AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF THE GAMBIA AND THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF MAURITANIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Republic of The Gambia and the Government of the Islamic Republic of Mauritania hereinafter the "Parties",

Desiring to create favorable conditions for greater economic cooperation and investments on the basis of principles of equality and mutual benefit; and

Recognizing that the promotion and reciprocal protection of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

(a) investment means every kind of asset and in particular, though not exclusively, includes:

i. movable and immovable property as well as other such property rights;

ii. shares in and stock and debentures of a company and any other form of interest in a company;

iii. claims to money, or to any performance under contract having an economic value;

iv. Intellectual property rights, including without limitation the rights relating to trademark, patent, new design patent, copyright, trade secret, integrated circuit layout protection, and all other rights resulting from intellectual activities in the industrial, scientific, literary or artistic fields and trade names and goodwill; in accordance with each Partys laws and regulations;

v. rights or permits conferred by law or under contract, including concessions to search for, cultivate, extractor exploit natural resources;

The said term "investment" shall refer to those investments admitted in the territories of the Parties in accordance with relevant laws, regulations and administrative practices.

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

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

(c) "investor" means any natural person who is a national of either Party or a juristic person such as a corporation, firm or associations incorporated or established under the law in force of either party.

(d) "territory" means

(i) For the Republic of the Gambia - The territory, including the territorial sea and any maritime area situated beyond the territorial sea, over which the Republic of The Gambia may exercise sovereign rights or jurisdiction in accordance with relevant international and domestic laws.

(ii) For the Islamic Republic of Mauritania - the area situated inside the terrestrial frontiers, maritime areas, sub-maritime and sub-soil areas beyond the territorial waters over which the contracting parties exercise sovereign rights or jurisdiction according to the national or international laws.

Article 2. Promotion and Admission of Investments

(1) Each Party shall, subject to its laws and regulations in the field of foreign investment, encourage investments in its territory by investors of the other Party, and, subject to its right to exercise powers conferred by its laws, shall admit such investment.

(2) Each Party shall grant, in accordance with its laws and regulations, the necessary permits in connection with such investments and with the implementation of licensing agreements and contracts for technical, commercial or administrative assistance.

Article 3. Treatment of Investments

(1) Investments and returns of investors of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the Party. Neither Party shall in any way impair, by adopting unreasonable or discriminatory measures, the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Party.

(2) Each Party shall accord investments made by investors of the other Party in the former's territory a treatment no less favorable than that granted to investments of its own investors, or to investments or investors of any Third State, whichever is more favourable.

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

(a) any existing or future customs union, free trade area, common market, any similar international agreement or any interim arrangement leading up to such customs union, free trade area, or common market to which either of the Parties may become a party, or

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

Article 4. Compensation for Loses

Investors of either Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, revolt, insurrection, riot, a state of national emergency or any similar events shall be accorded by the latter Party, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Party accords to is own investors or any other in their State whichever is more favourable.

Article 5. Expropriation

(1) Investments of investors of either Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation (hereinafter referred to as expropriation) in the territory of the other Party except in the public interest, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation become public knowledge, whichever is earlier, shall include interest calculated according to the annual LIBOR rate until the date of payment, shall be made without delay, and be effectively realizable.

(2) The investor affected thereby shall have all right under the law of either Party making the expropriation, to promptly review, by judicial or other independent authorities of that Party, in accordance with the procedures established by the law of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 6. Transfers of Investments and Returns

Each Party shall allow, in accordance with its laws and regulations, investors of the other Party the free transfer of payments relating to their investments and returns, including compensation paid pursuant to Articles and 4 and 5. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer subject to the exchange regulations in force, transfers shall be affected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer.

Article 7. Settlement of Disputes between an Investor and a Party

(1) Disputes between an investor of either Party and the other Party concerning an obligation of the latter under this Agreement in relation to an investment of the former which have not been amicably settled shall, after a period of three months from written notification of a claim, be submitted to international arbitration if the investor concerned so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Party concerned in the dispute may agree to refer the dispute either to:

(a) the international Court of Arbitration of the International Chamber of Commerce in accordance with its Arbitration rules; or

(b) an international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

If after a period of three months from written notification of the claim there is no agreement to one of the above alternative procedures, the dispute shall at the request in writing of the investor concerned be submitted to arbitration at the International Court of Arbitration of the International Chamber of Commerce. The parties to the dispute may agree in writing to modify the rules applicable to the arbitration. The award shall be final and binding on the parties to the dispute. Each party undertakes to enforce the awards.

(2) The arbitration award shall be based on the provisions of this Agreement, thee national legislation of the Party on the territory or which the investment has been made, and the rules and generally accepted principles of international law.

Article 8. Disputes between the Parties

(1) Disputes between the Parties concerning the interpretation of application of this Agreement shall, if possible, be amicably settled through consultation.

(2) If a dispute between the Parties cannot thus be settled within a period of six months, it shall upon the request of either 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 Party shall appoint one member of the tribunal. Those two members shall then elect a national of a third State who on approval by the 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 members.

(4) If within the periods specified in paragraph (3) of this article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the Chairman of the International Court of Arbitration of the International Chamber of Commerce to make any necessary appointments. If the Chairman is national of either Party or if he is otherwise prevented from discharging the said function, the Vice-Chairman shall be invited to make the necessary appointments. If the Vice-Chairman is a national of either Party or if he too is prevented from discharging the said function, the member of the International Chamber of Commerce next in seniority who is not a national of either Party shall be invited to make the necessary appointments.

The arbitral tribunal shall reach its decision by a majority of votes.

(5) Each Party shall bear the costs of its own member of the tribunal and of its representation in the arbitral proceedings; the costs 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 these costs shall be borne by one of the two Parties. The Tribunal shall determine is own procedure.

(6) The award reached by the tribunal shall be final and binding on the Parties.

Article 9. Subrogation

If a Party or its designated agency makes a payment to its own investor under a guarantee it has given in respect of an investment in the territory of the other party, the latter Party shall recognize the assignment, whether by law or by legal transaction, to the former Party of all the rights and claims of the indemnified investor, and all recognize that the former 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.

Article 10. Application of other Rules

(1) If the provisions of the law of either Party or obligations under international law existing at present or estabilished hereafter between the Parties in addition to the rules contained in this Agreement, whether general or specific, entitling investments and returns of investors of the other Party to treatment more favourable than those which provided hereunder in this Agreement, such rules shall prevail.

(2) Each Party shall observe any obligation it may have entered into with regard o investments of investors of the other Party.

Article 11. Scope of the Agreement

This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but shall not apply to any dispute, which arose before entry into force of this Agreement.

Article 12. Final Provisions

(1) This Agreement shall enter into force on the date which the Parties, by an exchange of notes through diplomatic channel, notify each other that the respective domestic legal processes required for implementation of this Agreement have been completed.

(2) This agreemet 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 Party shall have given written notice of termination to the other.

(3) In respect of investments made prior to the date when the notice of termination becomes effective, the provisions of articles 1 to 11 shall remain in force with respect to such investments for a further period of twenty years from that day.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

Done in Nouakchott on this 9th day of May, 2001 in duplicate in the English and Arabic languages, both texts being equally authentic. In case of any difference of interpretation, the english text shall prevail.

For the Government of the Republic of The Gambia

Hon. FAMARA L. JATTA

Secretary of State for Finance and Economic Affairs

For the Government of the Islamic Republic of Mauritania

Mohamed OULD NANY

Minister of Economic Affairs and Development