AGREEMENT

FOR THE

MUTUAL PROMOTION

AND

PROTECTION OF INVESTMENTS

(IPPA)

BETWEEN

The Republic of Mauritius

AND

The Portuguese Republic

AGREEMENT

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS

AND

THE GOVERNMENT OF THE PORTUGUESE REPUBLIC

FOR

THE MUTUAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Mauritius and the Government of the Portuguese Republic (hereinafter referred to as the “Contracting Parties”);

DESIRING to intensify the economic co-operation between the two States,

INTENDING to encourage and create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

RECOGNISING that the mutual promotion and protection of investments on the basis of this Agreement will stimulate business initiative,

HAVE agreed as follows:

ARTICLE 1

DEFINITIONS

For the purpose of this Agreement,

(1) The term “investment” shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter including, in particular though not exclusively:

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

(b) shares, stocks, debentures, or other forms of interest in the equity of companies and/or economic interests from the respective activity;

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

(d) intellectual property rights, such as copyrights, patents, utility-models, industrial designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and goodwill; and

(e) concessions conferred by law, under a contract or an administrative act of a competent State authority, including concessions for prospecting, research and exploitation of natural resources.

Any alteration of the form in which assets are invested shall not affect their character as investments, provided that such a change does not condradict the laws and regulations of the relevant Contracting Party.

(2) The term “returns” shall mean the amount yielded by investments, over a given period and include, in particular, profits, dividends, interests, royalties, or other forms of income related to the investments including technical assistance fees.

In cases where the returns of investment, as defined above, are reinvested, the income resulting from the reinvestment shall also be considered as income related to the first investments.

(3) The term “investor” means:

(a) natural person having the nationality or citizenship of either Contracting Party, in accordance with its law; and

(b) legal persons, including corporations, commercial companies or other companies or associations, which have a main office in the terrritory of either Contracting Party and are incorporated or constituted in accordance with the law of that Contracting Party.

(4) The term “territory” means:

(a) for the Portuguese Republic, the territory of the Portuguese Republic situated in the European Continent, the archipelagoes of Azores and Madeira, the repective territorial sea and any other zone in which, in accordance with the laws of Portugal and international law, the Portuguese Republic has its jutisdiction or sovereign rights with respect to the exploration and exploitation of the natural resources of the sea bed and subsoil, and of the superjacent waters;

(b) For 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; and

(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

ARTICLE 2

PROMOTION AND PROTECTION OF INVESTMENTS

(1) Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations. It shall, in any case accord such investments fair and equitable treatment.

(2) Investments made by investors of either Contracting Party shall enjoy full protection and security in acordance with this Agreement, in the territory of the other Contracting Party.

Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

ARTICLE 3

NATIONAL AND MOST FAVOURED NATION TREATMENT

(1) Investments made by investors of one Contracting Party in the territory of the other Contracting Party, as well as the returns therefrom, shall be accorded treatment which is fair and equitable and not less favourable than the latter Contracting Party accords to the investments and returns of its own investors or to investors of any third State.

(2) Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal or their investments, treatment which is fair and equitable and not less favourable than the latter Contracting Party accords its own investors or to investors of any third State.

(3) The provisions of this Article shall not be construed so as to oblige one Contractng Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be estended by the former Contracting Party to investors of a third State by virtue of:

(a) any existing or future free trade area, customs union, common market or other similar international agreements including other forms of regional economic co-operation to which either of the Contracting Parties is or may become a Party; and

(b) any international agreement relating wholly or mainly to taxation.

ARTICLE 4

EXPROPRIATION

(1) Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subjected to any other measure with effects equivalent to expropriation or nationalisation (hereinafter referred to as expropriation) except by virtue of law for a public purpose, on a non-discriminatory basis and providinf for fair, prompt, adequate and effective compensation.

(2) such compensation shall correspond to the value of the investment immediately before the expropriation became publicly known and shall include interest until the date of payment.

(3) The investor whose investments are expropriated, shall have the right, in the manner prescribed by the law of the expropriation Contracting Party, to the prompt review by a judicial or other competent autority of that Contracting Party of his or its case and of the valuation of his or its investments in accordance with the principles set out in this Article.

ARTICLE 5

COMPENSATION FOR LOSSES

Investors of either Contracting Party whose investments suffer losses in the territory owning to war or armed conflict, a state of national emergency or other events considered as such by international law, shall be accorded treatment no less favourable by the latter Contracting Party than that Contracting Party accords to the investments of its own investors, or to the investments of investors of any third State, whichever is more favourable, as regards restitution, indemnificatin, compensation or other valuable consideration. Any payment made under this Article shall be, without delay, freely transferable in cnvertible currency.

ARTICLE 6

TRANSFERS

(1) Pursuant to its own legislation, each Contracting Party shall guarantee investors of the other Contracting Party the free transfer of sums related to their investments, in particular, though not exclusively:

(a) capital and additional amounts necessary to maintain or increase the investments;

(b) the returns defined in paragraph 2 of Article 1 of this Agreement;

(c) repayments made, pursuant to a loan agreement, in connection with investments;

(d) the proceeds obtained from the sale or from the total or partial liquidation of the investment;

(e) any compensation or other payment referred to in Articles 4 and 5 of this Agreement; or

(f) any preliminary payments that may be made in the name of the investor in accordance with Article 7 of this Agreement.

