Agreement

between the Government of Hong Kong
and the Government of the Kingdom of Denmark
for the Promotion and Protection of Investments

AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Hong Kong, having been duly authorised to conclude this agreement by the sovereign government which is responsible for its foreign affairs, and the Government of the Kingdom of Denmark, hereinafter referred to as the Contracting Parties;

Desiring to create favourable conditions for the purpose of establishing lasting economic relations between investors of one Contracting Party and enterprises of the other Contracting Party;

Recognizing that fair and equitable treatment of investments on a reciprocal basis will serve this aim;

Have agreed as follows:

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 Kingdom of Denmark means the territory under its sovereignty and the sea and submarine areas over which it exercises, in conformity with international law, sovereignty, sovereign rights or jurisdiction. Subject to Article 12 the present agreement shall not apply to the Faroe Islands and Greenland;

(2) "investors" means:

(a) in respect of Hong Kong:

(i) physical persons who have the right of abode in its area;

(ii) corporations, partnerships and associations incorporated or constituted under the law in force in its area (hereinafter referred to as "companies");

(b) in respect of the Kingdom of Denmark:

(i) physical persons who are its nationals;

(ii) corporations, partnerships and associations such as development financial institutions or foundations incorporated or constituted under the law in force in its area (hereinafter referred to as "companies");

(3) "investment" means every kind of asset and in particular, thought not exclusively, includes:

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

(b) shares in and stock, bonds and debentures of a company and rights derived therefrom and any other form of participation in a company including a joint venture;

(c) returns reinvested, claims to money or other assets or to any performance under contract having a financial value;

(d) intellectual property rights, technical processes, trade names, know-how 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.

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

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

(6) "forces" means:

(a) in respect of Hong Kong, the armed forces of the sovereign government which is responsible for its foreign affairs;

(b) in respect of the Kingdom of Denmark, the armed forces of the Kingdom.

ARTICLE 2

Promotion and Protection of Investment and Returns

(1) Each Contracting Party shall, as far as possible, encourage and create favourable conditions for investors of the other Contracting Party to make investment 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 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.

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, on a non-discriminatory basis, 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, shall include interest at a normal commercial rate until the date of payment, shall be made without undue delay which, in any event, shall not extend a period of 3 months, be effectively realizable and be freely convertible. Under the law of the Contracting Party making the deprivation, the investor affected shall have a right 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 its law, 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 accordance with its laws and regulations in respect of investments, allow to investors of the other Contracting Party the unrestricted transfer of their investments and returns abroad, including funds in repayment of loans related to an investment, the proceeds of the total or partial liquidation of an investment, and the earnings of individuals allowed to work in an investment made in its area.

(2) Transfers of currency shall be effected without delay in any freely 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

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:

(a) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

(b) any international agreement or arrangement establishing a common market, free trade area or customs union.

ARTICLE 8

Subrogation

(1) If one Contracting Party, its designated Agency or a company (as defined in Article 1(2) of this Agreement) other than an investor (the "Indemnifying Party") makes a payment under an indemnity or guarantee given in respect of an investment in the area of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the Indemnifying Party by law or by legal transaction of all the rights and claims of the indemnified investor and that the Indemnifying Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as that investor.

(2) The Indemnifying Party shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the indemnified investor was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by the Indemnifying Party in pursuance of the rights and claims acquired shall be freely convertible.

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 by negotiation.

(2) If the Contracting Parties fail to reach a settlement of the dispute by negotiation, 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 most senior Vice-President 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 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. Any decision of the tribunal shall be taken by a majority vote.

(5) 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.

(6) The decision of the tribunal shall be final and binding on the Contracting Parties.

(7) 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 or Vice-President of the International Court of Justice in implementing the procedures in paragraph 2(b) of this Article.

ARTICLE 11

Consultations

Either Contracting Party may, at any time, propose consultations on matters concerning the interpretation or application of this Agreement. Such consultations shall be held at a place and time to be agreed between the Contracting Parties.

ARTICLE 12

Application

(1) The provisions of this Agreement shall apply to all investments whether made before or after the date of its entry into force.

(2) At the time of entry into force of this Agreement or at any time thereafter the Kingdom of Denmark may extend the provisions of this Agreement to the Faroe Islands and Greenland.

ARTICLE 13

Entry into Force

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

ARTICLE 14

Duration and Termination

(1) This Agreement shall remain in force for a period of fifteen years and shall thereafter remain in force indefinitely, unless terminated in accordance with paragraph (2) of this Article.

(2) Either Contracting Party may terminate this Agreement at any time after it has been in force for fifteen years by giving one year’s written notice to the other Contracting Party.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 12 shall remain in force 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 two originals at Copenhagen this second day of February 1994 in the Chinese,, Danish and English languages, all texts being equally authoritative.

For the Government of
Hong Kong

For the Government of the
Kingdom of Denmark