CONVENTION

BETWEEN

THE SWISS CONFEDERATION

AND

THE FEDERATIVE REPUBLIC OF BRAZIL

FOR THE ELIMINATION OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

The Swiss Confederation
and
the Federative Republic of Brazil,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

Have agreed as follows:

Article 1 Persons covered

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.

2. For the purposes of this Convention, income derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income of a resident of a Contracting State but only to the extent that the income is treated, for purposes of taxation by that State, as the income of a resident of that State. In no case shall the provisions of this paragraph be construed so as to restrict in any way a Contracting State's right to tax the residents of that State.

Article 2 Taxes covered

1. The existing taxes to which this Convention shall apply are in particular:

   a) in the case of Brazil:
      (i) the federal income tax,
      (ii) the social contribution on net profit,
      (hereinafter referred to as "Brazilian tax");

   b) in the case of Switzerland:
      the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains, and other items of income),
      (hereinafter referred to as "Swiss tax").

2. This Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

3. 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.

Article 3 General definitions

1. For the purposes of this Convention, unless the context otherwise requires:

a) the term “Brazil” means the Federative Republic of Brazil and, when used in a geographical sense, means the territory of the Federative Republic of Brazil, as well as the area of the sea-bed, its subsoil and the superjacent water column adjacent to the territorial sea, wherein the Federative Republic of Brazil exercises sovereign rights or jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources or for the production of energy from renewable sources;

b) the term ”Switzerland" means the territory of the Swiss Confederation as defined by its laws in accordance with international law;

c) the terms “a Contracting State” and “the other Contracting State” mean Switzerland or Brazil as the context requires;

d) the term “person” includes an individual, a company and any other body of persons;

e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

g) the term “national”, in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and

(ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;

h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

i) the term “competent authority” means:

(i) in the case of Brazil, the Minister of Finance, the Secretary of the Federal Revenue or their authorised representatives;

(ii) in the case of Switzerland, the Head of the Federal Department of Finance or his authorised representative;

j) the term "pension fund" of a State means an entity or arrangement established in a Contracting State that is treated as a separate person under the taxation laws of that State and:

(i) that is constituted and operated exclusively to administer or provide retirement or similar benefits to individuals and that is regulated as such by that State or one of its political subdivisions; or

(ii) that is constituted and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in clause (i).

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

Article 4 Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, legal head office (place of incorporation), place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

b) if the State 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 State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States 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 States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

Article 5 Permanent establishment

1. For the purposes of this Convention, 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. A building site, a construction, assembly or installation project constitutes a permanent establishment only if it lasts more than nine months.

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 sub-paragraphs (a) to (e) of this paragraph, 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 State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State 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 State merely because it carries on business in that State 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 State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6 Income from immovable property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State 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 (including the breeding and cultivation of fish) 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, sources and other natural resources; ships 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. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred.

4. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article

Article 8 Shipping and air transport

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to such part of the profits so derived as relates to the participation held in the joint operation.

Article 9 Associated enterprises

Where

a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

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 by a Contracting State in the profits of that enterprise and taxed accordingly.

Article 10 Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State,

but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a merger or divisive reorganisation, or from a change of legal form, of the company that holds the shares or that pays the dividend); or

b) 15 per cent of the gross amount of the dividends in all other cases.

3. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in that other State if the beneficial owner of the dividends is:

a) a pension fund of the other Contracting State provided that:
   (i) in the case of a pension fund referred to in clause (1) j) (i) of Article 3, the individuals are primarily residents of that other Contracting State; or
   (ii) in the case of a pension fund referred to in clause (1) j) (ii) of Article 3, the funds are invested for the benefit of entities or arrangements each of which satisfy clause (i) of this subparagraph; or

b) the Central Bank of the other Contracting State.

4. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of the limitations of paragraphs 2 and 3. Paragraphs 2 and 3 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

5. 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 Contracting State of which the company making the distribution is a resident.

6. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent 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 15, as the case may be, shall apply.

7. Where a resident of a Contracting State has a permanent establishment in the other Contracting State, that permanent establishment may be subject to a tax withheld at source in accordance with the law of that other Contracting State. However, the tax so charged shall not exceed 10 per cent of the gross amount of the profits of

that permanent establishment determined after the payment of the corporate tax related to such profits.

8. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State 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 State 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 State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

Article 11 Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 10 per cent of the gross amount of the interest if the beneficial owner is a bank and the loan has been granted for at least five years for the financing of the purchase of equipment or of investment projects;

b) 15 per cent of the gross amount of the interest in all other cases.

3. Notwithstanding the provisions of paragraph 2, interest arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State to the extent that such interest is paid

a) to a pension fund of the other Contracting State provided that:
   (i) in the case of a pension fund referred to in clause (1) j) (i) of Article 3, the individuals are primarily residents of that other Contracting State; or
   (ii) in the case of a pension fund referred to in clause (1) j) (ii) of Article 3, the funds are invested for the benefit of entities or arrangements each of which satisfy clause (i) of this subparagraph;

b) to the Government of that other State, a political subdivision or local authority thereof, any agency (including a financial institution) wholly owned by that Government, or to the Central Bank of that other State.

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, as well as other income assimilated to income from loans by the tax law of the Contracting State in which the income arises.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent 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 15, as the case may be, shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State 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 State 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, having regard to the debt claim for which it is paid, exceeds 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 State, due regard being had to the other provisions of this Convention.

Article 12 Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

a) 15 per cent of the gross amount of the royalties arising from the use or the right to use trademarks;

b) 10 per cent of the gross amount of the royalties in all other cases.

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 cinematograph films and recordings for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, any industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience (know-how).

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent 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 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State 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 State 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, having regard to the use, right or information for which they are paid, exceeds 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 State, due regard being had to the other provisions of this Convention.

Article 13 Fees for technical services

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, notwithstanding the provisions of Article 15 and subject to the provisions of Articles 8, 17 and 18, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed 10 percent of the gross amount of the fees.

3. The term “fees for technical services” as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:

a) to an employee of the person making the payment;

b) for teaching in an educational institution or for teaching by an educational institution; or

c) by an individual for services for the personal use of an individual.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State, or performs in the other Contracting State independent personal services from a fixed base situated in that other State, and the fees for technical services are effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State

or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the fees was incurred, and such fees are borne by the permanent establishment or fixed base.

6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State or a third State through a permanent establishment situated in that other State or the third State, or performs independent personal services through a fixed base situated in that other State or the third State and such fees are borne by that permanent establishment or fixed base.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services for which they are paid, exceeds 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 fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 14 Capital gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contacting State in the other Contracting State for the purpose of performing independent 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 State.

3. Gains 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 the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains derived by a resident of a Contracting State from the alienation of shares of the capital stock of a company the property of which consists directly or indirectly principally of immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4 that arise in the other Contracting State may be taxed in that other State.

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

Article 15 Independent personal services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State, except in the following circumstances, when such income may also be taxed in the other Contracting State:

a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his services or activities. In such case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

b) if his stay in the other State is for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned. In such case, only so much of the income as is derived from the services or activities performed in that other State may be taxed in that other State.

2. The term "professional services" includes especially independent scientific, technical, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 16 Income from employment

1. Subject to the provisions of Articles 17, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State, in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

Article 17 Directors' fees

Directors' fees and similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors or of any council of a

company which is a resident of the other Contracting State may be taxed in that other State.

Article 18 Entertainers and sportsmen

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State 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 State, may be taxed in that other State.

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 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised. The provisions of the preceding sentence shall not apply if it is established that neither the entertainer or the sportsman himself, nor persons related to him, participate directly in the profits of such person.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by entertainers or sportsmen if the visit to that State is wholly or mainly supported by public funds of the other Contracting State or a political subdivision or a local authority thereof or by a government controlled institution. In such case the income shall be taxable only in the Contracting State of which the entertainer or sportsman is a resident.

Article 19 Pensions

1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State, including payments under the social security legislation in a Contracting State, may be taxed in the State in which they arise, and according to the law of that State.

2. Notwithstanding the provisions of paragraph 1, pensions paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to any individual in respect of services rendered to that State or a political subdivision or a local authority thereof in the discharge of functions of a governmental nature shall be taxable only in that State.

