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MIPT: FUTURE OF HONG KONG: AGREEMENT

FOLLOWING IS THE FINAL TEXT OF THE DRAFT AGREEMENT WHICH SHOULD BE HANDED TO THE CHINESE:

THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA: RECOGNISING HONG KONG'S HISTORICAL POSITION AS PART OF CHINA AND ITS UNIQUE STATUS AS AN INTERNATIONAL COMMERCIAL AND FINANCIAL CENTRE AND FREE PORT, WITH ITS OWN CHARACTERISTIC SOCIETY AND WAY OF LIFE BASED UPON THE COMMON LAW AND THE RIGHTS AND FREEDOMS OF INDIVIDUALS PROTECTED BY LAW: MINDFUL OF THE FRIENDLY RELATIONS EXISTING BETWEEN THE UNITED KINGDOM AND CHINA: MINDFUL ALSO OF THEIR COMMON AIM OF MAINTAINING THE FUTURE STABILITY AND PROSPERITY OF HONG KONG: HAVE AGREED AS FOLLOWS:

ARTICLE 1

(1) HONG KONG SHALL, WITH EFFECT FROM 1 JULY 1997 BECOME A SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA, TO BE KNOWN AS 'HONG KONG (CHINA)', UNDER THE SOVEREIGNTY OF THE PEOPLE'S REPUBLIC OF CHINA.

(2) THE UNITED KINGDOM GOVERNMENT SHALL CONTINUE TO ADMINISTER HONG KONG UNTIL 30 JUNE 1997 AND SHALL, WITH EFFECT FROM 1 JULY 1997, TERMINATE ALL POWERS OF ADMINISTRATION WHICH THEY EXERCISE WITH RESPECT TO HONG KONG. ALL UNITED KINGDOM CONSTITUTIONAL INSTRUMENTS RELATING TO HONG KONG SHALL BE REPEALED WITH EFFECT FROM THAT DATE.

ARTICLE 2

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(1) THE CONSTITUTION OF HONG KONG (CHINA) SHALL, WITH EFFECT FROM 1 JULY 1997, BE PRESCRIBED BY A BASIC LAW TO BE ENACTED IN ACCORDANCE WITH ARTICLE 31 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA ADOPTED ON 4 DECEMBER 1982 TO WHICH IT SHALL BE APPENDED.

(2) THE BASIC LAW SHALL BE THE PARAMOUNT LAW FOR HONG KONG (CHINA). IT SHALL BE IN ACCORDANCE WITH THE STATEMENT OF THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA ISSUED IN AGREEMENT WITH THE UNITED KINGDOM GOVERNMENT AND DATED, AND WITH THE PROVISIONS OF THIS AGREEMENT, AND SHALL BE SO MAINTAINED UNTIL AT LEAST 1 JULY 2047.

(3) THE BASIC LAW SHALL PRESCRIBE THE SYSTEMS TO BE INSTITUTED FOR HONG KONG (CHINA) AS A SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA. ALL RIGHTS AND POWERS IN RELATION TO EXTERNAL DEFENCE AND, SUBJECT TO THE PROVISIONS OF PARAGRAPH 4(IV) OF THIS ARTICLE, THE CONDUCT OF EXTERNAL AFFAIRS SHALL REMAIN WITH THE CENTRAL PEOPLE'S GOVERNMENT, BUT OTHERWISE HONG KONG (CHINA) SHALL ENJOY AUTONOMY WITHIN THE PEOPLE'S REPUBLIC OF CHINA.

(4) ACCORDINGLY, THE BASIC LAW SHALL, SUBJECT TO THE PROVISIONS OF PARAGRAPH 3 OF THIS ARTICLE, INCLUDE PROVISION FOR THE FOLLOWING PRINCIPLES:

- (I) THE RIGHT AND POWER OF ADMINISTRATION WITHIN THE TERRITORY OF HONG KONG (CHINA) INCLUDING RESPONSIBILITY FOR INTERNAL SECURITY AND PUBLIC ORDER SHALL BE VESTED THROUGH THE BASIC LAW EXCLUSIVELY IN THE CHIEF EXECUTIVE AND EXECUTIVE AUTHORITIES OF HONG KONG (CHINA). THE EXERCISE OF ADMINISTRATIVE POWER BY THE EXECUTIVE AUTHORITIES AND BY OFFICIALS OF THE PUBLIC SERVICE SHALL BE LIABLE TO CHALLENGE OR REVIEW BY THE COURTS IN HONG KONG (CHINA) IN ACCORDANCE WITH ESTABLISHED LEGAL PROCEDURES:
- (II) THE RIGHT AND POWER OF LEGISLATION FOR HONG KONG (CHINA) SHALL BE VESTED THROUGH THE BASIC LAW EXCLUSIVELY IN THE LEGISLATIVE AUTHORITIES OF HONG KONG (CHINA) LAWS ENACTED BY THE LEGISLATURE SHALL BE REPORTED TO THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS FOR THE

RECORD BUT THERE SHALL BE NO RIGHT OR POWER OF DISALLOWANCE OR ANNULMENT OUTSIDE OR WITHIN HONG KONG (CHINA).

