

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

## **PREAMBLE**

The Government of The Republic of Mauritius and The Government of The Arab Republic of Egypt (hereinafter referred to as the "Contracting Parties");

DESIRING to intensify economic cooperation to the mutual benefit of both Contracting Parties;

INTENDING to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

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

CONVINCED that these objectives can be achieved without relaxing health, safety, environmental standards of general application, and prevention and combating of transnational organized crimes.

HAVE agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement, the following terms shall mean:

1. "investment" means every kind of asset that has the characteristics of an investment, such as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, the contribution to sustainable development, and established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, including in particular, though not exclusively:

(i) movable and immovable property as well as any other property rights such as mortgages, liens, pledges or usufruct;

(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, except claims arising solely out of commercial contracts for the sale of goods or services or from credits in relation to a commercial transaction of which the original maturity date is less than three years;

(iv) 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 law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which an investment has been made does not affect its character as investment pursuant to the Agreement.

2. "returns" mean the amount yielded by an investment and includes in particular, profit, interest, capital gains, dividends, royalties and fees.

3. "investor" means, with regard to either Contracting Party, any natural person or any legal entity, that has made an

investment in the territory of the other Contracting Party, provided that:

(a) the natural person derives his or her nationality in virtue of the laws of one of the Contracting Parties and is not simultaneously a national of the other Contracting Party;

(b) the legal entity is constituted or otherwise duly organized in accordance with the laws of one of the Contracting Parties and has, in the territory of that Contracting Party-

(i) committed capital or other resources;

(ii) the expectation of gain or profit;

(iii) assumed risk; or

(iv) contributed to sustainable development.

For the purposes of this definition, a legal entity shall include a company, a corporation, a public enterprise or any other business organization.

4. "territory" means:

(a) in respect 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 in 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;

(b) in respect of the Arab Republic of Egypt: the land territory, territorial waters, the exclusive economic zone(s), the continental shelf and the seabed over which the Arab Republic of Egypt exercises sovereign rights and jurisdiction in accordance with national and international law.

## **Article 2. Scope of Application of the Agreement**

1. This Agreement shall apply to investments made by investors of one Contracting Party, in the territory of the other Contracting Party in accordance with its laws and regulations, whether prior to or after the entry into force of the Agreement.

2. The Agreement shall however not be applicable to claims or disputes arising out of events that occurred prior to its entry into force.

3. The Agreement shall not apply to:

a. any matters relating to taxation;

b. procurement by a Contracting Party or a State enterprise of that Contracting Party;

c. subsidies or grants provided by a Contracting Party or a State enterprise of that Contracting Party, including government-supported loans, guarantees and insurance; and

d. investments made with capital or assets of illegal origin.

## **Article 3. Promotion, Facilitation and Admission**

1. Each Contracting Party shall promote and facilitate, in its territory, investments from investors of the other Contracting Party, in accordance with its laws and regulations, as well as with the relevant investment promotion policies.

2. Each Contracting Party shall also, as far as possible, promote and facilitate investments by its own investors into the territory of the other Contracting Party.

3. Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its laws and regulations.

4. Subject to its laws, regulations and policies relating to entry of foreign nationals, each Contracting Party shall grant temporary entry and stay in its territory to the investor and to key personnel employed by the investor in connection with an investment.

5. In order to increase investment flows, the Contracting Parties shall co-operate in such ways as:

- a. exchange of investment information including information on their laws, regulations and policies to increase awareness on investment opportunities;
- b. exchange of information on investment promotion activities and investment opportunities; and
- c. encouragement and support of investment promotion activities such as fairs, exhibitions, investment promotion missions, workshops, and seminars.

## **Article 4. Protection of Investments**

1. Each Contracting Party shall protect within its territory investments made, in accordance with its laws and regulations, by investors of the other Contracting Party, and shall grant to such investments fair and equitable treatment, protection and security.

