

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF _____ CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

Preamble

The Government of the Republic of Mauritius and _____ (hereinafter referred to as the "Contracting Parties"),
Desiring to create favourable conditions for the increase of investments and to intensify economic cooperation in the mutual interest of both States
Intending to create and maintain favorable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party
Recognizing the need to encourage and protect foreign investments in order to promote the economic prosperity of both States,
Have agreed as follows:

Article 1

Definitions

(1) For the purposes of this Agreement:

(A) The term "investment" means any asset and in particular, but not exclusively:

- (i) ownership of movable and immovable property, and all other real rights, such as charges on land, pledges on real property and movable property ;
- (ii) shares and other forms of participation in a company
- (iii) monetary claims and rights to any performance under a contract of economic value
- (iv) industrial and intellectual property rights (such as copyrights, patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source), technical processes, know-how and goodwill
- (v) concessions granted by law or by contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, as well as any other right conferred by law, by contract or by decision of the authority pursuant to the law.

(B) "Income" means amounts derived from an investment and includes, but is not limited to, profits, interest, capital gains, dividends, royalties and remuneration.

(C) The term "investors" means, with respect to each Contracting Party:

- (i) individuals who, under the laws of that Contracting Party, are considered its nationals ;
- (ii) legal entities, including corporations, registered companies, partnerships or other organizations, which are constituted under the laws of that Contracting Party;

(D) The term "territory" means,

- (i) with respect to the Republic of _____;
- (ii) with respect to the Republic of Mauritius :

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

(2) Any change in the form of investment of assets shall not affect their investment status.

Article 2

Scope of Application

- (1) The provisions of this Agreement shall apply only
- (a) in the case of investments in the territory of _____, to all investments made by investors or companies of the Republic of Mauritius.
- (b) in the case of investments in the territory of Mauritius, to all investments made by investors or companies of _____.

Article 3

Encouragement and admission

- (1) Each Contracting Party shall, taking into account its general practice on foreign investment, encourage and facilitate investments of investors of the other Contracting Party in its territory and admit or approve such investments in accordance with its laws and regulations.
- (2) Each Contracting Party shall endeavor to issue, in accordance with its laws and regulations, the necessary authorizations in connection with such investments, including for the purpose of executing licensing, technical, commercial or administrative assistance contracts, as well as authorizations required for the activities of consultants and experts.
- (3) Investments approved under Article 2 above shall be accorded fair and equitable treatment and protection in accordance with the provisions of this Agreement.

Article 4

Treatment of Investments

- (1) Investments and income of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall hinder in any way, by unjustified or discriminatory measures, the management, maintenance, use, enjoyment, increase or disposal of such investments.
- (2) Each Contracting Party shall accord in its territory to investments and income of investors of the other Contracting Party treatment no less favorable than that accorded to investments and income of its own investors or to investments and income of investors of any third State, whichever treatment is more favorable to the investor concerned.
- (3) Each Contracting Party shall accord in its territory to investors of the other Contracting Party, with respect to the management, maintenance, use, enjoyment or disposition of their investments, treatment no less favorable than that accorded to its own investors or to investors of any third State, whichever is more favorable to the investor concerned.
- (4) If a Contracting Party grants special advantages to investors of any third State under an agreement establishing a free trade area, a customs union or a common market, to which it is already a party or to which it will become a party, or under an agreement for the avoidance of double taxation, it shall not be obliged to grant such advantages to investors of the other Contracting Party.
- (5) For the avoidance of doubt, it is hereby confirmed that the principles referred to in paragraphs (2) and (3) of this Article shall not apply in respect of special advantages granted to development financial institutions, for example in tax matters.
- (6) Each of the Contracting Parties shall comply with all its commitments relating to investments as well as those made by its investors with the investments of the other Contracting Party, in accordance with the provisions of this Agreement and its own laws.

Article 5

Compensation for losses

- (1) Investors of a Contracting Party whose investments in the territory of the other Contracting Party have suffered losses due to war or any other armed conflict, revolution,

state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be treated by the latter Contracting Party with respect to restitution, compensation, indemnification or other settlement in a manner no less favourable than that accorded to its own investors or to investors of any third State. Payments resulting therefrom shall be freely transferable at the rate of exchange applicable on the date of transfer in accordance with the applicable exchange rules.

