AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF SENEGAL ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Mauritius gouvernemnet and for the Republic of Senegal (hereinafter referred to as the contracting parties),

Desiring to create favourable conditions for increasing investment and to intensify economic cooperation in the mutual interest of both States;

Intending to create and maintain favourable conditions for investments of investis-seurs of one Contracting Party in the territory of the other contracting party,

Recognizing the need to promote and protect foreign investment with a view to promoting economic prosperity of both States;

Have agreed as follows:

Article 1. Definitions

(1) For purposes of this Agreement:

(A) The term "investment" means any asset and in particular, but not exclusively:

(i) ownership of movable and immovable property, as well as all other real rights, such as charges on land, pledges on real and movable property;

(ii) shares and other forms of participation in a company

(iii) monetary claims and rights to any performance under a contract of economic value

(iv) industrial and intellectual property rights (such as copyrights, patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source), technical processes, know-how and goodwill

(v) concessions granted by law or by contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, as well as any other right conferred by law, by contract or by decision of the authority pursuant to the law.
(B) "Income" means amounts derived from an investment and includes, but is not limited to, profits, interest, capital gains, dividends, royalties and remuneration.

(C) The term "investors" means, with respect to each Contracting Party

(i) natural persons who, under the law of that Contracting Party, are considered its nationals;

(ii) legal entities, including corporations, registered companies, partnerships or other organizations, which are constituted under the laws of that Contracting Party;

(D) The term "territory" means,

(i) with respect to the Republic of Senegal

(a) all the territory which, according to the laws of Senegal, defining its boundaries, constitutes the State of Senegal;

(b) the territorial waters of Senegal; and

(c) any area beyond the territorial waters of Senegal which, in accordance with international law, is or shall be defined by the law of Senegal as an area, including the continental shelf, over which the rights of the State of Senegal may be exercised (c) any area beyond the territorial waters of Senegal which, in accordance with international the sea, the seabed and its subsoil, as well as their natural natural resources.

(ii) with respect to the Republic of Mauritius

(a) all the territories and islands which, under the laws of Mauritius, constitute the State of Mauritius;

(b) the territorial waters of Mauritius; and

(c) any area beyond the territorial waters of Mauritius which, in accordance with international law, is or shall be defined by the law of Mauritius as an area, including the continental shelf, over which the rights of Mauritius with respect to the sea, the seabed and its subsoil and their natural resources may be exercised.

(2) Any change in the form of investment of assets shall not affect their investment status.

Article 2. Scope

(1) The provisions of this Agreement shall apply only:

(a) In respect of investments in the territory of the Republic of Senegal, to all investors or investments made by companies of the Republic of Mauritius.

(b) In respect of investments in the territory of the Republic of Mauritius, to all investors or investments made by Societés of the Republic of Senegal.

Article 3. Encouragement and Admission

(1) Each Contracting Party shall encourage and facilitate, taking into account its general practice in the field of foreign investment, the investments of investors of the other contracting party in its territory and admit or approve such investments in accordance with its laws and regulations.

(2) Each Contracting Party shall endeavour to grant, in accordance with its laws and regulations the necessary permits in connection with such investments and with the carrying out of licensing agreements, commercial, administrative or technical assistance, as well as the au-torisations required for the activities of consultants and experts.

(3) Having received an investment authorization in accordance with article 2 above shall be subject to a fair and equitable treatment and protection in accordance with the provisions of this Agreement.

Article 4. Treatment of Investments

(1) Returns of investments and investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy protection and full sé-curité and in the territory of the other contracting party. no party contrac-tante will not in any way, unjustified or discriminatory measures by the management, maintenance, use, enjoyment, increased or disposal of such investment.

(2) Each Contracting Party shall accord in its territory to returns of investments and investors of the other contracting party treatment no less favourable than that which it accords to its own and returns of investments or investors to investisse-ments and income of investors of any third State, favora-ble treatment as to the investor in question is crucial.

(3) Each Contracting Party shall accord to investors in its territory of the other contracting party, as regards the management, maintenance, use, enjoyment or aliéna-tion of their investments, treatment no less favourable than that it accords to its own investors to investors or of any third State, more favourable treatment to the investor concerned is crucial.

(4) If a Contracting Party accords special advantages to investors of a third State quel-conque by virtue of an agreement establishing a free trade area doua-nière union, a common market or a free trade agreement to which it is already a party or becomes, or by virtue of an agreement for the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other contracting party.

