Premier of Queensland

For reply please quote: *WL/IGR – TF/09/25048 – DOC/09/102274*

21 SEP 2009

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Mr Neil Laurie
Clerk of the Parliament
Parliament House
George Street
BRISBANE QLD 4000

Dear Neil

In accordance with parliamentary procedures, I wish to table correspondence from the Commonwealth Parliament's Joint Standing Committee on Treaties in the Legislative Assembly (JSCOT).

The proposed treaty actions that were tabled on 20 August 2009 in both houses of the Commonwealth Parliament as follows:

- *Second Protocol Amending the Agreement between Australia and the Kingdom of Belgium for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with Respect to Taxes on Income signed at Canberra on 13 October 1977 as Amended by the Protocol signed at Canberra on 20 March 1984 (Paris, 24 June 2009).*
- *Amendments to the Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America concerning Certain Mutual Defence Commitments (Chapeau Defence Agreement) effected by exchange of notes signed at Sydney and Canberra on 1 December 1995 (Canberra 4 December 2008).*
- *Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund – adopted by the IMF Board of Governors on 28 April 2008.*
- *Proposed Amendment of the Articles of Agreement of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund – adopted by the IMF Board of Governors on 5 May 2008.*
- *Proposed Amendment of the Articles of Agreement of the International Bank for Reconstruction and Development to Enhance Voice and Participation in the International Bank for Reconstruction and Development – adopted by the IBRD Board of Governors on 30 January 2009.*

Queensland Government

- *Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in respect to Transfer Pricing Adjustments (London, 10 June 2009).*
- *Convention between Australia and New Zealand for the Avoidance of Double Taxation with Respect to Taxes on Income and Fringe Benefits and the Prevention of Fiscal Evasion (Paris, 26 June 2009).*
- *Agreement between the Government of Australia and the Government of the Republic of Singapore Concerning the Use of Shoalwater Bay Training Area and the Use of Associated Facilities in Australia (Singapore, 31 May 2009).*

The treaty texts and National Interest Analyses are available on the JSCOT website at http://www.aph.gov.au/house/committee/jsct/20august2009/tor.htm.

Thank you for your assistance in arranging the tabling of this material as soon as possible.

Yours sincerely

ANNA BLIGH MP
PREMIER OF QUEENSLAND

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

SECOND PROTOCOL AMENDING THE AGREEMENT BETWEEN

AUSTRALIA AND THE KINGDOM OF BELGIUM

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

SIGNED AT CANBERRA ON 13 OCTOBER 1977 AS AMENDED BY THE PROTOCOL SIGNED AT CANBERRA ON 20 MARCH 1984

(Canberra, 24 June 2009)

Not yet in force

[2009] ATNIF 17

SECOND PROTOCOL AMENDING THE AGREEMENT BETWEEN AUSTRALIA AND THE KINGDOM OF BELGIUM AUSTRALIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT CANBERRA ON 13 OCTOBER 1977 AS AMENDED BY THE PROTOCOL SIGNED AT CANBERRA ON 20 MARCH 1984

Australia and the Kingdom of Belgium,

Desiring to amend the Agreement between the Kingdom of Belgium and Australia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income signed at Canberra on 13 October 1977 as amended by the Protocol signed at Canberra on 20 March 1984 (hereinafter referred to as the "Agreement "),

Have agreed as follows:

ARTICLE I

The text of Article 26 of the Agreement is deleted and replaced by the following:

"1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed by or on behalf of the Contracting States, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

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 the provisions of 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 of this Article 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 of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, trust, foundation, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. To the extent necessary to obtain such information, the tax administration of the requested Contracting State shall have the power to require the disclosure of information and to conduct investigations and hearings notwithstanding any contrary provisions in its domestic tax laws."

ARTICLE II

1. Each of the Contracting States shall notify the other Contracting State, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and its provisions shall have effect:

a) with respect to taxes due at source on income credited or payable on or after 1 January 2010;

b) with respect to other taxes charged on income of taxable periods beginning on or after 1 January 2010;

c) with respect to any other taxes imposed by or on behalf of the Contracting States, on any other tax due in respect of taxable events taking place on or after 1 January 2010.

2. Notwithstanding paragraph 1, the provisions of Article 26 (Exchange of Information) shall have effect with respect to criminal tax matters from the date of entry into force of the Protocol, without regard to the taxable period to which the matter relates.

The term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting State.

ARTICLE III

This Protocol, which shall form an integral part of the Agreement, shall remain in force as long as the Agreement remains in force and shall apply as long as the Agreement itself is applicable.

IN WITNESS WHEREOF, the undersigned duly authorized thereto by their respective governments, have signed this Protocol.

DONE in duplicate at Paris, on this 24th day of June 2009 in the English language.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM:
The Hon. Simon Crean	H.E. Didier Reynders
Minister for Trade	Minister for Finance

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

CANBERRA

Amendments to the Exchange of Notes constituting an Agreement between the Government of Australia and the Government of the United States of America concerning Certain Mutual Defense Commitments (Chapeau Defense Agreement) effected by exchange of notes signed at Sydney and Canberra on December 1, 1995

(Canberra 4 December 2008)

Not yet in force

[2008] ATNIF 23

Canberra, 4 December 2008

Minister,

I have the honor to refer to the Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia concerning Certain Mutual Defense Commitments (Chapeau Defense Agreement) effected by exchange of notes signed at Sydney and Canberra on December 1, 1995, and to recent discussions between officials of our two Governments concerning the desirability of amending the Chapeau Defense Agreement to cover the assignment, exchange, or liaison of units and personnel between our respective national defense organizations.

As a result of these discussions, I have the honor to propose that the Chapeau Defense Agreement be amended as follows:

1. Article 1, paragraph (b)(ii) shall be deleted and replaced by the following:

"In the event of claims from third parties for injury or death to persons or damage to or loss of property arising from the performance of official duties, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. Such claims shall be handled by the most appropriate Government as mutually determined."

The Hon Joel Fitzgibbon
Minister for Defence
Parliament House
CANBERRA ACT 2600

2. Insert new Article 6 as follows:

“6. As regards the assignment, exchange, or liaison of units and personnel between our respective national defense organizations pursuant to written arrangements between those organizations, each Party shall fulfill (i) the terms and conditions set forth in this Agreement and in Annex A, and (ii) such other terms and conditions as may be set forth in the written arrangement.”

3. Insert new Article 7 as follows:

“7. The obligations of the Parties under this Agreement regarding liability and claims, ownership, use, transfer and protection of information, lease or loan of materiel or equipment, logistics support, and resolution of disputes shall continue notwithstanding termination of this Agreement.”

4. The second to the last paragraph of the closing formalities shall be deleted and replaced by the following:

“In order for this Agreement, which consists of Articles 1 through 7 and Annex A, to apply to written arrangements between our national defense organizations, it must be explicitly invoked by or for that arrangement.”

5. Insert the following Annex to the Agreement:

“**Annex A**

The Parties,

NOTING the application of the Agreement concerning the Status of United States Forces in Australia, done on May 9, 1963, to United States forces in Australia or of any other agreement between the Parties concerning the status of forces of one country when in the other which may be concluded hereafter;

RECOGNIZING the mutual benefits to be obtained from the assignment, exchange, or liaison of units and personnel between our respective national defense organizations; and

DESIRING to establish written arrangements to govern the assignment, exchange, or liaison of units and personnel between our respective national defense organizations;

HAVE AGREED that such written arrangements shall be subject to this Agreement as to the matters therein and this Annex as to the following matters, when explicitly invoked by or for such arrangements:

1. The following terms and definitions shall apply when used herein:

(a) "Assigned" and "Assignment" shall mean the assignment, exchange, or liaison of national defense units and personnel of the Parent Defense

Organization to the Host Defense Organization. Personnel, for the purposes of this Agreement, means a military member or members, or a civilian employee or employees of the Parent Defense Organization.

(b) "Classified Information" shall mean information generated by or for a Party that requires protection in the interests of national security of that Party, so designated by that Party by the assignment of a security classification. The information may be in oral, visual, electronic, or documentary form, or in the form of material including, equipment or technology.

(c) "Controlled Unclassified Information" shall mean unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws, regulations or policies. Whether the information is provided or generated under this Agreement or any arrangement thereto, the information will be marked to identify its "sensitive" nature. Such information could include information that has been declassified, but remains controlled.

(d) "Host Government" shall mean the national government of the Host Defense Organization, as well as all political subdivisions thereof.

(e) "Host Defense Organization" shall mean the national defense organization to which a national defense unit or personnel of the Parent Defense Organization is assigned pursuant to a written arrangement between the Parties' defense organizations.

(f) "Parent Government" shall mean the national government of the Parent Defense Organization, as well as all political subdivisions thereof.

(g) "Parent Defense Organization" shall mean the defense organization that assigns a national defense unit or personnel to the Host Defense Organization, pursuant to a written arrangement between the Parties' defense organizations.

2. The Parent Defense Organization shall provide the Host Defense Organization with the appropriate security assurance for Assigned personnel prior to the commencement of the Assignment. Security assurances shall be filed through official channels and in accordance with the established visit procedures of the Host Defense Organization. Access to Classified Information and Controlled Unclassified Information shall not occur until such security assurances have been received by the Host Defense Organization.

3. Assigned units and personnel shall comply with the security and disclosure laws, regulations, and policies of both Parties concerning Classified Information and Controlled

Unclassified Information and all applicable international agreements and arrangements between the Parties.

4. All Classified Information exchanged or disclosed to Assigned units and personnel pursuant to a written arrangement between the Parties' defense organizations shall be subject to and protected in accordance with the Agreement between the Government of the United States of America and Government of Australia Concerning Security Measures for the Protection of Classified Information, done on June 25, 2002.

5. (a) Access to Controlled Unclassified Information by Assigned units and personnel shall be authorized by the Host Defense Organization and shall be granted only as necessary to fulfill the purpose for the Assignment. Controlled Unclassified Information provided by or produced in cooperation with the Parent Defense Organization will be made available to the Host Defense Organization only on the condition that it will not be released to a third party (as may be defined in a written arrangement) by the Host Defense Organization without the prior written approval of the appropriate authorities of the Parent Government.

(b) Disclosure of Controlled Unclassified Information by the Host Defense Organization to Assigned units and personnel shall not be deemed a license or an authorization to use such information for any purpose other than for the purpose of the Assignment.

6. The status of Assigned personnel while in the country of the Host Government shall be governed by any bilateral agreements between the Parties concerning the status of their forces. Criminal and disciplinary jurisdiction shall be exercised in accordance with any such bilateral agreements between our two Governments; otherwise such jurisdiction shall be exercised in accordance with the governing laws of the Host Government.

7. Assigned personnel shall observe relevant Host Government laws and shall abstain from any activity inconsistent with the intent and provisions of any written arrangement between the Parties, and from all political activity in the territory of the Host Government.

8. Neither the Host Defense Organization nor the armed forces of the Host Government may take disciplinary action against Assigned personnel under the military laws or regulations of the Host Government, nor shall the Host Defense Organization or the armed forces of the Host Government exercise disciplinary powers over the dependents of such Assigned personnel. The Parent Defense Organization shall take such administrative or disciplinary action against its Assigned personnel as may be appropriate in the circumstances, and the Parties shall cooperate in the investigation of any offenses under the laws or regulations of either Party.

9. If any Assigned personnel are unable to perform their duties because of inappropriate behavior, willful violations of obligations or procedures, disciplinary action, illness, unsuitability, or other reason, the Host Defense Organization may request termination of their

Assignment. At the request of the Host Defense Organization, the Parent Defense Organization shall remove the Assigned personnel from the territory of the Host Government. In the event of

the termination of an Assignment, the Parent Defense Organization may fill the terminated Assignment with another individual who meets the requirements of the Assignment, subject to any certification, approval, or training requirements of the Host Defense Organization.

10. Assigned personnel of either Party may possess and carry arms while on duty on the condition that they are authorized to do so by their orders and with the approval of the

appropriate authorities of the Host Government. Parent Defense Organization personnel shall not carry or transport privately owned weapons into the territory of the Host Government, unless authorized to do so by the appropriate authorities of the Host Government, in accordance with the applicable laws of the Host Government.

11. Assigned personnel and their dependents shall be accorded exemptions and privileges to the extent authorized by the governing laws and regulations of the Host Government, and the provisions of any Status of Forces Agreement in force between the Parties or other international agreements or arrangements between the Parties.

12. Medical and dental services shall be subject to the provisions of any applicable international agreements or arrangements between the Parties and, in the absence of such an agreement or arrangement, to the requirements of the laws, regulations, and policies of the Host Government, including the requirement for reimbursement when mandated by such laws, regulations, and policies.

13. Unless the Parent Defense Organization gives written approval, Assigned units and personnel shall not be placed on duty in areas of political sensitivity where their presence might jeopardize the interests of their Parent Defense Organization or Parent Government. Additionally, unless the Parent Defense Organization gives written approval, Assigned units and personnel shall not:

(a) be placed in duty assignments or in situations in which direct hostilities with forces of third states are likely to occur or have commenced;
(b) participate in any form of operation, including peacekeeping or combat operations;
(c) travel to a third country, as part of the duties being performed;
(d) participate in any law enforcement operations; or
(e) participate in any civil-military actions.

14. Upon arrival, Assigned units and personnel shall be provided briefings by the Host Defense Organization on the laws, regulations and policies pertaining to Classified Information and Controlled Unclassified Information. Additionally, Assigned units, personnel and their dependents shall be provided information on exemptions and privileges, medical and dental services, and other matters as appropriate.

15. Financial arrangements necessary to carry out the provisions of this Agreement shall be as reflected in written arrangements between the Parties' Defense Organizations, and shall be subject to the availability of funds for such purposes."

I have the honor to propose that, if the foregoing is acceptable to your Government, the present Note and Your Excellency's reply to that effect shall constitute an Agreement between our two Governments, which shall enter into force on the date that the Government of Australia notifies the Government of the United States of America through the diplomatic channel, that all domestic procedures as are necessary to give effect to this Agreement in Australia have been completed.

Accept, your Excellency, the renewed assurances of my highest consideration.

Robert McCallum, Jr
United States Ambassador to Australia

Canberra, 4 December 2008

Excellency,

I have the honour to refer to your Note dated 4 December 2008 concerning amendment of the Agreement between the Government of Australia and the Government of the United States of America concerning Certain Mutual Defense Commitments (the "Chapeau Defense Agreement") which reads as follows:

"I have the honor to refer to the Exchange of Notes constituting an Agreement between the Government of the United States of America and the Government of Australia concerning Certain Mutual Defense Commitments (Chapeau Defense Agreement) effected by exchange of notes signed at Sydney and Canberra on December 1, 1995, and to recent discussions between officials of our two Governments concerning the desirability of amending the Chapeau Defense Agreement to cover the assignment, exchange, or liaison of units and personnel between our respective national defense organizations.

As a result of these discussions, I have the honor to propose that the Chapeau Defense Agreement be amended as follows:

1. *Article 1, paragraph (b)(ii) shall be deleted and replaced by the following:*

"In the event of claims from third parties for injury or death to persons or damage to or loss of property arising from the performance of official duties, the Parties shall share, in accordance with the proportions stated in the relevant arrangement, any costs adjudicated by a court or administrative body or other entity of competent jurisdiction. Such claims shall be handled by the most appropriate Government as mutually determined."