Article 20 Government service

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or political subdivision or authority shall be taxable only in that State.

   b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:

      (i) is a national of that State; or

      (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 16, 17, 18 and 19 shall apply to salaries, wages, and other similar remuneration, as well as to pensions, in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 21 Students and apprentices

1. Payments which a student or an apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State 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 first- mentioned State, provided that such payments arise from sources outside that State.

2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1, a student or apprentice described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State visited.

Article 22 Other income

1. Subject to paragraph 3, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

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 State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent 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 15, as the case may be, shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State shall not be covered by this Convention.

Article 23 Elimination of double taxation

1. In the case of Brazil, double taxation shall be avoided as follows:

   a) Where a resident of Brazil derives income which, in accordance with the provisions of this Convention, may be taxed in Switzerland, Brazil shall allow, according to the provisions of its law regarding the elimination of double taxation, as a deduction from the tax on income of that resident calculated in Brazil, an amount equal to the tax on income paid in Switzerland. Such deduction, however, shall not exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Switzerland.

b) Where in accordance with any provision of the Convention income derived by a resident of Brazil is exempt from tax in Brazil, Brazil may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

2. In the case of Switzerland, double taxation shall be avoided as follows:

a) Where a resident of Switzerland derives income which, in accordance with the provisions of this Convention, may be taxed in Brazil, Switzerland shall, subject to the provisions of subparagraph b), exempt such income from tax but may, in calculating tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the exempted income had not been so exempted. However, such exemption shall apply to gains referred to in paragraphs 4 and 5 of Article 14 and to income referred to in paragraph 1 of Article 19 only if actual taxation of such income or gains in Brazil is demonstrated.

b) Where a resident of Switzerland derives dividends, interest, royalties or payments for technical services which, in accordance with the provisions of Article 10, 11, 12 or 13, may be taxed in Brazil, Switzerland shall allow, upon request, a relief to such resident. The relief may consist of:

(i) a deduction from the tax on the income of that resident of an amount equal to the tax levied in Brazil in accordance with the provisions of Articles 10, 11, 12 and 13; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Brazil; or

(ii) a lump sum reduction of the Swiss tax; or

(iii) a partial exemption of such dividends, interest, royalties or payments for technical services from Swiss tax, in any case consisting at least of the deduction of the tax levied in Brazil from the gross amount of the dividends, interest, royalties or payments for technical services.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

c) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Brazil shall be entitled, for the purposes of the Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

d) The provisions of subparagraph a) of paragraph 2 shall not apply to income derived by a resident of Switzerland where Brazil applies the provisions of this Convention to exempt such income from tax or applies the provisions of paragraphs 2 of Articles 10, 11, 12 and 13 to such income.

Article 24 Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State 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 States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State 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 Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 7 of Article 13 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State 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 State.

4. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State 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 State are or may be subjected.

5. The provisions of this Article shall apply only to the taxes covered by this Convention.

Article 25 Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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 State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or appli-

cation of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States 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.

Article 26 Exchange of information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State 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, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

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 State;

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 State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. 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 State 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 State 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 27 Entitlement to benefits

1. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

2. Notwithstanding the provisions of paragraph 1 above, if the legislation of a Contracting State contains provisions, or introduces such provisions after the signing of this Convention, whereby offshore income derived by a company from:

a) shipping;

b) banking, financing, insurance, investment or similar activities; or

c) being the headquarter, co-ordination centre or similar entity providing administrative services or other support to a group of companies which carry on business primarily in third States,

is not taxed in that State or is taxed at a rate of tax which is lower than 60 per cent of the rate of tax which is applied to income from similar onshore activities, the other Contracting State shall not be obliged to apply any limitation imposed under this Convention on its right to tax the income derived by the company from such offshore activities or on its right to tax the dividends paid by the company.