(5) To prevent any ambiguity, it is confirmed that the principles referred to in paragraphs (2) and (3) of this article shall not apply with respect to the special advantages to development finance institutions, such as tax matters.

(6) Each Contracting Party shall observe any obligations relating to investisse-ments as well as those made by its investors and investments of the other contracting party, in accordance with the provisions set out in this Agreement, and its own laws.

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Article 5. Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other contracting party have suffered losses due to a war or any other armed conflict, revolution, state of emergency, national revolt riot, insurrection or occurring in the territory of the latter Contracting Party, benefit from it, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than that it accords to its own investors to investors or of any third 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 as a result of:

(a) The requisition of their property by its forces or authorities; or

(b) The destruction of their property by its forces or authorities, which was not caused in combat or was not required by the necessity of the situation, shall be accorded adequate restitution or 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 6. Expropriation

(1) Investments of investors of one Contracting Party shall not be expropriated or nationalized, subjected to measures having effects equivalent to expropriation or nationalisation (hereinafter referred to as expropriation) in the territory of the other contracting party except for reasons of public interest and provided that such measures are consistent with the legal requirements, they are non-discriminatory and provide for prompt payment of adequate and effective compensation. the compensation shall amount to the actual value of the expropriated investment immediately before the expropriation is en-treprise or they are known to the public, the first of those facts are crucial. it shall include interest at a normal commercial rate until the date of payment, shall be paid without delay and shall be fully realizable freely transferable and 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 a right to a prompt review, according to the Law of the expropriating Contracting Party, by a judicial or other independent authority of that party of its case and of the valuation of his critically in accordance with the principles set out in this article.

(3) If a Contracting Party expropriating the assets of a company which is incorporated or constituted in accordance with the laws in force in its territory and in which investors of the other contracting party own shares, it shall ensure, to the extent necessary and in accordance with its legislation, by such investors shall be compensated in accordance with subparagraph (1) of this article.

Article 7. Free Transfer

(1) Each Contracting Party shall guarantee to investors of the other contracting party without delay the transfer in a freely convertible currency of the amounts relating to an investment pursuant to Articles 5 and 6 of this Agreement.

(2) The transfers shall be made at the rate of exchange prevailing on the date of transfer. in the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to domestic investments or the most recent exchange rate for conversion of currencies into special drawing rights concer-née rate (whichever is more favourable to the investor.

Article 8. Disputes Relating to Investment

(1) Subject to the provisions of paragraph (3) below, any dispute between an investor of one Contracting Party and an investor of the other contracting party concerning an in-vestissement in one of the Territories, 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 a period of six months, either of the two parties may initiate

legal proceedings before the competent court of the Contracting Party which has admitted the investment.

(3) In the event of a dispute concerning the amount of compensation arising from an expropria-tion, nationalization or any other measures having equivalent effect, as provided for in article 6 has not been resolved within 6 months after the use of amicable attempts referred to in paragraph 1 of this article by the investor, the dispute pour-ra be submitted to an international arbitration tribunal established by the two parties.

The provisions of this paragraph shall not apply where the investor concerned has resorted to the procedure provided for in paragraph (2) of this article.

(4) The international arbitration tribunal referred to above shall be constituted as follows: each party to the dispute shall appoint an arbitrator. the two arbitrators so appointed pro-cèderont appoint a third arbitrator as Chairman of the Tribunal. the arbi-tres shall be appointed within two months and the Chairman within four months from the date on which either party shall be notified to the other party of its in-tention to submit the dispute to arbitration.

(5) If the necessary appointments have not been made within the period specified in paragraph (4) above, either of the Parties may, in the absence of any other agreement, invite the President of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

(6) In addition to what is provided below, the arbitral tribunal shall determine its own procedure by 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 take its decision by a majority of votes.

(8) The decision of the arbitral tribunal shall be final and require the parties undertake to comply with the award.

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

(10) Each Party shall bear the cost of its own arbitrator and its counsel in the arbitral procé-dure. the cost of the President of the Court for its function as well as the other costs of the arbitral tribunal shall be borne equally by each of the Parties. the Tribunal in its award may however decide that a higher proportion of costs shall be borne by one of the two parties, and this award require both parties.

