

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS, SIGNED IN PORT-LOUIS ON 8 MARCH 2010**

The Government of the French Republic and the Government of the Republic of Mauritius, hereinafter referred to as the "Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favourable conditions for French investments in Mauritius and Mauritian investments in France ;

Convinced that the encouragement and protection of these investments are likely to stimulate the transfer of capital and technology between the two countries in the interest of their economic development;

Have agreed upon the following provisions:

## **Article 1. Definitions**

For the application of this Agreement :

1. The term "investment" means all assets, such as property, rights and interests of every kind and, more specifically but not exclusively:

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

(b) shares, stocks and other forms of participation, whether or not in the form of minority or indirect holdings, in companies incorporated in the territory of one of the Contracting Parties ;

(c) obligations, claims and entitlements to any benefits of economic value ;

(d) intellectual, commercial and industrial property rights such as copyrights, patents of inventions, licences, trademarks, industrial models and designs, technical processes, the know-how, registered names and clientele;

(e) concessions granted by law or under contract, including concessions relating to the exploration, cultivation, extraction or exploitation of natural resources, including those in the maritime zone of the Contracting Parties.

It is understood that such assets must be or have been invested in accordance with the legislation of the Party. in the territory or maritime area of which the investment is made, before or after the date of the investment. the entry into force of this Agreement.

No change in the form in which the assets are invested shall affect their investment status, at provided that such amendment is not contrary to the legislation of the Contracting Party in the territory or

in the maritime area in which the investment is made.

2. The term "investor" means :

(a) Nationals, i.e. natural persons possessing the nationality of one of the Contracting Parties.

(b) Any legal person incorporated in the territory of one of the Contracting Parties in accordance with the legislation of the latter and having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal persons having their registered office in the territory of one of the Contracting Parties, or by legal persons having their registered office in the territory of one of the Contracting Parties and constituted in accordance with the legislation of

the Contracting Parties.

The following, in particular, shall be regarded as legal persons within the meaning of this article: companies, on the one hand, and non-profit organisations with legal personality on the other hand.

3. The term "income" refers to all sums produced by an investment, such as profits, royalties or interest, during a given period.

The income from the investment and, in the case of reinvestment, the income from its reinvestment shall benefit from the same protection as the investment.

4. This Agreement shall apply to the territory of each of the Contracting Parties and to the maritime area of each of the Contracting Parties, hereinafter defined as the economic zone and the continental shelf that extend beyond the limit of the territorial waters of each of the Contracting Parties and over which they have, in accordance with International Law, sovereign rights or jurisdiction for the purpose of prospecting, exploitation and preservation of natural resources.

5. Nothing in this Agreement shall be construed to prevent any Contracting Party from making any provisions to govern investments by foreign investors and the conditions under which they are made; and of the activities of these investors, as part of measures to preserve and encourage diversity cultural and linguistic. The provisions of this paragraph shall be without prejudice to any other agreement by cultural and technical matters between the Contracting Parties.

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

For the application of this Agreement, it is understood that the Contracting Parties shall be responsible for the actions of or omissions of their public authorities, and in particular of their federated states, regions, local authorities, or of any other entity over which the Contracting Party exercises trusteeship, representation or responsibility for its international relations or sovereignty.

## **Article 3. Encouragement and Admission of Investments**

Each Contracting Party shall encourage and permit, within the framework of its legislation and the provisions of this Agreement, investments made by investors of the other Party in its territory and in its zone maritime.

## **Article 4. Fair and Equitable Treatment**

Each Contracting Party undertakes to ensure, in its territory and maritime area, fair and equitable treatment, in accordance with the principles of international law, for investments by investors of the other Party and to ensure that the exercise of the right so recognised is not hindered in law or in fact. In particular, although not exclusively, any restriction on the purchase and transport of raw and auxiliary materials, energy and fuels, as well as of means of production and exploitation of any kind, any impediment to the sale and transport of goods within the country and abroad, and any other measures having a similar effect, shall be considered as obstacles in law or in fact to fair and equitable treatment.

