Agreement

between the Government of Hong Kong
and the Swiss Federal Council on the Promotion
and Reciprocal Protection of Investment

AGREEMENT BETWEEN THE GOVERNMENT OF HONG KONG AND THE SWISS FEDERAL COUNCIL ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Swiss Federal Council and the Government of Hong Kong, having been duly authorized to conclude this agreement by the sovereign government which is responsible for its foreign affairs, 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 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 purpose of this Agreement:

(1) "area":

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

(b) in respect of the Swiss Confederation means its territory;

(2) "investors" means:

(a) in respect of Hong Kong:

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

(ii) companies, including corporations, partnerships and associations, incorporated or constituted under the law in force in its area, as well as companies which are, directly or indirectly. controlled by persons who have the right of abode in its area or by companies incorporated or constituted under the law in force in its area;

(b) in respect of the Swiss Confederation:

(i) physical persons who are its nationals;

(ii) companies, including corporations, partnerships, associations and other organisations, which are constituted or otherwise duly organised under its law, as well as companies which are, directly or indirectly, controlled by its nationals or by companies established under its law;

(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 Swiss Confederation, its 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 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 any other form of participation in a company including a joint venture;

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

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

(e) business concessions or similar rights 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) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

ARTICLE 2

Promotion of Investments

(1) 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.

(2) Each Contracting Party shall grant, in accordance with its laws and regulations, the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

ARTICLE 3

Treatment and Protection of Investments and Returns

(1) 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.

(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) If the legislation of either Contracting Party entitles investments by investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such legislation shall to the extent that it is more favourable prevail over 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 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

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, 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. The investor affected shall have a right, under the law of the Contracting Party making the deprivation, to prompt review by 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, to the extent necessary and subject to its laws, ensure that compensation according to paragraph (1) of this Article will be made available to such investors.

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.

(2) Each Contracting Party shall also guarantee to investors of the other Contracting Party the unrestricted right to transfer funds to maintain or increase the investment or to repay loans contracted or to meet other contractual obligations undertaken in connection with the investment.

(3) Transfers of currency shall be effected without delay in any convertible currency. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer.

ARTICLE 7

Exceptions

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 agreement establishing a free trade area, a customs union or a common market or any international agreement or arrangement relating wholly or mainly to taxation. Nor, while both Contracting Parties recognize the obligation to grant treatment in accordance with Article 3(1) of this Agreement, shall either Contracting Party be obliged to apply such provisions in relation to domestic legislation related wholly or mainly to taxation.

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 recognize 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 payments received by the former Contracting Party or its designated Agency in pursuance of the rights and claims acquired shall be freely convertible. Such payments shall also be freely available to the former Contracting Party for the purpose of meeting any expenditure incurred in the area of the latter Contracting Party.

ARTICLE 9

Application

The provisions of this Agreement shall apply to investments by investors 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

Other obligations

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

ARTICLE 11

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, 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 12

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 appointment shall be made by the Vice-President and if he is also disqualified on the same ground the appointment

shall be made by the most senior judge of the Court who is not disqualified on that ground.

(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 sixty 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 were 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 at which the replies were due. The decision shall be taken by a majority vote.

(6) The Contracting Parties may submit requests for clarification of the decision within thirty days after it is received and such clarification shall be issued within thirty 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 the arbitrator appointed by its. 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 any other judge of the International Court of Justice in implementing the procedures in paragraph 2(b) of this article.

ARTICLE 13

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 14

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 authorized thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Hong Kong this 22nd day of September 1994 in the Chinese, English and French languages, each text being equally authoritative.

For the Government of
Hong Kong

For the Swiss Federal
Council