Agreement

between the Government of Hong Kong and the
Government of Japan
for the Promotion and Protection of Investment

AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF JAPAN FOR THE PROMOTION AND PROTECTION OF INVESTMENT

The Government of Japan and the Government of Hong Kong, the latter having been duly authorized to conclude this Agreement by the Government of the sovereign state which is responsible for foreign affairs relating to Hong Kong (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,

Recognizing that the promotion and reciprocal protection of such investment will be conducive to the stimulation of individual business initiative and will increase prosperity in the areas of both Contracting Parties,

Having agreed as follows:

Article 1

For the purposes of this Agreement:

1. The term "area":

   (a) in respect of Japan means the territory under its sovereignty, including its territorial sea;

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

2. The term "companies" means:

   (a) in respect of Japan, corporations, partnerships, companies and associations incorporated or constituted under the laws and regulations of Japan and having their seat within its area, whether or not with limited liability, whether or not with legal personality and whether or not for pecuniary profit;

   (b) in respect of Hong Kong, corporations, partnerships and associations incorporated or constituted under the law in force in its area, whether or not with limited liability, whether or not with legal personality and whether or not for pecuniary profit.

3. The term "investment" means every kind of asset and in particular, though not exclusively, includes:

   (a) rights with respect to movable and immovable property;

(b) shares in and stock of a company and other types of holding of a company;

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

(d) intellectual property rights including undisclosed information, and trade names; and

(e) concession rights conferred by law or under contract, including those for the exploration and exploitation of natural resources.

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

4. The term "investors" means:

(a) in respect of Japan:

(i) physical persons possessing the nationality of Japan; and

(ii) companies as defined in sub-paragraph (2)(a) of this Article;

(b) in respect of Hong Kong:

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

(ii) companies as defined in sub-paragraph (2)(b) of this Article.

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

6. The term "business activities in connection with the investment" includes:

(a) the maintenance of branches, agencies, offices, factories and other establishments appropriate to the conduct of business activities;

(b) the control and management of companies established or acquired by investors;

(c) the employment of accountants and other technical experts, executive personnel, attorneys, agents and other specialists;

(d) the making and performance of contracts; and

(e) the use, enjoyment or disposal, in relation to the conduct of business activities, of investments and returns.

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, subject to its rights to exercise powers conferred by its applicable laws and regulations, shall admit such investments.

2. Investors of either Contracting Party shall within the area of the other Contracting Party be accorded treatment no less favourable than that accorded to investors of any third party in respect of the matters relating to the admission of investments.

3. 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 its area, in any way impair by unreasonable or discriminatory measures the business activities in connection with the investment 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

Investors of either Contracting Party shall within the area of the other Contracting Party be accorded treatment no less favourable than that accorded to investors of the other Contracting Party or to investors of any third party with respect to investments, returns and business activities in connection with the investment.

Article 4

The treatment accorded by either Contracting Party within its area to investors of the other Contracting Party with respect to access to the courts of justice and administrative tribunals and agencies at all levels both in pursuit and in defence of their rights shall be no less favourable than that accorded to investors of such Contracting Party or to investors of any third party.

Article 5

1. Investments and returns of investors of either Contracting Party shall not be subjected to deprivation or any measure having effect tantamount to such deprivation (hereinafter referred to as "deprivation") in the area of the other Contracting Party except under due process of law, for a public purpose, on a non-discriminatory basis, and against compensation. Such compensation shall amount to the real value of the investments and returns at the time of the deprivation or when the impending deprivation became public knowledge, whichever is the earlier, disregarding any reduction in the value which might have been caused by the prospect of the deprivation, shall be paid without undue delay, shall carry an appropriate interest taking into account the length of time until the time of payment, and shall be effectively realizable, freely convertible and freely transferable.

2. Without prejudice to the provisions of Article 9, the investor affected shall have a right of access to the courts of justice or administrative tribunals or agencies of the Contracting Party making the deprivation, for reviewing the investor's case and the amount of compensation in accordance with the principles set out in this Article.

3. Where a Contracting Party deprives of its assets a company which is incorporated or constituted under the laws and regulations in force in any part of its area, and in which investors of the other Contracting Party hold shares or other interests, 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 paragraph 1 of this Article in respect of their investments and returns to such investors of the other Contracting Party who hold those shares or other interests.

