

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND HIS MAJESTY'S GOVERNMENT OF NEPAL FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Mauritius and His Majesty's Government of Nepal (hereinafter referred to as the "Contracting Parties");

DESIRING to create favourable conditions for greater flow of investments made by investors of either Contracting Party in the territory of the other Contracting Party; and

RECOGNIZING that the promotion and reciprocal protection of such investments will lend greater stimulation to the development of business initiatives and will increase prosperity in the territories of both Contracting Parties;

HAVE agreed as follows:

Article 1. Definitions

(1) In this Agreement,

(a) "investment" means every kind of asset admissible under the relevant laws and regulations of the Contracting Party in whose territory the respective business undertaking is made, and in particular, though not exclusively, includes:

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

(ii) Shares, debentures and any other form of participation in a company;

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

(iv) Industrial and intellectual property rights, in particular copyrights, patents, utility-model patents, designs, trade-marks, trade-names, technical processes, know-how and goodwill.

(v) Economic value of concession rights or permits conferred in accordance with the law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

(b) "return" means the amount yielded by an investment and in particular, though not exclusively, profit, interest, capital gains, dividends, royalties and fees;

(c) "investor" means in respect to either Contracting Party:

(i) The "national" that is a natural person deriving his or her status as a national of that Contracting Party from the relevant laws of that Contracting Party; and

(ii) The "company" that is a legal person, such as a corporation, firm or association, incorporated or constituted in accordance with the law of that Contracting Party;

(d) "territory" means-

(1) In respect of the Republic of Mauritius:

"territory" means the territory falling within the sovereignty and the jurisdiction of the Republic of Mauritius.

(2) In respect of the Kingdom of Nepal:

"territory" means the territory falling within the sovereignty and the jurisdiction of the kingdom of Nepal.

(2) Any changes in the form in which assets are or have been invested does not affect their character as investments as

defined in this Agreement.

Article 2. Scope of the Agreement

(1) This Agreement shall only apply -

(a) In respect of investments in the territory of the Kingdom of Nepal, to all investments made by investors of the Republic of Mauritius which are specifically approved in writing by the competent authority designated by His Majesty's Government of Nepal in conformity with the law.

(b) In respect of the investments in the territory of the Republic of Mauritius, to all investments made by investors of the Kingdom of Nepal which are specifically approved in writing by the competent authority designated by the Government of the Republic of Mauritius in conformity with the law.

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

Article 3. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, encourage the making of investments in its territory by investors of the other Contracting Party, and, subject to compliance with the provisions of its laws, shall admit such investments.

(2) Each Contracting Party shall use its best endeavours to grant, in accordance with its laws, the necessary permits in connection with the carrying out of such investments and, whenever necessary, licensing agreements and contracts for technical, commercial or administrative assistance.

(3) Investments approved under Article 2 shall be accorded fair and equitable protection in accordance with this Agreement.

Article 4. Treatment of Investments

(1) Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable nor discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

(2) Each Contracting Party shall in its territory accord to investors and to investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of investors of any third State.

(3) The provisions of paragraph (2) shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or a privilege resulting from:

(a) Any customs union, free trade area, common market or any similar international agreement or interim arrangement leading up to such customs union, free trade area, or common market of which either of the Contracting Party is a member,

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(4) Each Contracting Party shall observe the obligations under its laws and under this Agreement which bind the Contracting Party and its investors and the investors of the other Contracting Party in matters relating to investments.

Article 5. Compensation for Losses

(1) Investors of either 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 later Contracting Party shall be accorded by the later Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

(2) Without derogating from the provisions of paragraph (1) of this Article, investors of either 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 the forces or authorities of the latter Contracting Party, acting under and within the scope of the legal provisions to their competencies, duties and command structures; or
- (b) Destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation or observance of any legal requirement;

Shall be accorded restitution or adequate compensation, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

Article 6. Expropriation

(1) Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall be made without delay, and be effectively realizable.

(2) The investor affected by the expropriation shall have a right, under the law of the expropriating Contracting Party to prompt review, by a court of law or other independent and impartial forum of that Contracting Party, of the expropriation case.

(3) Where a Contracting Party expropriates, nationalizes or takes measures having effect equivalent to nationalization or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, 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 as specified therein to such investors of the other Contracting Party who are owners of those shares.

Article 7. Transfer of Investment Capital and Returns

(1) Each Contracting Party shall, in accordance with its relevant laws, allow investors of the other Contracting Party the free transfer of funds relating to their investments and returns, including compensation paid pursuant to the provisions of Articles 5 and 6 of this Agreement.

(2) All transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currencies agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, repatriations shall be made at the rate of exchange applicable on the date of repatriation pursuant to the exchange regulations in force.

Article 8. Settlement of Disputes between an Investor and a Contracting Party

(1) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on 18 March 1965 any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former. A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which, before such a dispute arises, the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention, be treated for the purposes of the Convention as a company of the other Contracting Party.

(2) If any such dispute should arise and agreement cannot be reached within three months between the parties to this dispute through pursuit of local remedies or otherwise, then, if the national or company affected also consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention.

(3) In the event of disagreement as to whether conciliation or arbitration is the more appropriate procedure, the national or company affected shall have the right to choose. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance contract or from the contracting state of which the national or company is a resident, an indemnity in respect of some or all of his or its losses.

(4) Neither Contracting Party shall pursue through the diplomatic channel any dispute referred to the Centre unless:

(a) The Secretary-General of the Centre, or a conciliation commission or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre; or

(b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

Article 9. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations between the Governments of the two Contracting Parties.

(2) If the dispute cannot be settled within a period of six months following the date on which such negotiations were requested by either Contracting Party, it may upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator for the tribunal. Those two arbitrators shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two arbitrators.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the vice-president shall be invited to make the necessary appointments. If the vice-president is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party and not prevented from discharging such functions shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator to the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne equally by the Contracting 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, and this award shall be binding on, and executed by, both Contracting Parties.

(6) Apart from the above, the tribunal shall determine its own procedure.

Article 10. Subrogation

(1) If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee it has given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party of all the rights and claims of the indemnified investor, and shall also recognize 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 the original investor.

(2) Any payment made by one Contracting Party or its designated Agency to its own investor as provided in paragraph (1) shall not affect the right of such investor to make his claims against the other Contracting Party in accordance with Article 8 provided that the exercise of such a right does not overlap, or is not in conflict with, the exercise of a right in virtue of subrogation under that paragraph.

Article 11. Application of other Rules

If the provision of the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to the present Agreement, contain rules, whether general or specific, entitling investments and returns of investors of the other Contracting Party to treatment more favourable than that provided for by the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

Article 12. Final Clauses

(1) For the avoidance of any doubt, it is declared that all investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

(2) The Contracting Parties shall notify each other promptly of the fulfillment of their legal procedures required for entry into force of this Agreement. The Agreement shall enter into force on the day of signature thereof.

(3) 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 of this Agreement to the other Contracting Party.

(4) In respect of investments approved or made prior to the date the notice of termination of this Agreement becomes effective, the provisions of the preceding articles shall remain in force with respect to such investments for a further period of ten years from that date or for any longer period as provided for and agreed upon in the relevant contract or approval granted to the investor.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement at Kathmandu, on this 3rd day of August of the year 1999 in duplicate in the English.

For the Government of the Republic of Mauritius

Dr. Vasant K. Bunwaree

Minister of Finance

For His Majesty's Government of Nepal

Mr. Mahesh Acharya

Minister of Finance