(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, have suffered losses in the territory of the other Contracting Party as a result of:

(a) the requisition of their assets by its forces or authorities, or

(b) the destruction of their assets by its forces or authorities, which was not the result of fighting or was not required by the situation,

shall be granted restitution or adequate compensation. The resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer in accordance with the exchange rules in force.

Article 6

Expropriation

(1) Investments of investors of a Contracting Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party, except for reasons of public interest and provided that such measures comply with legal requirements, are not discriminatory and result in the prompt payment of actual and adequate compensation. The compensation shall amount to the real value of the expropriated investment immediately before the expropriation was undertaken or became known to the public, whichever is earlier. It shall include interest calculated at a normal commercial rate until the date of payment, shall be paid without delay, shall be fully realizable and shall be freely transferable on the basis of the exchange rate applicable on the date of transfer in accordance with the exchange rules in force.

(2) The investor affected by the expropriation shall have the right to a prompt review, in accordance with the law of the expropriating Contracting Party, by a judicial or other independent authority of that Party, of his case and of the valuation of his investment in accordance with the principles set forth in this Article.

(3) If a Contracting Party expropriates the assets of a company registered or incorporated in accordance with the law in force in its territory and in which investors of the other Contracting Party hold shares, it shall, to the extent necessary and in accordance with its law, ensure that such investors are compensated in accordance with paragraph (1) of this Article.

Article 7

Free transfer

(1) Each Contracting Party guarantees to the investors of the other Contracting Party the transfer without delay in a freely convertible currency of the amounts relating to an investment in accordance with Articles 5 and 6 of this Agreement.

(2) Transfers shall be made at the exchange rate prevailing on the market on the date of transfer. In the absence of a foreign exchange market, the rate to be used shall be the most recent rate applied to domestic investments or the most recent rate for the conversion of the currency concerned into special drawing rights, whichever is more favorable to the investor.

Article 8

Investment Differences

(1) Subject to the provisions of Paragraph (3) below, any dispute between an investor of a Contracting Party and an investor of the other Contracting Party relating to an investment in either territory shall, to the extent possible, be settled amicably through negotiations between the parties to the dispute.

(2) In the event that the dispute cannot be settled through negotiations within a period of 6 months, either party may initiate legal proceedings before the competent court of the Contracting Party which has received the investment.

(3) In the event that a dispute concerning the amount of compensation resulting from expropriation, nationalization, or any other measure having equivalent effect as provided in Article 6 has not been settled within 6 months after the investor has made the amicable attempts indicated in Paragraph 1 of this Article, the said dispute may be submitted to an international arbitration tribunal constituted by the two parties.

The provisions of this Paragraph shall not apply in the event that the investors concerned resort to the procedure provided in Paragraph (2) of this Article.

(4) The international arbitration tribunal referred to above shall be constituted as follows: each party to the dispute shall appoint one arbitrator. The two arbitrators so appointed shall appoint a third arbitrator as President of the tribunal. The arbitrators shall be appointed within two months, and the President of the Tribunal within four months, from the date on which either party notifies the other party of its intention to submit the dispute to arbitration.

(5) If the necessary appointments are not made within the time limit prescribed in paragraph (4) above, either party may, failing any other agreement, request the President of the International Arbitration Institute of the Stockholm Chamber of Commerce to make the necessary appointments.

(6) Except as provided below, the arbitral tribunal shall determine its own procedure by reference to the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", done at Washington on 18 March 1965.

(7) The tribunal shall take its decision by majority vote.

(8) The decision of the arbitral tribunal shall be final and binding on the parties, who shall undertake to comply with the provisions of the award.

(9) The Arbitral Tribunal shall state the basis of its decision and the reasons therefor upon request of either party.

(10) Each party shall bear the expenses of its arbitrator and advisors for the arbitral proceedings. The expenses of the chairman of the tribunal for his office and the other expenses of the arbitral tribunal shall be borne equally by each party. The tribunal may, however, decide in its award that a greater proportion of the costs shall be borne by one of the parties, and such award shall be binding on both parties.

