

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE BRITISH VIRGIN ISLANDS
AND
THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA
FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

The Government of the British Virgin Islands and the Government of the People’s Republic of China (“the Contracting Parties”):

Acknowledging that the Contracting Parties are competent to negotiate and conclude a tax information exchange agreement;

Desiring to provide a framework for cooperation and exchange of information in tax matters;

Agree to conclude the following Agreement between the Government of the British Virgin Islands and the Government of the People’s Republic of China for the Exchange of Information Relating to Taxes (hereinafter referred to as “the Agreement”) which contains obligations on the Contracting Parties only:

ARTICLE 1
SCOPE OF AGREEMENT

1. The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, verification and collection of such taxes, the recovery and enforcement of tax claims, and the investigation or prosecution of tax matters.

2. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 8.

ARTICLE 2
JURISDICTION

To enable the appropriate implementation of this Agreement, information shall be provided in accordance with this Agreement by the competent authority of the requested party:

- (a) without regard to whether the person to whom the information relates is a resident, national or citizen of a party, or whether the person by whom the information is held is a resident, national or citizen of a party; and
- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the requested party.

ARTICLE 3
TAXES COVERED

1. The taxes covered by this Agreement are:

(a) in the case of the People's Republic of China;

- (i) the individual income tax; and
- (ii) the enterprise income tax;

(b) in the case of the British Virgin Islands;

- (i) the income tax;
- (ii) the payroll tax; and
- (iii) the property tax.

2. This Agreement shall also apply to any identical or substantially similar taxes imposed by either Contracting Party after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in paragraph 1.

3. The competent authorities of the Contracting Parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

4. The taxes covered by this Agreement may be expanded or modified by mutual agreement of the Contracting Parties in the form agreed upon by both Contracting Parties.

ARTICLE 4
DEFINITIONS

1. In this Agreement:

(a) "British Virgin Islands" means the territory of the Virgin Islands as referred to in the Virgin Islands Constitution Order 2007;

(b) "the People's Republic of China", when used in a geographical sense, means all the territory of the People's Republic of China, including its territorial sea, in which the

Chinese laws relating to taxation apply, and any area beyond its territorial sea, within which the People's Republic of China has in accordance with international law sovereign rights of exploration for and exploitation of resources of the seabed and its sub-soil and superjacent water resources;

- (c) "collective investment fund or scheme" means any pooled investment vehicle irrespective of legal form;
- (d) "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (e) "competent authority" means,
 - (i) in the case of the People's Republic of China, the State Administration of Taxation or its authorized representative; and
 - (ii) in the case of the British Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
- (f) "information" means any fact, statement, document or record in whatever form;
- (g) "information gathering measures" means judicial, regulatory or administrative laws and procedures enabling a Contracting Party to obtain and provide the information requested;
- (h) "national" means,
 - (i) in relation to the British Virgin Islands, any individual who belongs to the British Virgin Islands or is a permanent resident of the British Virgin Islands;
 - (ii) in relation to the People's Republic of China, any individual possessing the nationality of the People's Republic of China;
 - (iii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting Party;
- (i) "person" means a natural person, a company or any entity that is treated as a body corporate for tax purposes, or any other body or group of persons;
- (j) "public collective investment fund or scheme" means any collective investment fund or scheme, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (k) "publicly traded company" means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily

purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors; and for this purpose, the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company and the term “recognised stock exchange” shall bear the meaning agreed upon in the Protocol;

- (l) “requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (m) “requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;
- (n) “tax” means any tax covered by this Agreement.

2. 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 Contracting Party, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of a requested party shall provide upon request in writing information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested party if it occurred in the territory of the requested party. If the information received by the competent authority of the requested party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the requesting party of that fact and request such additional information as may be required to enable the effective processing of the request.

2. If the information in the possession of the competent authority of the requested party is not sufficient to enable it to comply with the request for the information, the requested party shall use all relevant information gathering measures to provide the requesting party with the information requested, notwithstanding that the requested party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting party, the competent authority of the requested party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Contracting Party shall ensure that its competent authority, for the purposes of this Agreement, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members, beneficiaries and directors or other senior officers of the foundation.

5. Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the parties to obtain or provide:

- (a) ownership information with respect to publicly traded companies or public collective investment funds or schemes, unless such information can be obtained without giving rise to disproportionate difficulties;
- (b) information relating to a period more than six years prior to the tax period under consideration;
- (c) information in the possession or control of a person other than the taxpayer that does not relate to the taxpayer.