(2) The transfers referred to in this Article shall be made without restriction or delay at the exchange rate applicable on thedate of the transfer in convertible currency.

ARTICLE 8

SUBROGATION

If either Contracting Party or its designated agency makes any payment to one of its investors as a result of a guarantee in respect of an investment made in the territory of the other Contracting Party, the former Contracting Party shall be subrogated to the rights and shares of this investor, and may exercise them according to the same terms and conditions as the original holder.

ARTICLE 8

DISPUTES BETWEEN THE CONTRACTING PARTIES

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled by negotiations through diplomatic channels.

(2) If the Contracting Parties fail to reach such settlement within six (6) months after the beginning of negotiations, the dispute shall upon the request of either Contracting Party, be submitted to an arbitral tribunal, in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted ad hoc, as follows: each of the Contracting Parties shall appoint one member and these two members shall propose a national of a third State as chairman to be appointed by the two Contracting Parties. The members shall be appointed within two (2) months and the chairman shall be appointed within three (3) months from the date on which either Contracting Party notifies the other that it wishes to submit the dispute to an arbitral tribunal.

(4) If the deadlines specified in paragraph 3 of this Article are not complied with, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is prevented from doing so, or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments.

If the Vice-President is also national of either Contracting Party or if he is prevented from making the appointments for any other reason, the appointments shall be made by the member of the Court who is next in seniority and who is not a natinal of either Contracting Party.

(5) The Chairman of the Arbitral Tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

(6) The Arbitral Tribunal shall rule according to majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties. Each Contrating Party shall be responsible for the costs of its own member and of its representatives at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the expenses incurred by the chairman, as well as any other expenses. The arbitral may make a different decision regarding costs. In all other respects, the tribunal shall define its own rules of procedure.

ARTICLE 9

DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

(1) Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an investment if that investor in the territory of the former Contracting Party shall be settled amicably through negotiations between the parties to the dispute.

(2) If such dispute cannot be settled within a period of six (6) months from the date of request for settlement, either party may submit the dispute:

(a) to the conpetent court of the Contracting Party for decision; or

(b) for conciliation or arbitration, to the International Center for the Settlement of Investments Disputes (ICSID), established under the Convention on the Settlement of Investments Disputes between States and Nationals of other States, opened for signature in Washington D. C., on March 18, 1965.

(3) Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting Party has failed to abide by or to comply with the award rendered by the International Center for the Settlement of Investments Disputes.

(4) The award shall be enforceable on the parties and shall not be subject to any appeal or remedy other than that provided for in the said Convention. The award shall be enforceable in accordance with the domestic law of the Contracting Party in whose territory the investment in question is situated.

ARTICLE 10

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 this Agreement contain a regulation, whether general or specific, entitling envestments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

ARTICLE 11

APPLICATION IF THE AGREEMENT

This Agreement shall apply to all investments, made by investors from one of the Contracting Parties in the teritory of the other Contracting Party in accordance with the respective legal provisions, prior to as well as after its entry into force, but shall not apply to any dispute concerning investments which have arisen before its entry into force.

ARTICLE 12

CONSULTATIONS

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and a time to be agreed upon through diplomatic channels.

ARTICLE 13

ENTRY INTO FORCE AND DURATION

(1) This Agreement shall enter into force thirty (30) days after the Contracting Parties notify each other in writing that their respective internal constitutional procedures have been fulfilled.

(2) This Agreement shall remain in force for a period of ten (10) years and continue in force thereafter for further five year periods, unless, twelve (12) months before the expiry of that ten year period or any such subsequent five-year period, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

(3) In respect of investment made prior to the date of termination of this Agreement the provisions of Articles 1 to 12 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

IN WITNESS WHEREOF the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done in ...., this .... day of .... 199...., in two originals in the Portuguese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

....	....
....	....
For the Government of the Republic of Mauritius	For the Government of the Portuguese Republic

PROTOCOL

On the occasion of the signing of the Agreement between the Republic of Mauritius and the Portuguese Republic on the Mutual Promotion and Protection of the Investments, the undersigned duly authorised to this effect, have agreed also on the following prosisions, which constitute an integral part of the said Agreement:

(1) With reference to Article 2 of this Agreement:

The provisions of Article 2 of this Agreement should be applicable when investors of one of the Contracting Parties are already established in the territory of the other Contracting Party and wish to extend their activities or to carry out activities in other sectors.

Such investments shall be considered as new ones and, to that extent, shall be made in accordance with the rules on the admission of investments, according to Article 2 of this Agreement.

(2) With reference to Article 3 of this Agreement:

The Contracting Parties consider that the provisions of Article 3 of this Agreement shall be without prejudice to the right of either Contracting Party to apply the relevant provisions of their tax law which distinguish between tax-payers who are not in the same situatiton with regard to their place of residence or with regard to the place where their capital is invested.

Done in ***Port Louis***, this ***twelfth*** day of ***December 1997***, in two originals in the Portuguese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

(Sd.) V. K. BUNWAREE
Ministry of Finance

For the Government of the
Republic of Mauritius

(Sd.)H.E. Mr. Ruy G. Brito e Cunha
Ambassador

For the Government of the
Portuguese Republic