

AGREEMENT BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF FISCAL EVASION

The Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Italian Republic;

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion;

Have agreed as follows:

Chapter I  
SCOPE OF THE AGREEMENT

**Article 1**  
**PERSONS COVERED**

This Agreement shall apply to persons who are residents of one or both of the Contracting Parties.

**Article 2**  
**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which this Agreement shall apply are in particular:
  - (a) in the case of the Hong Kong Special Administrative Region,
    - (i) profits tax;
    - (ii) salaries tax; and

(iii) property tax;

whether or not charged under personal assessment;

(b) in the case of Italy,

(i) the personal income tax;

(ii) the corporate income tax;

(iii) the regional tax on productive activities;

whether or not they are collected by withholding at source.

4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes, as well as any other taxes falling within paragraphs 1 and 2 of this Article which a Contracting Party may impose in future. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.
5. The existing taxes, together with the taxes imposed after the signature of this Agreement, are hereinafter referred to as “Hong Kong Special Administrative Region tax” or “Italian tax”, as the context requires.

Chapter II  
DEFINITIONS

**Article 3**  
**GENERAL DEFINITIONS**

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term “Hong Kong Special Administrative Region” means any territory where the tax laws of the Hong Kong Special Administrative Region of the People’s Republic of China apply;
  - (b) the term “Italy” means the Italian Republic and includes any area beyond the territorial waters which is designated as an area within which Italy, in compliance with its legislation and in conformity with international law, may exercise sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;
  - (c) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (d) the term “competent authority” means:
    - (i) in the case of the Hong Kong Special Administrative Region, the Commissioner of Inland Revenue or his authorized representative or any person or body authorized to perform any functions at present exercisable by the Commissioner or similar functions;

- (ii) in the case of Italy, the Ministry of Economy and Finance;
  - (e) the terms “a Contracting Party” and “the other Contracting Party” mean the Hong Kong Special Administrative Region or Italy, as the context requires;
  - (f) the terms “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;
  - (g) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;
  - (h) the term “national”, in relation to Italy, means:
    - (i) any individual possessing the citizenship of Italy; and
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in Italy;
  - (i) the term “person” includes an individual, a company and any other body of persons;
  - (j) the term “tax” means the Hong Kong Special Administrative Region tax or Italian tax, as the context requires.
2. In this Agreement, the terms “Hong Kong Special Administrative Region tax” and “Italian tax” do not include any amount which represents a penalty or interest imposed under the laws of either

Contracting Party relating to the taxes to which this Agreement applies by virtue of Article 2.

3. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

#### **Article 4**

##### **RESIDENT**

1. For the purposes of this Agreement, the term “resident of a Contracting Party” means:
  - (a) in the case of the Hong Kong Special Administrative Region,
    - (i) any individual who ordinarily resides in the Hong Kong Special Administrative Region;
    - (ii) any individual who stays in the Hong Kong Special Administrative Region for more than 180 days during a year of assessment or for more than 300 days in two consecutive years of assessment one of which is the relevant year of assessment;
    - (iii) a company incorporated in the Hong Kong Special Administrative Region or, if incorporated outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;

- (iv) any other person constituted under the laws of the Hong Kong Special Administrative Region or, if constituted outside the Hong Kong Special Administrative Region, being normally managed or controlled in the Hong Kong Special Administrative Region;
  - (b) in the case of Italy, any person who, under the laws of Italy, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term, however, does not include any person who is liable to tax in Italy in respect only of income from sources in Italy;
  - (c) in the case of either Contracting Party, the Government or any of its political or administrative subdivision or local authority.
2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:
- (a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);
  - (b) if the Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;

- (c) if he has an habitual abode in both Parties or in neither of them, the competent authorities of the Contracting Parties shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, the competent authorities of the Contracting Parties shall endeavour to settle the question by mutual agreement having regard to its place of effective management. In the absence of such agreement, such person shall not be entitled to claim any relief or exemption from tax provided for by this Agreement.