His Excellency Mr Robert McCallum Jr
Ambassador Extraordinary and Plenipotentiary
of the United States of America
CANBERRA ACT 2600

2. Insert new Article 6 as follows:

"6. As regards the assignment, exchange, or liaison of units and personnel between our respective national defense organizations pursuant to written arrangements between those organizations, each Party shall fulfill (i) the terms and conditions set forth in this Agreement and in Annex A, and (ii) such other terms and conditions as may be set forth in the written arrangement."

3. Insert new Article 7 as follows:

"7. The obligations of the Parties under this Agreement regarding liability and claims, ownership, use, transfer and protection of information, lease or loan of materiel or equipment, logistics support, and resolution of disputes shall continue notwithstanding termination of this Agreement."

4. The second to the last paragraph of the closing formalities shall be deleted and replaced by the following:

"In order for this Agreement, which consists of Articles 1 through 7 and Annex A, to apply to written arrangements between our national defense organizations, it must be explicitly invoked by or for that arrangement."

5. Insert the following Annex to the Agreement:

*"**Annex A***

The Parties,

NOTING the application of the Agreement concerning the Status of United States Forces in Australia, done on May 9, 1963, to United States forces in Australia or of any other agreement between the Parties concerning the status of forces of one country when in the other which may be concluded hereafter;

RECOGNIZING the mutual benefits to be obtained from the assignment, exchange, or liaison of units and personnel between our respective national defense organizations; and

DESIRING to establish written arrangements to govern the assignment, exchange, or liaison of units and personnel between our respective national defense organizations;

HAVE AGREED that such written arrangements shall be subject to this Agreement as to the matters therein and this Annex as to the following matters, when explicitly invoked by or for such arrangements:

1. The following terms and definitions shall apply when used herein:

(a) "Assigned" and "Assignment" shall mean the assignment, exchange, or liaison of national defense units and personnel of the Parent Defense

Organization to the Host Defense Organization. Personnel, for the purposes of this Agreement, means a military member or members, or a civilian employee or employees of the Parent Defense Organization.

(b) "Classified Information" shall mean information generated by or for a Party that requires protection in the interests of national security of that Party, so designated by that Party by the assignment of a security classification. The information may be in oral, visual, electronic, or documentary form, or in the form of material including, equipment or technology.

(c) "Controlled Unclassified Information" shall mean unclassified information to which access or distribution limitations have been applied in accordance with applicable national laws, regulations or policies. Whether the information is provided or generated under this Agreement or any arrangement thereto, the information will be marked to identify its "sensitive" nature. Such information could include information that has been declassified, but remains controlled.

(d) "Host Government" shall mean the national government of the Host Defense Organization, as well as all political subdivisions thereof.

(e) "Host Defense Organization" shall mean the national defense organization to which a national defense unit or personnel of the Parent Defense Organization is assigned pursuant to a written arrangement between the Parties' defense organizations.

(f) "Parent Government" shall mean the national government of the Parent Defense Organization, as well as all political subdivisions thereof.

(g) "Parent Defense Organization" shall mean the defense organization that assigns a national defense unit or personnel to the Host Defense Organization, pursuant to a written arrangement between the Parties' defense organizations.

2. The Parent Defense Organization shall provide the Host Defense Organization with the appropriate security assurance for Assigned personnel prior to the commencement of the Assignment. Security assurances shall be filed through official channels and in accordance with the established visit procedures of the Host Defense Organization. Access to Classified Information and Controlled Unclassified Information shall not occur until such security assurances have been received by the Host Defense Organization.

3. Assigned units and personnel shall comply with the security and disclosure laws, regulations, and policies of both Parties concerning Classified Information and Controlled Unclassified Information and all applicable international agreements and arrangements between the Parties.

4. All Classified Information exchanged or disclosed to Assigned units and personnel pursuant to a written arrangement between the Parties' defense organizations shall be subject to and protected in accordance with the Agreement between the Government of the United States of America and Government of

Australia Concerning Security Measures for the Protection of Classified Information, done on June 25, 2002.

5. (a) Access to Controlled Unclassified Information by Assigned units and personnel shall be authorized by the Host Defense Organization and shall be granted only as necessary to fulfill the purpose for the Assignment. Controlled Unclassified Information provided by or produced in cooperation with the Parent Defense Organization will be made available to the Host Defense Organization only on the condition that it will not be released to a third party (as may be defined in a written arrangement) by the Host Defense Organization without the prior written approval of the appropriate authorities of the Parent Government.

(b) Disclosure of Controlled Unclassified Information by the Host Defense Organization to Assigned units and personnel shall not be deemed a license or an authorization to use such information for any purpose other than for the purpose of the Assignment.

6. The status of Assigned personnel while in the country of the Host Government shall be governed by any bilateral agreements between the Parties concerning the status of their forces. Criminal and disciplinary jurisdiction shall be exercised in accordance with any such bilateral agreements between our two Governments; otherwise such jurisdiction shall be exercised in accordance with the governing laws of the Host Government.

7. Assigned personnel shall observe relevant Host Government laws and shall abstain from any activity inconsistent with the intent and provisions of any written arrangement between the Parties, and from all political activity in the territory of the Host Government.

8. Neither the Host Defense Organization nor the armed forces of the Host Government may take disciplinary action against Assigned personnel under the military laws or regulations of the Host Government, nor shall the Host Defense Organization or the armed forces of the Host Government exercise disciplinary powers over the dependents of such Assigned personnel. The Parent Defense Organization shall take such administrative or disciplinary action against its Assigned personnel as may be appropriate in the circumstances, and the Parties shall cooperate in the investigation of any offenses under the laws or regulations of either Party.

9. If any Assigned personnel are unable to perform their duties because of inappropriate behavior, willful violations of obligations or procedures, disciplinary action, illness, unsuitability, or other reason, the Host Defense Organization may request termination of their Assignment. At the request of the Host Defense Organization, the Parent Defense Organization shall remove the Assigned personnel from the territory of the Host Government. In the event of the termination of an Assignment, the Parent Defense Organization may fill the terminated Assignment with another individual who meets the requirements of the Assignment, subject to any certification, approval, or training requirements of the Host Defense Organization.

10. Assigned personnel of either Party may possess and carry arms while on duty on the condition that they are authorized to do so by their orders and with the approval of the appropriate authorities of the Host Government. Parent Defense Organization personnel shall not carry or transport privately owned weapons into the territory of the Host Government, unless authorized to do so by the appropriate authorities of the Host Government, in accordance with the applicable laws of the Host Government.

11. Assigned personnel and their dependents shall be accorded exemptions and privileges to the extent authorized by the governing laws and regulations of the Host Government, and the provisions of any Status of Forces Agreement in force between the Parties or other international agreements or arrangements between the Parties.

12. Medical and dental services shall be subject to the provisions of any applicable international agreements or arrangements between the Parties and, in the absence of such an agreement or arrangement, to the requirements of the laws, regulations, and policies of the Host Government, including the requirement for reimbursement when mandated by such laws, regulations, and policies.

13. Unless the Parent Defense Organization gives written approval, Assigned units and personnel shall not be placed on duty in areas of political sensitivity where their presence might jeopardize the interests of their Parent Defense Organization or Parent Government. Additionally, unless the Parent Defense Organization gives written approval, Assigned units and personnel shall not:

(a) be placed in duty assignments or in situations in which direct hostilities with forces of third states are likely to occur or have commenced;
(b) participate in any form of operation, including peacekeeping or combat operations;
(c) travel to a third country, as part of the duties being performed;
(d) participate in any law enforcement operations; or
(e) participate in any civil-military actions.

14. Upon arrival, Assigned units and personnel shall be provided briefings by the Host Defense Organization on the laws, regulations and policies pertaining to Classified Information and Controlled Unclassified Information. Additionally, Assigned units, personnel and their dependents shall be provided information on exemptions and privileges, medical and dental services, and other matters as appropriate.

15. Financial arrangements necessary to carry out the provisions of this Agreement shall be as reflected in written arrangements between the Parties' Defense Organizations, and shall be subject to the availability of funds for such purposes."

I have the honor to propose that, if the foregoing is acceptable to your Government, the present Note and Your Excellency's reply to that effect shall constitute an Agreement between our two Governments, which shall enter into force on the date that the Government of Australia notifies the Government of the

United States of America through the diplomatic channel, that all domestic procedures as are necessary to give effect to this Agreement in Australia have been completed.

Accept, Excellency, the renewed assurances of my highest consideration."

I have the honour to confirm that the proposals set out in your Note are acceptable to the Government of Australia and agree that your Note together with this reply shall constitute an Agreement between Australia and the United States of America which shall enter into force on the date that the Government of Australia notifies the Government of the United States of America through the diplomatic channel that all domestic procedures as are necessary to give effect to this Agreement in Australia have been completed.

Accept, Excellency, the renewed assurances of my highest consideration.

Joel Fitzgibbon

Minister for Defence

Proposed Amendments of the Articles of Agreement of the International Monetary Fund to Enhance Voice and Participation in the International Monetary Fund

The Governments on whose behalf the present Agreement is signed agree as follows:

1. The text of Article XII, Section 3(e) currently reads as:

- "(*e*) Each Executive Director shall appoint an Alternate with full power to act for him when he is not present. When the Executive Directors appointing them are present, Alternates may participate in meetings but may not vote.

The text will be amended to read as follows:

- "(e) Each Executive Director shall appoint an Alternate with full power to act for him when he is not present, provided that the Board of Governors may adopt rules enabling an Executive Director elected by more than a specified number of members to appoint two Alternates. Such rules, if adopted, may only be modified in the context of the regular election of Executive Directors and shall require an Executive Director appointing two Alternates to designate: (i) the Alternate who shall act for the Executive Director when he is not present and both Alternates are present and (ii) the Alternate who shall exercise the powers of the Executive Director under (f) below. When the Executive Directors appointing them are present, Alternates may participate in meetings but may not vote."

2. The text of Article XII, Section 5(a) currently reads as:

- "(a) Each member shall have two hundred fifty votes plus one additional vote for each part of its quota equivalent to one hundred thousand special drawing rights."

The text will be amended to read as follows:

- "(a) The total votes of each member shall be equal to the sum of its basic votes and its quota based votes. (i) The basic votes of each member shall be the number of votes that results from the equal distribution among all the members of 5.502 percent of the aggregate sum of the total voting power of all the members, provided that there shall be no fractional basic votes. (ii) The quota-based votes of each member shall be the number of votes that results from the allocation of one vote for each part of its quota equivalent to one hundred thousand special drawing rights."

3. The text of paragraph 2 of Schedule L currently reads as:

- "2. The number of votes allotted to the member shall not be cast in any organ of the Fund. They shall not be included in the calculation of the total voting power, except for purposes of the acceptance of a proposed amendment pertaining exclusively to the Special Drawing Rights Department."

The text will be amended to read as follows:

- "2 The number of votes allotted to the member shall not be cast in any organ of the Fund. They shall not be included in the calculation of the total voting power, except for purposes of: (a) the acceptance of a proposed amendment pertaining

exclusively to the Special Drawing Rights Department and (b) the calculation of basic votes pursuant to Article XII, Section 5(a)(i).”

TREATY TEXT

Proposed Amendments of the Articles of Agreement of the International Monetary Fund to Expand the Investment Authority of the International Monetary Fund

The Governments on whose behalf the present Agreement is signed agree as follows:

1. The text of Article XII, Section 6(f)(iii) currently reads as:

- "(iii) The Fund may invest a member's currency held in the Investment Account in marketable obligations of that member or in marketable obligations of international financial organizations. No investment shall be made without the concurrence of the member whose currency is used to make the investment. The Fund shall invest only in obligations denominated in special drawing rights or in the currency used for investment."

The text will be amended to read as follows:

- "(iii) The Fund may use a member's currency held in the Investment Account for investment as it may determine, in accordance with rules and regulations adopted by the Fund by a seventy percent majority of the total voting power. The rules and regulations adopted pursuant to this provision shall be consistent with (vii), (viii), and (ix) below."

2. The text of Article XII, Section 6(f)(vi) currently reads as:

- "(vi) The Investment Account shall be terminated in the event of liquidation of the Fund and may be terminated, or the amount of the investment may be reduced, prior to liquidation of the Fund by a seventy percent majority of the total voting power. The Fund, by a seventy percent majority of the total voting power, shall adopt rules and regulations regarding administration of the Investment Account, which shall be consistent with (vii), (viii), and (ix) below."

The text will be amended to read as follows:

- "(vi) The Investment Account shall be terminated in the event of liquidation of the Fund and may be terminated, or the amount of the investment may be reduced, prior to liquidation of the Fund by a seventy percent majority of the total voting power."

3. The text of Article V, Section 12(h) currently reads as:

- (*h*) Pending uses specified under (*f*) above, the Fund may invest a member's currency held in the Special Disbursement Account in marketable obligations of that member or in marketable obligations of international financial organizations. The income of investment and interest received under (*f*) (ii) above shall be placed in the Special Disbursement Account. No investment shall be made without the concurrence of the member whose currency is used to make the investment. The Fund shall invest only in obligations denominated in special drawing rights or in the currency used for investment."

The text will be amended to read as follows:

- "(h) Pending uses specified under (f) above, the Fund may use a member's currency held in the Special Disbursement Account for investment as it may determine, in accordance with rules and regulations adopted by the Fund by a

seventy percent majority of the total voting power. The income of investment and interest received under (f)(ii) above shall be placed in the Special Disbursement Account."

4. A new Article V, Section 12(k) shall be added to the Articles to read as follows:

- "(k) Whenever under (c) above the Fund sells gold acquired by it after the date of the second amendment of this Agreement, an amount of the proceeds equivalent to the acquisition price of the gold shall be placed in the General Resources Account, and any excess shall be placed in the Investment Account for use pursuant to the provisions of Article XII, Section 6(f). If any gold acquired by the Fund after the date of the second amendment of this Agreement is sold after April 7, 2008 but prior to the date of entry into force of this provision, then, upon the entry into force of this provision, and notwithstanding the limit set forth in Article XII, Section 6(f)(ii), the Fund shall transfer to the Investment Account from the General Resources Account an amount equal to the proceeds of such sale less (i) the acquisition price of the gold sold, and (ii) any amount of such proceeds in excess of the acquisition price that may have already been transferred to the Investment Account prior to the date of entry into force of this provision."

Proposed Amendment to the Articles of Agreement of the International Bank for Reconstruction and Development to Enhance Voice and Participation in the World Bank

The Governments on whose behalf the present Agreement is signed agree as follows:

1. The text of Article V, Section 3(a) currently reads as:

- "(a) Each member shall have two hundred and fifty votes plus one additional vote for each share of stock held."

The text will be amended to read as follows:

- "(a) The voting power of each member shall be equal to the sum of its basic votes and share votes. (i) The basic votes of each member shall be the number of votes that results from the equal distribution among all members of 5.55 percent of the aggregate sum of the voting power of all members, provided that there shall be no fractional basic votes. (ii) The share votes of each member shall be the number of votes that results from the allocation of one vote for each share of stock held."

For the full text of the Articles of Agreement of the International Monetary Fund and Articles of Agreement of the International Bank for Reconstruction and Development, please see Schedule 1 and Schedule 2 respectively to the *International Monetary Agreements Act 1947*.