3. Notwithstanding the provisions of paragraphs 1 and 2 above, a legal entity that is a resident of a Contracting State and derives income from sources within the other Contracting State shall not be entitled in that other Contracting State to the benefits of this Convention if more than fifty per cent of the beneficial interest in such an entity (or in the case of a company, more than fifty per cent of the aggregate vote and value of the company's shares) is owned, directly or indirectly, by any combination of one or more persons that are not residents of the first-mentioned Contracting State. However, the preceding sentence shall not apply if that entity, or an entity within a multinational group affiliated to it, has its principal class of shares regularly traded on one or more recognized stock exchanges, or carries on in the Contracting State of which it is a resident a substantive business activity other than the mere holding of securities or any other assets, or the mere performance of auxiliary, preparatory or any other similar activities in respect of other related entities.

4. Where:

a) an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats such income as attributable to a permanent establishment of the enterprise situated in a third state; and

b) the profits attributable to that permanent establishment are exempt from tax in the first-mentioned Contracting State,

the benefits of the Convention shall not apply to any item of income on which the tax in the third state is less than 60 per cent of the tax that would be imposed in the first-mentioned Contracting State on that item of income if that permanent establishment were situated in the first-mentioned Contracting State. In such a case, any income to which the provisions of this paragraph apply shall remain taxable according to the domestic law of the other Contracting State, notwithstanding any other provisions of the Convention.

Article 28 Members of diplomatic missions and consular posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 29 Entry into force

1. Each of the Contracting States shall notify in writing through diplomatic channels to the other the completion of the procedures required by its law for the bringing into force of this Convention.

2. This Convention shall enter into force on the date of the reception of the second of those notifications and its provisions shall have effect:

a) in Brazil:
   (i) in respect of taxes withheld at source, on income paid, remitted or credited on or after the first day of January next following the date upon which the Convention enters into force;
   (ii) in respect of other taxes, on income arising in the taxable years beginning on or after the first day of January next following the date upon which the Convention enters into force;
   (iii) in respect of Article 26, for information that relates to fiscal years or business years beginning on or after the first day of January of the calendar year next following the entry into force of the Convention;

b) in Switzerland:
   (i) in respect of taxes withheld at source, on amounts paid or credited on or after the first day of January of the year next following the year of the entry into force of the Convention;
   (ii) in respect of other taxes, for taxation years beginning on or after the first day of January of the year next following the year of the entry into force of the Convention;
   (iii) in respect of Article 26, for information that relates to fiscal years or business years beginning on or after the first day of January of the calendar year next following the entry into force of the Convention.

3. Notwithstanding the provisions of this Article, the provisions of Article 25 (Mutual Agreement Procedure) shall have effect from the date of entry into force of this Convention, without regard to the taxable period to which the matter relates.

4. The Agreement between the Governments of the United States of Brazil and of the Swiss Confederation on Mutual Exemption of Income Tax to Brazilian and Swiss Companies of Air and Naval Transportation concluded by exchange of notes dated 22 June 1956, shall be suspended and shall not have effect as long as this Convention has effect.

Article 30 Termination

Either Contracting State may terminate this Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of this Convention. In such event, this Convention shall cease to have effect:

a) in Brazil:
   (i) in respect of tax withheld at source, on income paid, remitted or credited on or after the first day of January next following the year in which the notice of termination is given;
   (ii) in respect of other taxes, on income arising in the taxable years beginning on or after the first day of January next following the year in which the notice of termination is given;

b) in Switzerland:
   (i) in respect of taxes withheld at source, on amounts paid or credited on or after the first day of January of the year next following that in which the notice of termination is given;
   (ii) in respect of other taxes, for taxation years beginning on or after the first day of January of the year next following that in which the notice of termination is given.

In witness whereof the undersigned, duly authorized thereto, have signed this Convention.

Done in duplicate at ……., this ……. day of …… 2018, in the French, Portuguese and English languages, all texts being equally authentic. In case of divergence of interpretation between the French and the Portuguese texts, the English text shall prevail.

For the Swiss Confederation: For the Federative Republic of Brazil:

Protocol

The Swiss Confederation
and
the Federative Republic of Brazil

Have agreed at the signing at ..... on the ..... of the Convention between the two States for the elimination of double taxation with respect to taxes on income and the prevention of tax evasion and avoidance upon the following provisions which shall form an integral part of the said Convention.