6. The competent authority of the requesting party shall provide the following information to the competent authority of the requested party when making a request for information under this Agreement in order to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature and type of the information requested, including a description of the information and/or specific evidence sought, and the form in which the requesting party would prefer to receive the information;
- (d) the tax purposes for which the information is sought;
- (e) reasonable grounds for believing that the information requested is present in the territory of the requested party or is in the possession or control of a person subject to the jurisdiction of the requested party;

- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a statement that the request is in conformity with this Agreement and the laws and administrative practices of the requesting party, and that if the requested information were within the jurisdiction of the requesting party then the competent authority of the requesting party would be able to obtain the information under the laws of the requesting party or in the normal course of administrative practice;
- (h) a statement that the requesting party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested party shall forward the requested information as promptly as possible to the competent authority of the requesting party. To ensure a prompt response, the competent authority of the requested party shall:

- (a) confirm the receipt of a request in writing to the competent authority of the requesting party and shall notify the competent authority of the requesting party of any deficiencies in the request within 60 days of receipt of the request; and
- (b) if the competent authority of the requested party has been unable to obtain and provide the information requested within 90 days of receipt of the request, including if obstacles are encountered in furnishing the information, or if the competent authority of the requested party refuses to provide the information, it shall immediately inform the competent authority of the requesting party to explain the reasons for its inability or the obstacles or its refusal.

ARTICLE 6

TAX EXAMINATIONS OR INVESTIGATIONS ABROAD

1. The requested party may, in accordance with its domestic laws, following receipt of notice of at least 14 working days from the requesting party, allow representatives of the competent authority of the requesting party to enter the territory of the requested party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authorities of the Contracting Parties shall agree on the time and place of the intended meeting with the persons concerned.

2. At the request of the competent authority of the requesting party, and in accordance with its domestic laws, the competent authority of the requested party may permit representatives of the competent authority of the requesting party to be present at the tax examination in the territory of the requested party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested party conducting the examination shall, as soon as possible, notify the competent authority of the requesting party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested party conducting the examination in accordance with its domestic laws.

ARTICLE 7

POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the requested party may decline to assist:
 - (a) where the request is not made in conformity with this Agreement;
 - (b) where the requesting party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
 - (c) where the disclosure of the information requested would be contrary to the public policy (*ordre public*) of the requested party.
2. This Agreement shall not impose upon a Contracting Party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.
3.
 - (a) The provisions of this Agreement shall not impose on a Contracting Party the obligation to obtain or provide information which would reveal confidential communications between a client and a professional legal advisor where such communications are:
 - (i) produced for the purposes of seeking or providing legal advice; or
 - (ii) produced for the purposes of use in existing or contemplated legal proceedings;
 - (b) Information held with the intention of furthering a criminal purpose is not subject to legal privilege, and nothing in this Article shall prevent a professional legal advisor from providing the name and address of a client where doing so would not constitute a breach of legal privilege.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.

5. The requested party shall not be required to obtain and provide information which, if the requested information was within the jurisdiction of the requesting party, the competent authority of the requesting party would not be able to obtain under its laws or in the normal course of administrative practice.

6. The requested party may decline a request for information if the information is requested by the requesting party to administer or enforce a provision of the tax law of the requesting party, or any requirement connected therewith, which discriminates against a national of the requested party as compared with a national of the requesting party in the same circumstances.

ARTICLE 8

CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Contracting Parties shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) officially concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

2. The information may not be used for any purpose other than for the purposes stated in Article 1 and may not be disclosed to any other person or entity or authority without the express written consent of the competent authority of the requested party.

3. Information provided to a requesting party shall not be disclosed to any other jurisdiction.

ARTICLE 9

SAFEGUARDS

Nothing in this Agreement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested party. The rights and safeguards shall not be applied by the requested party in a manner that unduly prevents or delays effective exchange of information.

ARTICLE 10

ADMINISTRATIVE COSTS

Incidence of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed upon by the competent authorities of the Contracting Parties in accordance with the Protocol.

ARTICLE 11
RESTRICTIVE TAX MEASURES

Neither of the Contracting Parties shall apply restrictive tax measures to residents or nationals of either Contracting Party so long as this Agreement is in force and effective. The term “restrictive tax measures” shall bear the meaning agreed upon in the Protocol.

ARTICLE 12
LANGUAGE

Requests for assistance and responses thereto shall be in English.

ARTICLE 13
MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.
2. In addition to the endeavours referred to in paragraph 1, the competent authorities of the Contracting Parties may mutually determine the procedures to be used under Articles 5 and 6.
3. The competent authorities of the Contracting Parties may communicate with each other directly for the purposes of this Agreement.
4. The Contracting Parties may also agree in writing on other forms of dispute resolution.

ARTICLE 14
ENTRY INTO FORCE

The Contracting Parties shall notify each other in writing that they have completed the internal legal procedures necessary for the entry into force of this Agreement. The Agreement shall enter into force on the thirtieth day upon the receipt of the later notification and shall have effect in respect of taxable years beginning on or after the date of entry into force.

ARTICLE 15
TERMINATION

1. This Agreement shall remain in force until terminated by either Contracting Party.

2. Either Contracting Party may terminate this Agreement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Contracting Party.

3. If the Agreement is terminated, the Contracting Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement. All requests received up to the effective date of termination shall be dealt with in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the undersigned, being duly authorised by the respective Contracting Parties, have signed this Agreement.