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE CANBERRA

AGREEMENT BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF JERSEY

FOR THE EXCHANGE OF INFORMATION WITH RESPECT TO TAXES

(London, 10 June 2009)

Not yet in force

[2009] ATNIF 14

Whereas the Government of Australia and the Government of Jersey ("the Parties") recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the Parties have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas it is acknowledged that Jersey has the right under the terms of its Entrustment from the United Kingdom to negotiate, conclude, perform and, subject to the terms of this Agreement, terminate a tax information exchange agreement with the Government of Australia;

Whereas the Parties wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the Parties have agreed to conclude the following agreement which contains obligations on the part of the Parties only:

ARTICLE 1
SCOPE OF THE AGREEMENT

The Parties through their competent authorities shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning the taxes covered by this Agreement, including information that is foreseeably relevant to the determination, assessment, enforcement or collection of such taxes, with respect to persons liable to such taxes, or to the investigation or the prosecution of civil or criminal tax matters in relation to such persons. A requested Party is not obliged to provide information

which is neither held by its authorities nor in the possession of, or obtainable by, persons who are within its territorial jurisdiction. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay the effective exchange of information.

ARTICLE 2
TAXES COVERED

1 This Agreement shall apply to the following taxes imposed by the Parties:

(a) in the case of Australia, taxes of every kind and description imposed under the federal tax laws administered by the Commissioner of Taxation; and

(b) in the case of Jersey:

(i) the income tax; and
(ii) the goods and services tax.

2 This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes if the Parties so agree. The competent authority of each Party shall notify the other of substantial changes in laws or measures which may affect the obligations of that Party pursuant to this Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities or other political subdivisions, or possessions of a Party.

ARTICLE 3
DEFINITIONS

1 In this Agreement:

(a) ″ Australia″, when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

(b) ″Jersey″ means the Bailiwick of Jersey, including its territorial sea;

(c) ″collective investment fund or scheme″ means any pooled investment vehicle, irrespective of legal form. The term ″public collective investment fund or scheme″ means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed ″by the public″ if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;

(d) ″ company″ means any body corporate or any entity that is treated as a body corporate for tax purposes;

(e) "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and in the case of Jersey, the Treasury and Resources Minister or an authorised representative of the Minister;

(f) ″criminal laws″ means all criminal laws designated as such under domestic law, irrespective of whether such laws are contained in the tax laws, the criminal code or other statutes;

(g) "criminal tax matters" means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal law of the requesting Party;

(h) ″information″ means any fact, statement, document or record in whatever form;

(i) ″information gathering measures″ means laws and administrative or judicial procedures enabling a requested Party to obtain and provide the information requested;

(j) "person" includes an individual, a company or any other body or group of persons;

(k) ″principal class of shares″ means the class or classes of shares representing a majority of the voting power and value of the company;

(l) ″publicly traded company″ means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold "by the public" if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;

(m) ″recognised stock exchange″ means any stock exchange agreed upon by the competent authorities of the Parties;

(n) "requested Party" means the Party to this Agreement which is requested to provide or has provided information in response to a request;

(o) "requesting Party" means the Party to this Agreement submitting a request for or having received information from the requested Party; and

(p) "tax" means any tax covered by this Agreement.

2 As regards the application of this Agreement at any time by a Party, 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 Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

ARTICLE 4
EXCHANGE OF INFORMATION UPON REQUEST

1 The competent authority of the requested Party shall provide upon request by the competent authority of the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if it had occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.

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

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

4 Each Party shall ensure that it has the authority, subject to the terms of Article 1, to obtain and provide, through its competent authority and upon request:

(a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

(b) (i) information regarding the legal and beneficial ownership of companies, partnerships and other persons and, within the constraints of Article 1, any other persons in an ownership chain, including in the case of collective investment schemes, information on shares, units and other interests;

(ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries; and

(iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries.

5 This Agreement does not create an obligation for a Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment schemes, unless such information can be obtained without giving rise to disproportionate difficulties.

6 Any request for information shall be formulated with the greatest detail necessary and shall specify in writing;

(a) the identity of the person under examination or investigation;

(b) the period for which the information is requested;

(c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;

(d) the tax purpose for which the information is sought;

(e) the reasons for believing that the information requested is foreseeably relevant to the tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;

(f) grounds for believing that the information requested is present in the requested Party or is in the possession of or obtainable by a person within the jurisdiction of the requested Party;

(g) to the extent known, the name and address of any person believed to be in possession of or able to obtain the information requested;

(h) a statement that the request conforms with the laws and administrative practice of the requesting Party, that if the requested information was within

the jurisdiction of the requesting Party then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement; and

(i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except where that would give rise to disproportionate difficulty.

7 The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least possible delay.

ARTICLE 5
TAX EXAMINATIONS ABROAD

1 With reasonable notice, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.

2 At the request of the competent authority of the requesting Party, the competent authority of the requested Party may permit representatives of the competent authority of the requesting Party to attend a tax examination in the territory of the requested Party.

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

ARTICLE 6
POSSIBILITY OF DECLINING A REQUEST

1 The competent authority of the requested Party may decline to assist:

(a) where the request is not made in conformity with this Agreement;

(b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or

(c) where the disclosure of the information requested would be contrary to public policy (ordre public) of the requested Party.

2 This Agreement shall not impose upon a requested Party any obligation to provide information subject to legal privilege, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 4(4) shall not by reason of that fact alone be treated as such a secret or trade process.

3 A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed by the taxpayer.

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

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

ARTICLE 7
CONFIDENTIALITY

1 All information provided and received by the competent authorities of the Parties shall be kept confidential.

2 Information provided to the competent authority of the requesting Party may not be used for any purpose other than for the purposes stated in Article 1 without the prior written consent of the requested Party.

3 Information shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 1, and used by such persons or authorities only for such purposes, including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.

4 Information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

ARTICLE 8
COSTS

Unless the competent authorities of the contracting Parties otherwise agree, indirect costs incurred in providing assistance shall be borne by the requested Party,

and direct costs incurred in providing assistance (including reasonable costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. At the request of either Party, the competent authorities shall consult as necessary with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party in advance if the costs of providing information with respect to a specific request are expected to be significant.

ARTICLE 9
NO PREJUDICIAL OR RESTRICTIVE MEASURES

1 Neither of the Parties shall apply prejudicial or restrictive measures based on harmful tax
practices to residents or nationals of either Party so long as this Agreement is in force and effective.

2 For the purposes of this Article, a "prejudicial or restrictive measure" based on harmful tax practices means a measure applied by one Party to residents or nationals of either Party on the basis that the other Party does not engage in effective exchange of information and/or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria.

3 Without limiting the generality of paragraph 2, the term "prejudicial or restrictive measure" includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements.

4 A "prejudicial or restrictive measure" does not include generally applicable measures, applied by either Party, such as Controlled Foreign Company rules, Foreign Investment Fund rules, Transferor Trust rules, transfer pricing rules, thin capitalisation rules, the operation of dual exempt and foreign tax credit systems or general information reporting rules that relate to the disclosure of information from other countries or jurisdictions, or transactions with such countries or jurisdictions, such as record keeping requirements imposed on foreign owned subsidiaries to ensure access to information concerning parent companies.

ARTICLE 10
MUTUAL AGREEMENT PROCEDURES

1 Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of this Agreement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement.

2 In addition to the endeavours referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under this Agreement.

3 The Parties shall endeavour to agree on other forms of dispute resolution should this become necessary.

ARTICLE 11
ENTRY INTO FORCE

This Agreement shall enter into force when each Party has notified the other in writing through the appropriate channel of the completion of its necessary internal procedures for entering into force. Upon the date of entry into force, it shall have effect:

(a) for criminal tax matters on that date; and

(b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

ARTICLE 12
TERMINATION

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

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

3 If the Agreement is terminated the Parties shall remain bound by the provisions of Article 7 with respect to any information obtained under this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE at London, this tenth day of June 2009,
in duplicate in the English language.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF JERSEY:
H E John Dauth LVO High Commissioner	Senator Philip Ozouf Deputy Chief Minister for Treasury and Resources

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE CANBERRA

Agreement between the Government of Australia and the Government of Jersey for the Allocation of Taxing Rights with respect to Certain Income of Individuals and to Establish a Mutual Agreement Procedure in respect to Transfer Pricing Adjustments

(London, 10 June 2009)

Not yet in force

[2009] ATNIF 15

The Government of Australia and the Government of Jersey ("the Parties"),

Recognising that the Parties have concluded an Agreement for the Exchange of Information with Respect to Taxes, and

Desiring to conclude an Agreement for the allocation of taxing rights with respect to certain income of individuals and to establish a mutual agreement procedure in respect of transfer pricing adjustments,

Have agreed as follows:

ARTICLE 1
PERSONS COVERED

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

ARTICLE 2
TAXES COVERED

1 The existing taxes to which this Agreement shall apply are:

(a) in Australia, the income tax imposed under the federal law of Australia; (hereinafter referred to as "Australian tax").

(b) in Jersey the income tax; (hereinafter referred to as "Jersey tax").

2 This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Parties shall notify each other within a reasonable period of time of any substantial changes to the taxation laws covered by this

Agreement.

3 This Agreement shall not apply to taxes imposed by states, municipalities, local authorities or other political subdivisions, or possessions of a Party.

ARTICLE 3
DEFINITIONS

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

(a) "Australia", when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;

(b) "Jersey" means the Bailiwick of Jersey, including its territorial sea;

(c) "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Jersey, the Treasury and Resources Minister or an authorised representative of the Minister;

(d) "Party" means Australia or Jersey, as the context requires;

(e) "national", in relation to a Party, means any individual possessing the nationality or citizenship of that Party;

(f) "person" includes an individual, a company and any other body of persons;

(g) "tax" means Australian tax or Jersey tax, as the context requires; and

(h) "transfer pricing adjustment" means an adjustment made by the competent authority of a Party to the profits of an enterprise as a result of applying the

domestic law concerning taxes referred to in Article 2 of that Party regarding transfer pricing.

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

ARTICLE 4
RESIDENT

1 For the purposes of this Agreement, the term "resident of a Party" means:

(a) in the case of Australia, a person who is a resident of Australia for the purposes of Australian tax; and

(b) in the case of Jersey, a person who is a resident of Jersey for the purposes of Jersey tax.

2 A person is not a resident of a Party for the purposes of this Agreement if the person is liable to tax in that Party in respect only of income from sources in that Party.

3 Where by reason of the preceding provisions of this Article a person, being an individual, is a resident of both Parties, then the person's status shall be determined as follows:

(a) the individual shall be deemed to be a resident only of the Party in which a permanent home is available to that individual; if a permanent home is available in both Parties, or in neither of them, that individual shall be deemed to be a resident only of the Party with which the individual's personal and economic relations are closer (centre of vital interests);

(b) if the Party in which the individual has their centre of vital interests cannot be determined, the individual shall be deemed to be a resident only of the Party of which the individual is a national;

(c) if the individual is a national of both Parties or of neither of them, the competent authorities of the Parties shall endeavour to resolve the question by mutual agreement.

4 Where by reason of paragraph 1 a person other than an individual is a resident of both Parties, then it shall be deemed to be a resident only of the Party in which its place of effective management is situated.

ARTICLE 5
PENSIONS AND RETIREMENT ANNUITIES

1 Pensions (including government pensions) and retirement annuities paid to an

individual who is a resident of a Party shall be taxable only in that Party. However, pensions and retirement annuities arising in a Party may be taxed in that Party where such income is not subject to tax in the other Party.

2 The term "retirement annuity" means:

(a) in the case of Australia, a superannuation annuity payment within the meaning of the taxation laws of Australia;

(b) in the case of Jersey, a retirement annuity contract approved by the Comptroller of Income Tax in accordance with the provisions of the taxation laws of Jersey; and

(c) any other similar periodic payment agreed upon by the competent authorities.

ARTICLE 6
GOVERNMENT SERVICE

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

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

(i) is a national or citizen of that Party; or
(ii) did not become a resident of that Party solely for the purpose of rendering the services.

2 Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a Party or a political subdivision or a local authority thereof may be taxed in accordance with the laws of a Party.

ARTICLE 7
STUDENTS

Payments which a student or business apprentice, who is or was immediately before visiting a Party a resident of the other Party and who is temporarily present in the first-mentioned Party solely for the purpose of their education or training, receives for the purpose of their maintenance, education or training shall not be taxed in that Party, provided such payments arise from sources outside that Party.

ARTICLE 8
MUTUAL AGREEMENT PROCEDURE IN RESPECT OF TRANSFER PRICING ADJUSTMENTS

1 Where a resident of a Party considers the actions of the other Party results or will result in a transfer pricing adjustment not in accordance with the arm's length principle, the resident may, irrespective of the remedies provided by the domestic law of those Parties, present a case to the competent authority of the first-mentioned Party. The case must be presented within 3 years of the first notification of the adjustment.

2 The competent authorities shall endeavour to resolve any difficulties or doubts arising as to the application of the arm's length principle by a Party regarding transfer pricing adjustments. They may also communicate with each other directly for the purposes of this Article.

ARTICLE 9
EXCHANGE OF INFORMATION

The competent authorities of the Parties shall exchange such information as is forseeably relevant for carrying out the provisions of this Agreement. Information may be exchanged by the competent authorities for the purposes of this Article in accordance with the provisions of the Agreement for the Exchange of Information with Respect to Taxes concluded by the Parties. (whether or not this Agreement, in whole or in part, forms part of the domestic law of either Party).

ARTICLE 10
ENTRY INTO FORCE

The Parties shall notify each other, in writing, through the appropriate channel of the completion of their constitutional and legal procedures for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last notification, and shall, provided an Agreement for the Exchange of Information with Respect to Taxes is in force between the Parties, thereupon have effect:

(a) in respect of Australian tax, for any year of income beginning on or after 1 July in the calendar year next following the date on which this Agreement enters into force; and

(b) in respect of Jersey tax, for any year of income beginning on or after 1 January in the calendar year next following the date on which this Agreement enters into force.

ARTICLE 11
TERMINATION

1 This Agreement shall continue in effect indefinitely, but either of the Parties may give to the other Party written notice of termination.

2 Such termination shall become effective:

(a) in respect of Australian tax, in the year of income beginning on or after 1 July in the calendar year next following that in which the notice of termination is given;

(b) in respect of Jersey tax, in the year of income beginning on or after 1 January in the calendar year next following that in which the notice of termination is given.

3 Notwithstanding the provisions of paragraph 1 or 2, this Agreement shall, on receipt through appropriate channels of written notice of termination of the Agreement for the Exchange of Information with Respect to Taxes between the Parties, terminate and cease to be effective on the first day of the month following the expiration of a period of 3 months after the date of receipt of such notice.

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

DONE at London, this tenth day of June, 2009, in duplicate in the English language.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF JERSEY:
H E John Dauth LVO High Commissioner	Senator Philip Ozouf Deputy Chief Minister for Treasury and Resources

CONVENTION

BETWEEN

AUSTRALIA AND NEW ZEALAND

FOR THE AVOIDANCE OF DOUBLE TAXATION

WITH RESPECT TO TAXES ON INCOME AND FRINGE BENEFITS

AND THE PREVENTION OF FISCAL EVASION

(Paris, 26 June 2009)

Not yet in force

[2009] ATNIF 18

CONVENTION BETWEEN AUSTRALIA AND NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME AND FRINGE BENEFITS AND THE PREVENTION OF FISCAL EVASION

The Government of Australia and the Government of New Zealand,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and fringe benefits and the prevention of fiscal evasion,

Have agreed as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

PERSONS COVERED

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

2. In the case of an item of income (including profits or gains) derived by or through a person that is fiscally transparent with respect to that item of income under the laws of either State, such item shall be considered to be derived by a resident of a State to the extent that the item is treated for the purposes of the taxation law of such State as the income of a resident**.**

Article 2

TAXES COVERED

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

a) in the case of Australia:

(i) the income tax, including the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources; and

(ii) the fringe benefits tax

imposed under the federal law of Australia

(hereinafter referred to as "Australian tax");

b) in the case of New Zealand:

the income tax, including the fringe benefit tax

(hereinafter referred to as "New Zealand tax").