The Contracting Parties shall give sympathetic consideration, within the framework of their domestic legislation, to requests for entry and authorisation for residence, work and movement introduced by nationals of a Party in respect of an investment made in the territory or maritime area of the other Party contractor.

## **Article 5. National Treatment and Most-favoured-nation Treatment**

Each Contracting Party shall apply in its territory and maritime zone to investors of the other Contracting Party, in respect of their investments and activities related to such investments, treatment no less than investors, or the treatment accorded to investors from the most favoured nation in the world, or the treatment accorded to investors from the most favoured nation in the world, favoured, if the latter is more advantageous. In this connection, nationals authorised to work in the territory and in the (b) the maritime area of one of the Contracting Parties must be able to benefit from appropriate material facilities for the exercise of their professional activities.

This treatment does not, however, extend to the privileges granted by a Contracting Party to investors in a third State, by virtue of its participation in or association with a free trade area, customs union, a common market or any other form of regional economic organisation.

## **Article 6. Exceptions [fiscal]**

1. Most-favoured-nation treatment and national treatment shall not apply to tax advantages which the Contracting Parties grant or will grant in the future on the basis of agreements to avoidance of double taxation or other fiscal arrangements.
2. Nothing in this Agreement shall be construed to prevent the adoption or application by the Contracting Parties of measures aimed at preventing the avoidance or evasion of taxes in accordance with the provisions of agreements for the avoidance of double taxation or other fiscal arrangements or national legislation.
3. Nothing in this Agreement shall be construed to prevent the Contracting Parties from to distinguish, in the application of the relevant provisions of their tax legislation, between the taxpayers who are not in identical situations, in particular with regard to their place of residence.

## **Article 7. Dispossession and Compensation**

1. Investments made by investors from either of the Contracting Parties shall benefit, in the territory and the maritime area of the other Contracting Party, full protection and security, and whole.
2. The Contracting Parties shall not take expropriation or nationalisation measures or any other measures the effect of which is to deprive, directly or indirectly, investors of the other Party of investments belonging to them, in their territory and maritime area, except in the public interest and provided that such measures are not discriminatory or contrary to a particular undertaking.

Any dispossession measures which may be taken shall give rise to the payment of prompt and adequate compensation, the amount of which, equal to the real value of the investments concerned, shall be assessed in relation to a normal economic situation and prior to any threat of dispossession.

This compensation, its amount and the manner of its payment shall be fixed no later than the date of dispossession. Such compensation shall be effectively realisable, paid without delay and freely transferable. It shall bear interest up to the date of payment at the appropriate market rate.

3. Investors of one of the Contracting Parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or revolt occurring in the territory or maritime zone of the other Contracting Party, shall receive from the latter treatment no less favourable than that accorded to its own investors or most-favoured-nation treatment if the latter is more favourable.

## **Article 8. Free Transfer**

Each Contracting Party in whose territory or maritime area investments have been made by investors of the other Contracting Party shall grant such investors free transfer :

- (a) interest, dividends, profits and other current income ;
- (b) royalties arising from the intangible rights referred to in Article 1(1)(d) and (e);
- (c) payments made for the repayment of loans duly contracted ;
- (d) the proceeds of the sale or liquidation of the investment or of the total or partial liquidation of the investment, including capital gains ;
- (e) the compensation for loss or dispossession provided for in Article 7(2) and (3) above.

Nationals of each Contracting Party who have been authorised to work in the territory or maritime area of the other Contracting Party in respect of an approved investment shall also be authorised to transfer to their country of origin an appropriate proportion of their remuneration.

The transfers referred to in the preceding paragraphs shall be effected without delay at the normal rate of exchange officially applicable on the date of transfer.

Where, in exceptional circumstances, movements of capital to or from third countries cause or threaten to cause a serious disequilibrium in the balance of payments, each Contracting Party may temporarily apply safeguard measures relating to transfers, provided that such measures are strictly necessary, are applied on an equitable, non-discriminatory and bona fide basis and do not exceed a period of six months.

The provisions of the preceding paragraphs of this Article shall not prevent a Contracting Party from exercising in good faith its international obligations and its rights and obligations under its participation in, or association with, a free trade area,

customs union, common market, economic and monetary union or any other form of regional cooperation or integration.