2. The concepts of "fair and equitable treatment" and "protection and security" do not require treatment in addition to or beyond that which is required by the customary international law minimum standard of treatment of aliens.

3. Neither Contracting Party shall impair by arbitrary or discriminatory measures the management, maintenance, use, sale or other disposition of investments of investors of the other Contracting Party.

4. A violation of any other provision of this Agreement, or of another international agreement concluded by either Contracting Party, does not invariably mean that there has been a violation of this article.

## **Article 5. Treatment of Investments**

1. Each Contracting Party shall grant to investors of the other Contracting Party treatment no less favorable than that it grants, in like circumstances, to its own investors or to investors of a third party with respect to management, maintenance, use, sale, or other disposition of investments in its territory, whichever is more favourable.

2. Each Contracting Party shall grant to covered investments of an investor of the other Contracting Party treatment no less favourable than that granted by each Contracting Party to investments made in its territory by its own investors or investors of any third Party, whichever is more favourable.

3. If a Contracting Party grants special advantages to investments of investors of any third party by virtue of an agreement establishing a free trade area, a customs union or a common market or a regional arrangement of similar nature or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to grant such advantages to investments of investors of the other Contracting Party.

4. It is understood that the most favoured nation treatment referred to in this article does not extend to the provisions on the settlement of disputes included in other international agreements related to investment concluded by the relevant Contracting Party.

## **Article 6. Compensation for Losses**

The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, State of emergency, revolution, which took place in the territory of the other Contracting Party shall be accorded by the latter Contracting Party a treatment as regard to restitution, indemnification, compensation or any other consideration, no less favorable than that which that Contracting Party accords to its own investors or to investors of any third country, whichever is more favorable to the investors concerned.

## **Article 7. Expropriation**

1. Investments of an investor of either Contracting Party in the territory of the other Contracting Party shall not be subjected to nationalization or expropriation or subjected to any measure having an effect equivalent to nationalization or expropriation unless the measures are taken on a non-discriminatory basis, for public purpose, in accordance with due process of law and against payment of compensation in accordance with this Article.

2. The compensation shall be based on the market value of the investments affected immediately before the nationalization or expropriation measure took place or before the measure became publicly known, whichever is earlier.
3. Where the compensation value cannot be readily ascertained, the compensation may be determined in accordance with generally recognized equitable principles of valuation taking into account the capital invested, its depreciation, the capital already repatriated, the replacement value and other relevant factors.
4. The amount of compensation shall include interest at a normal commercial rate from the date of dispossession until the date of payment.
5. The compensation shall be settled in a freely convertible currency, be paid without delay and be freely transferable.
6. The investor affected shall have a right to access, under the law of the Contracting Party making the expropriation, to the juridical or other independent authority of that Party, in order to review the legality of any such nationalization, expropriation or equivalent measure and the amount of compensation. The Contracting Party making the expropriation shall make every endeavor to ensure that such review is carried out promptly.
7. Where a Contracting Party expropriates the assets of a legal entity which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall, to the extent necessary and subject to its laws, ensure that compensation according to this Article will be made available to such investors.

## **Article 8. Transfers**

1. Each Contracting Party shall grant investors of the other Contracting Party the transfer without delay in a freely convertible currency of payments in connection with an investment, and in particular of:

(i) returns;

(ii) payments made under a contract related to investment entered into by the investor, or by its investment, including payments pursuant to a loan agreement;

(iii) proceeds from the sale of all or any part of the investment, or from the partial or complete liquidation of the investment; and

(iv) payments arising from compensation payable under Articles 6 (Compensation for Losses) and 7 (Expropriation) of this Agreement.

2. A transfer shall be deemed to have been made "without delay" if effected within such a period as is normally required for the completion of transfer formalities. Such period shall in no case exceed three months.

3. Unless otherwise agreed with the investor, transfers shall be made at the rate of exchange applicable on the date the transfer is made pursuant to the exchange regulations of the Contracting Party in whose territory the investment was made.

