Agreement on Promotion and Reciprocal Protection of Investment between the Government of the Kingdom of Sweden and the Government of the Republic of Mauritius

The Government of the Kingdom of Sweden and the Government of the Republic of Mauritius,

Desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and reciprocal protection of such investments favour the expansion of economic relations between the two Contracting Parties and stimulate investment initiatives;

Recognizing that the development of economic and business ties can promote respect for internationally recognized fundamental principles and rights at work; and

Agreeing that these objectives can be achieved without relaxing essential security interests, health and safety and environmental measures of general application;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) "investment" means any kind of asset owned or controlled directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights, such as lease, mortgage, lien, pledge, usufruct and similar rights;

(b) Shares, stocks, debentures or other kinds of interest in a company or enterprise;

(c) Title to money or any performance having an economic value;

(d) Industrial and intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights;

(e) Business concessions conferred by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.

(2) "investor" of a Contracting Party means:

(a) Any natural person who is a national of that Contracting Party in accordance with its laws;

(b) Any legal person or other organisation incorporated, constituted or set up in accordance with the laws applicable in that Contracting Party; and

(c) Any legal person not established under the law of that Contracting Party but effectively controlled by an investor as defined under (a)or(b).

(3) "returns" means the amounts yielded by an investment and in particular, though not exclusively, include profit, interest, capital gains, dividends, royalties or fees.

(4) "territory" means the territory of each Contracting Party including the land, airspace and territorial sea, as well as the exclusive economic zone and the seabed and subsoil over which the Contracting Party exercises, in accordance with

international law, sovereign rights and jurisdiction for the purpose of exploration, exploitation and conservation of natural resources.

(5) Any change in the form in which assets are invested shall not affect their character as investments.

Article 2. Scope and Application of the Agreement

(1) This Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party.

(2) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

Article 3. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, encourage the making of investments in its territory by investors of the other Contracting Party and shall, subject to compliance with the provisions of its laws, admit such investments.

(2) Each Contracting Party shall use its best endeavours to grant, in accordance with its laws, the necessary permits in connection with the carrying out of such investments and, whenever necessary, licensing agreements and contracts for technical, commercial or administrative assistance.

(3) Subject to the laws and regulations relating to the entry and residence of non-citizens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

(4) Each Contracting Party shall, at all times, accord fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof nor the acquisition of goods and services or the sale of their production, through unreasonable or discriminatory measures.

(5) The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, shall enjoy the full protection of this Agreement and in no case shall a Contracting Party award treatment less favourable than that required by international law. Each Contracting Party shall observe any obligation it has entered into with investors of the other Contracting Party with regard to their investment.

(6) Each Contracting Party shall ensure that its laws, regulations, administrative practices and procedures of general application, and adjudicatory decisions, that pertain or affect investments covered by this Agreement are promptly published or otherwise made publicly available.

(7) Returns yielded from an investment shall be given the same treatment and protection as an investment.

Article 4. National and Most Favoured Nation Treatment of Investments

(1) Each Contracting Party shall apply to investments made in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of third States, whichever is more favourable.

(2) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union or a common market, of which it is or may become a member, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

(3) The provisions of Paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 5. Expropriation

(1) Neither Contracting Party shall take any measures, such as nationalisation or expropriation, depriving directly or

indirectly, an investor of the other Contracting Party of an investment 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 distinct and not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency.

(2) Any compensation under this Article shall be equal to the open market value of the investment expropriated at the time immediately before the expropriation or impending expropriation became known, whichever is the earlier (hereinafter referred to as the "Valuation Date"). The open market value shall, at the request of the investor, be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. The compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

(3) The provisions of Paragraphs (1) and (2) of this Article shall also apply to the returns from an investment as well as in the event of liquidation, to the proceeds from such liquidation.

(4) Investors of a Contracting Party affected by expropriation shall have the right to a prompt review by a judicial authority or other independent authority of the other Contracting Party, of their case and of the valuation of their investments, in accordance with the principles established in this Article.