## **Article 5**

### **PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop; and
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term “permanent establishment” also encompasses:
  - (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
  - (b) the furnishing of services (including consultancy services) by an enterprise, through employees or other personnel engaged by the enterprise for such purpose, in connection with a site, a project or supervisory activities referred to in subparagraph (a), if those services continue within a Contracting Party in connection with such site, project or activities for a period or periods aggregating more than six months within any twelve-month period.
4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Chapter III  
TAXATION OF INCOME

**Article 6**

**INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply. Usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, quarries, sources and other natural resources shall also be considered as “immovable property”. Ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to the income from immovable property used for the performance of independent personal services.

## **Article 7**

### **BUSINESS PROFITS**

1. Profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other Party.
2. For the purposes of this Article and Article 22, the profits that are attributable in each Contracting Party to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.
3. Where, in accordance with paragraph 2, a Contracting Party adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting Parties and taxes accordingly profits of the enterprise that have been charged to tax in the other Party, the other Contracting Party shall, to the extent necessary to eliminate double taxation, make an appropriate adjustment if it agrees with the adjustment made by the first-mentioned Party; if the other Contracting Party does not so agree, the Contracting Parties shall eliminate any double taxation resulting therefrom by mutual agreement.
4. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **Article 8**

### **SHIPPING AND AIR TRANSPORT**

1. Profits of an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in that Party.
2. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **Article 9**

### **ASSOCIATED ENTERPRISES**

1. Where:
  - (a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party, or
  - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. Any such adjustment shall be made only in accordance with the mutual agreement procedure provided for by Article 24 of this Agreement.

## **Article 10**

### **DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party may be taxed in that other Party.
2. However, such dividends may also be taxed in the Contracting Party of which the company paying the dividends is a resident and according to the laws of that Party, but if the beneficial owner of the dividends is a resident of the other Contracting Party, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.

The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares,

founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Party of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident through a permanent establishment situated therein or performs in that other Party independent personal services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.
6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

## **Article 11**

### **INTEREST**

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.
2. However, such interest may also be taxed in the Contracting Party in which it arises and according to the laws of that Party, but if the beneficial owner of the interest is a resident of the other Contracting Party, the tax so charged shall not exceed 12.5 per cent of the gross amount of the interest. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting Party and paid to a resident of the other Contracting Party shall be exempt from tax in that Party if:
  - (a) the said resident is the beneficial owner of the interest and the interest is paid by the Government of that Contracting Party or a local authority thereof; or
  - (b) the interest is paid to the Government of the other Contracting Party or any of its political or administrative subdivision or local authority; or
  - (c) the interest is paid to any agency or instrumentality (including a financial institution) wholly owned or appointed by the Government of a Contracting Party or any of its political or administrative subdivision or local authority and which carries out activities of a governmental nature.
4. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and

whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1 to 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the interest, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain

taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

8. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

## **Article 12**

### **ROYALTIES**

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.
2. However, such royalties may also be taxed in the Contracting Party in which they arise, and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this limitation.
3. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including software, cinematograph-films, or films or tapes used for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether he is a resident of a Contracting Party or not, has in a Contracting Party a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Party in which the permanent establishment or fixed base is situated.
6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties exceeds, for whatever reasons, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.
7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the

royalties are paid to take advantage of this Article by means of that creation or assignment.

### **Article 13**

#### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party or of movable property pertaining to a fixed base available to a resident of a Contracting Party in the other Contracting Party for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other Party.
3. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Party.
4. Gains derived by a resident of a Contracting Party from the alienation of shares of a company deriving more than 50 per cent of its asset value directly or indirectly from immovable property situated in the other Contracting Party may be taxed in that other Party. However, this paragraph does not apply to gains derived from the alienation of shares quoted on a stock exchange of either

Contracting Party or any other stock exchange as may be agreed between the competent authorities.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting Party of which the alienator is a resident.

