

Agreement on the Promotion and Reciprocal Protection of Investment between the Government of the Republic of Mauritius and the Swiss Federal Council

The Government of the Republic of Mauritius and the Swiss Federal Council (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing the need to promote and protect foreign investments with the aim to foster the economic prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) "Investment" means every kind of asset and in particular, though not exclusively, includes:

(a) Movable and immovable property as well as any other rights in rem such as mortgages, liens and pledges;

(b) Shares, parts and any other form of participation in a company;

(c) Claims to money or to any performance under contract having an economic value;

(d) Intellectual property rights (such as copyrights, patents, utility models, industrial designs or models, trade or service marks, trade names, indications of origin), technical processes, know-how and goodwill;

(e) Concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources, as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

A change in the form in which assets are invested does not affect their character as investments.

(2) "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties and fees.

(3) "Investors" means with regard to either Contracting Party:

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal entities, including companies, corporations, business associations and other organisations, established under the law of that Contracting Party and having real economic activities in the territory of the same Contracting Party;

(c) Legal entities not established under the law of that Contracting Party but effectively controlled by natural persons, as defined in (a) above or by legal entities as defined in (b) above.

(4) "Territory" means

(a) In respect of the Swiss Confederation: the territory thereof as it has been or may hereafter be designated under the laws of Switzerland in accordance with international law;

(b) In respect of the Republic of Mauritius:

- (i) All the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
- (ii) The territorial sea of Mauritius; and
- (iii) Any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised.

Article 2. Scope of Application

The present Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party, whether prior to or after the entry into force of the Agreement.

Article 3. Promotion and Admission

(1) Each Contracting Party shall, having regard to its general policy in the field of foreign investment, encourage and facilitate investments in its territory by investors of the other Contracting Party and shall, in accordance with its laws and regulations, admit or approve such investments.

(2) Each Contracting Party shall use its best endeavours to grant, in accordance with its laws and regulations, the necessary permits including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance, as well as authorizations required for the activities of consultants and experts, in connection with such an investment.

Article 4. Promotion and Admission

(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 territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.

(2) Each Contracting Party shall in its territory accord to 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 third State, whichever is more favourable to the investor concerned.

(3) Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment not less favourable than that which it accords to its own investors or investors of any third State, whichever is more favourable to the investor concerned.

(4) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market, of which it is or may become a member, or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

(5) For the avoidance of doubt it is confirmed that the principles provided for in paragraphs (2) and (3) of this Article shall not be applicable in relation to special advantages, such as in the field of taxation, accorded to development finance institutions. paragraphs (2) and (3) of this Article shall not be applicable in relation to special advantages, such as in the field of taxation, accorded to development finance institutions.

Article 5. Free Transfer

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, particularly of:

- (a) Returns;
- (b) Amounts related to loans incurred, or other contractual obligations undertaken, for the investment;
- (c) Additional contributions of capital necessary for the maintenance or development of the investment;
- (d) The proceeds of the partial or total sale or liquidation of the investment, including possible increment values.

(2) Transfers of currency shall be made at the market rate of exchange prevailing on the date of transfer. In the absence of such a market rate, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for the conversion of the relevant currency into Special Drawing Rights, whichever is the more favourable to the investor.

Article 6. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the real value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realisable and be freely transferable at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

(2) The investor affected by the expropriation shall have the right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his case and the valuation of the investment in accordance with the principles set out in this paragraph.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the laws in force in its territory, 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 7. Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory 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 territory 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. Resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

(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 territory 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 adequate compensation. Resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 8. Principle of Subrogation

If one Contracting Party or its designated Agency makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognise 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 is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as that investor.

Article 9. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned with a view to solving the case amicably.

(2) If these consultations do not result in a solution within six months from the date of request for consultations, the investor may submit the dispute either to the national jurisdiction of the Contracting Party in whose territory the investment was made or to international arbitration. In the latter event the investor has the choice between either of the following:

- (a) An ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or
- (b) The International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on March 18, 1965.
- (3) Both Contracting Parties declare their consent to submit the dispute to arbitration in accordance with paragraph (2) above.
- (4) The Contracting Party which is a party to the dispute shall not at any time during the procedures, assert as a defence its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the damage or loss incurred.
- (5) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other Contracting Party does not abide by and comply with the arbitral award.
- (6) The arbitral award shall be final and binding on the parties to the dispute and shall be executed according to national law.

Article 10. Disputes between Contracting Parties

- (1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultations and negotiations between the Governments of the two Contracting Parties.
- (2) In the event that the consultations and negotiations fail to resolve the dispute within a period of six months, any of the Parties may, unless they have otherwise agreed, submit the dispute to an arbitral tribunal composed of three members. Each Party shall appoint one arbitrator. The third arbitrator, who will be the Chairman of the arbitral tribunal and a national of a third State, shall be appointed by agreement of the other two arbitrators. If any of the arbitrators are unable to perform the duties, a substituting arbitrator shall be appointed as provided for in this Article.
- (3) Should one of the Parties fail to appoint its arbitrator within two months after the other Party has submitted the dispute to an arbitral tribunal and has appointed its arbitrator, the latter Party may request the President of the International Court of Justice to make the corresponding appointment. If the latter is prevented from making such appointment or is a national of either Party, the Vice President or the most senior member of the Court shall make such an appointment.
- (4) In the event that the two arbitrators appointed by the Parties are unable to reach an agreement within two months concerning the third arbitrator, either Party may request the President of the International Court of Justice to make the corresponding appointment. If the latter is prevented from making such an appointment or is a national of either Party, the Vice President or the most senior member of the Court shall make such an appointment.
- (5) The tribunal shall determine its own procedures, unless the Parties agree otherwise. The tribunal shall decide the dispute according to this Agreement and to the principles of international law. The tribunal shall reach its decision by a majority of votes. Such a decision shall be final and binding on both Parties.
- (6) Each Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties.

Article 11. Other Rules and Specific Commitments

- (1) If provisions in the legislation of either Contracting Party or rules of international law entitle investments by investors of the other Contracting Party to treatment more favourable than that provided for by this Agreement, such provisions shall to the extent that they are more favourable prevail over this Agreement.
- (2) Each Contracting Party shall observe any particular obligation it has assumed with regard to an investment in its territory by investors of the other Contracting Party.
- (3) Nothing in this Agreement shall be construed to prevent a Contracting Party from taking any action necessary for the protection of its essential security interests or for reasons of public health or the prevention of diseases in animals and plants.

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 constitutional 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 ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other.

(2) In respect of investments made before the date of termination of the present Agreement the provisions thereof shall continue to be effective for a further period of fifteen years from that date or for any longer period as may be determined between the investor and the Contracting Party in the territory of which the investment was made.

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

Done in duplicate at Port Louis, on Twenty-six November One Thousand Nine Hundred and Ninety-Eight in the English and French languages, each text being equally authentic.

Dr. the Hon. Vasant Kumar BUNWAREE

Minister of Finance

For the Government of the Republic of Mauritius

H. E. Mrs. Lise FAVRE

Ambassador

For the Swiss Federal Council