

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED ARAB EMIRATES AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

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

Desiring to promote greater economic co-operation between them, with respect to investments made by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that agreement on the promotion and reciprocal protection to be accorded to such investments will stimulate the flow of capital and the economic development of the Contracting Parties;

Considering that a stable framework for investments will ensure effective utilization of economic resources and improve living standards;

Agreeing that the establishment of investments must be in accordance with their laws and regulations;

Understanding that promotion of such investments requires co-operative efforts of the investors of both Contracting Parties;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investor" means in respect of either Contracting Party:

- a. a natural person, who is a national of a Contracting Party and who makes an investment in the territory of the other Contracting Party;
- b. a legal entity, such as a corporation, foundation, trust, firm or association, incorporated or constituted under the laws and regulations of that Contracting Party, which is effectively managed in that Contracting Party;
- c. the Government or Government-owned entities of a Contracting party.

2. The term "investment" means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular:

- a. movable and immovable property as well as any other rights, such as mortgages, pledges, usufructs and similar rights;
- b. stocks, shares, debentures and other forms of participation in companies;
- c. returns reinvested;
- d. claims to money or any other rights to legitimate performance having financial value related to an investment, except claims to money arising solely from:
  - i. commercial contracts for the sale of goods or services by a national of a Contracting Party or an enterprise in the territory of a Contracting Party to an enterprise in the territory of the other Contracting Party;
  - ii. the extension of credit in connection with a commercial transaction such as trade financing.

e. Intellectual and industrial property rights, which are recognized under the domestic law of the host Contracting Party, including copyrights and related rights, trademarks, patents, industrial designs and technical processes, rights in plants varieties, know-how, trade secrets, trade names and goodwill;

f. rights to engage in economic and commercial activities conferred by law, by administrative act or by virtue of a contract. In the case of the United Arab Emirates, natural resources shall not be covered by this Agreement.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment, provided that such change is not contrary to the approvals granted, if any, to the assets originally invested.

3. The term "returns" means income derived from an investment and includes, in particular, but not exclusively profits, dividends, capital gains, interests, royalties and any other fees.

4. The term "freely convertible currency" shall mean any currency that is widely used in international transactions and is traded on principal exchange markets.

5. The term "territory" means in respect to:

a. 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;

(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. The United Arab Emirates: the territory of the United Arab Emirates, its territorial sea, airspace and submarine areas over which the United Arab Emirates exercises in accordance with international law and the law of United Arab Emirates sovereign rights; including the Exclusive Economic Zone and the mainland and islands under its jurisdiction in respect of any activity carried on in its water, seabed and subsoil in connection with the exploration for or the exploitation of the natural resources by virtue of its law and international law.

6. The term "competent authority" means:

In case of the United Arab Emirates, the Ministry of Finance or its authorized representative;

In case of the Republic of Mauritius, the Ministry responsible for the subject matter of finance or its authorized representative.

## **Article 2. Promotion and Encouragement of Investments**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

2. In order to encourage mutual investment flows, each Contracting Party shall endeavour as far as possible to inform the other Contracting Party, at its request of the investment opportunities in its territory.

## **Article 3. Protection of Investments**

1. Investments and returns of investors of either Contracting party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party.

2. Neither Contracting party shall hamper, by arbitrary or discriminatory measures, the development, management, use, enjoyment or disposal of investments made in its territory by investors of the other Contracting Party.

3. In accordance with its laws and regulations, each Contracting Party shall as far as possible make publicly available its laws and regulations pertaining to investments.

4. Each Contracting Party shall in accordance with its laws and regulations ensure to investors of the other Contracting Party the right of access to its courts of justice, administrative tribunals and agencies and all other judicial authorities.

## **Article 4. National and Most Favoured Nation Treatment**

1. Each Contracting Party shall, in accordance with its laws and regulations, accord in its territory to investments and returns of investors of the other Contracting Party a treatment no less favourable than that which it accords to investments and returns of its own investors, or to investments and returns of investors of any third State, whichever is more favourable to the investors concerned.