(11) The provisions of this article shall not affect the right of Contracting Parties also the procedures laid down in article 9, if the dispute concerns the interpretation or implementation of this Agreement.

Article 9. Disputes between the Contracting Parties

(1) Any dispute between the contracting parties concerning the interpretation or implementation of this Agreement shall as far as possible, be settled through diplomatic channels.

(2) If the dispute cannot be settled in this way within six months, it shall be submitted to arbitration at the request of either of the Contracting Parties.

(3) The Arbitral Tribunal (hereinafter referred to as the Tribunal "") shall be composed of three arbitrators, each party shall appoint one arbitrator and the third, who shall be the Chairman of the Tribunal and national of a third State, shall be appointed by mutual agreement between the contracting parties. such an arbitral tribunal shall be constituted for each individual case. within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator within two months from the date of appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

(4) In the event that the Tribunal has not been constituted within four months after the date of receipt of the request for arbitration, each Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator (s) / not yet appointed (s). if the President is a national of either party contrac-tantes or if it is unable to make the appointment, the vice-president may be required to do so. if the Vice-President is a national of either party contractatnes or if he is unable to do so, the member of the International Court, just after and who is not a citizen of the Parties contractan-tes, may be requested to make the necessary appointments, and so on.

(5) The tribunal shall take its decision by a majority of votes. the decision of the arbitral tribunal shall be final and require the parties undertake to comply with the provisions of the sen-tence. each Contracting Party shall bear the cost of its own arbitrator and its counsel in the arbitration proceedings and half the costs of the Chairman of the arbitral tribunal and other expenses. the Tribunal in its award may however decide that a higher proportion of costs shall be borne by one of the two

parties, and this award require both parties.

(6) The above except for the Tribunal shall establish its own rules of procedure.

Article 10. Principle of Subrogation

(1) If a Contracting Party or its designated agency makes a payment in respect of an investment in the territory of the other contracting party, the latter Contracting Party shall recognize the first assignment to the contracting party or its designated agency by law or pursuant to a contract of all rights and claims of indemnified the investor and the right of the former Contracting Party or agency dé-signé by it to exercise such rights and enforce such claims by virtue of subrogation to the same extent as the investor.

(2) Any payment made by one contracting party (or any representative, any institu-tion, any statutory body or any legal person designated by it) to its investors shall not affect the right of such investors to make claims against the other contracting party, in accordance with the provisions of article 8, provided that the exercise of such a right would not duplicate or not contradicted the exercise of a right by virtue of subrogation as provided for in paragraph (1) above.

Article 11. Other Special Rules and Commitments

(1) If the provisions of the legislation of a Contracting Party or rules of international law to accord investments of investors of the other contracting party to more favourable treatment than that provided for by the present Agreement, the latter shall prevail to the extent that they are more favourable.

(2) Each Contracting Party shall carry out any particular obligation entered into in respect of an investment in its territory by investors of the other party contrac-tante.

Article 12. Prohibitions and Restrictions

Nothing in this Agreement shall be construed to prevent a Contracting Party from taking any measure necessary for the protection of its essential security interests or for reasons of public health or disease prevention affec-tant animals and plants.

Article 13. Entry Into Force

(1) This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations by investors of the other contracting party, before or after its entry into force. for the avoidance of doubt, it is agreed that any investment, subject to the provisions of this Agreement shall be subject to the laws in force in the territory of the Contracting Party in which the investment has been ef-fectué.

(2) Each Contracting Party shall notify the other contracting party of the completion of the procedures required by its Law for the entry into force of this Agreement. this Agreement shall enter into force on the day following the date of receipt of the later of these notifications.

(3) This Agreement shall remain in force for a period of fifteen years. after the term, it shall remain in force until the expiration of twelve months from the date on which either Contracting Party has denounced in writing to the other.

(4) In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to apply for a further period of fifteen years from the expiry or for such longer period as may be agreed between the investor and the Contracting Party in whose territory the investment has been effec-tué. page

In WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Port Louis, on 14 March 2002, in duplicate, both texts being equally authentic.

.....(Sd.) Mons. Paul Raymond Berenger (SD). Ms.. Aïchatou Agne Pouye

Vice-Premier Ministre et Ministre de Finance Minister for Small and medium-sized enterprises and trade

Pour le Gouvernement de la République de Maurice For the Government of the Republic of Senegal