2. The Convention shall apply also to any identical or substantially similar taxes that are imposed under the federal laws of Australia or the laws of New Zealand after the date of signature of the Convention in addition to, or in place of, the taxes listed in paragraph 1. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in the laws of their respective States relating to the taxes to which the Convention applies within a reasonable period of time after those changes.

CHAPTER II

DEFINITIONS

Article 3

GENERAL DEFINITIONS

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

a) the term "Australia", when used in a geographical sense, excludes all external territories other than:

(i) the Territory of Norfolk Island;

(ii) the Territory of Christmas Island;

(iii) the Territory of Cocos (Keeling) Islands;

(iv) the Territory of Ashmore and Cartier Islands;

(v) the Territory of Heard Island and McDonald Islands; and

(vi) the Coral Sea Islands Territory,

and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploration for or exploitation of any of the natural resources of the exclusive economic zone or the seabed and subsoil of the continental shelf;

b) the term "New Zealand" means the territory of New Zealand but does not include Tokelau; it also includes any area beyond the territorial sea designated under New Zealand legislation and in accordance with international law as an area in which New Zealand may exercise sovereign rights with respect to natural resources;

c) the term "business" includes the performance of professional services and of other activities of an independent character;

d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

e) the term "competent authority" means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of New Zealand, the Commissioner of Inland Revenue or an authorised representative of the Commissioner;

f) the term "enterprise" applies to the carrying on of any business;

g) 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;

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

i) 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 company, partnership or association deriving its status as such from the laws in force in that Contracting State;

j) the term "person" includes an individual**,** a trust, a partnership, a company and any other body of persons;

k) the term "tax" means Australian tax or New Zealand tax as the context requires, but does not include any penalty or interest imposed under the law of either Contracting State relating to its tax;

l) the term "recognised stock exchange" means:

(i) the Australian Securities Exchange and any other Australian stock exchange recognised as such under Australian law;

(ii) the securities markets (other than the New Zealand Debt Market) operated by the New Zealand Exchange Limited; and

(iii) any other stock exchange agreed upon by the competent authorities; and

m) the term "managed investment trust" means a trust that is a managed investment trust for the purposes of Australian tax.

2. For the purposes of Articles 5 and 6, the term "natural resources" means naturally-occurring deposits or sources of materials and substances, such as minerals, oils, gas and water. The term also includes naturally-occurring forests and fish.

3. As regards the application of the 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 concerning the taxes to which the 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.

4. For the purposes of Articles 10, 11 and 12, dividends, interest or royalties arising in a Contracting State and derived by or through a trust shall be deemed to be beneficially owned by a resident of the other Contracting State where such income is subject to tax in that other State in the hands of a trustee of that trust.

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 as a resident of that State, and also includes that State and any political subdivision or local authority of that State. 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 their status shall be determined as follows:

a) the individual shall be deemed to be a resident only of the State in which a permanent home is available to that individual; but if a permanent home is available in both States, or in neither of them, that individual shall be deemed to be a resident only of the State with which the individual's personal and economic relations are closer (centre of vital interests);

b) if the State in which the centre of vital interests is situated cannot be determined, the individual shall be deemed to be a resident only of the State in which that individual has an habitual abode;

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

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. If the State in which the place of effective management is situated cannot be determined, or the place of effective management is in neither State, then the competent authorities of the Contracting States shall endeavour to determine by mutual agreement in accordance with Article 25 the Contracting State of which the person shall be deemed to be a resident for the purposes of the Convention, having regard to its places of management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention.

4. Where an item of income, profits or gains derived by an individual is exempt from tax in New Zealand by reason only of the status of that individual as a transitional resident under the laws

of New Zealand, no relief or exemption from tax shall be available under this Convention in Australia in respect of that item of income, profits or gains.

5. Notwithstanding paragraph 3 of this Article, where by reason of paragraph 1 of this Article a company, which is a participant in a dual listed company arrangement, is a resident of both Contracting States then it shall be deemed to be a resident only of the Contracting State in which it is incorporated, provided it has its primary stock exchange listing in that State.

6. The term "dual listed company arrangement" as used in this Article means an arrangement pursuant to which two companies that are listed on a stock exchange specified in subsubparagraphs 1*l)(i)* and *(ii)* of Article 3 respectively, while maintaining their separate legal entity status, shareholdings and listings, align their strategic directions and the economic interests of their respective shareholders through:

a) the appointment of common (or almost identical) boards of directors, except where the effect of the relevant regulatory requirements prevents this;

b) management of the operations of the two companies on a unified basis;

c) equalised distributions to shareholders in accordance with an equalisation ratio applying between the two companies, including in the event of a winding up of one or both of the companies;

d) the shareholders of both companies voting in effect as a single decision-making body on substantial issues affecting their combined interests; and

e) cross-guarantees as to, or similar financial support for, each other's material obligations or operations, except where the effect of the relevant regulatory requirements prevents such guarantees or financial support.

7. Notwithstanding the other provisions of this Convention, a managed investment trust which receives income (including profits and gains) arising in New Zealand shall be treated, for the purposes of applying the Convention to such income, as an individual resident of Australia and as the beneficial owner of the income it receives, but only to the extent that residents of Australia are the owners of the beneficial interests in the managed investment trust. However, if:

a) the managed investment trust has its principal class of units listed on a stock exchange specified in subsubparagraph 1 *l)(i)* of Article 3 and is regularly traded on one or more recognised stock exchanges; or

b) at least 80 per cent of the value of the beneficial interests in the managed investment trust is owned by residents of Australia,

the managed investment trust shall be treated as an individual resident of Australia and as the beneficial owner of all the income it receives.

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 the 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;

f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and

g) an agricultural, pastoral or forestry property.

3. A building site or a construction, installation or assembly project shall constitute a permanent establishment but only if it lasts more than 6 months.

4. Notwithstanding the provisions of paragraphs 1, 2 and 3, where an enterprise of a Contracting State:

a) performs services in the other Contracting State

(i) through an individual who is present in that other State for a period or periods exceeding in the aggregate 183 days in any twelve month period, and more than 50 per cent of the gross revenues attributable to active business activities of the enterprise during this period or periods are derived from the services performed in that other State through that individual, or

(ii) for a period or periods exceeding in the aggregate 183 days in any twelve month period, and these services are performed for the same project or for connected projects through one or more individuals who are present and performing such services in that other State;

b) carries on activities (including the operation of substantial equipment) in the other State in the exploration for or exploitation of natural resources or standing timber situated in that other State for a period or periods exceeding in the aggregate 90 days in any twelve month period; or

c) operates substantial equipment in the other State (including as provided in subparagraph *b)*) for a period or periods exceeding in the aggregate 183 days in any twelve month period,

such activities shall be deemed to be carried on through a permanent establishment of the enterprise situated in that other State, unless the activities are limited to those mentioned in paragraph 7 which, if exercised through a fixed place of business, would not make this place of business a permanent establishment under the provisions of that paragraph.

5. For the purposes of subsubparagraph *a)(ii)* of paragraph 4, services performed by an individual on behalf of one enterprise shall not be considered to be performed by another enterprise through that individual unless that other enterprise supervises, directs or controls the manner in which these services are performed by the individual. Furthermore, services performed through an individual who is present and performing such services in a State for any period not exceeding 5 days shall be disregarded for the purposes of subsubparagraph *a)(ii)* of paragraph 4, unless such services are performed by that individual in that State on a regular or frequent basis.

6. *a)* The duration of activities under paragraphs 3 and 4 will be determined by aggregating the periods during which activities are carried on in a Contracting State by associated enterprises provided that the activities of the enterprise in that State are connected with the activities carried on in that State by its associate.

b) The period during which two or more associated enterprises are carrying on concurrent activities will be counted only once for the purpose of determining the duration of activities.

c) Under this Article, an enterprise shall be deemed to be associated with another enterprise if:

(i) one is controlled directly or indirectly by the other; or

(ii) both are controlled directly or indirectly by the same person or persons.

7. 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 such activities are, in relation to the enterprise, of a preparatory or auxiliary character.

8. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 9 applies—is acting on behalf of an enterprise and:

a) has, and habitually exercises, in a Contracting State an authority to substantially negotiate or conclude contracts on behalf of the enterprise; or

b) manufactures or processes in a Contracting State for the enterprise goods or merchandise belonging to 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 7 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.

9. 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 person who is 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 as such a broker or agent.

10. 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.

11. The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph 7 of Article 11 and paragraph 5 of Article 12 whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of a Contracting State, has a permanent establishment in a Contracting State.

CHAPTER III

TAXATION OF INCOME AND FRINGE BENEFITS

Article 6

INCOME FROM REAL PROPERTY

1. Income derived by a resident of a Contracting State from real property (including profits of an enterprise from agriculture, forestry or fishing) may be taxed in the Contracting State in which the real property is situated.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated and includes:

a) any natural resources, property accessory to real property, rights to which the provisions of general law respecting real property apply, and rights to standing timber;

b) a lease of land and any other interest in or over land, whether improved or not, including a right to explore for natural resources, and a right to exploit those resources; and

c) a right to receive variable or fixed payments either as consideration for or in respect of the exploitation of, or for the right to explore for or exploit, natural resources.

Ships, boats and aircraft shall not be regarded as real property.

3. Any interest or right referred to in paragraph 2 shall be regarded as situated where the land, natural resources or standing timber, as the case may be, are situated or where the exploration may take place.

4. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of real property.

5. The provisions of paragraphs 1, 3 and 4 shall also apply to the income from real property of an enterprise. The profits of the enterprise shall be determined in accordance with the principles of paragraphs 2 and 3 of Article 7 as if such income were attributable to a permanent establishment in the Contracting State in which the real property is situated.

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 of the enterprise, being expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

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.

6. Nothing in this Article shall affect the application of any law of a Contracting State relating to tax imposed on income from insurance with non-resident insurers.

7. Where:

a) a resident of a Contracting State beneficially owns (whether as a direct beneficiary of a trust or through one or more interposed trusts) a share of the profits of a business of an enterprise carried on in the other Contracting State by the trustee of a trust other than a trust which is treated as a company for tax purposes; and

b) in relation to that enterprise, that trustee has or would have, if it were a resident of the first-mentioned State, a permanent establishment in the other State,

then the business of the enterprise carried on by the trustee through such permanent establishment shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated in that other State and the resident's share of profits may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

8. No adjustments to the profits attributable to a permanent establishment of an enterprise for a year of income shall be made by a Contracting State after the expiration of 7 years from the date on which the enterprise has completed the tax filing requirements of that State for that year of income. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of 7 years, an audit into the profits of the enterprise has been initiated by either State.

Article 8

SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a Contracting State derived from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, amounts paid or payable to an enterprise of a Contracting State for carriage by ship or aircraft of passengers, livestock, mail, goods or merchandise which are shipped in the other Contracting State and are discharged at a place in that

other State, or for leasing on a full basis of a ship or aircraft for purposes of such carriage, may be taxed in that other State.

3. The profits to which the provisions of paragraphs 1 and 2 apply include profits from the operation of ships or aircraft derived through participation in a pooling arrangement or other profit sharing arrangement.

4. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used in the transport of goods or merchandise, provided that such use, maintenance or rental is directly connected or ancillary to the operation of ships or aircraft in international traffic.

Article 9

ASSOCIATED ENTERPRISES

1. 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 operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the profits accruing to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistently with the principles of this Article.

3. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which might have been expected to have accrued to the enterprise of the first-mentioned State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

4. No adjustments to the profits of an enterprise for a year of income shall be made by a Contracting State in accordance with the provisions of paragraphs 1 and 2 after the expiration of 7 years from the date on which the enterprise has completed the tax filing requirements of that State for that year of income. The provisions of this paragraph shall not apply in the case of fraud, gross negligence or wilful default or where, within that period of 7 years, an audit into the profits of an enterprise has been initiated by that State.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State, being dividends beneficially owned by 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 the tax so charged shall not exceed:

a) 5 per cent of the gross amount of the dividends if the beneficial owner of those dividends is a company which holds directly at least 10 per cent of the voting power in the company paying the dividends; and

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

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2 of this Article, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial

owner of the dividends is a company that is a resident of the other Contracting State that has owned, directly or indirectly through one or more residents of either Contracting State, shares representing 80 per cent or more of the voting power of the company paying the dividends for a 12 month period ending on the date the dividend is declared and the company that is the beneficial owner of the dividends:

a) has its principal class of shares listed on a recognised stock exchange specified in subsubparagraph 1 *l)(i)* or *(ii)* of Article 3 and is regularly traded on one or more recognised stock exchanges;

b) is owned directly or indirectly by one or more companies:

(i) whose principal class of shares is listed on a recognised stock exchange specified in subsubparagraph 1 *l)(i)* or *(ii)* of Article 3 and is regularly traded on one or more recognised stock exchanges; or

(ii) which, if that company or each of those companies owned directly the holding in respect of which the dividends are paid, would be entitled to equivalent benefits in respect of such dividends under a tax treaty between the State of which that company is a resident and the Contracting State of which the company paying the dividends is a resident; or

c) does not meet the requirements of subparagraphs *a)* or *b)* of this paragraph but the competent authority of the first-mentioned Contracting State determines that the first sentence of paragraph 9 of this Article does not apply. The competent authority of the first-mentioned Contracting State shall consult the competent authority of the other Contracting State before refusing to grant benefits of this Convention under this subparagraph.

4. Notwithstanding the provisions of paragraph 2, dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends holds directly no more than 10 per cent of the voting power of the company paying the dividends, and the beneficial owner is a Contracting State, or political subdivision or a local authority thereof (including a government investment fund).

5. The term "dividends" as used in this Article means income from shares or other rights participating in profits, as well as other amounts which are subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident for the purposes of its tax**.**

6. The provisions of paragraphs 1, 2, 3 and 4 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. 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—being dividends beneficially owned by a person who is not a resident of the other Contracting State—except insofar as the holding in respect of which such dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

8. Notwithstanding paragraph 7, dividends paid by a company which is a resident of Australia for the purposes of Australian tax and which is also a resident of New Zealand for the purposes of New Zealand tax may be taxed in a Contracting State to the extent that the dividends are paid out of profits or income arising in that State. Where such dividends are beneficially owned by a resident of the other Contracting State, paragraphs 2 and 3 of this Article shall apply as if the company paying the dividends were a resident only of the first-mentioned State.

9. No relief shall be available under this Article if it is the main purpose or one of the main purposes of any person concerned with an assignment of the dividends, or with the creation or assignment of the shares or other rights in respect of which the dividend is paid, or the establishment, acquisition or maintenance of the company that is the beneficial owner of the dividends and the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting State.

Article 11

INTEREST

1. Interest arising in a Contracting State and beneficially owned by 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 the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding paragraph 2, interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may not be taxed in the first-mentioned State if:

a) the interest is derived by a Contracting State or by a political sub-division or a local authority thereof (including a government investment fund), or by a bank performing central banking functions in a Contracting State; or

b) the interest is derived by a financial institution which is unrelated to and dealing wholly independently with the payer. For the purposes of this Article, the term "financial institution" means a bank or other enterprise substantially deriving its profits by raising debt finance in the financial markets or by taking deposits at interest and using those funds in carrying on a business of providing finance.