1. With reference to Article 1

a) It is understood that, notwithstanding the other provisions of this Convention, a collective investment vehicle which is established in a Contracting State and which receives income arising in the other Contracting State shall be treated for purposes of applying the Convention to such income as an individual who is a resident of the Contracting State in which it is established and as the beneficial owner of the income it receives (provided that, if an individual who is a resident of the first-mentioned State had received the income in the same circumstances, such individual would have been considered to be the beneficial owner thereof), but only to the extent that the beneficial interests in the collective investment vehicle are owned by residents of the Contracting State in which the collective investment vehicle is established.

b) It is understood that for purposes of this paragraph, the term "collective investment vehicle" means, in the case of Switzerland, a contractual fund as defined in Article 25 and an investment company with variable capital as defined in Article 36 of the Federal Act on Collective Investment Schemes of 23 June 2006 and, in the case of Brazil, an entity, being or not a legal entity, constituted with the purpose of investing resources obtained from one or more investors, as regulated by the Securities and Exchange Commission of Brazil ("Comissão de Valores Mobiliários"), as well as any other investment fund, arrangement or entity established in either Contracting State which the competent authorities of the Contracting States agree to regard as a collective investment vehicle for purposes of this paragraph.

c) It is understood that, notwithstanding the other provisions of this Convention, a Swiss limited partnership for collective capital investment schemes as defined in Article 98 of the Federal Act on Collective Investment Schemes of 23 June 2006 which receives income arising in Brazil shall not be treated as a resident of Switzerland, but may claim, on behalf of the owners of its beneficial interests, the tax reductions, exemptions or other benefits that would have been available under this Convention to such owners had they

received such income directly. It may not make such a claim if the owner has itself made an individual claim for benefits with respect to income received by the partnership.

2. With reference to sub-paragraph j) of paragraph 1 of Article 3

It is understood that the term "pension fund" includes the following and any identical or substantially similar funds which are established pursuant to legislation introduced after the date of signature of this Convention:

a) in Brazil, any pension fund covered by
   (i) Complementary Law No. 108, dated 29 May 2001;
   (ii) Complementary Law No. 109, dated 29 May 2001; or
   (iii) Law No. 9,477, dated 24 July 1997;

b) in Switzerland, any pension fund covered by
   (i) the Federal Act on old age and survivors' insurance, of 20 December 1946;
   (ii) the Federal Act on disabled persons' insurance of 19 June 1959;
   (iii) the Federal Act on supplementary pensions in respect of old age, survivors' and disabled persons' insurance of 6 October 2006;
   (iv) the Federal Act on income compensation allowances in case of service and in case of maternity of 25 September 1952;
   (v) the Federal Act on old age, survivors' and disabled persons' insurance payable in respect of employment or self-employment of 25 June 1982, including pension funds which offer individual recognised pension plans comparable with occupational pension plans;
   (vi) the Federal Act on Vested Benefits of 17 December 1993;
   (vii) paragraph 6 and paragraph 7 of Article 89a of the Swiss Civil Code of 10 December 1907; or
   (viii) paragraph 1 of Article 331 of the Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations) of 30 March 1911.

3. With reference to paragraph 1 of Article 4

It is understood that the term "resident of a Contracting State" includes in particular:

a) a pension fund established in that State; and

b) an organization that is established and is operated exclusively for religious, charitable, scientific, cultural, sporting, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

4. With reference to paragraphs 1 and 2 of Article 7

a) It is understood that where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but shall be determined only on the basis of that part of the total receipts which is attributable to the actual activity of the permanent establishment for such sales or business.

b) It is understood that in the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident, provided that the amount payable is not covered under the provisions of Article 13.

5. With reference to Articles 9 and 25

It is understood that the absence of a clause providing for an obligation of a Contracting State to make an appropriate corresponding adjustment cannot be construed so as to hinder a Contracting State to make such an appropriate adjustment if it has been agreed to in the course of a mutual agreement procedure.

6. With reference to sub-paragraph a) of paragraph 2 of Article 10

It is understood that where the minimum holding period laid down in sub-paragraph a) of paragraph 2 of Article 10 was not met at the time of the payment of the dividend and, therefore, the tax stipulated in sub-paragraph b) of paragraph 2 of Article 10 was withheld at the moment of the payment, and the condition of the minimum holding period is met subsequently, then the beneficial owner of the dividend shall be entitled to a refund of the tax withheld up to the tax rate provided for in sub-paragraph a) of paragraph 2 of Article 10.