4. Where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary policy or exchange rate policy to any one of the Contracting Parties, the Contracting Party concerned may take safeguard measures with regard to capital movements that are strictly necessary, for a period not exceeding six months, provided that these measures are consistent with the Articles of Agreement of the International Monetary Fund in compliance with reservations of each Contracting Party. The application of safeguard measures may be extended through their formal reintroduction.

5. The Contracting Party adopting the safeguard measures shall inform the other Contracting Party, as soon as possible, with a time schedule for their removal. In addition, these safeguard measures shall:

(i) be non-discriminatory;

(ii) avoid unnecessary damage to the economic and financial interests of the other Contracting Party;

(iii) not exceed those necessary to deal with the circumstances described above; and

(iv) be temporary and phased out progressively as the situation specified above improves.

## **Article 9. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be, to the extent possible, settled through direct consultation and negotiation.
2. If the Contracting Parties cannot reach an agreement within six months from the beginning of the dispute, it shall be submitted by either Contracting Party for settlement to an arbitral tribunal.
3. The arbitral tribunal shall be constituted on an ad-hoc basis, as follows:
  - The arbitral tribunal shall comprise three arbitrators.
  - Each Contracting Party shall appoint one arbitrator and these two arbitrators shall designate a third arbitrator as a chairman of the arbitral tribunal. The chairman shall not be a national of a Contracting Party.
  - Each Contracting Party shall appoint an arbitrator within two months after receipt through diplomatic channels of the request from the other Contracting Party.
  - The chairman shall be appointed by the two other members of the arbitral tribunal within two months of their own appointment.
  - If within the periods specified in this Article the necessary appointments have not been made, either Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the necessary appointments.
  - If the President of the International Court of Justice is a national of either Contracting Party or if he/she 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 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 Party, shall be invited to make the necessary appointments.
4. Unless otherwise mutually agreed upon by the Contracting Parties, the arbitral tribunal shall determine its own rules and procedures. The tribunal shall settle the dispute in accordance with the provisions of the Agreement and applicable rules and principles of international law. It shall reach its decisions by a majority of votes.
5. Unless otherwise mutually agreed upon by the Contracting Parties, the decision of the arbitral tribunal shall be delivered within twelve months of the appointment of the chairman of the arbitral tribunal and shall be final.
6. Each Contracting Party shall bear the costs of the arbitrator appointed by it and of its representation in the arbitral proceedings. The costs related to the chairman and any remaining costs shall be borne equally by the Contracting Parties unless the arbitral tribunal decides otherwise.
7. The decision delivered by the arbitral tribunal shall be binding on both Contracting Parties.

## **Article 10. Settlement of Disputes between an Investor and a Contracting Party**

1. Disputes between a Contracting Party and an investor of the other Contracting Party relating to an investment of the latter in the territory of the former, which concern an alleged breach of this Agreement (hereinafter referred to as "investment dispute") shall, without prejudice to Article 9 of this Agreement (Disputes between the Contracting Parties), to the extent possible, be settled through consultation, negotiation, mediation or conciliation after written notification of the alleged breach has been made.
2. Before submitting an investment dispute for settlement in accordance with paragraph (3), the investor may, in addition to the procedures in paragraph (1), submit the dispute to the domestic administrative procedures of the Contracting Party in whose territory the investment has been made in parallel or in conjunction with the procedures of settlement referred to in paragraph (1).
3. If the dispute cannot be settled through the procedures in paragraphs (1) and (2) within twelve months of the written notification, either party to the dispute shall be entitled to initiate judicial action before the competent court of the Contracting Party in whose territory the investment was made.
4. If the investment dispute cannot be settled through the procedures of settlement referred to in paragraphs (1) and (2), within twelve months from the date of the written notification or neither party is interested in submitting the dispute to the courts of the Contracting Party in whose territory the investment has been made under paragraph (3), the Parties to the dispute may agree, through written consent, to submit it, either to:

