

**AGREEMENT BETWEEN THE SWISS FEDERAL COUNCIL
AND THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION OF
THE PEOPLE’S REPUBLIC OF CHINA
ON THE AUTOMATIC EXCHANGE OF FINANCIAL ACCOUNT
INFORMATION TO IMPROVE INTERNATIONAL TAX COMPLIANCE**

Whereas, the Swiss Federal Council and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China have a longstanding and close relationship with respect to mutual assistance in tax matters and desire to improve international tax compliance by further building on that relationship;

Whereas, the Common Reporting Standard was developed by the OECD, with G20 countries, to tackle tax avoidance and evasion and improve tax compliance;

Whereas, the laws of the respective Parties require or are expected to require financial institutions to report information regarding certain accounts and follow related due diligence procedures, consistent with the scope of exchange contemplated by Article 2 of this Agreement and the reporting and due diligence procedures set out in the Common Reporting Standard;

Whereas, it is expected that the laws of the respective Parties would be amended from time to time to reflect updates to the Common Reporting Standard and once such changes are enacted by a Party the definition of Common Reporting Standard would be deemed to refer to the updated version in respect of that Party;

Whereas, Article 25 of the Agreement between the Swiss Federal Council and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China for the Avoidance of Double Taxation with respect to Taxes on Income, signed at Hong Kong on 4 October 2011, and the Protocol thereto (the “DTA”), authorises the exchange of information for tax purposes, and allows the Parties to agree on exchange of information on an automatic basis and the scope and modalities of such automatic exchanges;

Whereas, Switzerland and Hong Kong have in place (i) appropriate safeguards to ensure that the information received pursuant to this Agreement remains confidential and is used solely for the purposes set out in the DTA, and (ii) the infrastructure for an effective exchange relationship (including established processes for ensuring timely, accurate, and confidential information exchanges, effective and reliable communications, and capabilities to promptly resolve questions and concerns about exchanges or requests for exchanges and to administer the provisions of Article 4 of this Agreement);

Whereas, the Parties desire to conclude an agreement to improve international tax compliance based on reciprocal automatic exchange pursuant to the DTA, and subject to the confidentiality and other protections provided for therein, including the provisions limiting the use of the information exchanged under the DTA;

Now, therefore, the Parties have agreed as follows:

ARTICLE 1

Definitions

1. For the purposes of this agreement (“Agreement”), the following terms have the following meanings:
 - (a) the term **“Hong Kong Special Administrative Region”** (**“Hong Kong”**) 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 **“Switzerland”** means the Swiss Confederation;
 - (c) the term **“Party”** means the Hong Kong Special Administrative Region or Switzerland, as the context requires;

- (d) the term “**Competent Authority**” means:
 - (i) in the case of Hong Kong, the Commissioner of Inland Revenue or his authorised representative; and
 - (ii) in the case of Switzerland, the Head of the Federal Department of Finance or his authorised representative;
- (e) the term “**Hong Kong Financial Institution**” means (i) any Financial Institution that is resident in Hong Kong, but excludes any branch of that Financial Institution that is located outside Hong Kong, and (ii) any branch of a Financial Institution that is not resident in Hong Kong, if that branch is located in Hong Kong;
- (f) the term “**Swiss Financial Institution**” means (i) any Financial Institution that is resident in Switzerland, but excludes any branch of that Financial Institution that is located outside Switzerland, and (ii) any branch of a Financial Institution that is not resident in Switzerland, if that branch is located in Switzerland;
- (g) the term “**Reporting Financial Institution**” means any Hong Kong Financial Institution or Swiss Financial Institution, as the context requires, that is not a Non-Reporting Financial Institution;
- (h) the term “**Reportable Account**” means a Hong Kong Reportable Account or a Swiss Reportable Account, as the context requires, provided it has been identified as such pursuant to due diligence procedures, consistent with the Common Reporting Standard, in place in Hong Kong or in Switzerland;
- (i) the term “**Hong Kong Reportable Account**” means a Financial Account that is maintained by a Swiss Reporting Financial Institution and held by one or more Hong Kong Persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Hong Kong Reportable Person;

