Annex B

Proposed CDTA partners to be accorded with priority

	Jurisdiction	Reasons for the need to accord priority to the proposed jurisdiction
1.	Please select...	Please refer to ASIFMA's attached submission of 31 July 2020. Our priorities are Singapore#, Australia#, Philippines# and USA.
2.	Please select...	Please refer to ASIFMA's attached submission of 1 April 2021. Our priorities are Egypt, Nigeria (which we note is one of the jurisdiction with "Negotiation in progress") and Ghana.
3.	Sri Lanka	To facilitate the increasing trading activities arising from China's Belt and Road Initiative (BRI).
4.	Brazil	A CDTA would support the competitiveness of banks in HK providing financial services to clients based in Brazil.
5.	Laos	To facilitate the increasing trading activities arising from China's BRI.
6.	Chile	To facilitate the increasing trading activities arising from China's BRI.
7.	Argentina	To facilitate the increasing trading activities arising from China's BRI.
8.	Kazakhstan	To facilitate the increasing trading activities arising from China's BRI.
9.	Please select...	
10.	Please select...	

Other views (if any):

Singapore is the 4th largest trading partner* of Hong Kong and one of the major developed jurisdictions with close business and economic connections with Hong Kong.

Australia is one of the top 20 trading partners* of HK. There are significant cross-border financial services for banks in HK – a CDTA will support the competitiveness of HK banks.

Philippines is one of the top 15 trading partners of HK. A CDTA would support the competitiveness of banks in HK providing financial services to clients based in the Philippines.

*Source: For year 2023 as per Trade and Industry Department: Trade Relations (https://www.tid.gov.hk/english/trade_relations/mainland/trade.html)

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Proposed CDTA partners to be accorded with priority

Jurisdictions		Reasons for the need to accord priority to the proposed jurisdiction

1	Australia	• Australia reduced withholding tax on dividends and other distributions.
		• A CDTA is important to provide clarity on rules around permanent establishments and facilitate talent movements between Australia and Hong Kong. This issue manifested in situations such as Covid-19 and in response, the ATO provided specific guidelines to address the Covid-19 situation. Taxpayers would require similar guidance in other non-Covid situations via a CDTA.
		• Welcome any efforts by IRD to ensure:
		  ○ A consistent application process for certificates of residence.
		  ○ That treaty partners honor the provisions of the existing treaty network for eligible Hong Kong residents.
		• One of Hong Kong's top 20 principal trading partners in 2019.

2	Singapore	• Singapore is important due to the increasing cross-border services and investment. • It could provide treaty protection for Hong Kong funds, employees and firms independent of the comprehensive Singapore rules. • One of Hong Kong's top 20 principal trading partners in 2019.

3	USA	• USA reduced withholding tax on dividends and interest.
		• Welcome any efforts by IRD to ensure:
		  ○ A consistent application process for certificates of residence.
		  ○ That treaty partners honor the provisions of the existing treaty network for eligible Hong Kong residents.
		• One of Hong Kong's top 20 principal trading partners in 2019.

4	Taiwan	• One of Hong Kong's top 20 principal trading partners in 2019.
5	Philippines	• One of Hong Kong's top 20 principal trading partners in 2019.
6	Other selected African jurisdictions	• Enhancing HK as a regional gateway for China's investments and trades with African nations. To make this case, though HK would need to have a number of jurisdictions covered.

Other views (if any):

Growing Asia's Markets

By Email

1 April 2021

Mr Stephen Y. K. Lo
Principal Assistant Sscretary for Financial Services & the Treasury (Treasury)(R2)
Financial Services and the Treasury Bureau (FSTB)

ASIFMA Follow- up Letter on Potential Tax Treaty Partners for HK

Dear Mr Lo,

On behalf of the Asia Securities Industry & Financial Markets Association ("**ASIFMA**") [1] and its members, we would like to follow up on your letter dated 2 July 2020 and ASIFMA's response dated 31 July 2020 regarding the proposed Comprehensive Avoidance of Double Taxation Agreement ("CDTA") partners for Hong Kong. In our recent communication with the industry, ASIFMA has sought views of its members, in particular from members which have sizeable pan-African franchises, and set out below some high-level comments for FSTB's consideration.

Background

ASIFMA members provide a range of banking products and services to clients in the region, including trade finance, capital raising, underwriting, and financial products which hedge against risk. While ASIFMA members may have a local presence in certain jurisdictions in the region, they will generally use their international balance sheet and product specialists in offshore locations to provide finance. This international, cross-border dimension to transacting with African customers makes CDTAs of critical importance. In the experience of our members, they and/or their customers may be exposed to the following implications in Africa in the absence of a CDTA:

- high rates of withholding tax on income flows, particularly interest and fees, which make international liquidity expensive;
- broadly cast definitions of 'interest', for example, the definition of interest in the tax regulations in Ghana, Uganda, and Tanzania specifically refers to swaps, which implies that these derivative instruments are subject to withholding tax;
- capital gains tax on transactions involving transfers of securities (for example, equity and debt securities transferred under repo transactions); and

[1] ASIFMA is an independent, regional trade association with over 145 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, professional and consulting firms, and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

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- risk of triggering a permanent establishment through commodity/asset-based financing transactions where title to goods is held in warehouses onshore.

