Agreement

On the Encouragement and Protection of Investments
between the Government of Hong Kong
and the Government of the Kingdom of the Netherlands

AGREEMENT ON THE ENCOURAGEMENT AND PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

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 Kingdom of the Netherlands, 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 agreement upon the treatment to be accorded to 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) "area":

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

(b) in respect of the Kingdom of the Netherlands, is the territory of the Kingdom including the maritime areas adjacent to the coast of the territory concerned, to the extent to which the Kingdom of the Netherlands exercises sovereign rights or jurisdiction in those areas according to international law;

(2) "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 Kingdom of the Netherlands:

(i) physical persons who are its nationals;

(ii) legal persons constituted under the law in force in any part of its area (hereinafter referred to as "companies");

(3) "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;

(4) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

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

(6) "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 Kingdom of the Netherlands, the armed forces of the Kingdom.

ARTICLE 2

Each Contracting Party shall, within the framework of its laws and regulations, encourage investors of the other Contracting Party to make investments in its area by creating favourable conditions for such investments and, subject to its right to exercise powers conferred by its laws, shall admit such investments.

ARTICLE 3

(1) 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.

(2) Each Contracting Party shall in its area accord investments or returns of investors of the other Contracting Party treatment 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.

(3) 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.

(4) Each Contracting Party shall accord to such investments and returns full physical protection and security in their respective areas which in any case shall not be less than that accorded either to investments and returns of their own investors or to investors of any other State, whichever is more favourable to the investor concerned.

(5) Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

ARTICLE 4

(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 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

(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 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, 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. Without prejudice to the provisions of Article 10, 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.

(2) 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 owners of those shares.

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 or to repay loans contracted in connection with an investment.

(3) Transfers of currency shall be effected without delay in any convertible currency.

ARTICLE 7

Without prejudice to Article 3(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:

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

(2) its participation in any existing or future customs union, economic union or similar international agreement; or

(3) reciprocal arrangements with any other State.

ARTICLE 8

(1) If the investments of an investor of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer or re-insurer to the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

(2) The insurer or reinsurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise. The subrogation does not affect any right the other Contracting Party may have with regard to the investor.

ARTICLE 9

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 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 final settlement as may be agreed between the parties to the dispute. If no such procedures have been agreed within that six month 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 may agree in writing to modify those Rules.

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 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 by both Contracting Parties 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 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.

(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 final and 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 President or Vice-President of the International Court of Justice in implementing the procedures in paragraph 2(b) of this Article.

ARTICLE 12

(1) 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.

(2) As regards the Kingdom of the Netherlands, this Agreement shall apply to the Kingdom in Europe, the Netherlands Antilles and to Aruba, unless the notification provided for in paragraph (1) of this Article provides otherwise.

ARTICLE 13

(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.

(3) Subject to the period mentioned in paragraph (1) of this Article, the Government of the Kingdom of the Netherlands shall be entitled to terminate the application of the present Agreement separately in respect of any of the parts of the Kingdom.

In witness whereof the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done in triplicate at Hong Kong this 19th day of November 1992 in the Chinese. English and Netherlands languages, all texts being equally authoritative.

For the Government of
Hong Kong

For the Government of the
Kingdom of the Netherlands