Agreement between the Government of the Republic of Mauritius and the Government of the People's Republic of China for the Reciprocal Promotion and Protection of Investments

The Government of the People's Republic of China and the Government of the Republic of Mauritius (hereinafter referred to as the "Contracting Parties");

Desiring to create favourable conditions for investment by nationals and/or companies of one Contracting Party in the territory of the other Contracting Party; and

Recognizing that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in the territories of both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement—

The term "investment" means every kind of asset invested by nationals and/or companies of one Contracting Party in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and in particular, though not exclusively, includes:

(a) Movable and immovable property and other property rights such as mortgage , usufruct, lien or pledge;

(b) Share, stock, debenture and similar interests in companies;

(c) Rights to money or to any contract having an economic value;

(d) Intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and goodwill;

(e) Business concessions conferred by law or under contract, including any concession to search for, cultivate extract or exploit natural resources.

"returns" means monetary returns yielded by an investment including any profit, interest, capital gain, dividend, royalty payment, technical assistance or other fee.

"nationals" means—

(a) In respect of the People's Republic of China, a natural person who is citizen of the People's Republic of China according to its laws;

(b) In respect of Mauritius, a natural person who is a citizen of the Republic of Mauritius according to its laws.

"company" means—

(a) In respect of the People's Republic of China, any company, firm, association or body, incorporated, established or registered under the laws in force in the People's Republic of China;

(b) In respect of Mauritius, any company, firm, association or body, incorporated, established or registered under the laws in force in the Republic of Mauritius.

"territory "means—

(a) 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 in accordance with international law has been or may hereafter he 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 the case of the People's Republic of China—

The territory of the People's Republic of China as defined in its laws and the adjacent areas over which the People's Republic of China has sovereignty, sovereign rights or jurisdiction in accordance with international law.

Article 2. Applicability of this Agreement

(1) This Agreement shall only apply—

(a) In respect of investments in the territory of the People's Republic of China, to all investments made by nationals and/or companies of the Republic of Mauritius which are specifically approved in writing by the competent authority designated by the Government of the People's Republic of China and upon such conditions, if any, as it shall deem fit;

(b) In respect of the investments in the territory of Mauritius, to all investments made by nationals and/or companies of the People's Republic of China 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 Agreement shall apply to all investments made by nationals and/or companies 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 Investment

(1) Each Contracting Party shall encourage and create favourable conditions for nationals and/or companies of the other Contracting Party to make in its territory investments that are in line with its general economic policy.

(2) Investments approved under Article 2 shall be accorded fair and equitable treatment and protection in accordance with this Agreement.Article 2 shall be accorded fair and equitable treatment and protection in accordance with this Agreement.

(3) Each Contracting Party shall grant assistance in accordance with its laws and provide facilities for obtaining visa and working permit to nationals of the other Contracting Party to or in the territory of the Former in connection with activities associated with such investments.

Article 4. Most Favoured National Provisions

(1) Subject to Articles 5 and 11, neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of Article 2 or returns of nationals and/or companies of the other Contracting party to treatment less favourable than that which it accords to investments or returns of nationals and/or companies of any third State.Articles 5 and 11, neither Contracting Party shall in its territory subject investments admitted in accordance with the provisions of Article 2 or returns of nationals and/or companies of the other Contracting party to treatment less favourable than that which it accords to investments or returns of nationals and/or companies of any third State.

(2) If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Agreement, result in a position entitling investments by nationals and/or companies of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement. In addition to those specified in this agreement each Contracting Party shall observe any commitment made by it in accordance with its laws to nationals and/or companies of the other Contracting Party as regards their investments.

Article 5. Exceptions

(1) The provisions of this Agreement relating to the grant of treatment not less favourable than that accorded to the nationals and/or companies of any third State shall not be construed so as to oblige one Contracting Party to extend to the

nationals and/or companies of the other Contracting Party the benefit of any treatment, preference or privilege resulting form—

(a) Any regional arrangements for customs, monetary, tariff or trade matters (including a free trade area) or any agreement designed to lead in future to such a regional arrangement; or

(b) Any agreement for facilitating frontier trade.

(2) Matters relating to taxation shall be governed by any Avoidance of Double Taxation Treaty between the two Contracting Parties and the domestic laws of each Contracting Party.

Article 6. Expropriation

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, nationals and/or companies of the other Contracting Party of their investments unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are not discriminatory or contrary to any undertaking which the Contracting Party which takes such measures may have given;

(c) The measures are taken against just compensation. Such compensation shall represent the genuine value of the investments affected, shall include interest at a normal commercial rate until the date of payment and shall, in order to be effective for the claimants concerned and in the currency of the country of which the claimants are nationals or in any freely convertible currency accepted by the claimants.

(2) Where one Contracting Party takes any measure referred to in paragraph 1 of this Article 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 nationals and/or companies 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 nationals and/or companies of the other Contracting Party who are owners of those shares.paragraph 1 of this Article 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 nationals and/or companies 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 nationals and/or companies of the other Contracting Party who are owners of those shares.

Article 7. Compensation

Nationals and/or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict. 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, if any, no less favourable than that which the latter Contracting Party accords to nationals and/or companies of any third State.