4. Notwithstanding paragraph 3, interest referred to in subparagraph *b)* of that paragraph may be taxed in the State in which it arises at a rate not exceeding 10 per cent of the gross amount of the interest if:

a) in the case of interest arising in New Zealand, it is paid by a person that has not paid approved issuer levy in respect of the interest. This subparagraph *a)* shall not apply if New Zealand does not have an approved issuer levy, or the payer of the interest is not eligible to elect to pay the approved issuer levy, or if the rate of the approved issuer levy payable in respect of such interest exceeds two percent of the gross amount of the interest. For the purposes of this Article, "approved issuer levy" includes any identical or substantially similar charge payable by the payer of interest arising in New Zealand enacted after the date of this Convention in place of approved issuer levy; or

b) it is paid as part of an arrangement involving back-to-back loans or other arrangement that is economically equivalent and intended to have a similar effect to back-to-back loans.

5. 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, as well as all other income treated as income from money lent by the laws, relating to tax, of the Contracting State in which the income arises, but does not include any income which is treated as a dividend under Article 10.

6. The provisions of paragraphs 1 and 2, subparagraph *b)* of paragraph 3 and paragraph 4 of this Article 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the interest, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both Contracting States a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by or deductible in determining the profits attributable to such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

8. 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 might have been expected to 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.

9. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with the assignment of the interest, the creation or assignment of the debt-claim or other rights in respect of which the interest is paid, or the establishment, acquisition or maintenance of the person which is the beneficial owner of the interest or the conduct of its operations, to take advantage of this Article. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting State.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and beneficially owned by 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 the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;

b) the supply of information concerning technical, industrial, commercial or scientific experience;

c) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in subparagraph *a)* or any such information as is mentioned in subparagraph *b)*;

d) the use of, or the right to use:

(i) motion picture films;

(ii) films or audio or video tapes or disks, or any other means of image or sound reproduction or transmission for use in connection with television, radio or other broadcasting;

e) the use of, or the right to use, some or all of the part of the radiofrequency spectrum as specified in a spectrum licence of a Contracting State, where the payment or credit arises in that State; or

f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

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 and the right or property in respect of which the royalties are paid or credited is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State or outside both

Contracting States a permanent establishment in connection with which the liability to pay the royalties was incurred, and the royalties are borne by or deductible in determining the profits attributable to such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid or credited, having regard to what they are paid or credited for, exceeds the amount which might have been expected to 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 or credits shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. No relief shall be available under this Article if it was the main purpose or one of the main purposes of any person concerned with an assignment of the royalties, or with the creation or assignment of the rights in respect of which the royalties are paid or credited, to take advantage of this Article by means of that creation or assignment. In any case where a Contracting State intends to apply this paragraph, the competent authority of that State shall consult with the competent authority of the other Contracting State.

Article 13

ALIENATION OF PROPERTY

1. Income, profits or gains derived by a resident of a Contracting State from the alienation of real property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. Income, profits or gains from the alienation of property (other than real property) forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including income, profits or gains from the alienation of that permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Income, profits or gains of an enterprise of a Contracting State from the alienation of ships or aircraft operated by that enterprise in international traffic, or of property (other than real property) pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

4. Income, profits or gains derived by a resident of a Contracting State from the alienation of any shares or comparable interests deriving more than 50 per cent of their value directly or indirectly from real property situated in the other Contracting State may be taxed in that other State.

5. Gains of a capital nature from the alienation of any property, other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

6. Where an individual who upon ceasing to be a resident of a Contracting State, is treated under the taxation law of that State as having alienated any property and is taxed in that State by reason thereof, the individual may elect to be treated for the purposes of taxation in the other Contracting State as if the individual had, immediately before ceasing to be a resident of the first-mentioned State, alienated and reacquired the property for an amount equal to its fair market value at that time.

7. The provisions of this Article shall not affect the right of Australia to tax, in accordance with its laws, income, profits or gains from the alienation of any property derived by a person who is a resident of Australia at any time during the year of income in which the property is alienated, or has been so resident at any time during the 6 years immediately preceding that year.

Article 14

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18 and 19, 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, 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 year of income of that other State, and

b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, or is borne by or deductible in determining the profits attributable to a permanent establishment which the employer has in the first-mentioned State, and

c) the remuneration is neither borne by nor deductible in determining the profits attributable to a permanent establishment 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.

4. Notwithstanding the preceding provisions of this Article, remuneration derived by an individual who is a resident of a Contracting State in respect of a secondment to the other Contracting State shall be taxable only in the first-mentioned State where the individual is present in the other State for a period or periods not exceeding in the aggregate 90 days in any twelve month period.

5. For the purposes of paragraph 4, "secondment to the other Contracting State" means an arrangement pursuant to which an employee of an enterprise of a Contracting State, being the enterprise with which the employee has a formal contract of employment, temporarily performs employment services in the other State for a permanent establishment of the enterprise situated in that other State, or for an associated enterprise (as referred to in subparagraph *c)* of paragraph 6 of Article 5), where such employment services are of a similar nature to those ordinarily performed by that employee for the first-mentioned enterprise. However, it does not include an arrangement that has as one of its main purposes the obtaining of benefits under paragraph 4.

Article 15

FRINGE BENEFITS

1. Where, except for the application of this Article, a fringe benefit is taxable in both Contracting States the benefit will be taxable only in the Contracting State that has the sole or primary taxing right in accordance with the Convention in respect of salary or wages from the employment to which the benefit relates.

2. For the purposes of this Article:

a) "fringe benefit" includes a benefit provided to an employee or to an associate of an employee by:

(i) an employer;

(ii) an associate of an employer; or

(iii) a person under an arrangement between that person and the employer, associate of an employer or another person in respect of the employment of that employee,

and includes an accommodation allowance or housing benefit so provided but does not include a benefit arising from the acquisition of an option over shares under an employee share scheme;

b) a Contracting State has a "primary taxing right" to the extent that a taxing right in respect of salary or wages from the relevant employment is allocated to that State in accordance with this Convention and the other Contracting State is required to provide relief for the tax imposed in respect of such remuneration by the first-mentioned State.

Article 16

DIRECTORS' FEES

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

Article 17

ENTERTAINERS AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 7 and 14, 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 sportsperson, from that person's 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 sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to the income derived in respect of personal activities exercised by a sportsperson as a member of a recognised team regularly playing in a league competition organised and conducted in both Contracting States, except in respect of performance as a member of a national representative team of either Contracting State. In such case the provisions of Article 7 or 14, as the case may be, shall apply.

Article 18

PENSIONS

1. Pensions (including government pensions) and other similar periodic remuneration paid to a resident of a Contracting State shall be taxable only in that State. However, such income arising in the other Contracting State (other than payments of portable New Zealand superannuation or portable veteran's pension or equivalent portable payments arising in New Zealand) shall not be taxed in the first-mentioned State to the extent that such income would not be subject to tax in the other State if the recipient were a resident of that other State.

2. Lump sums arising in a Contracting State and paid to a resident of the other Contracting State under a retirement benefit scheme, or in consequence of retirement, invalidity, disability or death, or by way of compensation for injuries, shall be taxable only in the first-mentioned State.

3. Any alimony or other maintenance payment arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

Article 19

GOVERNMENT SERVICE

1. *a)* Salaries, wages and other similar remuneration (other than a pension) paid by a Contracting State or a political subdivision or local authority thereof to an individual in respect of services rendered to that State or 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 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 14, 16 and 17 shall apply to salaries, wages and other similar remuneration paid in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

Article 20

STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is temporarily present in the first-mentioned State solely for the purpose of their education or training receives for the purpose of their maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Article 21

OTHER INCOME

1. 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 real property as defined in paragraph 2 of Article 6, derived by a resident of a Contracting State who carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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 the Convention and arising in the other Contracting State may also be taxed in the other Contracting State.

Article 22

SOURCE OF INCOME

Income, profits or gains derived by a resident of a Contracting State which, under any one or more of Articles 6 to 8 and 10 to 19 may be taxed in the other Contracting State shall for the purposes of the law of that other Contracting State relating to its tax be deemed to arise from sources in that other Contracting State.

CHAPTER IV

ELIMINATION OF DOUBLE TAXATION

Article 23

ELIMINATION OF DOUBLE TAXATION

1. Subject to the provisions of the laws of Australia which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle of this Article), New Zealand tax paid under the laws of New Zealand and in accordance with this Convention, in respect of income derived by a resident of Australia shall be allowed as a credit against Australian tax payable in respect of that income.

2. Subject to the provisions of the laws of New Zealand which relate to the allowance of a credit against New Zealand income tax of tax paid in a country outside New Zealand (which shall not affect the general principle of this Article), Australian tax paid under the laws of Australia and in accordance with this Convention, in respect of income derived by a resident of New Zealand (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.

3. Where, in accordance with paragraph 2 of Article 1, an item of income is taxed in a Contracting State in the hands of a person that is fiscally transparent under the laws of the other State, and is also taxed in the hands of a resident of that other State as a participant in such person, that other State shall provide relief in respect of taxes imposed in the first-mentioned State on that item of income in accordance with the provisions of this Article.

CHAPTER V

SPECIAL PROVISIONS

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 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 in similar circumstances. This provision shall not be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any of the personal allowances, reliefs and reductions for tax purposes which are granted to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 8 of Article 11, or paragraph 6 of Article 12, 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 more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State in similar circumstances are or may be subjected.

5. This Article shall not apply to any provision of the laws of a Contracting State which:

a) is designed to prevent the avoidance or evasion of taxes;

b) does not permit the deferral of tax arising on the transfer of an asset where the subsequent transfer of the asset by the transferee would be beyond the taxing jurisdiction of the Contracting State under its laws;

c) provides for consolidation of group entities for treatment as a single entity for tax purposes provided that a company, being a resident of that 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, may access such consolidation treatment on the same terms and conditions as other companies that are residents of the first-mentioned State;

d) provides for the transfer of losses within a group of companies;

e) does not allow tax rebates, credits or an exemption in relation to dividends paid by a company that is a resident of that State for purposes of its tax;

f) provides deductions to eligible taxpayers for expenditure on research and development; or

g) is otherwise agreed to be unaffected by this Article in an Exchange of Notes between the Contracting States.

6. In this Article, provisions of the laws of a Contracting State which are designed to prevent avoidance or evasion of taxes include:

a) measures designed to address thin capitalisation, dividend stripping and transfer pricing;

b) controlled foreign company, transferor trusts and foreign investment fund rules; and

c) measures designed to ensure that taxes can be effectively collected and recovered, including conservancy measures.

7. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description imposed on behalf of the Contracting States, or their political subdivisions.

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 the person in taxation not in accordance with the provisions of this Convention, the

person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 24, to that of the Contracting State of which the person is a national. 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 claim 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 application 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 for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. For the purposes 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 this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

6. Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been reserved or rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

7. The issues to which the provisions of paragraph 6 apply are:

a) issues of fact; and

b) issues which the Government of Australia and the Government of New Zealand agree, in an Exchange of Notes, shall be covered by the provisions of paragraph 6.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is forseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed, in the case of Australia, under the federal tax laws administered by the Commissioner of Taxation, and in the case of New Zealand, under its tax laws, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

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

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed, in the case of Australia, under the federal tax laws administered by the Commissioner of Taxation, and in the case of New Zealand, under its tax laws, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or

b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (ordre public);

c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;

e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

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 international agreements.

CHAPTER VI

FINAL PROVISIONS

Article 29

MISCELLANEOUS

1. The Contracting States shall consult each other at intervals of not more than five years regarding the terms, operation and application of the Convention with a view to ensuring that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion. The first such consultation shall take place no later than the end of the fifth year after the entry into force of the Convention.

2. With reference to Article 11, if in any future tax treaty with any other State, New Zealand should provide for more favourable treatment of interest derived by financial institutions, New Zealand shall without undue delay inform Australia and shall enter into negotiations with Australia with a view to providing the same treatment.

Article 30

ENTRY INTO FORCE

1. The Contracting States shall notify each other in writing through the diplomatic channel of the completion of their domestic requirements for the entry into force of this Convention. The Convention shall enter into force on the date of the last notification, and thereupon the Convention shall have effect:

a) in the case of Australia:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of the second month next following the date on which the Convention enters into force;

(ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which the Convention enters into force;

(iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the Convention enters into force;

b) in the case of New Zealand:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April next following the date on which the Convention enters into force.

2. Notwithstanding paragraph 1, paragraphs 6 and 7 of Article 25 shall have effect from the date agreed in an exchange of notes through the diplomatic channel.

3. The Agreement between the Government of Australia and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Melbourne on 27 Janu ary 1995, as modified by the Protocol signed at Melbourne on 15 November 2005 (hereinafter referred to as "the 1995 Agreement"), shall cease to have effect with respect to taxes to which this Convention applies in accordance with the provisions of paragraph 1. The 1995 Agreement shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this paragraph.

Article 31

TERMINATION

This Convention shall continue in effect indefinitely, but either Contracting State may terminate the Convention by giving written notice of termination, through the diplomatic channel, to the other State at least six months before the end of any calendar year beginning after the expiration of five years from the date of its entry into force and, in that event, the Convention shall cease to be effective:

a) in the case of Australia:

(i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after the first day of the second month next following the date on which the notice of termination is given;

(ii) in respect of fringe benefits tax, in relation to fringe benefits provided on or after 1 April next following the date on which the notice of termination is given;

(iii) in respect of other Australian tax, in relation to income, profits or gains of any year of income beginning on or after 1 July next following the date on which the notice of termination is given;

b) in the case of New Zealand:

(i) in respect of withholding tax on income, profits or gains derived by a non-resident, for amounts paid or credited on or after the first day of the second month next following the date on which the notice of termination is given;

(ii) in respect of other New Zealand tax, for any income year beginning on or after 1 April next following the date on which the notice of termination is given.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this Convention.

DONE at Paris this 26th day of June 2009, in duplicate in the English language.

FOR AUSTRALIA:	FOR NEW ZEALAND:
The Hon Simon Crean	Hon Tim Groser
Minister for Trade	Minister of Trade

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

AGREEMENT BETWEEN

THE GOVERNMENT OF AUSTRALIA

AND

THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

CONCERNING THE USE OF

SHOALWATER BAY TRAINING AREA

AND THE USE OF

ASSOCIATED FACILITIES IN AUSTRALIA

(Singapore, 31 May 2009)

Not yet in force
[2009] ATNIF 11

INDEX

Preamble

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE CONCERNING THE USE OF SHOALWATER BAY TRAINING AREA AND THE USE OF ASSOCIATED FACILITIES IN AUSTRALIA.

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE (hereinafter referred to as the Parties);

DESIRING to further promote mutually beneficial defence relations involving engagement, consultation and responsiveness in their region;

NOTING their commitments under the Exchange of Notes constituting a Status of Forces Agreement between the Parties done at Singapore on 10 February 1988 (the SOFA) and the Agreement between the Parties on the Reciprocal Protection of Classified Information Transmitted Between the Australian Department of Defence and the Singapore Ministry of Defence done at Canberra on 15 October 1996;

ACKNOWLEDGING the benefits to the Government of the Republic of Singapore from the continuation of the use of training areas in Australia by the Singapore Armed Forces;

DESIRING to set out an agreement for use of the Shoalwater Bay Training Area by the Singapore Armed Forces upon the expiration of the Agreement between the Parties concerning the Use of Shoalwater Bay Training Area and the Associated Use of Storage Facilities in Australia, done in duplicate at Perth on 23 August 2005;

ACCEPTING that limits on the Singapore Armed Forces' use of Shoalwater Bay Training Area are imposed by the exercise needs of the Australian Department of Defence, those of other allies and by environmental considerations;

HAVE AGREED as follows:

Article 1

Definitions

The definitions in the SOFA shall apply to this Agreement. Additionally, the following definitions shall apply:

(a) “ADOD” means the Australian Department of Defence;

(b) “ADOD Delegate” for the purpose of this Agreement is a person authorised by the DEPSEC IS&IP (or his or her successor in the event of a reorganisation or other change) to exercise delegations in relation to this Agreement;

(c) “ADOD support staff” means a military or civilian employee of the ADOD, or a commercial contractor of the ADOD, specifically tasked by the ADOD Delegate to assist or manage the implementation of any part of this Agreement;

(d) “ADF Liaison Officer” means a military member of the Australian Defence Force (ADF) who is specifically appointed to perform the duties of a Liaison Officer to the SAF during the allocated period referred to in clause 1 of Article 3;

(e) "Aircraft" means a machine or device, such as an airplane, helicopter, glider, or unmanned aerial vehicles that is capable of atmospheric flight.

