AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF ROMANIA ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

DESIRING to intensify economic cooperation to the mutual benefit of both States,

INTENDING to create and maintain favourable conditions for investments by investors of the State of one Contracting Party in the State territory of the other Contracting Party,

RECOGNIZING that the promotion and reciprocal protection of investments on the basis of the present Agreement will be conducive to the stimulation of business initiative and will increase prosperity in both States,

AWARE of the need to establish an adequate juridical framework which settles and guarantees the promotion and reciprocal protection of investments between both States,

HAVE AGREED as follows:

Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" refers with regard to either Contracting Party, the following subjects who made investments in the State territory of the other Contracting Party, in accordance with this Agreement:

(a) Natural persons who, according to the law of the State of that Contracting Party, are considered to be its citizens;

(b) Legal persons, including companies, corporations, business associations and other organizations, which are constituted or otherwise duly organized under the law of the State of that Contracting Party and have their seat and economic activities in the State territory of that same Contracting Party.

(2) The term "investment" shall mean every kind of assets invested by investors of the State of one Contracting Party in the State territory of the other Contracting Party, in accordance with the national laws and regulations of the latter, and include particularly, but not exclusively:

(a) Movable and immovable property, as well as any other rights in rem, such as servitudes, mortgages, liens, pledges;

(b) Shares, parts or any other kind of participation in companies;

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

(d) Intellectual property rights, such as copyrights, patents, industrial designs or models, trade or service marks, trade names, know-how and goodwill, as well as other similar rights recognized by the national laws of the Contracting Parties;

(e) Concessions under public law, including concessions to search for, extract or exploit natural resources, as well as all other rights given by law, by contract or by decision of the authority, in accordance with the law.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

(3) The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interests, capital gains, royalties, management and technical assistance or other fees, irrespective of the form in which the return is paid.

(4) The term "territory" means:

- In respect of Romania, the territory of Romania, including its territorial sea and the airspace above its territory and its territorial sea over which Romania exercises its sovereignty, as well as the contiguous zone, continental shelf and exclusive economic zones over which Romania exercises its jurisdiction, respective sovereign rights, in accordance with its legislation and international law;

- In respect of the Republic of Mauritius, all the territories and islands which, in accordance with the laws of Mauritius constitute the State of Mauritius, the territorial sea of Mauritius and 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, sea-bed and sub-soil and their natural resources may be exercised.

Article 2. Promotion and Admission

(1) Each Contracting Party shall, in its State territory, promote as far as possible investments made by investors of the other Contracting Party and admit such investments in accordance with its national laws and regulations. However, this Agreement shall not prevent a Contracting Party from applying restrictions of any kind or taking any other action to protect its essential security interests or public health or to prevent diseases or pests in animals or plants.

(2) When a Contracting Party shall have admitted an investment made in its State territory by investors of the other Contracting Party, it shall, in accordance with its national laws and regulations, grant the necessary permits in connection with such an investment, including authorizations for engaging top managerial and technical personnel of their choice, regardless of citizenship.

Article 3. Protection and Treatment

(1) Each Contracting Party shall protect within its State territory, investments made in accordance with its national laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of such investments. In particular, each Contracting Party or its competent authorities, shall issue the necessary authorizations mentioned in Article 2, paragraph (2) of this Agreement.

(2) Each Contracting Party shall ensure fair and equitable treatment within its State territory to investments and returns on the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to the investments made within its State territory by investors of any third State.

(3) The most favoured nation treatment shall not be construed so as to oblige a Contracting Party to extend to the investors and investments of the other Contracting Party the advantages resulting from any existing or future customs or economic union, a free trade area or regional economic organization, to which either of the Contracting Parties is or becomes a member. Nor shall such treatment relate to any advantage which either Contracting Party accords to investors of a third State by virtue of a double taxation agreement or other agreements on a reciprocal basis regarding tax matters or to special advantages to foreign development finance institutions operating in the State territory of the other Contracting Party for the exclusive purpose of development assistance through mainly nonprofit acivities.

Article 4. Free Transfer

(1) Each Contracting Party in whose State territory investments have been made by investors of the other Contracting Party, shall grant those investors the free transfer of the payments relating to these investments, particularly of:

(a) Capital and additional funds required for maintenance and enlargement of the investment;

(b) Returns according to Article 1, paragraph (3) of this Agreement;

(c) Amounts relating to loans incurred, or other contractual obligations undertaken, for the investment;

(d) Proceeds accruing from the total or partial sale, alienation or liquidation of an investment;

(e) Any compensation owed to an investor by virtue of Article 5 of the Agreement.

