AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF BENIN CONCERNING THE ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the Republic of Mauritius, on the one hand,

And

The Government of the Republic of Benin, on the other hand,

(hereinafter referred to as the Contracting Parties)

DESIRING to strengthen their economic cooperation by creating favourable conditions for the realisation of investments by investors of one of the Contracting Parties in the territory of the other Contracting Party;

CONSIDERING the beneficial influence that such an Agreement may have in improving business contacts and strengthening confidence in the field of investment;

RECOGNISING the need to encourage and protect foreign investment with a view to promoting the economic prosperity of both Contracting Parties;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" shall mean any direct or indirect contribution of assets and any direct or indirect contribution in any company or undertaking in any sector of economic activity, including, but not limited to:

a) movable and immovable property, as well as all other rights in rem such as mortgages, pledges, securities, usufruct and similar rights;

b) shares and other forms of participation in undertakings;

c) claims and rights to all benefits having an economic value;

d) intellectual property rights, which include in particular copyright, patents, industrial designs, trade marks and registered names, commercial rights and customer rights;

e) concessions under public law, including concessions for the research, extraction or exploitation of natural resources.

Any alteration of the form in which assets and capital invested or reinvested shall not affect their character as "investment" within the meaning of this Agreement. such investments shall be carried out in accordance with the laws and regulations in force in the host country.

2. The term "investor" means:

(a) any natural person having the nationality of Benin or Mauritius under the legislation of the Republic of Benin or the Republic of Mauritius respectively and making an investment in the territory of the other Contracting Party.

(b) any legal person, including companies, firms, business associations and other organisations, corporations which are incorporated and have their registered office in the territory of the State of the same Contracting Party and making an

investment in the territory of the other Contracting Party.

3. The term "income" refers to amounts net of taxes reported by an investment, including but not limited to profits, interest, dividends and licence fees.

4. The term "territory" means,

i. in relation to the Republic of Mauritius:

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

ii. as regards the Republic of Benin, the territory of the Republic of Benin, including the territorial sea and airspace above the territorial sea and the territorial sea over which the Republic of Benin exercises sovereignty, as well as the contiguous zone, the continental shelf and the exclusive economic zone over which the Republic of Benin exercises jurisdiction, respectively sovereign rights in accordance with its own legislation and international law.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party undertakes to encourage investments in its territory by investors of the other Contracting Party and admits such investments in accordance with its laws and regulations.

The extension, modification or conversion of an investment made in accordance with the laws and regulations in force in the host country shall be treated as a new investment.

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.

3. Investments made by investors of one of the Contracting Parties in the territory of the other Contracting Party shall enjoy from the latter fair and equitable treatment and, subject to such measures as are strictly necessary for the maintenance of law and order, full protection and security. Each Contracting Party undertakes to ensure that the management, maintenance, use, enjoyment or disposal in its territory of the investments of the other Contracting Party is not hindered by unjustified or discriminatory measures.

Income from the investment and, in the event of its reinvestment in accordance with the legislation of a Contracting Party, shall enjoy the same protection as the initial investment.

Article 3. Treatment of Investments

1. Each Contracting Party shall ensure in its territory fair and equitable treatment for investments of investors of the other Contracting Party which shall be no less favourable than that which it accords to investments of its own investors, or to investments of the most favoured nation, if the latter is more favourable. Each Contracting Party shall accord in its territory to investments of investors of the other Contracting Party, in respect of activities related to their investments, treatment no less favourable than that which it accords to its own investors or to investors of the most-favoured-nation, whichever is the more favourable.

2. The most-favoured-nation treatment does not apply to the privileges that a Contracting Party grants to investors from a third State by virtue of its participation in or association with a free trade area, an economic or customs union, a common market or any other form of regional economic organisation, or a similar international agreement or a convention for the avoidance of double taxation in fiscal matters or any other tax convention.

Article 4. Expropriation and Compensation

Neither Contracting Party shall take either directly or indirectly, measures of expropriation or nationalization or any other measures having the same nature or effect against investments belonging to investors in the territory of the other Contracting Party except for reasons of public interest, on a non-discriminatory basis and in accordance with due process.

The measures shall be accompanied by provisions for the payment of prompt, effective and adequate compensation. The amount of such compensation shall be paid in a freely convertible currency and will correspond to the real value of the affected investments immediately before the date on which the measures taken or were publicly available. In the event of late payment, the compensation shall include interest at market conditions from the date of receipt.

Article 5. Compensation for Losses

Investors of one of the Contracting Parties whose investments suffer damage or loss as a result of war or any other armed conflict, revolution, state of national emergency, revolt, insurrection or any other similar event in the territory of the other Contracting Party, shall enjoy from the latter non-discriminatory treatment at least equal to that accorded to its own investors or to investors of the most favoured nation with regard to restitution, compensation, indemnification or other damages, whichever treatment is the more favourable.

