Agreement

between the Government of the Hong Kong Special Administrative Region of the People's Republic of China and the Government of the Kingdom of Thailand for the Promotion and Protection of Investments

AGREEMENT

BETWEEN THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

AND

THE GOVERNMENT OF THE KINGDOM OF THAILAND

FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Hong Kong Special Administrative Region of the People's Republic of China, having been duly authorised to conclude this Agreement by the Central People's Government of the People's Republic of China, and the Government of the Kingdom of Thailand (hereinafter referred to as "the Contracting Parties");

Desiring to create favourable conditions for greater economic cooperation between them and, in particular, for investment by investors of one Contracting Party in the area of the other;

Recognising 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 purposes of this Agreement:

(1) "area":

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

(*b*) in respect of the Kingdom of Thailand is the territory over which the Kingdom of Thailand has sovereignty and/or jurisdiction in accordance with international law;

(2) "forces" means:

(*a*) in respect of the Hong Kong Special Administrative Region, the armed forces of the People's Republic of China;

(*b*) in respect of the Kingdom of Thailand, the armed forces of the Kingdom of Thailand;

(3) "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 or pledges;

(*b*) shares in and stock and debentures of a company and any other form of participation in a company;

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

(*d*) intellectual property rights and goodwill;

(*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 provided that such change has been specifically approved in accordance with Article 2(1) of this Agreement when it is necessary. The term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement;

(4) "investors" means:

(*a*) in respect of the Hong Kong Special Administrative Region:

(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 Thailand:

(i) physical persons who possess the nationality of the Kingdom of Thailand in accordance with its laws;

(ii) juridical persons incorporated or constituted under the law in force in its area, whether or not with limited liability and whether or not for pecuniary profit, hereinafter referred to as "companies";

(5) "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 and Protection of Investment 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 and regulations regarding the specific approval in writing (where applicable) of the investments, shall admit such investments.

(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. 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

Treatment of Investments

(1) Investments of investors of one Contracting Party in the area of the other Contracting Party, and also the returns therefrom, shall receive treatment which is fair and equitable and no less favourable than that accorded in respect of the investments and returns of the investors of the latter Contracting Party or any third party.

(2) Each Contracting Party shall in its area accord to investors of the other Contracting Party, as regards the 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 third party.

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 third party. Resulting payments shall be made without delay and shall be freely transferable in freely convertible currencies.

(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 made without delay and shall be freely transferable in freely convertible currencies.

ARTICLE 5

Expropriation

(1) Investors of either Contracting Party shall not be deprived of their investments or 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 Contracting Party, and against compensation. Subject to the provisions of paragraph (2) of this Article, 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 the rate applicable under the law of the Contracting Party making the deprivation until the date of payment, shall be made without undue delay, be effectively realizable and be freely transferable in freely convertible currencies. 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 Contracting 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 investments which consist only of immovable property, the provisions of paragraph (1) of this Article shall apply, except that the moment at which the real value of such property is determined shall be governed by the laws and policies of the Contracting Party which is expropriating that immovable property.

(3) 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 investments to such investors of the other Contracting Party who are owners of those shares.

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 right to the free transfer abroad of their investments and the returns therefrom.

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

ARTICLE 7

Exceptions

The provisions of this Agreement relating to the granting of treatment no less favourable than that accorded to the investors of either Contracting Party or to investors of any third party 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 international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

(*b*) any international agreement or arrangement establishing a common market, free trade area or customs union or to promote regional cooperation in the economic, social, labour, industrial or monetary fields;

(*c*) the grant to a particular person or company of the status of a "promoted person" under the law of Thailand.

ARTICLE 8

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 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 agree 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 9

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 thirty 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 Vice-President or the most senior member 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 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 or other members of the International Court of Justice in implementing the procedures in paragraph 2(*b*) of this Article.

ARTICLE 10

Subrogation

(1) If either Contracting Party or an agency designated by it makes payment to an investor under a policy of insurance covering non-commercial risks, which it has given in respect of any investment or any part thereof in the area of the other Contracting Party, the latter Contracting Party shall recognise:

(*a*) the assignment, whether under law or pursuant to a legal transaction, of any right or claim from such an investor 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 such an investor.

(2) The former Contracting Party or its designated agency shall, accordingly, be entitled to assert, if it so desires, any such right or claim to the same extent as its predecessor in title.

(3) If the former Contracting Party acquires amounts in the lawful currency of the other Contracting Party or credits thereof by virtue of an assignment under subparagraph (*a*) of paragraph (1) of this Article, such amounts and credits shall be freely available to the former Contracting Party for the purpose of meeting its expenditure in the area of the latter Contracting Party.

ARTICLE 11

Entry into Force

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.

ARTICLE 12

Duration and Termination

(1) This Agreement shall remain in force for a period of fifteen years and thereafter shall remain in force indefinitely, unless terminated in accordance with paragraph (2) of this Article.

(2) Either Contracting Party may terminate this Agreement at any time after it has been in force for fourteen 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 Articles 1 to 10 shall remain in force for a further period of fifteen years from that date.

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

Done in two originals at Busan on the 19th day of November, Year Two Thousand and Five in the Chinese, Thai and English languages, all texts being equally authoritative.

FOR THE GOVERNMENT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

(Mr. John C. Tsang)
Secretary for Commerce, Industry and Technology

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND

(Dr. Kantathi Suphamongkhon)
Minister of Foreign Affairs