(5) Where a Contracting Party expropriates the assets of a company or an enterprise in its territory in which investors of the other Contracting Party have an investment, including through the ownership of shares, it shall ensure that the provisions of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party.

Article 6. Compensation

(1) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall be transferable without delay in freely convertible currency.

(2) Without prejudice to paragraph (1) of this Article, investors of a Contracting Party who in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from,

(a) Requisitioning of its investment or part thereof by the latter's forces or authorities; or

(b) Destruction of its investment or part thereof by the latter's forces or authorities, which were not required by the necessity of the situation,

Shall be accorded restitution or compensation, which in either case shall be prompt, adequate and effective.

Article 7. Transfers

(1) Each Contracting Party shall allow without delay the transfer in a freely convertible currency of payments in connection with an investment, and shall include in particular though not exclusively:

(a) The returns;

(b) The proceeds from a total or partial sale or liquidation of any investment by an investor of the other Contracting Party;

(c) Funds in repayment of loans;

(d) Compensation according to Articles 5 and 6; and

(e) Any additional contributions of capital necessary for the maintenance or development of the investment.

(2) Any transfer referred to in this Agreement shall be effected at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of

currencies into Special Drawing Rights, whichever is the most favourable to the investor.

Article 8. Subrogation

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 10, recognize the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or title to the same extent as its predecessor in title.

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

(1) Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, as far as possible, be settled amicably.

(2) If any such dispute cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investor's choice, for resolution by international arbitration to one of the following fora:

i) The International Centre for Settlement of Investment Disputes (ICSID) for settlement by arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States provided both Contracting Parties have adhered to the said Convention, or

ii) An ad hoc tribunal set up under Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under the said rules shall be the Secretary General of ICSID.

(3) If the parties to such a dispute have different opinions as to whether conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

(4) For the purpose of this Article and Article 25(2)(b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting party and which, before a dispute arises, was controlled by an investor of the other Contracting Party, shall be treated as a national of the other Contracting Party.

(5) Any arbitration under the UNCITRAL Arbitration Rules shall, at the request of either party to the dispute, be held in a state that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958 (the New York Convention).

(6) The consent given by each Contracting Party in paragraph (2) and the submission of the dispute by an investor under the said paragraph shall constitute the written consent and written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre), Article 1 of the UNCITRAL Arbitration Rules and Article II of the New York Convention.

(7) In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defense, counterclaim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received pursuant to an insurance or guarantee contract.

(8) Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such an award.

Article 10. 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 by negotiations between the Governments of the two Contracting Parties.

(2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party, has advised the other Contracting Party of its wish to submit the dispute to an arbitration

tribunal.

(4) If the time limits referred to in Paragraph (3) of this Article have not been complied with, 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.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 11. Application of other Rules

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 12. Entry Into Force, Duration and Termination

(1) The Contracting Parties shall notify each other when the constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date either Contracting Party notifies in writing the other Contracting Party of its decision to terminate this Agreement.

(3) 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 11 shall remain in force for a further period of twenty years from that date.

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

Done at Port Louis on 23rd February 2004 in duplicate in the English language.

Hon. Pravind Kumar JUGNAUTH

Deputy Prime Minister and Minister of Finance and Economic Development

For the Government of the Republic of Mauritius

Ms. Lotta FODGE

State Secretary, Ministry of Industry, Employment and Communications

For the Government of the Kingdom of Sweden

This protocol forms an integral part of the Agreement.

With regard to Article 9 on dispute settlement between an investor and a Contracting Party, it is the understanding of the

Contracting Parties that recourse to national courts is not excluded.

Done at Port Louis on 23rd February 2004 in duplicate in the English language.

Hon. Pravind Kumar JUGNAUTH

Deputy Prime Minister and Minister of Finance and Economic Development

For the Government of the Republic of Mauritius

Ms. Lotta FODGE

State Secretary, Ministry of Industry, Employment and Communications

For the Government of the Kingdom of Sweden