Agreement

between the Government of Hong Kong and the
Belgo-Luxembourg Economic Union for the
Promotion and Protection of Investments

AGREEMENT

BETWEEN THE GOVERNMENT OF HONG KONG

AND

THE BELGO-LUXEMBOURG ECONOMIC UNION

FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Hong Kong,
having been duly authorised to conclude this agreement by the government of the sovereign State which is responsible for foreign affairs relating to Hong Kong, on the one hand,

and

The Government of the Kingdom of Belgium,
The Government of the Region of Wallonia,
The Government of the Region of Flanders,
The Government of the Region of Brussels-Capital,
and
The Government of the Grand-Duchy of Luxembourg,
on the other hand,

Hereinafter referred to as "Contracting Parties"

Desiring to promote favourable conditions for greater investment by investors of one Contracting Party in the area of the other;

Recognising that the encouragement and reciprocal protection under agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both areas;

Have agreed as follows :

AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE BELGO-LUXEMBOURG ECONOMIC UNION FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

ARTICLE 1

Definitions

For the purposes of this Agreement

(1) "area" :

(a) in respect of Hong Kong includes Hong Kong Island, Kowloon and the New Territories;

(b) in respect of the Belgo-Luxembourg Economic Union means the territory over which Belgium or Luxembourg have sovereignty or jurisdiction in accordance with international law;

(2) "companies" means :

(a) in respect of Hong Kong : corporations, partnerships and associations incorporated or constituted under the law in force in its area;

(b) in respect of the Belgo-Luxembourg Economic Union : any legal person constituted in accordance with Belgian or Luxembourg legislation and having its registered office in the territory of Belgium or of Luxembourg;

(3) "freely convertible" means free of all currency exchange controls and transferable abroad in any currency;

(4) "investment" means every kind of asset held or invested directly or indirectly, and in particular, though not exclusively, includes :

(a) movable and immovable property and any other property rights such as mortgages, liens or pledges;

(b) shares in and stock and debentures of a company and any other form of participation in a company;

(c) claims to money or to any performance under contract having a financial value;

(d) intellectual property rights and goodwill;

(e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

A change in the form in which assets are invested does not affect their character as investments;

(5) "investors" means :

(a) in respect of Hong Kong :
physical persons who have the right of abode in the area of Hong Kong, and companies incorporated or constituted under the law in force in its area;

(b) in respect of the Belgo-Luxembourg Economic Union :
any natural person who is a citizen of Belgium or of Luxembourg in accordance with Belgian or Luxembourg legislation, and any legal person constituted in accordance with Belgian or Luxembourg legislation and having its registered office in the territory of Belgium or of Luxembourg;

(6) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

ARTICLE 2

Promotion and Protection of Investment and Returns

(1) Each Contracting Party shall encourage and promote favourable conditions for investors of the other Contracting Party to make investments in its area, and, subject to its right to exercise powers conferred by its laws, shall admit such investments.

(2) Investments and returns of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the area of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its area of investors of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into, including any such obligation made under a specific agreement, with regard to investments of investors of the other Contracting Party.

ARTICLE 3

Treatment of Investments

(1) Neither Contracting Party shall in its area subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any other State.

(2) Neither Contracting Party shall in its area subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any other State.

ARTICLE 4

Compensation for Losses

(1) Investors of one Contracting Party whose investments in the area of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the area of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any other State. Resulting payments shall be freely convertible.

(2) Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the area of the other Contracting Party resulting from

(a) requisitioning of their property by its forces or authorities, or

(b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or reasonable compensation. Resulting payments shall be freely convertible.

(3) For the purpose of paragraph (2) of this Article, the term "forces" means in respect of Hong Kong the armed forces of the government of the sovereign State which is responsible for foreign affairs relating to Hong Kong.

ARTICLE 5

Expropriation

(1) Investors of either Contracting Party shall not be deprived of their investments nor subjected to measures having effect equivalent to such deprivation in the area of the other Contracting Party except lawfully, for a public purpose related to the internal needs of that Party, and

against compensation. Such compensation shall amount to the real value of the investment immediately before the deprivation or before the impending deprivation became public knowledge whichever is the earlier. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and equitable principles taking into account the capital invested, depreciation, capital already repatriated, replacement value, currency exchange rate movements and other relevant factors. Compensation shall include interest at a normal commercial rate until the date of payment, shall be made without undue delay, be effectively realizable and be freely convertible. The investor affected shall have a right, under the law of the Contracting Party making the deprivation, to prompt review by a judicial or other independent authority of that Party, of the investor's case and of the valuation of the investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its area, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee compensation referred to in paragraph (1) in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

ARTICLE 6

Transfer of Investments and Returns

(1) Each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the unrestricted right to transfer their investments and returns abroad.

(2) Transfers of currency shall be effected without delay in any convertible currency. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer.

ARTICLE 7

Subrogation

(1) If one Contracting Party or any public institution of this Party pays compensation to its own investors pursuant to a guarantee providing coverage for an investment, the other Contracting Party shall recognize that the former Contracting Party or the public institution concerned is subrogated as insurer into the rights of the indemnified investors.

(2) The insurer shall be entitled by virtue of subrogation to exercise the rights of the investors and to invoke the related claims with the same authority as the said investors and within the limits of the rights transferred in this way. The subrogation of rights shall also apply to the rights of transfer or arbitration referred to in Articles 6 and 9.

(3) Such rights shall be exercised by the insurer to the extent of the proportion of the risk covered by the contract of guarantee and by the investor entitled to benefit from the guarantee to the extent of the proportion of the risk not covered by the contract.

(4) As far as the transferred rights are concerned, the other Contracting Party shall be entitled to invoke against the insurer who is subrogated into the rights of the indemnified investors the obligations of the latter under law or contract.

ARTICLE 8

Exceptions

The provisions in this Agreement relative to the grant of treatment not less favourable than that accorded to the investors of either Contracting Party or to investors of any other State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from its participation in or association with a free trade zone, a customs union, a common market, any other form of regional economic organization, any international agreement or arrangement relating to taxation, or from any domestic legislation relating wholly or mainly to taxation.

ARTICLE 9

Settlement of Investment Disputes

A dispute between an investor of one Contracting Party and the other Contracting Party concerning an investment of the former in the area of the latter which has not been settled amicably, shall, after a period of six months from written notification of the claim, be submitted to such procedures for settlement as may be agreed between the parties to the dispute. If no such procedures have been agreed within that six month period, the parties to the dispute shall be bound to submit it to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties may agree in writing to modify those Rules.

ARTICLE 10

Disputes Between the Contracting Parties

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place try to settle it amicably.

(2) If the Contracting Parties fail within six months to reach a settlement of the dispute amicably, it may be referred by them to such person or body as they may agree on or, at the request of either Contracting Party, shall be submitted for decision to a tribunal of three arbitrators which shall be constituted in the following manner :

(a) within thirty days after receipt of a request for arbitration, each Contracting Party shall appoint one arbitrator. A national of a State which can be regarded as neutral in relation to the dispute, who shall act as President of the tribunal, shall be appointed as the third arbitrator by agreement between the two arbitrators, within sixty days of the appointment of the second;

(b) if within the time limits specified above any appointment has not been made, either Contracting Party may request the President of the International Court of Justice, in a personal and individual capacity, to make the necessary appointment within thirty days. If the President considers that he is a national of a State which cannot be regarded as neutral in relation to the dispute, the Vice-President or the most senior Member who is not disqualified on that ground shall make the appointment.

(3) Except as hereinafter provided in this Article or as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure. At the direction of the tribunal, or at the request of either of the Contracting Parties, a conference to determine the precise issues to be arbitrated and the specific procedures to be followed shall be held not later than thirty days after the tribunal is fully constituted.

(4) Except as otherwise agreed by the Contracting Parties or prescribed by the tribunal, each Contracting Party shall submit a memorandum within forty five days after the tribunal is fully constituted. Replies shall be due sixty days later. The tribunal shall hold a hearing at the request of either Contracting Party, or at its discretion, within thirty days after replies are due.

(5) The tribunal shall attempt to give a written decision within thirty days after completion of the hearing or, if no hearing is held, after the date both replies are submitted. The decision shall be taken by a majority vote.

(6) The Contracting Parties may submit requests for clarification of the decision within fifteen days after it is received and such clarification shall be issued within fifteen days of such request.

(7) The tribunal shall reach its decision on the basis of internationally recognized rules of law. The decision of the tribunal shall be final and binding on the Contracting Parties.

(8) Each Contracting Party shall bear the costs of the arbitrator appointed by it. The other costs of the tribunal shall be shared equally by the Contracting Parties including any expenses incurred by the President, the Vice-President or the most senior Member of the International Court of Justice in implementing the procedures in paragraph (2)(b) of this Article. The tribunal may, however, in its award determine another distribution of costs.

ARTICLE 11

Application

This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement.

ARTICLE 12

Entry into Force

This Agreement shall enter into force thirty days after the date on which the Contracting Parties have notified each other in writing that their respective requirements for the entry into force of this Agreement have been complied with.

ARTICLE 13

Duration and Termination

(1) This Agreement shall remain in force for a period of fifteen years. Unless notice of termination has been given by either Contracting Party at least twelve months before the date of expiry of its validity, the Agreement shall be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least twelve months before the date of expiry of the current period of validity.

(2) In respect of investments made before the date of the termination of the present Agreement, the provisions of Articles 1 to 12 shall continue to be effective for a further period of fifteen years from that date.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in triplicate at Brussels this 7th day of October 1996 in the Chinese, Dutch, English and French languages, all texts being equally authoritative.

FOR THE GOVERNMENT OF HONG KONG

FOR THE BELGO-LUXEMBOURG ECONOMIC UNION

FOR THE GOVERNMENT OF THE KINGDOM OF BELGIUM

FOR THE GOVERNMENT OF THE GRAND-DUCHY OF LUXEMBOURG

FOR THE GOVERNMENT OF THE REGION OF WALLONIA

FOR THE GOVERNMENT OF THE REGION OF FLANDERS

FOR THE GOVERNMENT OF THE REGION OF BRUSSELS-CAPITAL