4. Investors of either Contracting Party shall within the area of the other Contracting Party be accorded treatment no less favourable than that accorded to investors of the other Contracting Party or to investors of any third party with respect to the matters set forth in the provisions of paragraphs 1, 2 and 3 of this Article.

Article 6

1. Investors of either Contracting Party who suffer within the area of the other Contracting Party damage in relation to their investments, returns or business activities in connection with the investment owing to the outbreak of hostilities or a state of national emergency such as revolution, revolt, insurrection or riot, shall be accorded treatment, as regards any measure to be taken by the other Contracting Party including restitution, compensation or other valuable consideration, no less favourable than that accorded to investors of the other Contracting Party or to investors of any third party. Resulting payments shall be effectively realizable, freely convertible and freely transferable.

2. Without prejudice to the provisions of 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

(b) destruction of their property by its authorities which was not required by the necessity of the situation,

shall be accorded restitution or reasonable compensation. Resulting payments shall be effectively realizable, freely convertible and freely transferable.

3. For the purpose of paragraph 2 of this Article, the term "authorities" includes in respect of Hong Kong the armed forces of the sovereign government which is responsible for its foreign affairs.

Article 7

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 out of and into the former Contracting Party, including the transfer of funds for payments, funds in repayment of loans, proceeds from sales, the proceeds of the total or partial liquidation of an investment, and the earnings of individuals allowed to work in an investment in its area.

2. Transfer of currency shall be effected without delay in any freely convertible currency.

Article 8

If either Contracting Party or its designated agency makes payment to any investor of that Contracting Party under indemnity, guarantee or contract of insurance given in accordance with the applicable laws and regulations of that Contracting Party in respect of investments and returns in the area of the other Contracting Party, such other Contracting Party shall recognize the transfer to the former Contracting Party or its designated agency of any right or claim of such investor in such investments and returns on account of which such payment is made and the subrogation of the former Contracting Party or its designated agency to any claim or cause of action of such investor arising in connection therewith. As regards payment to be made to that former Contracting Party or its designated agency and the transfer of such payment, the provisions of Article 5, Article 6 and Article 7 shall apply mutatis mutandis.

Article 9

1. Any 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 shall, as far as possible, be settled amicably through consultation between the parties to the dispute.

2. Any 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, may, after a period of six months from written notification of the claim by either of the parties to the dispute, 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 dispute shall at the request of the investor concerned be submitted to arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law as then in force. The parties to the dispute may agree in writing to modify those Rules.

3. Paragraph 2 of this Article shall not be construed so as to prevent investors of either Contracting Party from seeking administrative or judicial settlement within the area of the other Contracting Party. In the event that an investor has resorted to administrative or judicial settlement within the area of the other Contracting Party of a dispute concerning an investment by such investor, the same dispute shall not be submitted to arbitration referred to in paragraph 2 of this Article.

4. In case a dispute arises out of an investment made by a company of either Contracting Party which is owned or controlled by investors of the other Contracting Party, investors of the other Contracting Party may submit the dispute to arbitration referred to in paragraph 2 of this Article on behalf of such company.

Article 10

This Agreement shall apply to all investments and returns of investors of one Contracting Party made within the area of the other Contracting Party in accordance with the applicable laws and regulations of the other Contracting Party, whether made before, on or after the date of entry into force of this Agreement.

Article 11

1. The Contracting Parties shall consult at the request of either of them on matters concerning the interpretation or application of this Agreement.

2. 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.

3. If the Contracting Parties fail to reach a settlement of the dispute referred to in paragraph 2 of this Article by negotiation, the dispute, at the request of either Contracting Party, shall be submitted for decision to an arbitral tribunal which shall be constituted in the following manner:

(a) Within thirty days after receipt of a written 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 the third arbitrator is not agreed upon between the arbitrators appointed by each Contracting Party within the period specified in sub-paragraph (a) of this paragraph, the President of the International Court of Justice in a personal and individual capacity may be requested by either Contracting Party to make the necessary appointment within thirty days. If the President of the International Court of Justice considers that he or she is a national of a State which cannot be regarded as neutral in relation to the dispute, or he or she is otherwise prevented from appointing the said arbitrator, the Vice-President, or failing that, the most senior judge of the International Court of Justice who is not disqualified on that ground in the same capacity may be requested by either Contracting Party to make the appointment.