The table in Appendix I sets out the CDTA network which UK and Mauritius have with various jurisdictions in the region. As such, where possible, members have generally leveraged balance sheet/bankers in these jurisdictions to book transactions with African clients. In contrast, the connectivity between Africa and HK has, in our members' experience, been more limited, partly due to the absence of a CDTA (Hong Kong has only one operational CDTA with an African country, South Africa). It is also relevant to note that while Singapore historically had a very limited CDTA network in Africa, it has recently agreed an operational CDTA with Nigeria, and CDTAs with Ghana and Kenya have been signed but are not yet ratified.

Notwithstanding the above, ASIFMA would also like to highlight that while the UK/Mauritius may have an extensive CDTA network in Africa, there are some jurisdictions where interest WHT rates under treaty are now equivalent to the domestic WHT rates. This is because the applicable CDTA was negotiated decades ago and the rates under domestic law have in the meantime reduced to a position of parity with the CDTA.

Recommendations

ASIFMA is pleased to put forward the following recommendations for FSTB's consideration.

- **Prioritisation –** based on publicly available information of the markets which have witnessed significant levels of FDI in recent years, we would recommend prioritisation of CDTAs with the following jurisdictions:

    - Nigeria
    - Democratic Republic of Congo,
    - Ethiopia,
    - Morocco
    - Egypt
    - Angola
    - Kenya
    - Ghana
    - Zambia
    - Tanzania

  It is our strong belief that with a more extensive CDTA network in place with Africa, FIs (as well as other industries) in Hong Kong would be strategically placed to capitalise on the banking opportunities associated with Chinese FDI into Africa.

- **Key considerations** – for completeness, we have also taken this opportunity to highlight some of the keys considerations which we recommend FSTB give due regard in potential future treaty negotiations:

    - **Rates** - reductions in sourced based withholding taxes on interest and other income payments. Since some of the UK / Mauritius treaties are now quite 'dated' there may be an opportunity to negotiate rates below the current CDTA rates of other countries.

- **Definitions** – Harmonization of PE definition to provide certainty on the threshold activities which may give rise to a taxable presence e.g., exclusions for preparatory / auxiliary activities.

- **Scope** – Interest / business profits articles should not import domestic law concepts such as the inclusion of swaps and premiums within the definition of interest.

- **Anti-abuse** – Measures to prevent treaty abuse should be aligned to the measures introduced as part of the BEPS project and introduced into DTTs through the Multi-lateral Instrument, including LOB and / or PPT tests. We note that some African countries have in recent years introduced domestic limitation of benefit (LOB) clauses which can limit the extent to which tax treaties in force can apply and apply a more stringent threshold than the BEPS equivalent measures.

- **MFN** – In order to mitigate the risk of the value of negotiated rates being eroded through negotiation of CDTAs with other parties, we recommend Most Favoured Nation clauses are included. By way of illustration, the Nigeria UK tax treaty (1987) contains rates that are in cases higher than the domestic rates. To address this the Nigeria Tax Authority has issued a guideline that it will permit a 25% ‘discount’ off the domestic rate for countries with older tax treaties with Nigeria. On the other hand, the Nigeria – Singapore CDTA (2017) contains a Most Favoured Nation clause that automatically applies lower rates of withholding tax on dividends, interest and royalties should a ‘third’ country enter into a more favourable treaty.

ASIFMA is pleased to contribute to this exercise, and we hope FSTB has found the comments set out herein of use. ASIFMA would be glad to assist FSTB further with this exercise. If you have any follow up questions or comments, please contact Patrick Pang at ppang@asifma.org or +852-25316520.

Yours sincerely,

Patrick Pang
Managing Director and Head of Compliance and Tax
ASIFMA

APPENDIX I – UK / Mauritius CDTA network with a selected pool of jurisdictions in Africa (nb: for ease of comparison, we have only included the rates applicable to interest, although the CDTA may also provide for varying levels of protection from source taxation in respect of other sources of income, such as capital gains).

			Interest		
Location	**Treaty with UK**	**Treaty with Mauritius**	**Domestic interest WHT rates***	**UK**	**Mauritius**
Angola	N	N	15%	NT	NT
Botswana	Y	Y	15%	10%	12%
Cameroon	N	N	16.5%	NT	NT
Côte D'Ivoire	Y	N	18%	15%	NT
Gambia	Y	N	15%	15%	NT
Ghana	Y	Y	8%	8%	7%
Kenya	Y	Y	15%	15%	10%
Nigeria	Y	N	10%	7.5%	NT
Sierra Leone	Y	N	15%	15%	NT
Tanzania	N	N	10%	NT	NT
Uganda	Y	Y	15%	15%	10%
Zambia	Y	Y	20%	10%	10%
Zimbabwe	Y	Y	0%	0%	10%

* Exemptions/reductions may exist under domestic law depending on character of interest paid but not captured in table.

Shaded areas represent reductions in treaty rates compared to domestic law.