- (III) THE RIGHT AND POWER OF FINAL ADJUDICATION OVER ALL CRIMINAL AND CIVIL DISPUTES IN HONG KONG (CHINA) INCLUDING THE RIGHT TO INTERPRET ITS LAWS AND THE POWERS OF PUNISHMENT SHALL BE VESTED THROUGH THE BASIC LAW EXCLUSIVELY IN THE ESTABLISHED COURTS OF HONG KONG (CHINA) WHOSE JUDGES SHALL FUNCTION INDEPENDENTLY AND WITHOUT INTERFERENCE FROM THE EXECUTIVE OR LEGISLATURE OF HONG KONG (CHINA) OR FROM OUTSIDE HONG KONG (CHINA). HONG KONG (CHINA) SHALL HAVE THE RIGHT TO RECRUIT AND EMPLOY JUDGES FROM OTHER COMMON LAW JURISDICTIONS.
- (IV) THE LAWS OF HONG KONG (CHINA) ON AND AFTER 1 JULY 1997 SHALL BE THE COMMON LAW, RULES OF EQUITY AND ORDINANCES, SUBORDINATE LEGISLATION AND CUSTOMARY LAW AND PRACTICES IN FORCE IN HONG KONG (CHINA) IMMEDIATELY BEFORE 1 JULY 1997 SAVE ONLY FOR CHANGES IN NOMENCLATURE OR REFERENCES CONSEQUENT UPON THE SEVERANCE OF CONSTITUTIONAL LINKS WITH THE UNITED KINGDOM. HONG KONG (CHINA) SHALL BE SUBJECT TO NO OTHER LAWS SAVE FOR THE BASIC LAW AND FOR THOSE ENACTED AFTER 1 JULY 1997 BY THE LEGISLATIVE AUTHORITIES OF HONG KONG (CHINA).
- (V) IN PURSUANCE OF THE COMMON AIM, THE OBJECT AND THE INTENT OF THE BASIC LAW SHALL BE TO ENSURE THAT PERSONS WITHIN HONG KONG (CHINA) SHALL CONTINUE TO ENJOY, AT LEAST UNTIL 1 JULY 2047, THEIR EXISTING RIGHTS AND FREEDOMS UNDER THE LAW, THEIR WAY OF LIFE AND THEIR SOCIAL, ECONOMIC, MONETARY, FISCAL AND COMMERCIAL SYSTEMS ALL AS DESCRIBED AND AMPLIFIED IN THE ANNEXES TO THIS AGREEMENT.
- (VI) THE CHIEF EXECUTIVE OF HONG KONG (CHINA) SHALL BE AUTHORISED BY THE BASIC LAW IN THE NAME OF HONG KONG (CHINA) TO CONCLUDE AGREEMENTS GOVERNING TRADE, ECONOMIC, SHIPPING, AIR SERVICES, LEGAL AND CULTURAL MATTERS WITH FOREIGN STATES, REGIONS AND INTERNATIONAL ORGANISATIONS.
- (VII) IN CONSEQUENCE OF THE SEVERANCE OF CONSTITUTIONAL LINKS

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WITH THE UNITED KINGDOM, THE BASIC LAW SHALL MAKE PROVISION FOR THE CONTINUATION OF THE ESSENTIAL STRUCTURE AND ORGANS OF GOVERNMENT WITHIN HONG KONG (CHINA), INCLUDING: THE RIGHTS, DUTIES, POWERS AND FUNCTIONS OF THE CHIEF EXECUTIVE OF HONG KONG (CHINA), ITS EXECUTIVE AND LEGISLATIVE AUTHORITIES AND THE ELECTION AND APPOINTMENT OF THEIR MEMBERS, THE ESTABLISHMENT OF THE COURTS OF HONG KONG (CHINA), THE JUDICIAL SERVICES COMMISSION AND THE PUBLIC SERVICES COMMISSION, ALL AS DESCRIBED AND AMPLIFIED IN THE ANNEXES TO THIS AGREEMENT.