#### **Article 14**

#### **INDEPENDENT PERSONAL SERVICES**

1. Income derived by a resident of a Contracting Party in respect of professional services or other independent activities of a similar character shall be taxable only in that Party except in the following circumstances, when such income may also be taxed in the other Contracting Party:
  - (a) if he has a fixed base regularly available to him in the other Contracting Party for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting Party; or
  - (b) if his stay in the other Contracting Party is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned; in that case, only so much of the income as is derived from his activities performed in that other Contracting Party may be taxed in that other Contracting Party.
2. The term “professional services” includes, especially, independent scientific, literary, artistic, educational or teaching activities as well

as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

## **Article 15**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:
  - (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the taxable period concerned, and
  - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Party, and
  - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Party.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard

a ship or aircraft operated in international traffic by an enterprise of a Contracting Party shall be taxable only in that Party.

4. If a resident of a Contracting Party becomes a resident of the other Contracting Party, payments received by such resident by virtue of his employment in the first-mentioned Party as severance indemnity or other similar lump sum payments, are taxed in that Contracting Party.

#### **Article 16**

#### **DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

#### **Article 17**

#### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting Party, may be taxed in that other Party.
2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

## **Article 18**

### **PENSIONS**

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a Contracting Party in consideration of past employment shall be taxable only in that Party. However, such pensions and other similar remuneration may also be taxed in the other Contracting Party if they arise in that Party.
2. Pensions and other similar remuneration arising in a Contracting Party include payment out of a pension fund or scheme in which individuals may participate in order to secure retirement benefits, where such pension fund or scheme is recognised for tax purposes or regulated in accordance with the laws of that Contracting Party.

## **Article 19**

### **GOVERNMENT SERVICE**

1. (a) Salaries, wages and other similar remuneration, other than a pension, paid by the Government of a Contracting Party or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.
- (b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in that Party and the individual is a resident of that Party who:
  - (i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein and in the case of Italy, is a national thereof; or

- (ii) did not become a resident of that Party solely for the purpose of rendering the services.
- 2. (a) Any pension paid by, or paid out of funds created or contributed by, the Government of a Contracting Party or a political or administrative subdivision or a local authority thereof to an individual in respect of services rendered to that Party or subdivision or authority shall be taxable only in that Party.
- (b) However, such pension may also be taxed in the other Contracting Party if the individual is a resident of that Party and
  - (i) in the case of the Hong Kong Special Administrative Region, has the right of abode therein;
  - (ii) in the case of Italy, is a national thereof.
- 3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages, pensions, and other similar remuneration, in respect of services rendered in connection with a business carried on by a Contracting Party or a political or administrative subdivision or a local authority thereof.

## **Article 20**

### **STUDENTS**

- 1. Payments which a student who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the first-mentioned Contracting Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that

Party, provided that such payments arise from sources outside that Party.

2. The benefits of this Article shall extend only for a period not exceeding six consecutive years from the date of his arrival in the first-mentioned Party.

## **Article 21**

### **OTHER INCOME**

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein, or performs in that other Party independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.
3. Where, by reason of a special relationship between the persons who have carried on activities from which income referred to in paragraph 1 are derived, the payment for such activities exceeds the amount which would have been agreed upon by independent persons, the provisions of paragraph 1 shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting

Party, due regard being had to the other provisions of this Agreement.

4. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

#### Chapter IV

### METHODS FOR ELIMINATION OF DOUBLE TAXATION

#### Article 22

#### **ELIMINATION OF DOUBLE TAXATION**

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.
2. In the case of the Hong Kong Special Administrative Region, subject to the provisions of the laws of the Hong Kong Special Administrative Region relating to the allowance of a credit against Hong Kong Special Administrative Region tax of tax paid in a jurisdiction outside the Hong Kong Special Administrative Region (which shall not affect the general principle of this Article), Italian tax paid under the laws of Italy and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of the Hong Kong Special Administrative Region from sources in Italy, shall be allowed as a credit against Hong Kong Special Administrative Region tax payable in respect of that income, provided that the credit so allowed does not exceed the amount of Hong Kong Special

Administrative Region tax computed in respect of that income in accordance with the tax laws of the Hong Kong Special Administrative Region.

3. In the case of Italy:

If a resident of Italy owns items of income which are taxable in the Hong Kong Special Administrative Region, Italy, in determining its income taxes specified in Article 2 of this Agreement, may include in the basis upon which such taxes are imposed the said items of income, unless specific provisions of this Agreement otherwise provide.

In such a case, Italy shall deduct from the taxes so calculated the income tax paid in the Hong Kong Special Administrative Region but in an amount not exceeding that proportion of the aforesaid Italian tax which such items of income bear to the entire income.

The tax paid in the Hong Kong Special Administrative Region for which deduction is granted is only the pro rata amount corresponding to the foreign income which is included in the aggregate income.

However, no deduction shall be granted if the item of income is subjected in Italy to a substitute tax or to a final withholding tax, or to substitute taxation at the same rate as the final withholding tax, also by request of the recipient, in accordance with the Italian law.

4. Where in accordance with any provision of this Agreement income derived by a resident of a Contracting Party is exempt from tax in that Party, such Party may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Chapter V  
SPECIAL PROVISIONS

**Article 23**  
**NON-DISCRIMINATION**

1. Persons who, in the case of the Hong Kong Special Administrative Region, have the right of abode or are incorporated or otherwise constituted therein, and, in the case of Italy, are Italian nationals, shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which persons who have the right of abode or are incorporated or otherwise constituted in that other Party (where that other Party is the Hong Kong Special Administrative Region) or nationals of that other Party (where that other Party is Italy) in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.
2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12, or paragraph 3 of Article

21, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.

#### **Article 24**

#### **MUTUAL AGREEMENT PROCEDURE**

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting Party in which he has the right of abode or is incorporated or otherwise constituted (in the case of the Hong Kong Special Administrative Region) or of which he is a national (in the case of Italy). The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory

solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with this Agreement.

3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.
5. Where,
  - (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting Party on the basis that the actions of one or both of the Contracting Parties have resulted for that person in taxation not in accordance with the provisions of this Agreement, and
  - (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting Party,

any unresolved issues arising from the case shall be submitted for arbitration upon request by the person and subject to both competent authorities and the person agreeing in writing to be bound by the decision of the arbitration board. These unresolved issues shall not, however, be submitted to arbitration if a decision on

these issues has already been rendered by a court or administrative tribunal of either Party. The decision of the arbitration board in a particular case shall be binding on both Contracting Parties with respect to that case and shall be implemented notwithstanding any time limits in the domestic laws of these Parties. The competent authorities of the Contracting Parties shall by mutual agreement settle the mode of application of this paragraph.

## **Article 25**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement, insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by Article 1.
2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

- (a) to carry out administrative measures at variance with the laws and the administrative practice of that or of the other Contracting Party;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
  - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).
4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purpose. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

**Article 26**

**MEMBERS OF GOVERNMENT MISSIONS**

Nothing in this Agreement shall affect the fiscal privileges of members of government missions, including consular posts, under the general rules of international law or under the provisions of special agreements.

**Article 27**

**MISCELLANEOUS**

Nothing in this Agreement shall prejudice the right of each Contracting Party to apply its domestic laws and measures to prevent fiscal evasion and tax avoidance, whether or not described as such.

Chapter VI

FINAL PROVISIONS

**Article 28**

**ENTRY INTO FORCE**

Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of receipt of the later of these notifications and shall thereupon have effect:

- (a) in Italy:
  - (i) in respect of taxes withheld at source, to income derived on or after 1<sup>st</sup> January in the calendar year next following that in which this Agreement enters into force;

- (ii) in respect of other taxes on income, to taxes chargeable on or after 1<sup>st</sup> January in the calendar year next following that in which this Agreement enters into force;
- (b) in the Hong Kong Special Administrative Region:  
  
in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1<sup>st</sup> April in the calendar year next following that in which this Agreement enters into force.

