Agreement

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

AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF THE ITALIAN REPUBLIC 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 Italian Republic (hereinafter referred to as the Contracting Parties);

Desiring to create favourable conditions for greater investment 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:

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 Italian Republic means, in addition to the areas lying within the land boundaries, the maritime zones over which the Italian Republic has sovereignty or exercise sovereign or jurisdictional rights 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 Italian Republic: corporations, partnerships, foundations, associations and public institutions incorporated or constituted under the law in force in any part of its area;

(3) "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 Italian Republic, Italian armed forces;

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

(5) "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, pledges or usufructs;

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

(d) rights in the Field of intellectual property, technical processes, goodwill and know-how;

(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;

(6) "investors" means:

(a) in respect of Hong Kong:

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

(ii) companies as defined in paragraph 2(a) of this article;

(b) in respect of the Italian Republic:

(i) physical persons who are its nationals;

(ii) companies as defined in paragraph 2(b) of this article;

(7) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees or payment for assistance and technical services.

ARTICLE 2

Promotion and Protection of Investments and Returns

(1) Each Contracting Party shall encourage and create 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. 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) Each Contracting Party shall in its area accord investments or returns of investors of the other Contracting Party treatment and protection not 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, whichever is more favourable to the investor concerned.

(2) Each Contracting Party shall in its area accord investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, treatment not 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.

(3) 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.

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 any measures having effect equivalent to such deprivation or limiting the enjoyment of the investment 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. 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 calculated from the date of expropriation to the date of payment, shall be made without undue delay, be effectively realizable and be freely convertible.

(2) 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.

(3) 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 paragraphs (1) and (2) of this Article are applied to the extent necessary to guarantee compensation referred to in these paragraphs 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. This right shall not relieve investors of their obligation to pay taxes.

(2) Transfers of currency shall be effected without undue delay in any convertible currency. A transfer shall be deemed to have been made without undue delay if effected within such period as is normally required for the completion of transfer formalities. Unless otherwise agreed by the investors transfers shall be made at the most favourable rate of exchange applicable on the date of transfer.

ARTICLE 7

Exceptions

(1) 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 any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(2) The provisions of Article 3 do not apply to any advantages or privileges which one Contracting Party grants or may grant at some future time to any other State by virtue of its membership in customs or economic unions, common market associations, free trade areas, regional or subregional agreements, International multilateral economic agreements, or agreements entered into in order to prevent double taxation or to facilitate cross-border trade.

ARTICLE 8

Subrogation

(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 and 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 payment received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely convertible and transferable in accordance with the relevant provisions of this Agreement.

ARTICLE 9

Application

The provisions of this Agreement shall apply to any investment of an investor of one Contracting Party in the area of the other Contracting Party whether made before or after the date of entry into force of this Agreement.

ARTICLE 10

Settlement of Investments 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, including recourse to the Courts of the relevant Contracting Party or to other forms of arbitration. 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 (UNCITRAL) as then in force. The parties may agree in writing to modify those Rules.

ARTICLE 11

Settlement of 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 sixty 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.

(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 decide on the basis of respect for the law. Before the tribunal decides, it may, at any stage of the proceedings, propose to the Contracting Parties that the dispute be settled amicably.

(6) 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.

(7) 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.

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

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

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 thereof 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 duplicate at Rome this 28th day of November 1995 in the Chinese, English and Italian languages, all texts being equally authoritative.

For the Government of
Hong Kong

For the Government of the
Italian Republic