## **Article 9. Settlement of Disputes between an Investor and a Contracting Party**

Any investment dispute between one of the Contracting Parties and an investor of the other Contracting Party shall be settled amicably between the two parties concerned.

If such a dispute has not been settled within six months from the time it was raised by either of the parties to the dispute, it shall, at the request of either of those parties, be submitted to arbitration by the International Centre for Settlement of Investment Disputes (I.C.S.I.D.), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, signed at Washington on 18 March 1965.

Where the dispute is of such a nature as to give rise to liability for the acts or omissions of public authorities or bodies dependent on one of the two Contracting Parties, within the meaning of Article 2 of this Agreement, the said public authority or body shall be required to give its unconditional consent to recourse to arbitration by the International Centre for Settlement of Investment Disputes (I.C.S.I.D.), within the meaning of Article 25 of the Convention for the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on 18 March 1965.

## **Article 10. Guarantee and Subrogation**

1. To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case examination, to investments made by investors of that Party in the territory or maritime area of the other Party.
2. Investments by investors of one of the Contracting Parties in the territory or maritime area of the other Party may not obtain the guarantee referred to in the above sub-paragraph unless they have first obtained the approval of the latter Party.
3. If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime area of the other Party, makes payments to one of its investors, it shall thereby be subrogated to the rights and shares of that investor.
4. Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to the C.I.R.D.I. or to pursue the actions brought before it until the proceedings have been completed.

## **Article 11. Specific Commitments**

Investments which have been the subject of a special undertaking by one Contracting Party to investors of the other Contracting Party shall, without prejudice to the provisions of this Agreement, be governed by the terms of that undertaking to the extent that it contains more favourable provisions than those provided for in this Agreement. The provisions of Article 9 of this Agreement shall apply even in the case of a specific undertaking providing for the waiver of international arbitration or designating an arbitral tribunal different from that mentioned in Article 9 of this Agreement.

## **Article 12. Settlement of Disputes between Contracting Parties**

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.
2. If the dispute is not settled within six months from the date on which it was raised by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal.

The said tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall designate one member and the two members shall designate, by common agreement, a national of a third State who shall be appointed President of the tribunal by the two Contracting Parties. All members shall be appointed within two months from the date on which one of the Contracting Parties has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party may, failing any other agreement, request the President of the International Court of Justice to make the necessary appointments. If the President is a national of one or other of the Contracting Parties, or if he is unable to make the said appointment, the Vice-President may be called upon to do so. If the Vice-President is a national of one or other of the Contracting Parties or if he is unable to do so, the member next in seniority of the International Court who is not a national of the Contracting Parties and is not

prevented from holding that office may be called upon to make the necessary appointments, and so on.

5. The Arbitration Tribunal shall take its decisions by majority vote. Such decisions shall be final and binding as of right on the Contracting Parties.

The tribunal shall itself determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal provides otherwise, having regard to special circumstances, the costs of the arbitral proceedings, including the fees of the arbitrators, shall be shared equally between the Contracting Parties.

### **Article 13. Entry Into Force and Duration**

Each Party shall notify the other of the completion of its internal procedures required for the entry into force of this Agreement, which shall take effect one month after the day of receipt of the last notification.

As from its entry into force, this Agreement cancels and replaces the Convention between the Government of the French Republic and the Government of Mauritius on the Protection of Investments, signed at Port Louis on 22 March 1973.

The Agreement is concluded for an initial period of ten years. It shall remain in force after this term unless one of the Parties denounces it through diplomatic channels with one year's notice.

At the expiry of the period of validity of this Agreement, investments made during the period of validity of this Agreement shall continue to benefit from the protection of its provisions for a further period of twenty years.

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

Signed at Port Louis, on 8 March 2010, in two originals in the French language.

For the Government of the French Republic :

The Secretary of State for Foreign Trade, at the Ministry of the Economy, Industry and Employment,

ANNE-MARIE IDRAC

For the Government of the Republic of Mauritius :

The Deputy Prime Minister, Minister of Finance and Economic Empowerment,

RAMAKRISHNA SITHANEN