## **Article 29**

### **TERMINATION**

This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement, by giving the other Contracting Party written notice of termination at least six months before the end of any calendar year after the period of five years from the date on which this Agreement enters into force. In such event, this Agreement shall cease to have effect:

- (a) in Italy:
  - (i) in respect of taxes withheld at source, to income derived on or after 1<sup>st</sup> January in the calendar year next following that in which the notice is given;
  - (ii) in respect of other taxes on income, to taxes chargeable for any taxable period beginning on or after 1<sup>st</sup> January in the calendar year next following that in which the notice is given;

(b) in the Hong Kong Special Administrative Region:

in respect of Hong Kong Special Administrative Region tax, for any year of assessment beginning on or after 1<sup>st</sup> April in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Agreement.

DONE in duplicate at Hong Kong this 14<sup>th</sup> day of January 2013, in the English and Italian languages, both texts being equally authentic.

For the Government of  
the Hong Kong Special  
Administrative Region of the  
People's Republic of China

For the Government of  
the Italian Republic

## PROTOCOL

to the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion.

At the time of signing of the Agreement between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Italian Republic for the avoidance of double taxation with respect to taxes on income and the prevention of fiscal evasion ("the Agreement"), the Governments of the Contracting Parties have agreed upon the following additional provisions which shall form an integral part of the Agreement.

It is understood that:

1. with reference to paragraph 3(c) of Article 11, the competent authorities of the Contracting Parties shall inform each other in writing of the agencies or instrumentalities to which the paragraph applies.
2. with reference to paragraphs 1 and 2 of Article 19, remuneration paid to an individual in respect of services rendered to the Bank of Italy or to the Italian Foreign Trade Institution (I.C.E.), are covered by the provisions concerning government service.
3. with reference to paragraph 5 of Article 24, both Contracting Parties consider that the implementation of reliefs and refunds following a mutual agreement ought to remain linked to the time limits prescribed by their domestic laws for commencement of procedures.

4. with reference to Article 25, it does not prohibit the use by the tax authorities of the Italian Republic, for taxes that are administrated and enforced by such tax authorities, of materials such as assessments, calculations, tabulations, listings, reports and work product of a similar nature, which are derived from the legitimate use of the information exchanged under paragraph 2 of Article 25.

It is further understood that, if at any time after the entry into force of the Agreement, under any agreement between the Hong Kong Special Administrative Region and a third jurisdiction which is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes, the Hong Kong Special Administrative Region agrees to exchange information on taxes other than the taxes covered by the Agreement, then the Hong Kong Special Administrative Region will pursue with expedition a negotiation with the Italian Republic aiming to extend the scope of Article 25 to apply to such other taxes.

5. with reference to Article 25, information shall not be disclosed to any third jurisdiction for any purpose without the prior consent of the competent authority of the Contracting Party providing the information.
6. with reference to Italy:
  - (a) Taxes withheld at source in a Contracting Party will be refunded by request of the taxpayer or of the Party of which he is a resident if the right to collect the said taxes is affected by the provisions of the Agreement.
  - (b) Claims for refund, that shall be produced within the time limit fixed by the law of the Contracting Party which is obliged to carry out the refund, shall be accompanied by an official certificate of the Contracting Party of which the

taxpayer is a resident certifying the existence of the conditions required for being entitled to the application of the allowances provided for by the Agreement.

- (c) By mutual agreement, the competent authorities of the Contracting Parties shall settle the mode of application of this paragraph, in accordance with the provisions of Article 24 of the Agreement.
- (d) The provisions of subparagraph (c) of this paragraph shall not prevent the competent authorities of the Contracting Parties from the carrying out, by mutual agreement, of other practices for the application of the limitations provided for in the Agreement.

IN WITNESS WHEREOF, the undersigned, duly authorized thereto, have signed this Protocol.

DONE in duplicate at Hong Kong this 14<sup>th</sup> day of January 2013, in the English and Italian languages, both texts being equally authentic.

For the Government of  
the Hong Kong Special  
Administrative Region of the  
People's Republic of China

For the Government of  
the Italian Republic