2. Each Contracting Party shall accord in its territory to the investors of the other Contracting Party with regard to development, management, maintenance, use, enjoyment, sale or other disposal of their investment, a treatment which is no less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable to the investors concerned.

3. The treatment accorded to an investor of a Contracting Party under this Article does not extend to the pre-establishment stage of the investment.

4. Notwithstanding any other bilateral investment agreement the Contracting parties have signed with other States before or after the entry into force of this Agreement, the most favored nation treatment shall not apply to procedural or judicial matters. In this respect, for more certainty there shall be no importation of more favourable protection arising from such other Agreements

5. The provisions of paragraph 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

a. any existing or future customs union or economic or monetary union, free trade area or similar international agreements to which either of the Contracting Party is or may become a party in the future;

b. any international agreement or arrangement, wholly or partially related to taxation.

## **Article 5. Performance Requirement**

Neither Contracting Party shall in its territory impose mandatory measures on investments by investors of the other Contracting Party, concerning the purchase of materials, means of production, operation, transport, marketing of its products

Or similar orders having unreasonable or discriminatory effects. This paragraph shall not apply to measures taken in accordance with the laws and regulations in the course of government procurement of goods and services at any level of the government of the Contracting Party, and Freeport activities which are approved and licensed in accordance with the Freeport Act of Mauritius

## **Article 6. Compensation for Damage or Loss**

1. When investments made by investors of either Contracting Party suffer loss or damage owing to war or other armed conflict, civil disturbances, state of national emergency, revolution, riot or similar events in the territory of the other Contracting Party they shall be accorded by the latter Contracting Party treatment, as regards restitution, compensation or other settlement, not less favorable than the treatment that the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favorable to the investors concerned.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the events referred to in that paragraph suffer damage or loss in the territory of the other Contracting Party resulting from:

a) requisitioning of their property or part thereof by its forces or authorities

b) destruction of their property or part thereof by its forces or authorities which was not caused in combat or was not required by the necessity of the situation,

Shall be accorded prompt, adequate and effective compensation or restitution for the damage or loss sustained during the period of requisitioning or as a result of destruction of their property. Resulting payments shall be made in freely convertible currency and be freely transferable without delay.

## **Article 7. Expropriation**

1. A Contracting Party shall not expropriate or nationalize directly or indirectly in its territory an investment of an investor of the other Contracting Party or take any measures having equivalent effect such as freezing, or levying excessive tax

(hereinafter referred to as "expropriation") except if the following conditions occur simultaneously:

- a. for a purpose which is in the public interest,
  - b. on a non-discriminatory basis,
  - c. in accordance with due process of law, and
  - d. accompanied by payment of prompt, adequate and effective compensation.
2. Compensation shall amount to the fair market value of the investment expropriated immediately before the expropriation or impending expropriation became known, whichever is the earlier.
3. Where the fair market value cannot be ascertained, the compensation shall be determined in equitable manner taking into account all relevant factors and circumstances, such as the capital invested, the nature and duration of the investment, replacement cost, book value and goodwill.
4. Compensation shall be paid without delay, be effectively realizable and freely transferable.
5. An investor of a Contracting Party affected by the expropriation carried out by the other Contracting Party shall have the right to prompt review of its case, including the valuation of its investment and the payment of compensation in accordance with the provisions of this Article, by a judicial authority or another competent and independent authority of the latter Contracting Party.
6. Where a Contracting Party expropriates the assets of a legal entity that is constituted in its territory according to its laws and regulations and in which investors of the other Contracting Party participate, it shall ensure that the provisions of this Article are applied in a way that it guarantees such investors adequate and effective compensation.