(f) “Allocated period” means the period of forty-five (45) consecutive days between August and December each calendar year for use of SWBTA and Associated Facilities for SAF training and purposes associated with such training. The allocated period encompasses the dates of the SAF training and specifically includes time for the establishment and removal of exercise specific support facilities in SWBTA.

(g) “Associated facilities” means such facilities internal or external to SWBTA as approved or made available by the ADOD;

(h) “Australian commercial enterprise” means any body corporate registered under Australian Corporations Law, or incorporated under any

other law of the Commonwealth, or a State or Territory of Australia, which conducts business in Australia for the commercial purposes of that enterprise, uses a primarily Australian labour force and which is certified pursuant to clause 2 of Article 15;

(i) "commercial support" means the provision by Australian commercial enterprises of maintenance, engineering or other support services on a commercial basis;

(j) "depot level maintenance" means maintenance in the nature of major repairs, overhaul or rebuilding which is normally undertaken commercially by the SAF;

(k) "DEPSEC IS&IP" means Deputy Secretary Intelligence, Security and International Policy, Australian Department of Defence;

(l) "Environmental Impact Assessment" means identifying potential impacts and considering them against the EPBC Act
significance guidelines with the potential for assessment under the EPBC Act;

(m) "Environmental Laws" means any Law relating to or having as one of its objects the protection of the environment (including heritage) and includes the Australian *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act), the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, and the *Historic Shipwrecks Act 1976*;

(n) "Environmental Monitoring Group" means SAF personnel who have received environmental management training provided by the ADOD sufficient for them to monitor exercise related environmental impacts in SWBTA;

(o) "External roads of access" means all roads providing access into and out of SWBTA including Raspberry Creek Road (Green Route), Rossmoya Rd (Brown Route) and Yeppoon-Byfield Rd (Blue Route) as agreed between the Parties prior to the commencement of training;

(p) The "Great Barrier Reef Marine Park" means the marine park established under the Commonwealth Great Barrier Reef Marine Park Act 1975;

(q) The “Great Barrier Reef World Heritage Area” means the Great Barrier Reef as inscribed by United Nations Education, Scientific and Cultural Organisation on the World Heritage List 26 October 1981;

(r) The “Great Barrier Reef National Heritage Place” means the Great Barrier Reef as inscribed on the National Heritage List 21 May 2007;

(s) The “Shoalwater Bay Commonwealth Heritage Place” means the Shoalwater Bay area as included in the Commonwealth Heritage List 22 June 2004;

(t) “Intermediate level maintenance” means maintenance in the nature of general repair or scheduled servicing which is normally undertaken at workshop level by the SAF;

(u) “Law” means any Australian Commonwealth, State or Territory statute, rule, code, regulation, proclamation, recommendation, order, direction, notice, ordinance or by-law, present or future as may be amended or replaced from time to time.

(v) “organisation level maintenance” means maintenance in the nature of minor repairs or replacement of parts which is normally undertaken at unit level by the SAF;

(w) “RSAF” means the Republic of Singapore Air Force;

(x) "RSN" means the Republic of Singapore Navy;

(y) “SAF” means all land, sea and air services of the Singapore Armed Forces;

(z) “SAF Army Detachment” means the SAF military personnel and any accompanying civilian component present in Australia pursuant to Article 7;

(aa) “SAF Army Detachment Commander” means the SAF Officer commanding the SAF Army Detachment;

(bb) “SAF contractor” means a contractor providing vehicle maintenance, engineering, administrative or other support services on a commercial basis to the SAF;

(cc) “SAF Director of Exercise” means the officer appointed by the

SAF to exercise responsibility, command and control over all SAF personnel present in Australia pursuant to this Agreement. This appointment is equivalent to the appointment of Officer Scheduling the Exercise in the context of the ADOD;

(dd) "SAF personnel" means members of a Singapore force present in Australia for the purpose of SAF training at SWBTA, members of a civilian component accompanying that Singapore force specifically for the purpose of SAF training at SWBTA, including authorised visitors and members of the SAF Army Detachment;

(ee) The "Shoalwater and Corio Bay Ramsar Site" means a wetland designated by the Commonwealth Environment Minister under the Ramsar Convention for Wetlands of International Importance;

(ff) "SWBTA" means Shoalwater Bay Training Area;

(gg) "the SOFA" means the Exchange of Notes constituting a Status of Forces Agreement between the Parties done at Singapore on 10 February 1988.

(hh) "UAV" means unmanned aerial vehicle;

(ii) "UAV Training" means the use of one or more UAV involving:

(1) UAV specific training, and UAV support to other SAF training elements; and

(2) UAV-mounted payload systems

(jj) "Vehicles":

(1) "A vehicles" means, armoured battle tanks, armoured fighting vehicles and armoured combat support vehicles and armoured command vehicles, either tracked or wheeled, including special purpose armoured vehicles such as bridge laying vehicles, amphibious assault vehicles and self-propelled artillery vehicles;

(2) "B vehicles" means soft-skinned combat fighting vehicles and soft-skinned combat support vehicles, and combat service support vehicles that may mount close defence weapons, either wheeled or tracked;

(3) “C vehicles” means special purpose engineering vehicles both military and non-military;

(4) “Motorcycles” means two wheeled vehicles, or three wheeled vehicles or quad-wheeled bikes;

(5) “Other vehicles” means any non-military vehicles that may be employed for transport of personnel and/or materiel that are operated by SAF personnel and visitors. They could be commercially hired, loaned.

(kk) “Vessel” means all machines or devices capable of surface, sub-surface and amphibious aquatic activity, whether manned or unmanned.

Article 2

Scope

1. This Agreement sets out the terms under which the SAF may:

(a) conduct unilateral training at SWBTA during the period from 1 January 2010 until 31 December 2019; and

(b) store vehicles, ammunition (including explosives), materiel and equipment associated with such training at the associated facilities for the period of this Agreement. Subject to clause 1 of Article 20, in the event of this Agreement not being renewed beyond 2019 any such vehicles, ammunition (including explosives), materiel and equipment is to be removed by the SAF at their expense before 31 December 2019.

2. This Agreement shall not preclude the conduct of joint ADOD-SAF exercises at SWBTA either during the allocated period referred to in clause 1 of Article 3 or another period when feasible subject to the mutual agreement by both Parties. The Parties may mutually agree to arrangements for the conduct of such exercises.

3. Existing arrangement/s between the Parties relating to the conduct of

activities in SWBTA continue in effect unless otherwise amended or terminated in accordance with their provisions. This includes the Arrangement between the Department of Defence of Australia and the Ministry of Defence of the Republic of Singapore Concerning the Use of the Singaporean Range Safety Officers and Range Laser Officers in Australia of 25 October 2000.

4. Any UAV training conducted as part of SAF training at SWBTA shall be subject to ADOD approval.

Article 3

Access to and use of SWBTA and Associated Facilities

1. Subject to the subsequent clauses of this Article and to Article 8, the SAF shall be allocated one period of not more than forty-five (45) consecutive days between August and December each calendar year for use of SWBTA and Associated Facilities for SAF training and purposes associated with such training. The allocated period shall encompass the dates of the SAF training and specifically includes time for the establishment and removal of exercise specific support facilities in SWBTA. The allocated period shall also incorporate sufficient time to ensure safe work practices. The ADOD in consultation with the SAF shall develop procedures relating to workplace safety and occupational health and safety in SWBTA that may be amended from time to time.

2. SAF training at SWBTA shall be conducted in accordance with the same rules, procedures and standing operating procedures applied to other users of SWBTA, including the ADF. Details of rules, procedures and standing operating procedures shall be provided in writing by the ADOD to the SAF prior to the IPC. SAF training at SWBTA shall not be undertaken unless compliance with all relevant rules, regulations and standing operating procedures can be assured, to the satisfaction of the ADOD delegate.

3. In order to provide the SAF with a basis for planning and budgetary purposes, the number of SAF personnel and vehicles to be deployed for training at SWBTA shall be based upon the following numbers; increases to which may be considered and approved in writing by the ADOD Delegate. For planning purposes it shall be assumed that the numbers of personnel and vehicles that

may be deployed concurrently for training in SWBTA in any one allocated period are:

(a) 6600 persons

(b) 150 "A" and "C" vehicles combined;

(c) 250 "B" vehicles;

(d) 30 "Other" vehicles, not including vehicles used for VIP visits; and

(e) 70 Motorcycles.

4. Subject to approval, camps may be established by the SAF in SWBTA. Requests for approval shall be made by the SAF in writing to the ADOD Delegate, and shall be subject, pursuant to Article 8, to Environmental Laws and other considerations including remediation, restoration and rehabilitation.

5. Any request for access to SWBTA, the associated facilities or other locations in Australia or additional training days in SWBTA prior to the allocated period to enable preparation to take place prior to SAF training at SWBTA shall be made by the SAF in writing to the ADOD Delegate, and be considered by the DEPSEC IS&IP. Access to SWBTA by SAF personnel shall be permitted only during the allocated period and any additional period consented to by the DEPSEC IS&IP in writing and arranged in accordance with this Article.

6. Other than in exceptional circumstances, no request for alteration of the allocated period and any additional period if approved shall be made by the Government of the Republic of Singapore. Any such request, which shall state the exceptional circumstances, shall be made in writing to the ADOD Delegate, and determined by the DEPSEC IS&IP.

7. If SWBTA is unavailable for use by the SAF during the allocated period pursuant to this Agreement, the ADOD shall advise the SAF as soon as practicable, the ADOD shall use its best endeavours to identify suitable alternate arrangements regarding the proposed training, and the ADOD and SAF shall consult with a view to examining any alternate arrangements

identified by the ADOD. In the extreme situation where events, environmental considerations or strategic circumstances cause SWBTA to become unavailable or unsuitable for use by the SAF, the provisions of this Agreement shall be reviewed immediately by the Parties and all activity pursuant to this Agreement shall be suspended pending resolution of such event. The Government of Australia shall not be responsible for any costs incurred by the Government of the Republic of Singapore should SWBTA become unsuitable or unavailable for SAF training.

Article 4

Planning and Coordination

1. SAF training at SWBTA shall not be undertaken unless full compliance with all rules, regulations and standing operating procedures can be assured, to the satisfaction of the ADOD delegate.

2. SAF shall provide a written Outline Concept of Training for ADOD consideration at the Joint Australia Singapore Coordination Group (JASINCG) meeting in the year preceding the proposed training or no later than 1 October in the year preceding the proposed training.

3. The Outline Concept of Training shall propose:

(a) dates for the exercise;

(b) the estimated number of personnel to be deployed;

(c) the number of “A”, “B” and “C” Vehicles by type to be deployed which exceed the numbers of vehicles as addressed in Article 3 clause 3;

(d) the number and type of Vessels to be deployed;

(e) the number and type of Aircraft to be deployed;

(f) weapons systems and ammunition by type;

(g) Services (Army, Navy and Air Force) and formations that will participate in the exercise; and

(h) Vehicles, Vessels, Aircraft, weapons, laser, ammunition and materiel not previously cleared for use by the ADOD in SWBTA for the SAF.

4. At the JASINCG preceding each year's exercise, the ADOD shall advise of any areas of SWBTA that shall be unavailable for use by the SAF, and limitations that may constrain training. If the identified constraints alter, the ADOD shall advise the SAF in writing as soon as practicable.

5. Subsequent to JASINCG, ADOD shall confirm with the SAF in writing dates for SAF use of SWBTA and approval or otherwise of the proposed Outline Concept of Training. ADOD consideration of the Outline Concept of Training shall take into account ADF priorities, safety and environmental considerations and other relevant issues. Where elements of the Outline Concept of Training do not satisfy ADOD requirements the ADOD shall advise the SAF to proffer alternatives.

6. A Detailed Concept of Training shall be submitted by the SAF to the ADOD one month prior to the Initial Planning Conference (IPC), which is to be held in Australia not less than six (6) months prior to the commencement of the allocated period.

7. In addition to the list of items addressed in the Outline Concept of Training at clause 2, the Detailed Concept of Training shall include not less than the following:

(a) the dates of the exercise;

(b) the scheme of manoeuvre, including sectors required and major

activities to be undertaken;

(c) type and nature of live firing (including radar and laser equipment);

(d) number and types of Vehicles;

(d) major equipments, including laser;

(e) weapons systems and their specific ammunition with detail of danger areas;

(f) number and type of Aircraft including weapons fit and laser equipment;

(g) personnel (including an indication of VIPs), exercise appointments;

(1). safety appointments;

(2). range appointments

(3). environmental appointments;

(h) camp locations;

(i) logistic considerations (including finance, contractor support, requests for ADOD stores and equipment loan/supply and the use of associated facilities); and

(j) number and type of Vessels.

8. The Detailed Concept of Training shall provide sufficient detail for an Environmental Impact Assessment to be made by the ADOD of the impact on SWBTA, pursuant to Article 8. The ADOD shall notify in writing the SAF of approval of the Detailed Concept of Training, or of any variations required to

the Detailed Concept of Training to obtain approval, not less than three (3) months prior to the commencement of the allocated period. If this includes notification that an external Environmental Impact Assessment is required for the proposal under Environmental Laws, the ADOD shall provide written advice on meeting this requirement.

9. SAF training at SWBTA shall be conducted in accordance with the approved Detailed Concept of Training and no details shall be changed without the prior written approval of the ADOD Delegate.

Article 5

ADOD support to SAF planning

1. The ADOD Delegate shall allocate ADOD support staff, on an as required basis, to assist the SAF Army Detachment Commander in the performance of his duties (that involve liaison with and/or support from the ADOD) and to coordinate the facilitation of all ADOD planning and support to the SAF, and to coordinate the employment of all ADF Liaison Officers during the allocated period.

2. The Government of the Republic of Singapore shall, pursuant to Article 17, pay the costs of the Government of Australia for the ADOD support staff for travel, subsistence and allowances that are incurred in performing duties specifically related to assisting the SAF Army Detachment and other assistance to be provided to the SAF under this Agreement.

Article 6

ADOD support to SAF training

1. Except as otherwise provided for in this Agreement, the provision of ADOD administrative, logistic and other support and services to facilitate and support SAF training at SWBTA shall be subject to the Arrangement on Cooperative Logistic Support between the Australian Defence Force and the

Singapore Armed Forces, which came into effect on 29 September 1999 (the Arrangement). Any requests for such administrative, logistic or other support and services, any subsequent offer by the ADOD, and any acceptance by the SAF shall be set out in writing to the ADOD Delegate. Any inconsistency between this Agreement and the Arrangement will be resolved in favour of this Agreement.