Article 6. Free Transfers

1. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee to such investors, after the fulfilment of tax obligations, the free transfer in convertible currency of the liquid assets relating to such investments, in particular :

a) a capital sum or an additional amount intended to maintain and increase the investment;

b) profits, dividends, interest, royalties and other current income;

c) sums needed to repay loans relating to the investment;

d) the proceeds of the sale or total or partial liquidation of the investment;

e) compensation due pursuant to Articles 4 and 5;

2. The transfers referred to in paragraph 1 shall be effected at the rate of exchange applicable on the date of the transfer in accordance with the exchange regulations in force.

3. The guarantees provided for in this Article shall be at least equal to those granted to investors of the most favoured nation who are in similar situations.

Article 7. Subrogation

1. Where one of the Contracting Parties or the agency designated by it makes payments to its own investors under a financial guarantee covering non-commercial risks in connection with an investment in the territory of the State of the other Contracting Party, the latter shall recognise, by virtue of the principle of subrogation, the assignment of any right or title of that investor to the first Contracting Party or the agency designated by it. The other Contracting Party shall be entitled to deduct taxes and other public obligations due and payable by the investor.

2. In accordance with the guarantee given for the investment concerned, the insurer is entitled to assert all the rights that the investor could have exercised if the insurer had not been subrogated to it.

Article 8. Settlement of Disputes between an Investor and the Contracting Party Receiving the Investment

1. Any dispute relating to investments within the meaning of this Agreement, between one of the Contracting Parties and an investor of the other Contracting Party shall, as far as possible, be settled amicably between the two Parties.

2. If the dispute has not been settled within six (6) months from the time it was raised by either of the Parties concerned, it shall be submitted, at the request of the investor:

a) either to the national courts of the Contracting Party involved in the dispute;

b) or to international arbitration, under the conditions described in paragraph 3 below.

Once an investor has submitted the dispute either to the courts of the Contracting Party involved in the dispute or to international arbitration, the choice of one or the other of these procedures shall remain final.

3. In the event of recourse to international arbitration, the dispute may be brought before one of the arbitration bodies

designated hereafter, at the investor's choice:

a) the International Centre for Settlement of Investment Disputes (ICSID) established by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" opened for signature in Washington on 18 March 1965.

b) an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. The arbitral tribunal shall decide on the basis of the provisions of this Agreement, the law of the Contracting Party Party to the dispute, including the rules relating to conflict of laws, the terms of any special agreements which may have been concluded in respect of the investment and the principles of international law in this field.

5. Arbitral awards shall be final and binding on the Parties to the dispute. Each Contracting Party shall carry them out in accordance with its own legislation.

Article 9. Settlement of Disputes between the Contracting Parties

1. Any dispute between the contracting parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.

2. If the dispute cannot be settled within six (6) months after the beginning of negotiations, it should be submitted to an arbitral tribunal, in accordance with the provisions of this Article.

3. The arbitral tribunal shall be constituted as follows: each of the two Contracting Parties shall appoint an arbitrator within three (3) months following receipt of the request for arbitration. These two arbitrators shall choose a third arbitrator who shall be a national of a third State and who, with the approval of the two Contracting Parties, shall be appointed Chairman of the Tribunal. The arbitrators shall be appointed within three (3) months and the President within five (5) months from the date of receipt of the request for arbitration.

4. If within the periods specified in paragraph (3) of this article, the arbitrators have not been appointed, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or if it is otherwise may perform this function, the Vice-President shall be invited to make the appointments.

If the Vice-President is a national of either of the Contracting Parties or cannot discharge the function, the member of the International Court of Justice next in seniority and who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall reach its decision on the basis of the provisions of the present Agreement and other agreements in force between the Contracting Parties in accordance with the principles of international law.

6. The arbitral tribunal shall determine the procedures and take its decisions by majority vote. The decisions shall be binding on both Contracting Parties. Each Contracting Party shall bear the costs of its arbitrator and counsel in the arbitral proceedings. The costs relating to the Chairman and other expenses shall be shared equally between the two Contracting Parties.

Article 10. Applicable Rules

Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or under existing international conventions or undertaken by the parties in the future, investors of the other Contracting Party may avail itself of the provisions that are most favourable.

Article 11. 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 diseases animal and plant diseases.

Article 12. Application

This Agreement shall also cover, with regard to its future application, investments made in foreign currency before its entry

into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations. However, this Agreement shall not apply to disputes which may arise before its entry into force.

Article 13. Entry Into Force and Termination

1. This Agreement shall be subject to ratification and shall enter into force 30 days from the date of receipt of the last of the two notifications relating to the completion by both Contracting Parties of the constitutional procedures in their respective countries.

It shall remain in force for a period of ten (10) years. Unless one of the Contracting Parties denounces it, in writing, at least six (6) months before the expiry of its period of validity, it shall be tacitly renewed for a further period of ten years, each Contracting Party reserving the right to denounce it by written notification at least six months before the date of expiry of the current period of validity.

2. Investments made prior to the date of expiry of this Agreement shall remain subject to it for a period of ten years from the date of the said expiry.

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

Done at.... on 18 May 2001 in two originals, both texts being equally authentic.

For the Government of the Republic of Mauritius

For the Government of the Republic of Benin