- (j) the term “**Swiss Reportable Account**” means a Financial Account that is maintained by a Hong Kong Reporting Financial Institution and held by one or more Swiss Persons that are Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Swiss Reportable Person;
- (k) the term “**Hong Kong Person**” means an individual or Entity that is identified by a Swiss Reporting Financial Institution as resident in Hong Kong pursuant to due diligence procedures consistent with the Common Reporting Standard, or an estate of a decedent that was a resident of Hong Kong;
- (l) the term “**Swiss Person**” means an individual or Entity that is identified by a Hong Kong Reporting Financial Institution as resident in Switzerland pursuant to due diligence procedures consistent with the Common Reporting Standard, or an estate of a decedent that was a resident of Switzerland;
- (m) the term “**TIN**” means a Hong Kong TIN or a Swiss TIN, as the context requires;
- (n) the term “**Hong Kong TIN**” means the Hong Kong Identity Card number in the case of an individual, or the Business Registration number in the case of an entity;
- (o) the term “**Swiss TIN**” means:
- for individuals: the Old Age and Survivors Insurance Number according to the Federal Law of 20 December 1946 on the Old Age and Survivors Insurance;
 - for entities: the entity identification number according to the Federal Law of 18 June 2010 on the Entities Identification Number;
- (p) the term “**Common Reporting Standard**” means the standard for automatic exchange of financial account information in tax matters, developed by the OECD, with G20 countries.

2. Any capitalised term not otherwise defined in this Agreement shall have the meaning that it has at that time under the law of the jurisdiction applying the Agreement, such meaning being consistent with the meaning set forth in the Common Reporting Standard. Any term not otherwise defined in this Agreement or in the Common Reporting Standard shall, unless the context otherwise requires or the Competent Authorities agree to a common meaning (as permitted by internal law), have the meaning that it has at that time under the law of the jurisdiction applying this Agreement, any meaning under the applicable tax laws of that jurisdiction prevailing over a meaning given to the term under other laws of that jurisdiction.

ARTICLE 2

Exchange of Information with Respect to Reportable Accounts

1. Pursuant to the provisions of Article 25 of the DTA and subject to the applicable reporting and due diligence rules consistent with the Common Reporting Standard, each Competent Authority shall annually exchange with the other Competent Authority on an automatic basis the information obtained pursuant to such rules and specified in paragraph 2.
2. The information to be exchanged is, in the case of Hong Kong with respect to each Swiss Reportable Account, and in the case of Switzerland with respect to each Hong Kong Reportable Account:
 - (a) the name, address, TIN(s) and date and place of birth (in the case of an individual and if collected by a Hong Kong or Swiss Financial Institution) of each Reportable Person that is an Account Holder of the account and, in the case of any Entity that is an Account Holder and that, after application of due diligence procedures consistent with the Common Reporting Standard, is identified as having one or more Controlling Persons that is a Reportable Person, the name, address, and TIN(s) of the Entity and the name, address, TIN(s) and date and place of birth of each Reportable Person;
 - (b) the account number (or functional equivalent in the absence of an account number);

- (c) the name and identifying number (if any) of the Reporting Financial Institution;
- (d) the account balance or value (including, in the case of a Cash Value Insurance Contract or Annuity Contract, the Cash Value or surrender value) as of the end of the relevant calendar year or other appropriate reporting period or, if the account was closed during such year or period, the closure of the account;
- (e) in the case of any Custodial Account:
 - (i) the total gross amount of interest, the total gross amount of dividends, and the total gross amount of other income generated with respect to the assets held in the account, in each case paid or credited to the account (or with respect to the account) during the calendar year or other appropriate reporting period; and
 - (ii) the total gross proceeds from the sale or redemption of Financial Assets paid or credited to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution acted as a custodian, broker, nominee, or otherwise as an agent for the Account Holder;
- (f) in the case of any Depository Account, the total gross amount of interest paid or credited to the account during the calendar year or other appropriate reporting period; and
- (g) in the case of any account not described in subparagraph 2(e) or (f), the total gross amount paid or credited to the Account Holder with respect to the account during the calendar year or other appropriate reporting period with respect to which the Reporting Financial Institution is the obligor or debtor, including the aggregate amount of any redemption payments made to the Account Holder during the calendar year or other appropriate reporting period.