(VIII) HONG KONG (CHINA) SHALL PROVIDE CONTINUITY OF EMPLOYMENT TO ALL MEMBERS OF THE PUBLIC SERVICE IN EMPLOYMENT ON 30 JUNE 1997 ON TERMS AND CONDITIONS OF SERVICE NO LESS FAVOURABLE THAN THOSE PREVIOUSLY ENJOYED. HONG KONG (CHINA) SHALL TAKE OVER RESPONSIBILITY FOR THE PAYMENT OF ALL PENSIONS AND SIMILAR ALLOWANCES AND ASSOCIATED BENEFITS EARNED AND DUE TO MEMBERS OF THE PUBLIC SERVICE WHO HAVE RETIRED BEFORE 1 JULY 1997 AND TO THEIR DEPENDANTS. HONG KONG (CHINA) SHALL ALSO BECOME RESPONSIBLE FOR PAYMENT TO MEMBERS OF THE PUBLIC SERVICE WHO CONTINUE TO SERVE BEYOND 30 JUNE 1997 AND THEIR DEPENDANTS OF ALL EARNED EMOLUMENTS, GRATUITIES AND ALL PENSIONS AND SIMILAR ALLOWANCES AND ASSOCIATED BENEFITS WHICH BY THAT DATE, OR MAY THEREAFTER BECOME, DUE TO THEM.

(IX) NO TAXES SHALL BE LEVIED IN HONG KONG (CHINA) SAVE BY THE LEGISLATURE OF HONG KONG (CHINA).

ARTICLE 3

IN ORDER TO SECURE THEIR COMMON AIM THE TWO GOVERNMENTS, SHALL, IN A SPIRIT OF FRIENDSHIP, CONTINUE THEIR DISCUSSIONS AND SHALL COOPERATE UPON THE EFFECTIVE IMPLEMENTATION OF THIS AGREEMENT.

ARTICLE 4

THE TWO GOVERNMENTS SHALL COOPERATE IN PROMOTING THE ACCEPTANCE BY THE INTERNATIONAL COMMUNITY OF THE AUTONOMOUS STATUS OF HONG KONG (CHINA), AS DEFINED IN ARTICLES 1 AND 2 OF THIS AGREEMENT. IN PARTICULAR THEY SHALL ENDEAVOUR TO SECURE THE

RETENTION BY HONG KONG (CHINA) OF THE BENEFITS EXISTING IMMEDIATELY PRIOR TO 1 JULY 1997 IN RELATION TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE, AND OTHER INTERNATIONAL AGREEMENTS AND ARRANGEMENTS.

ARTICLE 5

OPEN SQUARE BRACKETS AN ARTICLE ON NATIONALITY. CLOSE SQUARE BRACKET

ARTICLE 6

THE ANNEXES TO THIS AGREEMENT SHALL BE TREATED AS AN INTEGRAL PART THEREOF.

ARTICLE 7

OPEN SQUARE BRACKETS AN ARTICLE ON REPRESENTATION OF THE UNITED KINGDOM AND OTHER COUNTRIES IN HONG KONG (CHINA), AFTER 1997. CLOSE SQUARE BRACKETS.

ARTICLE 8

(1) THIS AGREEMENT SHALL BE SUBJECT TO RATIFICATION. INSTRUMENTS OF RATIFICATION SHALL BE EXCHANGED IN PEKING.

(2) THIS AGREEMENT SHALL ENTER INTO FORCE UPON EXCHANGE OF INSTRUMENTS OF RATIFICATION.

IN WITNESS WHEREOF THE UNDERSIGNED, BEING DULY AUTHORIZED THEREBY BY THEIR RESPECTIVE GOVERNMENTS, HAVE SIGNED THIS AGREEMENT. DONE IN DUPLICATE AT PEKING THIS.....DAY OF.....1984, IN THE ENGLISH AND CHINESE LANGUAGES, BOTH TEXTS BEING EQUALLY AUTHORITATIVE.

FOR THE GOVERNMENT OF THE UNITED KINGDOM
GREAT BRITAIN AND NORTHERN IRELAND

FOR THE GOVERNMENT OF
THE PEOPLE'S REPUBLIC

HOWE

-- FUTURE OF HONG KONG

LIMITED

ED/ED

ED/FED

ED/PLANNING STAFF

ED/FUSD

D/ED/FUSD

RES B. (MR WALKER)

LEGAL ADVISER (MR FREELAND)

PS

PS/LADY YOUNG

PS/MR LUCE

PS/FUS

SIR J BULLARD

SIR W HARDING

MR WILSON

MR WRIGHT

SIR C TUCKELL

COPIES TO:

BUCKINGHAM PALACE

PS/LORD PRESIDENT OF THE COUNCIL

PS/HOME SECRETARY

PS/CHANCELLOR OF THE EXCHEQUER

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