Article 8. Repatriation

(1) Each Contracting Party shall guarantee to nationals and/ or companies of the other Contracting Party the free transfer, in accordance with its laws and regulations and on a non-discriminatory basis, of their investment and the returns from any investments, including—

(a) Profits, capital gain, dividends , royalties , interests and other current income accruing from any investment;

(b) The proceeds of the total or partial liquidation of any investment;

(c) Repayments made pursuant to a loan agreement in connection with investment;

(d) Licence fees in relation to the matters in Article 1 (d);Article 1 (d);

(e) Payments in respect of technical assistance, technical services and management fees;

(f) Payments in connection with contracting projects;

(g) Earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the

Contracting Party.

(2) Nothing in paragraph (1) of this Article shall affect the free transfer of compensation paid under Article 6 of this Agreement.paragraph (1) of this Article shall affect the free transfer of compensation paid under Article 6 of this Agreement.

Article 9. Exchange Rate

The transfers referred to in Articles 6 to 8 of this Agreement shall be effected at the prevailing market rate in freely convertible currency on the date of transfer. In the absence of such a market rate the official rate of exchange shall apply.

Article 10. Laws

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.

Article 11. 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 or its essential security interests, or to the protection of public health or the prevention of diseases and pests in animals or plants or the protection of its environment.

Article 12. Subrogation

(1) In the event that either Contracting Party (or any agency, institution, statutory body or corporation designated by it) as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to its own national and/or companies in respect of any of their claims under this Agreement, the Contracting Party (or any agency, institution, statutory body or corporation designated by it) is entitled by virtue of subrogation to exercise the rights and assert the claims of its own nationals and/or companies. The subrogated right or claim shall not be greater than the original right or claim of the said investor.

(2) Any payment made by one Contracting Party (or any agency, institution, statutory body or corporation designated by it) to its nationals and/or companies shall not affect the right of such nationals and/or companies to make their claims against the other Contracting Party in accordance with Article 13 provided that the exercise of such a rights does not overlap, of is not in conflict, with the exercise of a right in virtue of subrogation under paragraph (1).Article 13 provided that the exercise of such a rights does not overlap, of is not in conflict, with the exercise of a right in virtue of subrogation under paragraph (1).

Article 13. Investment Disputes

(1) Any dispute between a national and/or company 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 any measure referred to in paragraph (1) of Article 6 cannot be settled within six months after resort to negotiation as specified in paragraph (1) of this Article by the national and/or company concerned, it may be submitted to an international arbitral tribunal established by both parties.paragraph (1) of Article 6 cannot be settled within six months after resort to negotiation as specified in paragraph (1) of this Article by the national and/or company concerned, it may be submitted to an international arbitral tribunal established by both parties.

The provisions of this paragraph shall not apply if the national and/or company concerned has resorted to the procedure specified in paragraph (2) of this article.

(4) The international arbitral tribunal mentioned above shall be especially 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 this submission of the dispute to arbitration.

(5) If the necessary appointments are not made within the period specified in paragraph (4), eithe 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.paragraph (4), eithe 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 and the parties shall abide by and comply with the terms of its award.

(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 its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be 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 decision shall be binding on both parties.

(11) The arbitration shall be held in the territory of the Contracting Party where the investments was made.

(12) The provisions of this Article shall not prejudice the Contracting Parties from using the procedures specified in Article 14 where a dispute concerns the interpretation of any provision of this Agreement.Article 14 where a dispute concerns the interpretation of any provision of this Agreement.

Article 14. Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation of any provision of this Agreement shall, as far as possible, be settled through diplomatic channels.

(2) If any such dispute cannot be settled, it shall upon the request of either Contracting Party be submitted to arbitration. The arbitral tribunal (hereinafter called "the tribunal") shall consist of three arbitrators, one appointed by each Contracting Party, and the third, who shall be the Chairman of the tribunal, appointed by agreement of the Contracting Parties.

(3) Within two months of receipt of the request for arbitration, each Contracting Party shall appoint an arbitrator, and within two months of such appointments of the two arbitrators, the Contracting Parties shall appoint the third arbitrator who shall be the Chairman and shall not be a national of either party.

(4) If the tribunal shall not have been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national of either Contracting Party or if he is unable to do so, the Vice-President may be invited 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 of Justice next in seniority who is not a national of either Contracting Party may be invited to make the necessary appointments and so on.

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

(6) The tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award.

(7) Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half the costs of the Chairman and the remaining costs. 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 decision shall be binding on both parties.

(8) Apart from the above, the tribunal shall establish its own rules of procedure.

Article 15. Entry Into Force, Duration, Termination and Amendment

(1) Each Contracting Party shall notify the other Contracting Party of the fulfillment of its internal legal procedures required for the bringing into force of this Agreement. This Agreement shall enter into force on the 30th day from the date of the

notification of the latter Contracting Party.

(2) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of nine years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(3) This Agreement may be amended by a written Agreement between the Parties. Any amendment shall enter into force when each Party has notified the other that it has completed all internal requirements for entry into force of such amendment.

(4) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 14 shall remain in force for a further period of ten years.Articles 1 to 14 shall remain in force for a further period of ten years.

Done in duplicate at Port Louis on 4th may, 1996 in the Chinese and English languages, all texts being equally authentic.

For the Government of the People's Republic of China

For the Government of the Republic of Mauritius