AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of Mauritius and the Government of the Islamic Republic of Pakistan (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

RECOGNISING 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 concession; 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 the case 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 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;

(2) In the case of the Islamic Republic of Pakistan means Pakistan as defined in the Constitution of the Islamic Republic of Pakistan and includes any area outside the territorial waters of Pakistan which under the laws of Pakistan and international law is an area within which Pakistan exercises sovereign rights and exclusive jurisdiction with respect to the natural resources of the sea bed, sub-soil and superjacent waters.

(2) Any change 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 Islamic Republic of Pakistan, to all investments made by investors of the Republic of Mauritius which are specifically approved in writing by the competent authority designated by the Government of the Islamic Republic of Pakistan 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 Islamic Republic of Pakistan which are specifically approved in writing by the competent authority designated by the Government of the Republic of Mauritius and upon such conditions, if any, as it shall deem fit.

(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 non-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 and Contracting Party to extend to the investors of the other Contracting Party benefit of any treatment, preference or 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 Parties 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.

(c) Special advantages to foreign development finance institution operation in the territory of either Contracting Party for the exclusive purpose development assistance through mainly nonprofit activities.

(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 latter Contracting Party shall be accorded by the latter 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 relating to their competences, dutles 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 that that which the latter Contracting Party accords to its own investors or in 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 nationalised, expropriated or subjected to measures having effects equivalent to nationalisation 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, nationalises or takes measures having effect equivalent to nationalisation 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 tansfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of such a market exchange rate, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the most favourable to the investor.

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

(1) Subject to paragraph (3) any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute.

(2) If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to initiate judicial action before the competent court of the Contracting Party accepting the investment.

(3) If a dispute involving the amount of compensation resulting from expropriation nationalisation, or other measures having effect equivalent to nationalisation or expropriation mentioned in Article 6 cannot be settled within six months after

resort to negotiation as specified in paragraph (1) of this Article by the investor concerned, it may be submitted to an international arbitral tribunal established of both parties.

The provisions of this paragraph shall not apply if the investor concerned resorted to the procedure specified in paragraph (2) of this Article.

(4) The international arbitral tribunal mentioned above shall be specially constituted in the following manner. Each party to the dispute shall appoint an arbitrator. The two arbitrators shall appoint a third arbitrator as Chairman. The arbitrators shall be appointed within two months and the Chairman within four months from the date on which one party concerned notified the other party of its submission of the dispute to arbitration.

(5) If the necessary appointments are not made within the period specified in paragraph (4), either party may, in the absence of any other agreement, request the Chairman of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

(6) The arbitral tribunal shall, apart from what is stated below, determine its own arbitral procedures with reference to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, done at Washington on 18 March 1965.

(7) The tribunal shall reach its decision by a majority of votes.

(8) The decision of the arbitral tribunal shall be final and binding on both parties.

(9) The arbitral tribunal shall state the basis of its decision and state reasons upon the request of either party.

(10) Each party concerned shall bear the cost of its own arbitrator and legal representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties; and this award shall be binding on both parties.

(11) The provisions of this Article shall not prejudice the Contracting Parties from using the procedures specified in Article (9) where a dispute concerns the interpretation or application of this Agreement.

Article 9. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation on application of this Agreement should, if possible, be settled through negotiation 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 must 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 appointment. If the Vice-President is a national of either Contracting Party or if he 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 Contracting Parties, and this award shall be binding on, and executed by the 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 recognise the assignment to the former Contracting Party of all the rights and claims of the indemnified investor, and shall also recognise that the former Contracting Party or its designated Agency is entitled to exercise such rights to 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 make his claims against the other Contracting Party in accordance with Article 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

(1) If the provisions 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 Contracting Party to treatment more favorable than that provided for in the present Agreement, such rules shall, to the extent that they are more favourable prevail over the present Agreement.

(2) Each Contracting Party shall, however, honour any obligation it may have entered into with regard to Investments of investors of the other Contracting Party.

Article 12. Prohibitions and Restrictions

The provisions of this Agreement shall not in any way limit the right of either Contracting Party to apply prohibitions or restrictions of any kind or take any other action which is directed to the protection of its essential security interests, or to the protection of public health or the prevention of diseases and pests in animals or plants.

Article 13. 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 fulfilment of their legal procedures required for entry into force of this Agreement. The Agreement shall enter into force on the day following of the date of receipt of the notification.

(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 the Agreement to the other Contracting Party.

(4) In respect of investments approved and/or made prior to the date the notice of termination of this Agreement becomes effective, the provisions of the proceeding 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 or agreed upon in the relevant contract or approval granted to the investor.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement in Islamabad on this 3rd day of April of the year 1997 in duplicate in the English.

Gohar Ayub Khan

Minister for foreign Affairs

For the Government of the Islamic Republic of Pakistan

Paul R. Berenger

Deputy Prime Minister and Minister for Foreign Affairs, International and Regional Co-operation.

For the Government of the Republic of Mauritus