4. Unless otherwise agreed between the Contracting Parties, the tribunal shall determine the limits of its jurisdiction and establish its own procedure.

5. The tribunal shall use its best endeavours to reach a decision within sixty days after completion of the hearing or, if no hearing is held, after both Contracting Parties have completed their representations.

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, the Vice-President or the most senior judge of the International Court of Justice in implementing the procedures set forth in sub-paragraph (b) of paragraph 3 of this Article.

Article 12

1. Article 3 shall not be construed so as to oblige either Contracting Party to extend to investors of the other Contracting Party special tax advantages accorded on the basis of reciprocity with a third party or by virtue of agreements for the avoidance of double taxation or for the prevention of fiscal evasion.

2. Notwithstanding the provisions of Article 3, the treatment accorded by either Contracting Party to investors of the other Contracting Party may be limited to treatment no less favourable than that which is accorded to investors of any third party in connection with:

(a) the conditions of registration of aircraft in the register of the competent authorities of either Contracting Party and matters arising from such registration, and matters related to or arising from the nationality of a ship; and

(b) the acquisition of a ship or of any interest in a ship.

3. Notwithstanding the provisions of Article 3, either Contracting Party may prescribe special procedural formalities in connection with the activities of foreign nationals and companies within its area, provided that such formalities may not impair the substance of the rights set forth in the provisions of Article 3.

Article 13

1. A company of a non-Contracting Party which is owned or controlled by investors of either Contracting Party shall within the area of the other Contracting Party be accorded:

(a) treatment no less favourable than that accorded to like companies owned or controlled by investors of any third party with respect to the matters set forth in paragraph 2 of Article 2; and

(b) treatment no less favourable than that accorded to like companies owned or controlled by investors of such other Contracting Party or by investors of any third

party with respect to the matters set forth in Article 3, paragraphs 1 to 3 of Article 5, Article 6 and Article 10.

2. Paragraph 1 of this Article does not apply if such non-Contracting Party and such other Contracting Party are signatories to an international agreement concerning the promotion and protection of investment which is applicable to the company of such non-Contracting Party.

Article 14

Notwithstanding the provisions of sub-paragraph (3) of Article 1, nothing in this Agreement shall be construed so as to derogate from the rights and obligations under international agreements relating to intellectual property rights to which they are parties.

Article 15

1. This Agreement shall enter into force on the date of an exchange of notes between both Contracting Parties notifying each other that their respective requirements necessary for the entry into force of this Agreement have been complied with.

2. This Agreement shall remain in force for a period of fifteen years and shall continue in force thereafter until terminated in accordance with the provisions of paragraph 3 of this Article.

3. Either Contracting Party may, giving one year's advance notice in writing to the other Contracting Party, terminate this Agreement at the end of the initial fifteen-year period or at any time thereafter.

4. In respect to investments and returns made prior to the date of termination of this Agreement, the provisions of Articles 1 to 14 shall continue to be effective for a further period of fifteen years from the date of termination of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Tokyo on the fifteenth day of May 1997, in duplicate, in the Japanese, Chinese and English languages, all three texts being equally authentic.

For the Government
of Hong Kong:

For the Government
of Japan:

PROTOCOL

At the time of signing the Agreement between the Government of Hong Kong and the Government of Japan for the Promotion and Protection of Investment (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

1. Notwithstanding the provisions of paragraph 2 of Article 6 of the Agreement, the Government of Japan shall accord to investors of Hong Kong restitution or compensation subject to its laws and regulations.

2. Notwithstanding the provisions of paragraph 1 of Article 7 of the Agreement, the Government of Japan may, in exceptional financial or economic circumstances, impose exchange restrictions in accordance with its laws and regulations and in conformity with the Articles of the Agreement of the International Monetary Fund.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

DONE at Tokyo on the fifteenth day of May 1997, in duplicate, in the Japanese, Chinese and English languages, all three texts being equally authentic.

For the Government
of Hong Kong:

For the Government
of Japan: