AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE FEDERAL ISLAMIC REPUBLIC OF THE COMOROS ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS, on the one hand;

AND THE GOVERNMENT OF THE ISLAMIC FEDERAL REPUBLIC OF THE COMOROS, on the other hand;

Hereinafter referred to as the "Contracting Parties";

Desiring to enhance economic cooperation between the two States and to create favourable conditions for investments of one Contracting Party in the territory of the other contracting party;

Recognizing that such an agreement will be conducive to stimulating business initiatives and to enhance confidence in the field of investment;

Recognizing that discrimination performed by either of the Contracting Parties, on the basis of nationality, in respect of investments made in its territory by investors of the other Contracting Party, is inconsistent with any stable investment framework or with any optimum and efficient use of economic resources,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means every asset and in particular, though not exclusively:

(i) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufructs, security, bond charges and similar land rights;

(ii) Shares, and other forms of participation shares in companies;

(iii) Debt securities issued by undertakings, claims and rights to any performance under a contract to economic value;

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

(v) Concessions conferred by law or under contract, including concessions to search, culture, extract or exploit natural resources, as well as any other rights conferred by law, by contract or by a decision of the Authority in accordance with the law.

Any alteration of the form in which assets are invested does not affect their status as investment.

(2) The term "investor" refers with regard to either Contracting Party:

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

(ii) Legal entities, including companies, corporations registered or not, and other organizations, which are constituted in accordance with the law of that Contracting Party;

(3) The term "returns" means the amounts derived from investment and includes in particular, though not exclusively, interests, capital gains, profits, dividends, royalties, and other fees.

(4) The term "territory" means,

(i) In respect of the Republic of Mauritius:

(a) all the territories and all the islands in accordance with 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 will be defined by the laws of Mauritius as an area, including the continental shelf, over which the rights of Mauritius with respect to the sea, the seabed and subsoil and their natural resources may be exercised.

(ii) with regard to the Islamic Federal Republic of the Comoros, all the territories and islands which, in accordance with the legislation of the Comoros, constitute the Comorian State, as well as the airspace and maritime zones, i.e. the marine and submarine areas which extend beyond the territorial waters over which, in accordance with International Law, sovereign rights are exercised for the purpose of exploring, exploiting and conserving natural resources.

Article 2. Scope

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.

Article 3. Investment Promotion

(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 required authorisations for the activities of consultants and experts.

Article 4. Treatment and Protection of Investments

(1) Each Contracting Party undertakes to provide in its territory fair and equitable treatment to direct or indirect investments and related activities undertaken by investors of the other Contracting Party, in accordance with the provisions of this Agreement.

(2) These investments and activities enjoy constant protection and security, excluding any unjustified or discriminatory measure which could adversely affect, in law or in fact, management, maintenance, use, enjoyment, or disposal.

(3) Each Contracting Party shall accord in its territory to investments and returns of investors of the other Contracting Party treatment no less favourable than that which it accords to investments and income of its own investors or to investments and income of investors of any third State, whichever treatment is more favourable to the investor concerned.

(4) Each Contracting Party shall accord in its territory to investors of the other Contracting Party, with respect to the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that which it accords to its own investors or to investors of any third State, whichever treatment is more favourable to the investor concerned.

(5) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union or common market agreements 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.

(6) To prevent any ambiguity, it is confirmed that the principles set out in subparagraphs (3) and (4) of this article shall not apply with respect to the special advantages granted to development finance institutions, such as tax matters.

Article 5. Free Transfer

(1) Each Contracting Party shall guarantee to investors of the other Contracting Party the transfer without delay and in a freely convertible currency of the amounts relating to an investment, including:

(a) Income;

(b) The amounts relating to loans for investment or other obligations;

(c) Additional contributions of capital necessary for the maintenance of the development or investment;

(d) Proceeds from the sale or the total or partial liquidation of an investment including capital gains.