The transfers shall be effected without delay in convertible currency.

(2) Notwithstanding the provisions of paragraph (1) of the present Article, either Contracting Party may, in exceptional

financial or economic circumstances, impose such exchange restrictions in accordance with its national laws and regulations and in conformity with the Articles of Agreement of the International Monetary Fund.

(3) Unless otherwise agreed with the investor, transfers shall be made, pursuant to the national laws and regulations in force of the Contracting Party in whose State territory the investment was made, at the market rate of exchange applicable on the date of transfer. In the absence of such a market exchange rate, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is more favourable to the investor.

Article 5. Compensation for Expropriation and Losses

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party, unless the measures are taken in the public interest as established by law, on a non-discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. The amount of compensation for expropriation, interest included, shall be settled in a convertible currency and paid without delay to the investor entitled thereto. Resulting payments shall be freely and promptly transferable.

(2) The investor affected by the expropriation shall have a right, under the national law of the expropriating Contracting Party to prompt review, by a court of law or other independent and impartial forum of that Contracting Party of the expropriation case.

(3) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the State territory of the other Contracting Party shall obtain, from the latter, a treatment in accordance with Article 3, paragraph (2) of this Agreement. They shall, in all events, be entitled to compensation and, if applicable, restitution.

Article 6. Scope of Application

This Agreement shall apply to investments in the State territory of one Contracting Party, made in accordance with its national laws and regulations, by investors of the other Contracting Party, whether prior to, or after the entry into force of this Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

Article 7. Other Obligations

(1) If the national legislation of either Contracting Party entitles the investments of the investors of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such national legislation shall, to the extent that it is more favourable, prevail over this Agreement.

(2) Each Contracting Party shall observe any other obligation it has assumed with regard to investments made in its State territory by investors of the other Contracting Party.

Article 8. Principle of Subrogation

If either Contracting Party or its designated agency makes a payment to one of its investors under any financial guarantee against non-commercial risks it has granted in regard of an investment in the State territory of the other Contracting Party, the latter shall recognize, by virtue of the principle of subrogation, the assignment of any right or title of that investor to the first Contracting Party or its designated agency. The other Contracting Party shall be entitled to set off taxes and other public charges due and payable by the investor.

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

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned, with a view to solving the case, as far as possible, amicably.

(2) If these consultations do not result in a solution within six months from the date of request for settlement, the investor may submit the dispute, at his choice, for settlement to:

(a) The competent court of the Contracting Party in the State territory of which the investment has been made; or

(b) The International Centre for Settlement of Investment Disputes (ICSID) established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, on March 18, 1965; or

(c) An ad hoc arbitral tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party hereby consents to the submission of an investment dispute to international conciliation or arbitration.

(4) The Contracting Party which is a party to the dispute shall, at no time whatsoever during the procedures involving investment disputes, assert as a defence its immunity, or the fact that the investor has received compensation under an insurance contract, covering the whole or part of the incurred damage or loss.

Article 10. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both Contracting Parties cannot reach an agreement within six months after the beginning of the dispute between themselves, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a citizen of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement as concerns the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a citizen of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a citizen of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a citizen of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

(7) Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The tribunal may, however, in its award direct that a higher proportion of costs shall be borne by one of the two Contracting Parties.

(8) The awards of the tribunal are final and binding for each Contracting Party.

Article 11. Entry Into Force, Duration and Termination

(1) The Contracting Parties shall notify each other promptly of the fulfillment of their legal procedures required for entry into force of this Agreement. The Agreement shall enter into force on the date of the later notification. It shall remain in force for an initial period of fifteen years. Unless official notice of denounciation is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for further periods of fifteen years.

(2) In case of official notice of denounciation of this Agreement, the provisions of the Articles 1 to 10 shall continue to be effective for a further period of fifteen years for investments made before official notice was given.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Signed at Bucharest, on 20 January 2000, in two originals, each in English and Romanian languages, both texts being equally authentic. In case of difference of interpretation, the English text shall prevail.

(Sd) Mr. Premcoomar Beeharry

Acting Permanent Secretary

Ministry of Finance

FOR THE GOVERNMENT OF REPUBLIC OF MAURITIUS

(Sd.) Mr. Sebastian Vladescu

Secretary of State

Ministry of Finance

FOR THE GOVERNMENT OF THE ROMANIA