Agreement

between the Government of Hong Kong and the
Government of the Republic of France
for the Reciprocal Promotion
and Protection of Investments

AGREEMENT
BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF THE REPUBLIC OF FRANCE FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to strengthen economic cooperation between both Contracting Parties and to create favourable conditions for greater investment by investors of one Contracting Party in the area of the other;

Recognising that the encouragement and reciprocal protection of such investments will be conducive to the stimulation of individual business initiative and transfers of capital and will increase prosperity in the interest of their economic development;

Have agreed as follows.

ARTICLE 1

Definitions

For the purpose of this Agreement:

(1) "area":

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

(b) in respect of France means the territory of the French Republic;

(2) "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, usufructs or pledges;

(b) shares in and stock and debentures of a company and any other form of participation in a company, including premium on shares and minority holding;

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

(d) intellectual property rights, in particular copyrights, including mockups, and industrial property rights such as patents, trademarks, industrial designs (including industrial models), technical processes, tradenames 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 shall not affect their character as investments;

(3) "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 and having their head office in its area, or corporations, partnerships and associations controlled directly or indirectly by physical persons who have the right of abode in its area or by legal persons having their head off-ice in its area and incorporated or constituted under the law in force in its area (hereinafter referred to as "companies");

(b) in respect of the Republic of France:

(i) physical persons possessing French nationality;

(ii) any legal person constituted on French territory in accordance with French legislation and having its head office on French territory, or any legal person controlled directly or indirectly by French nationals or by legal persons having their head office on French territory and constituted in accordance with French legislation (hereinafter referred to as "companies");

(4) "returns" means all the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees. Re-investment returns shall enjoy the same protection as returns;

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

ARTICLE 2

Promotion and Protection of Investments and Returns

(1) Each Contracting Party shall, in accordance with its laws and the provisions of this Agreement, admit and encourage investments in its area by investors of the other Contracting Party and shall create favourable conditions for investors of the other Contracting Party to make 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 de jure or de facto hinder such treatment, nor, in particular, 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.

ARTICLE 3

Particular Obligations

Without prejudice to the provisions of this Agreement, each Contracting Party shall observe any particular obligation it may have entered into with regard to investments of investors of the other Contracting Party, including provisions more favourable than those of this Agreement.

ARTICLE 4

Treatment of Investments and Returns

(1) Each Contracting Party shall in its area accord investments and returns of investors of the other Contracting Party treatment no less favourable than that which it accords to investments and returns of its own investors or to investors of any other State, whichever is more favourable to the investor concerned.

(2) Each Contracting Party shall in its area accord to investors of the other Contracting Party, as regards the activities relating to their investments, in particular the management, maintenance, use, enjoyment or disposal thereof, treatment no less favourable than that which it accords to its own investors or to investors of any other State, whichever is more favourable to the investor concerned. In this respect, personnel authorized to work in the area of one Contracting Party in connection with an investment shall enjoy, in accordance with the laws of that Contracting Party, the material facilities relevant to the exercise of their professional activities.

(3) The treatment provided for in this Article shall not include the privileges granted by one Contracting Party to investments made in its area by investors of any other State by virtue of its participation in or association with a free trade zone, customs union, common market or any other form of regional economic organization.

(4) The provisions of this Article 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 any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

ARTICLE 5

Expropriation

(1) Investors of either Contracting Party shall not be deprived of their investments nor subjected to measures having, directly or indirectly, an effect equivalent to such deprivation in the area of the other Contracting Party except lawfully and on a non discriminatory basis, for a public purpose related to the internal needs of that Party, and against appropriate compensation as provided for in this Article. Such deprivation shall not be contrary to a particular obligation. 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 delay, be effectively realizable and be freely convertible. The investor affected shall have a right, in accordance with 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) Without prejudice to the general application of paragraph (1) of this Article, 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 the owners of those shares.

ARTICLE 6

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, whichever is more favourable to the investor concerned. 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 authorities or forces, or

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

shall be accorded, without delay, restitution or reasonable compensation. Resulting payments shall be freely convertible.

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

ARTICLE 7

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 abroad their investments as defined in Article 1(2) and their returns as defined in Article 1(4) (including profit, interest, capital gains, dividends, royalties and fees). Investors shall also have the unrestricted right to transfer abroad:

(a) repayments of loans duly contracted;

(b) proceeds of partial or total liquidation of an investment, including capital gains on the capital invested;

(c) compensation for deprivation or loss provided for in Airticles 5 and 6 of this Agreement.

(2) Personnel employed from abroad in connection with investments shall be entitled to transfer abroad earnings and other remuneration.

(3) Transfers of currency shall be effected without delay in any convertible currency. Transfers shall be made at the rate of exchange applicable on the date of transfer.

ARTICLE 8

Guarantee

Each Contracting Party may guarantee, following a case by case examination and subject to its legislation, investments made by its investors in the area of the other Contracting Party, provided that Party's agreement has been previously obtained if required.

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 months 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. The arbitration award shall be final and binding in accordance with relevant domestic law.

ARTICLE 10

Subrogation

(1) If one Contracting Party or its designated agency, as a result of a guarantee given for an investment made in the area of the other Contracting Party, makes payment to its own investors, the first mentioned Party or its designated agency has full rights of subrogation with regard to the rights and actions of the said investors.

(2) A Contracting Party which is party to an investment dispute under Article 9 of this Agreement shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the investor concerned has been indemnified in respect of all or part of his loss.

ARTICLE 11

Dispute 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 within three months, 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 an arbitral 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 physical person possessing neither French nationality nor the nationality of the State which is responsible for the foreign affairs of Hong Kong nor having the right of abode in Hong Kong area shall act as President of the tribunal. He 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 Chamber of Commerce, in a personal and individual capacity, to make the necessary appointments within thirty days. If the President is a national of a State which is not regarded by either Contracting Party as neutral in relation to the dispute, the most senior member who is so regarded shall make the appointment.

(3) Except as hereinafter provided in this Article, the tribunal shall determine the limits of its jurisdiction and establish its own rules of procedure.

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

(5) Each Contracting Party shall bear the costs of the arbitrator appointed by it. All other costs of the tribunal shall be shared equally by the Contracting Parties.

ARTICLE 12

Application

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

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 twenty years. Unless notice of termination has been given by either Contracting Parties at least twelve months before the date of expiry of its validity, the Agreement shall be extended 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 case of termination of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for a further period of twenty years.

Done in duplicate at Paris this 30th day of November 1995 in the Chinese, English and French languages, all texts being equally authoritative.

For the Government of
Hong Kong

For the Government of
the Republic of France