ARTICLE 3

Time and Manner of Exchange of Information

1. For the purposes of the exchange of information in Article 2, the amount and characterisation of payments made with respect to a Reportable Account may be determined in accordance with the principles of the tax laws of the jurisdiction exchanging the information.
2. For the purposes of the exchange of information in Article 2, the information exchanged shall identify the currency in which each relevant amount is denominated.
3. With respect to paragraph 2 of Article 2, information shall be exchanged with respect to 2018 and all subsequent years and shall be exchanged within nine months after the end of the calendar year to which the information relates. Notwithstanding the foregoing sentence, information is only required to be exchanged with respect to a calendar year if both jurisdictions have in effect legislation that requires reporting with respect to such calendar year that is consistent with the scope of exchange provided for in Article 2 and the reporting and due diligence procedures contained in the Common Reporting Standard.
4. The Competent Authorities shall automatically exchange the information described in Article 2 in the common reporting standard schema in Extensible Markup Language.
5. The Competent Authorities shall work towards and agree on one or more methods for data transmission, including encryption standards.

ARTICLE 4

Collaboration on Compliance and Enforcement

A Competent Authority shall notify the other Competent Authority when the first-mentioned Competent Authority has reason to believe that an error may have led to incorrect or incomplete information reporting or there is non-compliance by a Reporting Financial Institution with the applicable reporting requirements and due diligence procedures consistent with the Common

Reporting Standard. The notified Competent Authority shall take all appropriate measures available under its internal law to address the errors or non-compliance described in the notice.

ARTICLE 5

Confidentiality and Data Safeguards

1. All information exchanged is subject to the confidentiality rules and other safeguards provided for in the DTA, including the provisions limiting the use of the information exchanged and, to the extent needed to ensure the necessary level of protection of personal data, in accordance with the safeguards required under the internal law of the supplying Party, as specified in the notification pursuant to paragraph 2(b) of Article 7.
2. Each Competent Authority shall notify the other Competent Authority immediately regarding any breach of confidentiality or failure of safeguards and any sanctions and remedial actions consequently imposed.

ARTICLE 6

Consultations and Amendments

1. If any difficulties in the implementation or interpretation of this Agreement arise, either Competent Authority may request consultations to develop appropriate measures to ensure that this Agreement is fulfilled.
2. This Agreement may be amended by written agreement of the Parties. Unless otherwise agreed upon, such an amendment is effective on the first day of the month following the expiration of a period of one month after the date of the later of the signatures of such written agreement or the date of the later of the notifications exchanged for purposes of such written agreement.

ARTICLE 7

Term of Agreement

1. This Agreement shall be provisionally implemented by the Parties in accordance with their respective law from 1 January 2018 pending its entry into force in accordance with paragraph 2 below. A Party may terminate the provisional application of this Agreement by giving written notice to the other Party of its intention not to become a party to this Agreement. Such termination shall take effect on the first day of the month following the date of such notification and all obligations under this Agreement shall cease to be binding. In the event of termination, all information previously received under this Agreement shall remain confidential and subject to the terms of the DTA.
2. Each Party shall notify to the other confirming:
 - (a) that the procedures required by its internal law for the bringing into force of this Agreement have been completed and the relevant effective dates with respect to Preexisting Accounts, New Accounts, and the application or completion of the reporting and due diligence procedures;
 - (b) the safeguards for the protection of personal data required under the internal law of the supplying Party and to be complied with by the receiving Party;
 - (c) that it has in place adequate measures to ensure the required confidentiality and data safeguards standards are met;
 - (d) that the jurisdiction is in a position to comply with the data protection safeguards specified by the other Party in its notification pursuant to paragraph 2(b) of Article 7.

This Agreement shall enter into force on the first day of the month following the date on which the later of those notifications has been received.

3. A Party may suspend the exchange of information under this Agreement by giving notice in writing to the other Party that it has determined that there is or has been significant non-compliance by the other Party with this Agreement. Such suspension shall have immediate effect as from the date of the notification. For the purposes of this paragraph, significant non-compliance includes, but is not limited to, non-compliance with the confidentiality and data safeguard provisions of this Agreement and the DTA, a failure by the Competent Authority to provide timely or adequate information as required under this Agreement or defining the status of Entities or accounts as Non-Reporting Financial Institutions and Excluded Accounts in a manner that frustrates the purposes of the Common Reporting Standard.
4. Either Party may terminate this Agreement by giving notice of termination in writing to the other Party. Such termination shall become effective on the first day of the month following the expiration of a period of 12 months after the date of the notice of termination. In the event of termination, all information previously received under this Agreement shall remain confidential and subject to the terms of the DTA.

Done in duplicate at Hong Kong on 13 October 2017, in the English and German languages, both texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

For the Swiss Federal Council

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