2. The ADOD Delegate shall provide ADF Liaison Officers in SWBTA and in associated facilities as approved by the DEPSEC IS&IP. In order to support the SAF conduct of training at SWBTA the ADF Liaison Officers shall brief the SAF on relevant ADOD rules and regulations pertaining to this Agreement and the SOFA, and shall observe the implementation of the Detailed Concept of Training during the allocated period. The ADF Liaison Officers shall not intervene in the conduct of a SAF training activity, but may prohibit, suspend or cause to stop immediately the SAF training activity if in the ADF Liaison Officer's opinion, in consultation with the relevant commander of the SAF unit or units or personnel participating in that training activity, that it is necessary to do so for reasons of safety or security. The Government of Australia shall not be responsible for any costs incurred by the Government of the Republic of Singapore in such circumstances. The ADOD Delegate may provide other ADOD manpower support to facilitate and support SAF training at SWBTA (including associated facilities supporting training in SWBTA). The Government of the Republic of Singapore shall pay the Government of Australia for the cost of all ADOD manpower provided under this clause on a cost recovery basis pursuant to Article 17.

3. The ADOD shall allow the SAF use of the Operational Technical Facility (OPTEC) at Rockhampton Airport as a detachment office and a work area for the SAF in order to facilitate and support SAF training at SWBTA. If the ADOD is unable to provide the SAF use of OPTEC, the ADOD shall make best endeavours to provide the SAF with suitable alternative facilities. The use of any such facilities provided in accordance with this clause shall be subject to cost recovery pursuant to Article 17.

Article 7

SAF Army Detachment

1. A SAF Army Detachment consisting of a maximum of seven (7) personnel may remain in Australia to supervise the storage and maintenance of vehicles, equipment, ammunition (including explosives) and materiel and to provide maintenance on the SAF vehicles, equipment and materiel pursuant to Article 16. The SAF shall provide in writing details of members of the SAF Army Detachment to the ADOD in the case of personnel changes. Any proposal to increase the number of personnel in the SAF Army Detachment shall be made in writing to the ADOD Delegate and shall be determined by DEPSEC IS&IP.

2. The SAF Army Detachment shall be an independent SAF detachment that is located in Australia. Subject to this Agreement, the SAF shall be responsible for arranging and meeting the associated costs of all necessary support requirements of the SAF Army Detachment.

3. Members of the SAF Army Detachment may be accompanied by dependants while in Australia.

4. The ADOD shall not be responsible for arranging the residential accommodation of members of the SAF Army Detachment or their dependants.

Article 8

Environmental considerations

1. The Parties acknowledge that SWBTA is an environmentally sensitive area within and adjacent to the Great Barrier Reef World Heritage Area and the Great Barrier Reef National Heritage Place, and that it is inscribed on the World Heritage List, and included in the National Heritage List and the Commonwealth Heritage List. The SWBTA is home to nationally listed threatened species and ecological communities, migratory species and the

Shoalwater and Corio Bays Ramsar site. These are matters of national environmental significance protected under the *Environment Protection and Biodiversity Conservation Act 1999* and other Environmental Laws.

2. Access to and use of SWBTA, external roads of access and adjacent coastal and inland waters may be constrained by environmental, weather or other conditions. Such constraints identified prior to or at the time of the SAF training may require cancellation or reduction of the allocated period by the ADOD, or activity level, or the imposition of environmental compliance requirements consistent with obligations under Australian Law and policies by the ADOD additional to those previously advised to the SAF, with which the SAF shall comply.

3. Prior to the allocated period the SAF will ensure that its personnel are appropriately briefed on the requirements of Environmental Laws and ADOD's environmental policy, the importance afforded to it within the ADF's training regime, its applicability to foreign nationals training on Australian soil and in particular, the potential requirement to amend the Concept of Training to ensure environmental compliance and sustainable use of the SWBTA. All SAF training shall be subject to Environmental Impact Assessment, monitoring and post exercise environmental remediation, restoration and rehabilitation, to ensure the sustainable use of SWBTA in accordance with Environment Laws. The SAF and the ADOD shall ensure that any actions that may be controlled actions shall be the subject of a referral as required under the *Environment Protection and Biodiversity Conservation Act 1999.* Without limiting the SAF's general obligations under this Agreement and the generality of this Article, the SAF is to provide information, including for example equipment to be used in Australia to better assist Australia to understand the full impact of exercising in the area and to facilitate the assessment process. The Government of the Republic of Singapore shall pay the Government of Australia for the cost of all such assessments, monitoring (including the cost of personnel) and environmental remediation, restoration and rehabilitation on a cost recovery basis, pursuant to Article 17.

4. The SAF and the ADOD shall establish and operate an Environmental Monitoring Group during the allocated period for the purposes of monitoring adherence to the environmental compliance conditions, SWBTA Standing Orders, and the Environmental Plan for SWBTA.

5. The ADOD and SAF shall jointly conduct inspections of SWBTA immediately before and after each allocated period to examine any environmental remediation, restoration and rehabilitation works required and any other damage caused as a result of SAF training. If the ADOD considers it necessary and appropriate, a third party environmental consultant may be requested by the ADOD in consultation with the SAF to assist in inspections. The ADOD shall determine the environmental remediation, restoration and rehabilitation works and any other repairs to SWBTA which are required to restore the SWBTA to the ADOD's satisfaction, benchmarked on the pre-exercise inspections and in accordance with Environmental Law. The Government of the Republic of Singapore shall, notwithstanding any applicable provisions of the SOFA, be responsible for the cost of such works and studies (including the cost of personnel to conduct inspections) and any other repairs pursuant to Article 17.

Article 9

Security

1. All the associated facilities in Australia used by the SAF shall remain at all times subject to Australian security and legal requirements. The ADOD shall at all times retain primary responsibility for the security of the associated facilities provided for the SAF's use by the ADOD. The Government of the Republic of Singapore shall be responsible for any increased charges incurred by the ADOD as a result of providing security for facilities used by the SAF.

2. All classified information and material exchanged, provided or generated pursuant to this Agreement shall be used, transmitted, stored, handled and protected in accordance with the Agreement between the Government of Australia and the Government of the Republic of Singapore for the Reciprocal Protection of Classified Information Transmitted Between the Australian Department of Defence and the Singapore Ministry of Defence, done at Canberra on 15 October 1996.

3. The ADOD shall provide details of all applicable ADOD security policies and procedures to the SAF at the IPC and then as required, and advise any changes to the Defence Security Alert Status. SAF personnel and contractors in

Australia pursuant to this Agreement shall observe all applicable ADOD security policies and procedures including those pertaining to personnel access, access to and storage of vehicles, equipment and weapons, photography of facilities and equipment, contractor facilities and to protection of classified information and materials and any directions relating to compliance with ADOD security policies and procedures which may be given by the ADOD.

4. Identity cards issued by a competent authority shall be carried at all times by members of the SAF and contractors when on associated facilities. Members of the SAF and contractors shall comply with access control arrangements at associated facilities.

5. The SAF shall, at the expense of the Government of the Republic of Singapore, ensure that security and fire protection systems at the associated facilities made available by the ADOD are in working order at all times. Such systems shall be monitored by the ADOD at Security and Fire Indicator panels. In the event of a security or fire alert, ADOD emergency personnel may enter the associated facilities to control the emergency and secure the area.

6. The ADOD shall liaise with the SAF Army Detachment Commander for escorted access to the associated facilities for the purpose of validating security arrangements and procedures in accordance with ADOD requirements. The SAF shall provide the ADOD with keys to the associated facilities for security and emergency access purposes.

7. In the event of any breach or compromise (known or suspected) of security pertaining to the use of SWBTA or the associated facilities or otherwise in relation to activities undertaken pursuant to this Agreement, the ADOD delegate is to be informed immediately. Australian authorities may conduct an investigation into the circumstances surrounding the incident. The SAF shall cooperate in relation to any such investigation and shall make SAF personnel available to the Australian authorities to allow such an investigation to be completed. When requested by the ADOD, the SAF shall immediately conduct an investigation into the circumstances surrounding any such incident and report its findings and recommendations to the ADOD in a reasonable time frame.

8. In the event that there is any non-compliance by the SAF or their

contractors with any Australian Laws, any ADOD security policies and procedures or any directions relating to compliance with ADOD security policies and procedures in relation to the use of SWBTA or the associated facilities, the protection and shipment of SAF vehicles, weapons, ammunition (including explosives), materiel and equipment or otherwise in relation to activities undertaken pursuant to this Agreement, for which immediate remedial action is necessary for reasons of security or safety, the ADOD may take such remedial action and the Government of the Republic of Singapore shall be responsible for the costs incurred by the ADOD, pursuant to Article 17, provided that the ADOD shall in no instance take any action under this clause which it would not ordinarily take in respect of ADOD operations in similar circumstances. Nothing in this clause shall affect the application of Section 1 of Annex II of the SOFA.

9. The SAF shall provide the ADOD Delegate with details of all non-SAF personnel involved in SAF training in Australia. Such personnel shall not be allowed access without the prior written consent of the ADOD. The SAF is to submit a list in writing no later than one (1) month prior to the allocated period to allow the ADOD to conduct ADOD authorisation requirements.

Article 10

Command and Control and Discipline

1. At any one time during SAF training at SWBTA, the SAF shall appoint a SAF Director of Exercise who shall exercise overall command and control of all SAF personnel present in Australia pursuant to this Agreement.

2. The SAF shall direct all SAF personnel to adhere to all ADOD directions (including those relating to security) while present in Australia, and in particular SWBTA Standing Orders and those relating to use of the associated facilities.

3. Subject to clause 1 of this Article, the SAF Army Detachment Commander shall be responsible for the conduct, good order and discipline of all SAF Army Detachment personnel and their dependants while in Australia and shall exercise complete functional authority over the day-to-day operational

activities of the SAF Army Detachment.

4. The ADOD Delegate and the SAF Director of Exercise shall consult on all matters of common concern or interest. Such consultation shall be in addition to any exchange of relevant information by higher Australian and Singaporean Defence authorities.

5. In the event that any SAF personnel or their dependants exhibit behaviour which is not professionally or socially acceptable, the ADOD in writing may request the SAF to remove that person/or persons from Australia. On receipt of any such request, the SAF shall take all steps legally available to it to immediately comply with the request.

Article 11

Training and Workplace Safety

1. The SAF are to appoint SAF personnel in writing for, and are to notify the ADOD Delegate in writing of, all safety appointments concerned with the conduct of live fire (including use of radar and laser equipment) training in SWBTA. The safety appointments are to be equivalent in nature and responsibility with the standards and responsibilities required to be satisfied in the SWBTA Standing Orders and other references relevant to associated facilities as advised by the ADOD Delegate.

2. The SAF Army Detachment Commander is to confirm with the ADOD Delegate the safety appointments and their responsibilities, in accordance with the SWBTA Standing Orders and other references relevant to associated facilities as advised by the ADOD Delegate, prior to the commencement of training in SWBTA.

3. The SAF Army Detachment Commander is to notify the ADOD Delegate of any incident or accident involving SAF personnel (including SAF contractors), materiel and equipment in, or whilst transiting between, SWBTA and associated facilities and when transiting External Roads of Access during the allocated period.

4. The SAF Director of Exercise is to ensure that all SAF training in SWBTA and associated facilities is conducted in accordance with the requirements of the SWBTA Standing Orders, applicable Australian laws and other references substantially relevant to associated facilities as advised by the ADOD Delegate.

5. The ADOD shall appoint a Workplace Health and Safety consultant as part of the ADOD support staff to assist the SAF Army Detachment Commander. This appointment is to be in accordance with terms to be mutually determined between the Parties.

Article 12

Health, Medical and Dental

1. The SAF shall ensure that all SAF personnel and any dependants accompanying members of the SAF Army Detachment are medically and dentally fit prior to arrival in Australia. The SAF shall ensure that all SAF personnel and any dependants accompanying members of the SAF Army Detachment moving into and within Australia shall be conducted in accordance with all relevant Australian Laws (including Australian quarantine laws). The SAF is to advise the ADOD Delegate immediately if the activities of the SAF have the potential to introduce an infectious disease into Australia or there is an inadvertent breach of these requirements.

2. Unless otherwise mutually determined, access to medical services for SAF military personnel shall be in accordance with the Arrangement between the Parties concerning Reciprocal Access by Australian Defence Force Personnel and Singapore Armed Forces Personnel to Military Medical and Dental Services in Singapore and Australia signed on 8 June 1993 or any successor arrangements.

Article 13

Storage and movement of SAF vehicles, equipment, ammunition (including explosives) and materiel

1. Subject to Australian legal requirements and ADOD security policy and procedures, the ADOD shall make available associated facilities, or approve the commercial facilities, proposed for use by the SAF for the purpose of storing vehicles, equipment, ammunition (including explosives) and materiel used by the SAF for training at SWBTA and for undertaking maintenance of such vehicles, equipment, ammunition (including explosives) and materiel pursuant to Article 16. Vehicles, equipment, ammunition (including explosives) and materiel used by the SAF for training at SWBTA shall be stored within Australia in the ADOD-nominated associated facilities. Ammunition (including explosives) shall be stored and moved only with the written approval of the ADOD Explosive Ordnance Licensing Authority. In the event that the associated facilities made available by the ADOD become unavailable for use by the SAF, the ADOD shall advise the SAF as soon as practicable. In any such event, the ADOD shall use its best endeavours to identify suitable alternate arrangements for storage of SAF vehicles, equipment, ammunition (including explosives) and materiel associated with SAF training at SWBTA. Any ADOD support provided in accordance with this clause shall be subject to cost recovery pursuant to Article 17. The ADOD and SAF shall consult with a view to examining any alternate arrangements identified by the ADOD.

2. The Government of the Republic of Singapore shall be responsible for costs associated with the use of the associated facilities made available by the ADOD, pursuant to Article 17.

3. The SAF shall provide to the ADOD a detailed inventory of all vehicles, ammunition (including explosives), equipment and materiel which it intends to store in the associated facilities upon the completion of all SAF training activity in SWBTA and on request from the ADOD Delegate. Any change to the inventory shall require prior written approval of the ADOD. The SAF may store a maximum combined number of 150 "A" and "C" vehicles and 250 "B" vehicles and 70 Motorcycles in the associated facilities.

4. This Agreement or the activities carried out pursuant to it shall not create any interest in land.

5. The movement of all Vehicles, equipment, materiel, weapons and ammunition (including explosives) into and within Australia shall be conducted in accordance with Australian Laws, (including Australian quarantine laws), and ADOD security policies and procedures and with any directions relating to compliance with ADOD security policy and procedures as may be advised by the ADOD. The SAF is to advise the ADOD Delegate immediately of any potential or inadvertent breach of these requirements.

6. The SAF also shall advise the ADOD, at least forty five (45) days in advance in writing, of the proposed import or export of ammunition (including explosives). Ammunition (including explosives) imported by the SAF is considered to be Commonwealth explosives pursuant to the *Explosives Act 1961* and regulations thereto and any contract for commercial transport shall specify compliance with the Explosives Transport Regulations 2002 and other applicable Australian Laws.

7. The SAF shall not remove the vehicles, equipment, ammunition (including explosives) and materiel from the associated facilities without the ADOD's prior written approval, except for the SAF training at SWBTA pursuant to this Agreement or where the Government of the Republic of Singapore requires the return of the vehicles, equipment, ammunition (including explosives) and materiel to Singapore. In such cases the SAF shall provide the ADOD with reasonable advance notice in writing, citing reasons which do not jeopardise the security of the SAF.