- Cairo Regional Centre for International Commercial Arbitration;
  - The LCIA-MIAC Arbitration Centre in Mauritius;
  - An ad-hoc tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
  - The International Centre for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington, on March 18, 1965; or
  - Any other national or international arbitration institution or under any other arbitration rules.
5. Once the investment dispute has been submitted to the competent court of the Contracting Party in whose territory the investment was made or to the arbitration fora referred to in paragraph (4), that choice is final.
6. No claim may be submitted by the investor to either a national court or to arbitration if more than five years have elapsed from the date on which the investor acquired, or should have first acquired, knowledge of the breach of this Agreement and knowledge of the loss or damage arising from that breach.
7. Unless the disputing parties agree otherwise, the arbitral tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the Chairman, appointed by agreement of the disputing parties. In case the arbitral tribunal has not been constituted within 3 months from the date of submission of the request for arbitration, the arbitrator or arbitrators not yet appointed, upon request of either disputing party, shall be appointed according to the chosen arbitration rules.
8. An arbitral tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of a disputing party.
9. In the case where the investor and the Contracting Party in whose territory the investment is made have signed a State contract or an investment agreement, the procedure relating to the settlement of disputes foreseen in that contract or agreement shall apply to the settlement of disputes arising from the breach or violation of that contract or agreement.
10. The arbitral tribunal shall reach its decision on the basis the provisions of this Agreement, national laws and regulations of the Contracting Party which is a party to the dispute and applicable rules of international law.
11. Where the arbitral tribunal makes a final award against a party, the tribunal may award, separately or in combination:

(a) monetary damages and any applicable interest; or

(b) restitution of property, in which case the award shall provide that the party may pay monetary damages and any applicable interest in lieu of restitution.

The tribunal may also award costs and attorneys' fees in accordance with this Agreement and the applicable arbitration rules.

12. An award made by a tribunal shall be final and binding on the disputing parties in respect of the particular case.

13. Subject to the award being revised, annulled or set aside in whole or in part by an appropriate judicial instance, a disputing party shall abide by and comply with an award without delay. Each Contracting Party shall provide for the enforcement of an award in its territory in accordance with its national law.

## **Article 11. Subrogation**

1. If either Contracting Party or its designated agency has made a payment in accordance with a financial guarantee against non-commercial risks concerning an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of that other Contracting Party by virtue of a subrogation to the rights of the investor. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

2. Any payment made by one Contracting Party or its designated Agency to its 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 10 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 12. Application of other Rules**

Notwithstanding the articles of this agreement, 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 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 13. Security Exceptions**

Subject to the requirement that such measures are not applied in an arbitrary or discriminatory manner or constitute a disguised restriction on investors and investments, nothing in this Agreement shall be construed to prevent either Contracting Party from taking measures to fulfill its obligations with respect to the protection of its essential security interests, the protection of public health or the prevention of diseases and pests in animals or plants.

## **Article 14. Entry Into Force**

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 following the date of receipt of the last notification.

## **Article 15. Duration and Termination**

1. This Agreement shall remain in force for an initial period of ten years and shall remain in force thereafter unless either Contracting Party notifies the other Contracting Party, in writing, of its intention to terminate it. The termination of this Agreement shall become effective one year after notice of termination has been received by the other Contracting Party.
2. With respect to investments made prior to the date when the termination of this Agreement becomes effective, its provisions shall continue to be effective for a period of ten years after the said termination.
3. This Agreement may be amended by agreement among both Contracting Parties. Such amendment shall enter into force on the date to be agreed upon by the Contracting Parties.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Balaclava on 25 th of June 2014 in duplicate in English and Arabic languages, each text being equally authentic.

For

The Government of The Republic of Mauritius

For

The Government of The Arab Republic of Egypt

Mr. D. Manraj, G.O.S.K. Financial Secretary

Dr. Hassan Fahmy

Chairman General Authority of Investment