## **Article 8. Transfers**

1. In accordance with its laws and regulations in force in the territory of the Contracting Party, each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of the other Contracting Party shall be freely transferred into and out of its territory without delay. Such transfers shall include, in particular:

- a. initial capital and additional amounts to maintain or increase an investment;
- b. returns;
- c. payments made under a contract, including repayments pursuant to a loan agreement;
- d. proceeds from the sale or liquidation of all or any part of an investment;
- e. payments of compensation under Articles 6 and 7 of this Agreement;
- f. payments under Article 9 of this Agreement;
- g. payments arising out of the settlement of an investment dispute;
- h. earnings and other remuneration of personnel engaged from abroad in connection with an investment.
- i. Profits and returns of national airlines.

2. Each Contracting Party shall ensure that the transfers under paragraph 1 of this Article are made without delay and in a freely convertible currency, at the market rate of exchange prevailing on the date of transfer and under the laws and regulations in force in the territory of the Contracting Party where investments have been made.

3. Notwithstanding paragraph 1 and 2 of this Article, a Contracting Party may in accordance with its laws and regulations, in good faith and in equitable and non-discriminatory manner temporarily prevent the transfers to apply its laws and regulations relating to:

- a- protection of creditors in bankruptcy proceedings; and
- b- Criminal offences.

## **Article 9. Subrogation**

1. If one Contracting Party or its designated agency (for the purpose of this Article: the "guarantor") makes a payment under a guarantee given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

- a. the assignment to the guarantor of all the rights and claims of the party indemnified; and
- b. that the guarantor is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor, and shall assume the obligations related to the investment.

2. The guarantor shall be entitled in all circumstances to:

- a. the same treatment in respect of the rights, claims and obligations acquired

By it, by virtue of the assignment; and

- b. any payments received in pursuance of those rights and claims

As the party indemnified was entitled to receive it by virtue of this Agreement, in respect of the investment concerned and its related returns.

3. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

4. Notwithstanding paragraph 1 of this Article, subrogation shall take place in the Contracting Party only after the approval of the competent authority of that Contracting Party.

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

1. An investor that has a dispute with a Contracting Party should initially attempt to settle it amicably through consultations and negotiations.

2. To start consultations and negotiations, the investor shall deliver to the competent authority of the relevant Contracting Party a written notice. The notice shall specify:

- a. the name and address of the disputing investor;
- b. the provisions of this Agreement alleged to have been breached;
- c. the factual and legal basis for the claim; and
- d. the remedy sought and the amount of damages claimed, if any.

3. When required by the Contracting Party, if the dispute cannot be settled amicably within three months from the date of receipt of the written notice, it shall be submitted to the competent authority of that Contracting Party or arbitration centers thereof, for conciliation and mediation.

4. If the dispute cannot be settled amicably within six months from the date of the start of the conciliation and mediation process referred to in paragraph 3 of this Article, the dispute may upon the request of the investor be settled as follows:

- a. by a competent court of the Contracting Party in whose territory the investment is made; or
- b. by arbitration centers of a Contracting Party in whose territory the investment is made; or
- c. by arbitration by 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 th March 1965; or
- d. by arbitration in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), as amended by the last amendment accepted by both Contracting Parties.

5. At any stage of the proceedings the investors and the host state may withdraw the case if they agree on any other mode of settlements in connection with the dispute.

6. The arbitral award shall be final and binding. Each Contracting Party shall ensure the recognition and enforcement of the arbitral award in accordance with its laws and regulations.

7. A Contracting Party which is a party to a dispute shall not, at any stage of conciliation or arbitration proceedings or enforcement of an award, raise the objection that the investor who is the other party to the dispute has received an indemnity by virtue of an insurance in respect of all or a part of its losses.

8. When the investor and any designated entity of a Contracting Party or its local government have concluded an agreement concerning the investments of the investor, the dispute settlement procedure stipulated therein shall apply.

## **Article 11. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible by negotiations.

2. If a dispute under paragraph 1 of this Article cannot be settled within six months it shall upon the request of either Contracting Party be submitted to an arbitral tribunal of three members.