Article 14

Building improvements and services

1. The SAF shall not undertake any improvements, construction or renovations to the associated facilities made available by the ADOD without the prior written approval of the DEPSEC IS&IP. The ADOD shall be responsible for arranging contracts for any such improvements, construction or renovations

including the provision of telephone, communication and facsimile services. All improvements, construction or renovations shall meet applicable Australian construction and ADOD standards. The SAF shall be responsible for the full costs, including contract and administrative costs associated with any renovations, constructions or improvements. Any decision to allow the SAF to undertake improvements, renovations or constructions shall be made on the basis of the duration of storage at the associated facilities pursuant to this Agreement.

2. Where ADOD provides additional facilities, the Government of the Republic of Singapore shall pay the Government of Australia for the associated costs pursuant to Article 17.

3. Unless otherwise mutually determined, the Government of the Republic of Singapore shall be responsible for the costs associated with the restoration of the associated facilities made available by the ADOD to their original condition, pursuant to Article 17.

Article 15

Commercial support arrangements

1. In recognition of the access by the SAF to SWBTA and the associated facilities, the Government of the Republic of Singapore shall demonstrate a practical commitment to the use of Australian commercial enterprises to satisfy SAF's commercial support requirements arising out of the SAF use of SWBTA and the associated facilities. The Government of the Republic of Singapore shall also require its contractors to demonstrate a practical commitment to the use of Australian commercial enterprises.

2. The SAF shall be responsible for arranging contracts with Australian commercial enterprises for the provision of commercial support. It shall also ensure that, where practical, contracting and sub-contracting opportunities are offered to Central Queensland Local Industry Providers (LIPs) as a priority. Such contracts shall be made pursuant to the law of the appropriate Australian State or Territory. Where commercial support is to be contracted to Australian

commercial enterprises pursuant to this Agreement, the prior written certification from the ADOD Delegate that the enterprise/s is considered at the time by the ADOD to be an Australian commercial enterprise, shall be obtained before the contract or sub-contract is placed. Consideration by the ADOD of such certification shall be undertaken in consultation with the SAF, if requested, and shall be based on the spirit and intent of the commercial support arrangements in this Agreement and shall not be unreasonably withheld.

3. In order to give effect to the commercial support provisions of this Agreement:

(a) the Parties shall take into account the need to meet the quality standards required by the SAF;

(b) the SAF shall ensure that necessary and sufficient information, including technical data and performance requirements shall be provided at the tendering stage in line with the Government of the Republic of Singapore's procurement policy of value for money, transparency and fair competition;

(c) the SAF shall provide a copy of all commercial support contracts it enters into with its contractors, including any amendments, to the ADOD within thirty (30) days of their signature. In June each year, the SAF shall provide the ADOD a report containing a breakdown of expenditure for the past year, and include details of the degree of involvement of Central Queensland LIP. In August each year, the SAF shall also provide the ADOD with a report providing a forecast of planned expenditure for the following year. The format of the reports, to be counter-signed by the SAF contractor, and/or by the Australian commercial enterprises providing intermediate and depot level maintenance pursuant to clause 1 sub clauses (b) and (c) of Article 16, shall be mutually determined by the SAF and the ADOD; and

(d) the SAF and ADOD shall consult with each other on a regular basis to monitor work in progress, including but not limited to, ongoing major SAF milestones for implementation of commercial support and reports by the SAF contractor and shall meet at the request of either Party.

4. Where either Party provides clearly identified Commercial-in-Confidence information to the other pursuant to this Article, the Party receiving that information shall deal with it as being in confidence between the Parties and in accordance with any limitations on its use directed by the Party providing it. For the purpose of this Article, Commercial-in-Confidence information means commercial information which is not subject to a security classification, but which may be prejudiced by unauthorised disclosure.

5. Neither Party shall pass to a third party Commercial-in-Confidence information it has received from the other Party without the prior written consent of that other Party. Where either Party passes Commercial-in-Confidence information it has received from the other Party to a third party, it shall ensure that the same obligations relating to confidentiality and use are imposed on that third party.

6. When complying with the terms of clauses 4 and 5 of this Article each Party acknowledges that the information shall not at any time be used or provided for purposes other than those authorised by the owner of the information.

Article 16

Maintenance Support

1. The arrangements for maintenance support for SAF training are:

(a) Organisational level maintenance for SAF training at SWBTA shall be undertaken either by the SAF, or its accompanying civilian component, the SAF Army Detachment, or, at the discretion of the SAF, by Australian commercial enterprises;

(b) Intermediate level maintenance for SAF training at SWBTA shall be undertaken either by the SAF, its accompanying civilian component, or the SAF Army Detachment, to the extent that this is necessary to maintain SAF operational maintenance capability, or by Australian commercial enterprises on a commercially competitive basis. A minimum

of fifty percent (50%) of the value of the intermediate level maintenance which is required to be performed on the SAF vehicles, equipment and weapons to be stored at the associated facilities shall be contracted to Australian commercial enterprises; and

(c) Depot level maintenance that is required to be performed on the SAF vehicles and equipment stored at the associated facilities shall be contracted to Australian commercial enterprises on a commercially competitive basis.

2. Where maintenance is required to be contracted to Australian commercial enterprises pursuant to this Agreement the following exclusions apply:

(a) if Australian commercial enterprises do not have the capability to undertake it, or it cannot reasonably be provided on a commercially competitive basis without subsidy by Australian commercial enterprises, the ADOD and the SAF shall mutually determine in writing the appropriate course of action; or

(b) if the maintenance cannot be undertaken by Australian commercial enterprises for reasons of security of the SAF, the SAF shall advise the ADOD in writing, giving reasons which do not jeopardise the security of the SAF, and stating the means by which the maintenance is to be undertaken; or

(c) if maintenance of components needs to be undertaken by the component manufacturer under contractual obligation, including warranty or exclusive licensing, the SAF shall advise the ADOD in writing when such component maintenance is to be undertaken.

3. In any other exceptional circumstances, with the prior written approval of the ADOD Delegate which approval shall not be unreasonably withheld, maintenance which has been or is to be contracted to particular Australian commercial enterprises pursuant to this Agreement may be undertaken instead by other Australian commercial enterprises.

Article 17

Finance

1. The Government of the Republic of Singapore shall pay the Government of Australia a fee of AUD $1.00 annually for the use of SWBTA.

2. The provision of ADF Liaison Officers and manpower and the provision of ADOD administrative and other support and services to facilitate and support SAF training at SWBTA pursuant to Article 5 shall be charged by the Government of Australia to the Government of the Republic of Singapore on a full cost recovery basis calculated in accordance with ADOD cost recovery guidelines. This shall include costs associated with:

(a) the production of any necessary Environmental Impact Assessments, monitoring (including the cost of personnel) and environmental remediation, restoration and rehabilitation;

(b) the provision of ADOD manpower, including ADF Liaison Officers and any other ADOD personnel provided to support the SAF training at SWBTA and associated facilities, excluding permanently assigned ADOD staff at SWBTA and associated facilities (except where the costs of travel, subsistence and allowances (including overtime) are specifically incurred in support of SAF training outside the formal work or duty hours of such personnel);

(c) the provision of supplies, stores, maps, charts and fuel (including aviation fuel) to the SAF by the ADOD;

(d) the use of capital assets including any flying hours undertaken as a result of the SAF use of SWBTA;

(e) personnel, equipment, Vehicles, Vessels or Aircraft required for purposes associated with SAF use of SWBTA including range clearance;

(f) an administrative cost of five percent (5%) to be charged on all transactions and administration of the SAF Special Accounts for RSAF, RSN and Army;

(g) all travel and subsistence, meal allowances and any other allowances to which the manpower support may be entitled;

(h) all horizontal and vertical infrastructure including the External Roads of Access as identified by the Environmental Monitoring Group and the post exercise damage inspection;

(i) the consumption of utilities specific to the facilities (e.g. telephones, electricity, chemicals);

(j) the hire of ADOD stores and equipment; and

(k) any other goods and services provided by ADOD as required by the SAF.

3. Any environmental remediation, restoration and rehabilitation work (including the cost of personnel) and any other repairs to SWBTA pursuant to Article 8 shall be charged by the Government of Australia to the Government of the Republic of Singapore on a full cost recovery basis in accordance with ADOD cost recovery guidelines and shall include all management and consultancy fees associated with such repairs/works.

4. The ADOD shall advise the SAF of the estimated costs, based on the SAF Detailed Concept of Training provided one month prior to the IPC and in accordance with ADOD cost recovery policy, for provision of ADOD support and services to the annual SAF training at SWBTA at least two (2) months prior to the commencement of the training. The Government of the Republic of Singapore shall pay such amount by way of Electronic Funds Transfer (EFT) or such other means as mutually determined, to the bank account nominated by ADOD in Australian Dollars, at least twenty one (21) days prior to the commencement of the allocated period. The SAF shall provide a statement identifying this Agreement and the purpose of the payment within two (2)

calendar days of the EFT being effected. The ADOD Delegate shall ensure the funds are deposited into an approved SAF Special Account, created pursuant to Section 20 of the *Financial Management and Accountability Act (Cth) 1997* and authorised by First Assistant Secretary Financial Management and Reporting in the ADOD.

5. Following the conclusion of the SAF training at SWBTA each year, the ADOD shall provide a statement, accompanied by supporting documentation, setting out a breakdown of costs and rates where applicable, including costs pursuant to Article 8, to the SAF Army Detachment within one hundred and twenty (120) days. If the amount set out in the statement exceeds the amount of the advance payment, the Government of the Republic of Singapore shall pay the balance, in Australian Dollars, within thirty (30) days of the date of receipt of the invoice, statement and supporting documentation from the ADOD to the SAF Army Detachment in Rockhampton. Where the amount in the statement is less than the amount of the advance payment the balance shall be refunded to the Government of the Republic of Singapore or, if mutually determined, adjusted against other payments due by the ADOD. Any refund shall be made within thirty (30) days of the statement and accompanying supporting documentation being provided to the SAF Army Detachment and preferably by the end of the Singapore financial year.

6. The Government of the Republic of Singapore shall pay costs calculated in accordance with ADOD full cost recovery guidelines for the use of the associated facilities made available by the ADOD (including costs associated with cleaning of the office space within the associated facilities, preventative maintenance and the provision of fuel, light and power) and any increased charges incurred by the ADOD as a result of the SAF use of the associated facilities.

7. Any increased charges incurred by the ADOD as a result of the SAF use of the associated facilities made available by the ADOD shall be calculated in accordance with ADOD full cost recovery guidelines and levied on a quarterly basis by the provision of invoices, accompanied by supporting documentation setting out a breakdown of costs, to the SAF Army Detachment. Payment shall be made as specified in clause 9 of this Article.

8. All other costs incurred by the Government of the Republic of Singapore

pursuant to this Agreement, including any costs incurred pursuant to Articles 4, 8, 9 and 15, shall be calculated in accordance with ADOD full cost recovery guidelines and levied on a quarterly basis by the provision of invoices, accompanied by supporting documentation setting out a breakdown of costs, to the SAF Army Detachment. Payment shall be made as specified in clause 9 of this Article.

9. Payment of all invoices from the Government of Australia shall be made within thirty (30) days of the date of the invoice, to the bank account nominated by the ADOD. A statement identifying this Agreement and the purpose of the payment shall be forwarded to the address as specified by the ADOD Delegate.

10. In the event that this Agreement is terminated or SWBTA or the associated facilities otherwise become unavailable or unsuitable for use by the SAF pursuant to this Agreement, the Government of Australia shall, unless alternative arrangements are made, reimburse to the Government of the Republic of Singapore, without prejudice to any of the Government of Australia's rights, on a pro-rata basis the portion of that part of any advance payment which relates to the use of SWBTA or the associated facilities, as the case may be.

Article 18

Claims

1. Unless otherwise provided for in this Agreement, the SOFA shall apply to the settlement of claims arising from activities under this Agreement subject to the following variations:

(a) in relation to claims to which Annex III, Section (1), clause 2 applies, the Government of the Republic of Singapore shall make full compensation in accordance with the applicable law to the Federal, State, Territory or local government concerned for damage to its property;

(b) in relation to claims to which Annex III, Section (1), clause 3 applies, Annex III, Section (1), clause 3.e(1) shall be read so that the

proportion chargeable to the Government of the Sending State shall be 100% provided that no claim is settled without consultation with the sending State.

2. For contracts where one Party contracts solely on its own behalf, the Party awarding the contract shall pay the cost of claims arising under that contract.

3. For contracts where one Party contracts on behalf of the other Party, the Party on whose behalf the contract was awarded shall pay the cost of claims arising under that contract. If the Parties mutually determine that the negligence of the contracting Party contributed to the loss or damage which resulted in the claim, the liability of the Party on whose behalf the contract was awarded shall be reduced proportionally to the extent that negligence of the contracting Party contributed to the claim. The contracting Party shall not indemnify contractors against third party liability claims, unless otherwise mutually determined by both Parties.

4. For contracts awarded on behalf of both Parties, the cost of claims arising under such contracts shall be shared in the same proportions as financial costs are shared between the Parties in relation to the applicable contract. The contracting Party shall not indemnify contractors against third party liability claims, unless otherwise mutually determined by both Parties.

Article 19

Settlement of disputes

1. During the allocated period, any issue arising from the conduct of training in SWBTA and associated facilities shall be resolved between the SAF Army Detachment Commander and ADF Liaison Officer. In the event that these officers can not resolve the issue, the matter shall be referred to the SAF Director of Exercise and the ADOD Delegate for resolution.

2. Any dispute not resolved in accordance with clause 1 of this Article, or any other dispute arising from the interpretation or implementation of this

Agreement shall be resolved by consultation or negotiation between the Parties and shall not be referred to a third party or national or international tribunal.

Article 20

Amendment

1. All articles of this Agreement may be modified through amendments in writing mutually agreed to by both Parties. All amendments shall enter into force on an exchange of notes confirming that each Party has completed its domestic requirements for the entry into force of the amendments to this Agreement.

Article 21

Commencement and Termination

1. This Agreement shall enter into force on an exchange of notes confirming that each Party has completed its domestic requirements for the entry into force of this Agreement. Subject to clause 2 of this Article, this Agreement shall remain in force until the removal of all SAF personnel, vehicles, materiel, weapons and explosives associated with the SAF training at SWBTA from Australia by 31 December 2019 or until other arrangements to be mutually determined between the Parties providing for their disposition come into effect.

2. This Agreement may be terminated by either Party giving written notice of its intention to terminate it in which case it shall be terminated twelve (12) months after the date of receipt of the notice of termination. The Parties may agree to the termination of this Agreement at any time.

3. The provisions of this Agreement concerning costs and claims shall continue in force notwithstanding termination or expiration of this Agreement until all costs due to either Party incurred pursuant to this Agreement, whether incurred prior to or after written notification of termination is received, have been recovered between the Parties. The provisions of this Agreement

concerning security and concerning compliance with laws, policies, procedures and directions shall continue in force notwithstanding termination or expiration of the Agreement while SAF personnel and any vehicles, weapons, ammunition (including explosives) and materiel associated with SAF training at SWBTA remain in Australia. The provisions of this Agreement concerning settlement of disputes shall continue in effect notwithstanding termination or expiration of this Agreement.

Signatories

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Singapore on the 31st day of May two thousand and nine.

FOR THE GOVERNMENT OF AUSTRALIA:	FOR THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE:
The Hon. Joel Fitzgibbon	Mr Teo Chee Hean
Minister for Defence	Deputy Prime Minister and Minister for Defence