7. With reference to Articles 10 and 24

It is understood that the provisions of paragraph 7 of Article 10 are not in conflict with the provisions of paragraph 2 of Article 24.

8. With reference to paragraph 2 of Article 11, paragraph 2 of Article 12 and paragraph 2 of Article 13

If, after the date of signature of this Convention, Brazil agrees, in a convention with any other country which is a member of the Organization for Economic Cooperation and Development (OECD), to rates that are lower (including any exemption) than

the ones provided in those Articles, then such rates shall, for the purposes of this Convention, be applicable under the same terms from the time on which such rates enter into force and for as long as such rates are applicable.

9. With reference to paragraph 4 of Article 11

It is understood that interest paid as "remuneration on the company's equity" ("remuneração sobre o capital próprio") in accordance with the Brazilian tax law is also considered interest for the purposes of paragraph 4.

10. With reference to paragraph 3 of Article 12

It is understood that the provisions of paragraph 3 of Article 12 shall apply to payments of any kind received as consideration for the rendering of technical assistance.

11. With reference to Articles 12 and 24

It is understood that the provisions of the Brazilian tax law which do not allow that royalties as defined in paragraph 3 of Article 12, paid by a permanent establishment situated in Brazil to a resident of Switzerland that carries on business in Brazil through such a permanent establishment, be deductible at the moment of the determination of the taxable income of the above referred permanent establishment, are not in conflict with the provisions of paragraph 2 of Article 24 of the present Convention.

12. With reference to Article 19

It is understood that income referred to in Article 19 covers periodic payments and lump sum payments.

13. With reference to Articles 19 and 24

It is understood that, as regards Article 19 and Article 24, contributions to a pension fund of a Contracting State that are made by or on behalf of an individual who renders services in the other Contracting State shall, for the purposes of determining the individual's tax payable and the profits of an enterprise which may be taxed in that State, be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension fund in that Contracting State, provided that the individual was not a resident of that State, and was participating in the pension fund, immediately before beginning to provide services in that State.

14. With reference to paragraph 4 of Article 24

It is understood that, in the case of Brazil, with respect to paragraph 4 of Article 24, any requirements other than that directly connected with the obligation to pay taxes (i.e. "obrigações acessórias"/"National Tax Code" – Law n. 5.172/66 and "Income Tax Regulation" – Decree n. 3,000/1999) to which may be subjected the enterprises of Brazil, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of Switzerland, are not discriminatory.

15. With reference to Article 25

It is understood that for the purpose of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 25 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

16. With reference to Article 26

a) It is understood that an exchange of information will only be requested once the requesting Contracting State has exhausted all regular sources of information available under the internal taxation procedure.

b) It is understood that the tax authorities of the requesting State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 26:
   (i) the identity of the person under examination or investigation;
   (ii) the period of time for which the information is requested;
   (iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
   (iv) the tax purpose for which the information is sought;
   (v) to the extent known, the name and address of any person believed to be in possession of the requested information.

c) It is understood that the reference to "foreseeable relevance" is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that the Contracting States are not at liberty to engage in "fishing expeditions" or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer. While subparagraph (b) contains important procedural requirements that are intended to ensure that fishing expeditions do not occur, clauses (i) through (v) of subparagraph (b) nevertheless are not to be interpreted in order to frustrate effective exchange of information.

d) It is understood that Article 26 of the Convention does not require the Contracting States to exchange information on an automatic or a spontaneous basis.

e) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable. It is further understood that these provisions aim at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.

17. With reference to Article 27

It is understood that the provisions of the Convention shall not prevent a Contracting State from applying the provisions of its domestic legislation aimed at countering tax evasion and avoidance.

In witness whereof the undersigned, duly authorized thereto, have signed this Protocol.

Done in duplicate at ……., this ……. day of …… 2018 in the French, Portuguese and English languages, all texts being equally authentic. In case of divergence of interpretation between the French and the Portuguese texts, the English text shall prevail.

For the Swiss Confederation: For the Federative Republic of Brazil: