Agreement

between the Government of Hong Kong and the Government of the Federal Republic of Germany for the Encouragement and Reciprocal Protection of Investments

AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF THE FEDERAL REPUBLIC OF GERMANY FOR THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Hong Kong, and the Government of the Federal Republic of Germany, having been duly authorised to conclude this Agreement by the sovereign government which is responsible for its foreign affairs (hereinafter referred to as the Contracting Parties);

Desiring 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 will increase prosperity in both areas;

Have agreed as follows:

ARTICLE 1

For the purposes of this Agreement

(1) the term "area":

(a) in respect of the Federal Republic of Germany means its territory including its territorial sea;

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

(2) the term "investment" means every kind of asset and in particular, though not exclusively, includes:

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

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

(c) claims to money or to any performance under contract having an economic value;

(d) intellectual property rights, in particular copyrights, patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and good will;

(e) business concessions lawfully conferred, 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;

(3) the term "returns" means:

amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(4) the term "investors" means:

(a) in respect of the Federal Republic of Germany:

– Germans within the meaning of the Basic Law of the Federal Republic of Germany,

– any juridical person as well as any commercial or other company or association with or without legal personality having its seat in the territory of the Federal Republic of Germany, irrespective of whether or not its activities are directed at profit;

(b) in respect of Hong Kong:

– physical persons who have the right of abode in its area,

– corporations, partnerships and associations incorporated or constituted and registered where applicable under the law in force in its area;

(5) the term "freely convertible and transferable" means:

free of all currency exchange controls and transferable abroad in any currency.

ARTICLE 2

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its area, and, in accordance with 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.

(3) Subject to the provisions of international agreements which apply to the Contracting Parties, investors shall be free to choose their own means of transport of goods and persons in connection with their investments.

ARTICLE 3

(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.

(3) The treatment provided for in this Article shall not relate to privileges which either Contracting Party accords to investors of other States on account of its membership of, or association with, a customs or economic union, a common market or a free trade area.

(4) The treatment provided for in this Article shall not relate to advantages which either Contracting Party accords to investors of other States by virtue of any international agreement or arrangement relating wholly or mainly to taxation. The provisions of this Article do not oblige a Contracting Party to extend to physical persons resident or companies , partnerships and associations incorporated or constituted and, where applicable, registered or having their seat in the area of the other Contracting Party tax privileges, tax exemptions and tax reductions which, according to its tax laws, may be granted only to physical persons resident or companies, partnerships and associations incorporated or constituted and, where applicable, registered or having their seat in its area.

(5) Each Contracting Party shall, subject to the requirements of its law, give sympathetic consideration to applications for the entry and sojourn of persons from the other Contracting Party who wish to enter its area in connection with an investment.

ARTICLE 4

(1) In accordance with the provisions of Article 2 (2) of this Agreement, investments by investors of either Contracting Party shall enjoy full protection and security in the area of the other Contracting Party.

(2) Investors of either Contracting Party shall neither suffer expropriation, nor otherwise be deprived of their investments, nor subjected to measures having equivalent effect, in the area of the other Contracting Party except lawfully, for the public benefit 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 expropriation or deprivation or before the impending expropriation or 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, be effectively realizable and be freely convertible and transferable. The investor affected shall have a right to prompt review by a Judicial or other independent authority of the Contracting Party concerned of the investor's case and of the valuation of the investment in accordance with the principles set out in this paragraph.

(3) Where a Contracting Party expropriates the assets or takes measures which severely impair the economic substance of a company in its area, in which investors of the other Contracting Party own shares or otherwise hold investments, it shall ensure that the provisions of paragraph (2) of this Article are applied to the extent necessary to guarantee compensation referred to in paragraph (2) of this Article in respect of their investment to such investors of the other Contracting Party.

ARTICLE 5

(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 and transferable.

(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 and transferable.

(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 6

(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) Each Contracting Party shall also guarantee to investors of the other Contracting Party the unrestricted right to transfer capital to maintain or increase their investments, to repay loans contracted in connection with an investment, to transfer the proceeds of a liquidation or a sale of

the whole or any part of an investment, and to transfer the compensation provided for in Articles 4 and 5 of this Agreement.

(3) Transfers of currency shall be effected without delay in any convertible currency. A transfer shall be deemed to have been made without delay if effected within such period as is normally required for the completion of transfer formalities.

(4) Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer. This rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

ARTICLE 7

(1) If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the area of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party or its designated Agency by law or by legal transaction of all the rights and claims of the indemnified investor; it shall also recognise that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as that investor.

(2) The former Contracting Party or its designated Agency 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 former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely convertible and transferable. Such payments shall also be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the area of the latter Contracting Party.

ARTICLE 8

(1) This Agreement shall not prevent an investor of one Contracting Party from taking advantage of any law of the other Contracting Party or any other obligations between the Contracting Parties which are more favourable than the provisions of this Agreement.

(2) Each Contracting Party shall observe any obligation it has assumed with regard to investments in its area by investors of the other Contracting Party.

ARTICLE 9

This Agreement shall apply to investments by investors of either Contracting Party in the area of the other Contracting Party whether made before or after its entry into force.

ARTICLE 10

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. The arbitration award shall be final and binding on the parties to the dispute and shall be enforced in accordance with relevant domestic law.

ARTICLE 11

(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 to reach a settlement of the dispute, 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 members 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 member. 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 member by agreement between the two members, 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 invite 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 is a national of a State which he considers cannot be regarded as neutral in relation to the dispute, the most senior member of the Court who is not disqualified on that ground shall make the appointment.

(3) Except as otherwise agreed by the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own rules of procedure.

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

(5) 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 member of the International Court of Justice in implementing the procedures in paragraph (2)(b) of this Article.

ARTICLE 12

This Agreement shall enter into force one month from 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 fulfilled.

ARTICLE 13

(1) This Agreement shall remain in force for a period of fifteen years and shall be extended thereafter for an unlimited period unless denounced in writing by either Contracting Party twelve months before its expiration. After the expiry of the period of fifteen years this Agreement may be denounced at any time by either Contracting Party giving twelve months' written notice.

(2) In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a further period of fifteen years from the date of termination of this Agreement.

Done at Bonn on 31 January 1996

in duplicate in the Chinese, German and English all texts being equally authoritative.

For the Government of
Hong Kong

For the Government of the
Federal Republic of Germany