(11) The provisions of this Article shall not affect the right of the Contracting Parties to have recourse to the procedures provided for in Article 9, if the dispute concerns the interpretation or implementation of this Agreement.

Article 9

Disputes between the Contracting Parties

(1) Any dispute between the Contracting Parties concerning the interpretation or implementation of this Agreement shall, to the extent possible, be settled by diplomatic means.

(2) If the dispute cannot be settled by diplomatic means within six months, it shall be submitted to arbitration at the request of either Contracting Party.

(3) The arbitral tribunal (hereinafter referred to as "the tribunal") shall be composed of three arbitrators, one of whom shall be appointed by each party and the third, who shall be the chairman of the tribunal and a national of a third State, shall be appointed by mutual agreement of the Contracting Parties. Such a tribunal shall be constituted for each claim. Within two months after the receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator and within two months after the appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.

(4) If the tribunal has not been constituted within four months after the receipt of the request for arbitration, each of the Contracting Parties may, in the absence of any other agreement, request the President of the International Court of Justice to appoint the arbitrator(s) not yet appointed. If the President is a national of either Contracting Party 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 either Contracting Party or is unable to make the appointment, the next ranking member of the International Court, who is not a national of the Contracting Parties, may be called upon to make the necessary appointments, and so on.

(5) The tribunal shall take its decision by a majority vote. The decision of the arbitral tribunal shall be final and binding on the parties, who shall undertake to comply with the provisions of the award. Each Contracting Party shall bear the expenses of its arbitrator and advisors for the arbitral proceedings, as well as half the expenses of the chairman of the tribunal and other expenses. The tribunal may, however, decide in its award that a greater proportion of the costs shall be borne by either party, and such award shall be binding on both parties.

(6) Except for the foregoing, the Tribunal shall establish its own rules of procedure.

Article 10

Principle of Subrogation

(1) If a Contracting Party or a body designated by it makes a payment by way of compensation for an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the first Contracting Party or to the body designated by it, by law or by contract, of all the rights and claims of the compensated investor and the right of the first Contracting Party or the body designated by it to exercise such rights and claims by way of subrogation, to the same extent as the investor.

(2) No remuneration made by a Contracting Party (or any representative, institution, statutory body or legal entity designated by it) to its investors shall affect the right of such investors to pursue claims against the other Contracting Party in accordance with the provisions of Article 8, provided that the exercise of such a right does not duplicate or conflict with the exercise of a right by virtue of subrogation as provided for in Paragraph (1) above.

Section 11

Other rules and special undertakings

(1) If provisions of the legislation of a Contracting Party or rules of international law grant investments of investors of the other Contracting Party more favourable treatment than that provided for in this Agreement, they shall prevail over this Agreement to the extent that they are more favourable.

(2) Each Contracting Party shall comply with any special obligation undertaken with respect to an investment made in its territory by an investor of the other Contracting Party.

Article 12

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 or the prevention of animal and plant diseases.

Article 13

Entry into force

(1) This Agreement shall apply to investments made in the territory of a Contracting Party, in accordance with its laws and regulations, by investors of the other Contracting Party, before or after its entry into force. For the avoidance of doubt, it is agreed that any investment, subject to the provisions of this Agreement, shall be subject to the laws in force in the territory of the Contracting Party in which the investment is made.

(2) Each Contracting Party shall notify the other Contracting Party of the completion of the procedures required by its legislation for the entry into force of this Agreement. This Agreement shall enter into force on the day following the receipt of the last of these notifications.

(3) This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of a period of twelve months from the date on which one Contracting Party shall have denounced it in writing to the other.

(4) With respect to investments made prior to the expiration of this Agreement, the provisions of this Agreement shall continue to apply for an additional period of ten years from the expiration of this Agreement or such longer period as may be agreed between the investor and the Contracting Party in whose territory the investment was made.

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

Done at _____, on _____, in duplicate, both texts being equally authentic.

For the Government of the Republic of Mauritius

For the Government _____