(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 concerned, the rate, whichever is more favourable to the investor.

Article 6. Compensation for Losses

(1) Investors of a Contracting Party whose investments made in the territory of the other Contracting Party have suffered losses as a result of war or any other armed conflict, revolution, national emergency, revolt, insurrection or riot occurring in the territory of the latter Contracting Party, shall enjoy, on the part of the latter Contracting Party, as regards restitution, compensation, indemnification or any other settlement, treatment no less favourable than that which it accords to its own investors or to investors of any third State. Payments resulting therefrom shall be freely transferable at the rate of exchange applicable on the date of transfer in accordance with the exchange rules 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 7. Expropriation

(1) Investments by investors of one Contracting Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation in the territory of the other Contracting Party, except on grounds of public interest and provided that such measures comply with legal requirements, are non-discriminatory and give rise to the prompt payment of effective and adequate compensation. The compensation shall amount to the real value of the expropriated investment immediately before the expropriation is undertaken or becomes public knowledge, whichever occurs first. It shall include interest calculated at a normal commercial rate up to the date of payment, shall be paid without delay, shall be fully realizable and freely transferable on the basis of the exchange rate applicable on the date of transfer in accordance with the exchange rules 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 its investment in accordance with the principles set out in this Article.

(3) If a Contracting Party expropriates the assets of a company registered or constituted in accordance with the laws in force in its territory and in which investors of the other Contracting Party hold shares, it shall ensure, to the extent necessary and in accordance with its laws, that such investors are compensated in accordance with paragraph (1) of this Article.

Article 8. Principle of Subrogation

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 its designated agency to exercise such rights and enforce such claims by virtue of subrogation to the same extent as the investor.

Article 9. Investment Disputes

1. For the purposes of this article, a dispute relating to an investment is defined as a dispute concerning:

a) The interpretation or application of a particular investment agreement between a Contracting Party and an investor of the other Contracting Party;

b) The interpretation or application of any investment authorization granted by the authorities of the host State governing foreign investment;

c) The alleged breach of any right conferred by this Agreement or created with regard to investment.

2. Any dispute related to investments made subject to a written notification, accompanied by an aide-memoire sufficiently detailed established on the initiative of the investor of one of the Parties, to the other Contracting Party. The dispute shall preferably be settled amicably by an agreement between the parties to the dispute or by conciliation between the Contracting Parties, through diplomatic channels.

3. If the dispute cannot be settled through negotiations within a period of six months from written notification referred to in paragraph 2, either of the two parties may refer the dispute either to the competent courts of the Contracting Party in whose territory the investment has been made or to an international arbitral tribunal. To this end, each contracting party hereby gives its consent irrevocable, advance and that any such dispute is submitted to the Tribunal. This consent implies that each Contracting Party waives the administrative or judicial remedies.

(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 will appoint a third arbitrator as Chairman of the Tribunal. The arbitrators shall be appointed within two months and the Chairman within four months from the date on which either Party has notified the other party of its intention 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 Centre for Settlement of Investment Disputes (ICSID) 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 the reasons therefor.

(10) Each Party shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings. 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 to use the procedures laid down in article 10, if the dispute concerns the interpretation or implementation of this Agreement.

Article 10. 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 Contracting Party or if he is unable to make the appointment, the Vice-President may be required to do so. If the Vice-President is a national of either Contracting Party or if he is unable to do so, the member of the International Court, next in seniority and who is not a national of the Contracting Parties, 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 award. 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 is binding for both parties.

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

Article 11. Other Special Rules and Commitments

If the provisions of the legislation of a Contracting Party or rules of International Law accord to 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.

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 and prevention of animal and plant diseases.

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 made.

(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 valid for a period of ten years. After that 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 ten 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 made.

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

Done at…. on 18 May 2001, in duplicate, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS

FOR THE GOVERNMENT OF THE ISLAMIC FEDERAL REPUBLIC OF THE COMOROS