DONE at London in duplicate this 7th day of December, 2009, in the English and Chinese languages, both texts being equally authentic.

**For the Government of
the British Virgin Islands**

**For the Government of
the People's Republic of China**

**PROTOCOL TO
THE AGREEMENT BETWEEN THE GOVERNMENT OF THE BRITISH VIRGIN
ISLANDS AND THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA FOR
THE EXCHANGE OF INFORMATION RELATING TO TAXES**

The Government of the British Virgin Islands and the Government of the People’s Republic of China, desiring to facilitate proper interpretation and application of the Agreement between the Government of the British Virgin Islands and the Government of the People’s Republic of China for the Exchange of Information Relating to Taxes, (hereinafter referred to as “the Agreement”), have agreed on the following Protocol, which shall form an integral part of the Agreement.

**Section I
Interpretation of Article 3**

Information exchanged shall not be used for the purposes of taxes other than those covered by Article 3.

**Section II
Interpretation of Article 4**

For the purposes of sub-paragraph (k) of paragraph 1 of Article 4, a “recognised stock exchange” means any stock exchange agreed upon from time to time by the competent authorities of the Contracting Parties.

**Section III
Interpretation of Article 5**

The competent authorities of the Contracting Parties will not, pursuant to Article 5 of the Agreement, engage in fishing expeditions or request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

**Section IV
Interpretation of Article 6**

With respect to paragraph 1 of Article 6 of the Agreement, the term “in accordance with its domestic laws” refers to procedural matters to facilitate the entry of the representatives of a Contracting Party to the territory of the other Contracting Party for the purposes provided in Article 6.

**Section V
Interpretation of Article 10**

1. Pursuant to Article 10 of the Agreement, it is mutually decided that costs that would be incurred in the ordinary course of administering the domestic tax laws of the requested party will be borne by the requested party when such costs are incurred for the purpose of responding to a

request for information. Such ordinary costs would normally cover internal administration costs and any minor external costs.

2. All other costs that are not ordinary costs are considered extraordinary costs and will be borne by the requesting party. Examples of extraordinary costs include, but are not limited to, the following:

- (a) reasonable fees charged by third parties for carrying out research;
- (b) reasonable fees charged by third parties for copying documents;
- (c) reasonable costs of engaging experts, interpreters, or translators;
- (d) reasonable costs of conveying documents to the requesting party;
- (e) reasonable litigation costs of the requested party in relation to a specific request for information; and
- (f) reasonable costs for obtaining depositions or testimony.

3. The Contracting Parties will consult each other in any particular case where extraordinary costs are likely to exceed \$US1,000 to determine whether the requesting party will continue to pursue the request and bear the cost.

Section VI

Interpretation of Article 11

1. Pursuant to Article 11 of the Agreement, a "restrictive tax measure" is a measure applied by one Contracting Party to residents or nationals of the other Contracting Party on the basis that the other Contracting Party does not engage in effective exchange of information, and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the sole basis of no or nominal taxes.

2. Without limiting the generality of the meaning in paragraph 1, but subject to the domestic laws and regulations of the Contracting Parties, the term "restrictive tax measure" includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or the black listing by one Contracting Party of the other Contracting Party, on the basis outlined in paragraph 1.

3. Notwithstanding paragraph 2, the Contracting Parties may issue their own list of jurisdictions for the purposes of facilitating their own internal tax administration.

4. The Contracting Parties undertake to utilize all necessary legal and administrative mechanisms to ensure the effective exchange of information under the Agreement.

5. For the purposes of paragraph 4, the following will be considered not to constitute effective exchange of information under the Agreement:

- (a) where there is failure by a Contracting Party to establish relevant administrative systems and mechanisms to implement the provisions of the Agreement;

- (b) where there is undue delay in processing a request for information without notifying the requesting party the reason for such delay;
- (c) where there is refusal to provide information requested without complying with the grounds of refusal stipulated in Article 7.

6. If a Contracting Party forms the opinion that the other Contracting Party is not engaged in effective exchange of information under the Agreement, it may

- (a) notify that other Contracting Party of such opinion; and
- (b) invite and engage that other Contracting Party in a dialogue to resolve the matter that may be the subject of failure of effective exchange of information.

Section VII Miscellaneous

1. The Competent Authorities of the Contracting Parties shall endeavour to meet on a periodic basis to discuss matters relating to the effective implementation of the provisions of the Agreement.

2. This Protocol shall come into effect on the entry into force of the Agreement and shall remain in effect as long as the Agreement is in force.

3. The Contracting Parties may amend this Protocol at any time in writing. The amended Protocol will come into effect on the date of the final letter arranging the amendment, or in such other manner as the Contracting Parties may agree.

DONE at London in duplicate this 1st day of December, 2009, in the English and Chinese languages, both texts being equally authentic.

**For the Government of
the British Virgin Islands**

**For the Government of
the People's Republic of China**