3. Such arbitral tribunal shall be constituted for each individual case. Each Contracting Party shall appoint one member and these two members shall agree upon a national of a third State as their chairman. Such members shall be appointed within two months from the date one Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitral tribunal, the chairman of which shall be appointed within two further months.

4. If the periods specified in paragraph 3 of this Article are not observed, either Contracting Party may, in the absence of any other relevant 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 of the Contracting Parties or if he is otherwise prevented from discharging the said function, the Vice-president or in case of his inability the member of the International Court of Justice next in seniority according to the Rules of the Court should be invited under the same conditions to make the necessary appointments. The appointed judge should be a national of a State that has diplomatic relations with the Contracting parties.

5. The arbitral tribunal shall establish its own rules of procedure unless the Contracting Parties decide otherwise.

6. The arbitral tribunal shall reach its decision in virtue of this Agreement and pursuant to the rules of international law. It shall reach its decision by a majority of votes; the decision shall be final and binding.

7. Each Contracting Party shall bear the costs of its own member and of its legal representation in the arbitration proceedings. The costs of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The tribunal may, however, in its award determine another distribution of costs.

## **Article 12. Application of other Rules**

1. Without prejudice to Article 4, if the legislation of either Contracting Party or obligations between the Contracting Parties under international law existing at present or established hereafter between the Contracting Parties, in addition to this Agreement, contain rules whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such rules shall to the extent that they are more favourable to the investor, prevail over this Agreement.

2. The Contracting Parties recognize that it is inappropriate to encourage investment by relaxing public health, safety or environmental measures. They shall not waive or otherwise derogate or offer to waive from such measures as an encouragement or establishment or expansion in their territories of an investment.

3. The investor should respect laws and regulations that pertain to essential security interests, or to the protection of public health or the prevention of diseases and pests in animals or plants.

## **Article 13. Application of the Agreement**

This Agreement shall apply to investments made prior to or after the entry into force of this Agreement, but shall not apply to any investment dispute that may have arisen nor any claim that was settled before its entry into force.

## **Article 14. Consultations**

The Contracting Parties shall hold consultations on any matter relating to the implementation or application of this Agreement, including on settlement of investment disputes. These consultations shall be held at the request of one of the

Contracting Parties at a place and time to be agreed upon through diplomatic channel.

## **Article 15. Limitation of Benefits**

1. Benefits of this Agreement shall not be available to:

- i. An investor of a Contracting Party, if the main purpose of the acquisition of the nationality of that Contracting Party was to obtain benefits under this Agreement that would not otherwise be available to the investor; or
- ii. An investor of a non-party who acquires the ownership or control of an investment through planning of nationality where the investor has structured his investment through intermediary countries and that non-party has no diplomatic relationship with the host state.

2. Prior to denying the benefits of this Agreement, the denying Contracting Party shall notify and consult the other Contracting Party of such denial of benefits.

## **Article 16. Entry Into Force, Amendments, Duration and Termination**

1. This Agreement shall enter into force on the date of receipt of the later notification through diplomatic channels by which either Contracting Party notifies the other Contracting Party that its internal legal requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement may be amended in writing by the mutual consent of the Contracting Parties. Such amendments shall enter into force according to the same procedure as the Agreement.

3. This Agreement shall remain in force for a period of ten years. Thereafter it shall continue to remain in force until the expiration of twelve months from the date on which the other Contracting Party shall have given written notice of termination of this Agreement to the other Contracting Party through diplomatic channel. In respect of investments approved or made prior to the date the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force with respect to such investments for a further period of ten years from that date or for any longer period as provided for or agreed upon in the relevant contract or approval granted to that investor.

4. This Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

In witness whereof, the undersigned duly authorized have signed this Agreement.

Done at Dubai on 20/09/2015 in duplicate, in the Arabic and English languages, all three texts being equally authentic. In a case of divergence of interpretation, the English text shall prevail.

FOR THE UNITED ARAB EMIRATES

FOR THE REPUBLIC OF MAURITIUS