Agreement

between the Government of Hong Kong
and the Government of New Zealand
for the Promotion and Protection of Investments

AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE GOVERNMENT OF NEW ZEALAND 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 foreign affairs relating to Hong Kong, and the Government of New Zealand, (each hereinafter referred to as a "Contracting Party");

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 under this 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 New Zealand includes the territorial sea, exclusive economic zone and continental shelf where it exercises its sovereignty' sovereign rights or jurisdiction in accordance with 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 or other legally recognised entities incorporated or constituted or otherwise duly organised under the law in force in its area (hereinafter referred to as "companies");

   (b) in respect of New Zealand,

(i) persons who are New Zealand citizens or permanent residents in accordance with the laws of New Zealand;

(ii) corporations, partnerships and associations or other legally recognised entities incorporated or constituted or otherwise duly organised under the law in force in its area, (hereinafter referred to as "companies");

3. "forces" means:

(i) in respect of Hong Kong, the armed forces of the Government of the sovereign State which is responsible for foreign affairs relating to Hong Kong;

(ii) in respect of New Zealand, the New Zealand armed forces;

4. "Freely convertible currency" means a fully and freely convertible currency as identified by the International Monetary Fund or a currency that is widely traded in international foreign exchange markets;

5. "investment" means every kind of asset which has been invested in accordance with the laws of the Contracting Party receiving it and in particular, though not exclusively, includes:

(i) movable and immovable and any other property rights such as mortgages, usufructs, liens or pledges;

(ii) shares in and stock and debentures of a company and any similar form of participation in a company;

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

(iv) copyright, intellectual property rights (such as patents for inventions, trade marks, industrial design), know-how, technical processes, trade names and goodwill;

(v) 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, provided that the assets continue to be invested in accordance with the laws and regulations of the Contracting Party receiving them;

6. "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, earnings, interest, capital gains, dividends, royalties, proceeds of liquidation, loan repayments and fees.

ARTICLE 2

Applicability of this Agreement

1. This Agreement shall apply only to investments made in accordance with the laws and regulations of the Contracting Party in whose area the investments are made.

2. The provisions of the foregoing paragraph shall apply to all investments made by investors of either Contracting Party, whether made before or after the entry into force of this Agreement.

ARTICLE 3

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, 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. Each Contracting Party shall observe any obligations it may have entered into with regard to investments of investors of the other Contracting Party.

3. The two Contracting Parties shall to the extent possible encourage exchanges of information on relevant investment matters.

ARTICLE 4

Treatment of Investments

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 investors of any other State or, subject to its laws and regulations, that which it accords to investments or returns of its own investors.

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 investors of any other State or, subject to its laws and regulations, that which it accords to investments or returns of its own investors.

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 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, if any, no less favourable than that which the latter Contracting Party accords to its own investors or investors of any other State. Any 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 in a freely convertible currency.

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 lawfully, for a public purpose related to the internal needs of that Party, on a non -discriminatory basis, 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 until the date of payment, shall be made without undue delay, be effectively realisable and be in a freely convertible currency. 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 7

Transfer of Investments and Returns

1. Each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the right to transfer their investments and returns abroad, in accordance with its laws and regulations, and on a non-discriminatory basis.

2. Transfers of currency shall be effected without delay in a freely convertible currency. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer.

ARTICLE 8

Exceptions

1. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) any regional arrangement for customs, monetary, tariff or trade matters (including a free trade area) or any agreement designed to lead in the future to such a regional arrangement; or

(b) any arrangement with any other State or States in the same geographic region designed to promote regional cooperation in the economic, social, labour, industrial or monetary fields within the framework of specific projects.

2. The provisions of this Agreement shall not apply to matters of taxation in the area of either Contracting Party. Such matters shall be governed by the domestic laws of each Contracting Party and the terms of any agreement relating to taxation concluded between the Contracting Parties.

3. The provisions of this Agreement shall not in any way limit the right of either Contracting Party to take measures directed to the protection of its essential interests, or to the protection of public health, or to the prevention of diseases and pests in animals and plants, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustified discrimination.

4. This Agreement shall not apply to Tokelau unless the Contracting Parties have exchanged notes agreeing to the terms on which this Agreement shall so apply.

ARTICLE 9

Settlement of Investment 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, within 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.

ARTICLE 10

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 Contracting Parties, 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. 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 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 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 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.

6. 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.

7. The decision of the tribunal shall be final and binding on the Contracting Parties.

8. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half the costs of the President of the tribunal and the remaining costs, 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. The tribunal may, however, in its decision direct that a higher proportion of the costs shall be borne by one of the two parties, and this decision shall be binding on both Contracting Parties.

ARTICLE 11

Subrogation

1. In the event that either Contracting Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own investors in respect of any of their claims under this Agreement, the other Contracting Party acknowledges that the former Contracting Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of the investors that it has indemnified. The subrogated right or claim shall not be greater than the original right or claim of the said investors.

2. Any payment made by one Contracting Party (or any agency, institution, statutory body or corporation designated by it) to its investors shall not affect the right of such investors to make their claims against the other Contracting Party in accordance with Article 9, in cases where the former Contracting Party elects not to exercise its subrogated rights or claims.

ARTICLE 12

Entry into Force

This Agreement shall enter into force thirty days after the date on which the 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 and shall continue in force thereafter unless after the expiry of the initial period of fourteen years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

2. In respect of investments made prior to the date when the notice of termination becomes effective, the provisions of Articles 1 to 12 shall remain in force for a further period of fifteen years from that date.

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

DONE at Hong Kong on 6 July 1995 and in duplicate, in the Chinese and English languages, both texts being equally authoritative.

For the Government of
Hong Kong:

For the Government of
New Zealand: