Agreement

between the Government of Hong Kong and the
Government of the Republic of Korea
For the Promotion and Protection of Investments

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

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

Desiring to create favourable conditions for greater investments by investors of one Contracting Party in the area of the other;

Recognising that an agreement on 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

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 Republic of Korea means the territory under its sovereignty, including its territorial sea;

(2) "forces" means:

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

(b) in respect of the Republic of Korea, the armed forces of the Republic;

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

(4) "investment" means every kind of asset invested by investors of one Contracting Party in the area of the other Contracting Party 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 stocks, bonds and debentures of a company and any other forms of participation in companies including joint ventures;

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

(d) intellectual property rights, including rights with respect to copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets and trade names, and goodwill;

(e) business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

(f) goods that, under a leasing agreement, are placed at the disposal of a lessee in the area of a Contracting Party in accordance with its laws and regulations.

Any change in the form in which assets are invested or reinvested shall not affect their character as an investment;

(5) "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 Republic of Korea:

(i) physical persons who are its nationals;

(ii) legal persons incorporated or constituted in accordance with its laws such as companies, corporations, partnerships and associations (hereinafter referred to as "companies");

(6) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and all kinds of fees.

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 shall admit such investments in accordance with its laws and regulations.

(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.

ARTICLE 3

Treatment of Investments

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

(2) Each Contracting Party shall in its area accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and no less favourable than that which it accords to its own investors or to investors of any other State.

ARTICLE 4

Exceptions

The provisions in this Agreement relating to the grant of treatment no less favourable than that accorded to the investors of either Contracting Party or 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.

ARTICLE 5

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, riot or other similar situations 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 events 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 fair and reasonable compensation. Resulting payments shall be freely convertible.

ARTICLE 6

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 for a public purpose related to the internal needs of that Party, under due process of law, on a non-discriminatory basis and provided that it is accompanied by compensation. Such compensation shall amount to the real value of the investments immediately before the deprivation or before the impending deprivation became public knowledge, whichever is the earlier, shall include interest from the date of deprivation at the applicable commercial rate and shall be made without undue delay, be effectively realisable and be freely convertible.

(2) Investors affected by deprivation 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 their case and of the valuation of their investment in accordance with the principles set out in paragraph (1) of this Article.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under its laws and regulations and in which investors of the other Contracting Party participate or own shares, the former Contracting Party shall ensure that the provisions of

paragraphs (1) and (2) of this Article are applied to the extent necessary to guarantee the compensation referred to in those paragraphs to such investors in respect of their investment.

ARTICLE 7

Transfers

(1) Each Contracting Party shall, in respect of investments, returns and payments relating thereto, guarantee to investors of the other Contracting Party the unrestricted right to effect transfers. Such transfers shall include, in particular, though not exclusively:

(a) proceeds accruing from the total or partial liquidation of any investment;

(b) funds in repayment of loans relating to an investment;

(c) remuneration of investors and their employees in connection with investments made in the area of the other Contracting Party;

(d) additional funds necessary for the maintenance or development of an existing investment.

(2) All transfers of currency under this Agreement shall be effected without delay in any freely convertible currency. Unless otherwise agreed by the investors, transfers shall be made at the rate of exchange applicable on the date of transfer.

ARTICLE 8

Subrogation

If a Contracting Party or its designated agency makes a payment to its own investors under a guarantee it has accorded in respect of an investment in the area of the other Contracting Party, the latter Contracting Party shall recognise:

(a) the assignment, whether under the law or pursuant to a legal transaction in its area, of any right or claim from the investors to the former Contracting Party or its designated agency; and

(b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of those investors and shall assume the obligations relating to the investment.

ARTICLE 9

Settlement of Investment Disputes

(1) Any dispute between a Contracting Party and an investor of the other Contracting Party concerning an investment of the latter in the area of the former, including that relating to the deprivation of an investment, shall, as far as possible, be settled by the parties to the dispute in an amicable way.

(2) Remedies under the laws and regulations of one Contracting Party in the area of which the investment has been made shall be available to the investor of the other Contracting Party on the basis that the investor shall be treated in this regard no less favourably than its own investors or investors of any other State in its area.

(3) If the dispute cannot be settled within six(6) months from the date on which the dispute has been raised by either party in writing, it shall 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 Commissions on International Trade Law (UNCITRAL) as then in force. The parties may agree in writing to modify those Rules.

(4) The arbitration award shall be final and binding on the parties to the dispute. Each Contracting Party shall ensure the recognition and enforcement of the award in accordance with its relevant laws and regulations.

ARTICLE 10

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 within six(6) 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 a tribunal of three arbitrators constituted in the following manner:

(a) within thirty(30) 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(60) 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(30) 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 and the specific procedures to be followed shall be held not later than thirty(30) 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(45) days after the tribunal is fully constituted. Replies shall be due sixty(60) days later. The tribunal shall hold a hearing at the request of either Contracting Party, or at its discretion, within thirty(30) days after replies are due.

(5) The tribunal shall attempt to give a written decision within thirty(30) 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.

(6) The Contracting Parties may submit requests for clarification of the decision within fifteen(15) days after it is received and such clarification shall be issued within fifteen(I5) days of such request.

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

(8) 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

Application of other Rules and Special Commitments

(1) Where a matter is governed simultaneously both by this Agreement and by another international agreement applicable to both Contracting Parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the area of the other Contracting Party from taking advantage of whichever rules are the more favourable to his or its case.

(2) If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party, in accordance with its laws and regulations or other specific provisions or contracts, is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

(3) Either Contracting party shall observe any other obligation it may have entered into with regard to investments in its area by investors of the other Contracting Party.

ARTICLE 12

Application

This Agreement shall apply to all investments whether made before or after its entry into force.

ARTICLE 13

Entry into Force

This Agreement shall enter into force thirty(30) 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 fulfilled.

ARTICLE 14

Duration and Termination

(1) This Agreement shall remain in force for a period of fifteen (15) years and shall remain in force thereafter indefinitely unless terminated in accordance with paragraph of this Article.

(2) Either Contracting Party may terminate this Agreement at any time after it has been in force for fifteen (15) 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 Article 1 to 12 of this Agreement shall remain in force for a further period of twenty (20) years from that date.

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

DONE in duplicate at Hong Kong on the 30th day of June 1997 in the Chinese, English and Korean languages, all texts being equally authoritative.

For The Government of
Hong Kong

For The Government of
The Republic of Korea