FRANCE/MAURITIUS DOUBLE TAXATION CONVENTION

SIGNED 11 DECEMBER 1980

Effective in France:

1. the income tax;

2. the corporation tax

including any withholding tax, prepayment (précompte) or advance payment with respect to the aforesaid taxes

Effective in Mauritius:

the income tax

Synthesised text of the MLI and the Convention between the Government of Mauritius and the Government of the French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital

General disclaimer on the Synthesised text document

This document presents the synthesised text for the application of the Convention between the Government of Mauritius and the Government of the French Republic for the avoidance of Double Taxation with respect to Taxes on Income and on Capital signed on 11 December 1980 (the "Convention"), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Mauritius on 05 July 2017 and signed by France on 07 June 2017 (the "MLI").

The document was prepared on the basis of the MLI position of Mauritius submitted to the Depositary upon ratification on 18 October 2019 and of the MLI position of France upon ratification on 26 September 2018. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

The authentic legal texts of the Convention and the MLI take precedence and remain the legal texts applicable.

The provisions of the MLI that are applicable with respect to the provisions of the Convention are included in boxes throughout the text of this document in the context of the relevant provisions of the Convention. The boxes containing the provisions of the MLI have generally been inserted in accordance with the ordering of the provisions of the 2017 OECD Model Tax Convention.

Changes to the text of the provisions of the MLI have been made to conform the terminology used in the MLI to the terminology used in the Convention (such as changes from "Covered Tax Agreement" to "Convention" and changes from "Contracting Jurisdictions" to "Contracting States"), to ease the comprehension of the provisions of the MLI. The changes in terminology are intended to increase the readability of the document and are not intended to change the substance of the provisions of the MLI. Similarly, changes have been made to parts of provisions of the MLI that describe existing provisions of the Agreement: descriptive language has been replaced by legal references of the existing provisions to ease the readability.

In all cases, references made to the provisions of the Convention or to the Convention must be understood as referring to the Convention as modified by the provisions of the MLI, provided such provisions of the MLI have taken effect.

References

The authentic legal texts of the MLI and the Convention can be found at the following links:

The MLI:

http://www.oecd.org/tax/treaties/multilateral-convention-to-implement-tax-treaty-related-measures-to-prevent-BEPS.pdf

In Mauritius:

http://www.mra.mu/download/Mtius_France.pdf and

http://www.mra.mu/download/IncomeTaxAct-France.pdf

In France:

https://www.impots.gouv.fr/sites/default/files/media/10_conventions/ile_maurice/ile-maurice_convention-avec-l-ile-maurice_fd_1920.pdf

The MLI position of Mauritius submitted to the Depositary upon ratification on 18 October 2019 and of the MLI position of France submitted to the Depositary upon ratification on 26 September 2018 can be found on the MLI Depositary (OECD) webpage.

Disclaimer on the entry into effect of the provisions of the MLI

The provisions of the MLI applicable to this Convention do not take effect on the same dates as the original provisions of the Convention. Each of provisions of the MLI could take effect on different dates, depending on the types of taxes involved (taxes withheld at source or other taxes levied) and on the choices made by Mauritius and France in their MLI positions.

Dates of the deposit of instruments of ratification, acceptance or approval: 18 October 2019 for Mauritius and 26 September 2018 for France.

Entry into force of the MLI: 01 February 2020 for Mauritius and 01 January 2019 for France.

Unless it is stated otherwise elsewhere in this document, the provisions of the MLI have effect:

(a) with respect to the application of the Convention by France, in accordance with paragraph 1 of Article 35 of the MLI:

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2021;

- with respect to all other taxes levied by France, for taxes levied with respect to taxable periods beginning on or after 1 August 2020;

And

b) with respect to the application of the Agreement by Mauritius, in accordance with paragraphs 1 and 2 of Article 35 of the MLI:

- with respect to taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 July 2020;

- with respect to all other taxes levied by Mauritius, for taxes levied with respect to taxable periods beginning on or after 1 August 2020.

Convention between the Government of Mauritius and the Government of the French Republic for the Avoidance of Double Taxation with respect to Taxes on Income and on Capital

The Government of Mauritius and the Government of the French Republic;

[REPLACED by paragraph 1 and paragraph 3 of Article 6 of the MLI] [Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income and on capital]

The following paragraph 1 and paragraph 3 of Article 6 of the MLI replaces the text referring to an intent to eliminate double taxation in the preamble of this Convention:

ARTICLE 6 OF THE MLI – PURPOSE OF A COVERED TAX AGREEMENT

Desiring to further develop their economic relationship and to enhance their co-operation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by [*this Convention*] without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in [*the Convention*] for the indirect benefit of residents of third jurisdictions),

Have agreed as follows:

ARTICLE 1

PERSONAL SCOPE

This Convention shall apply to persons who are residents of one or both of the States.

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a State or of its local authorities irrespective, of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are:

(a) in the case of France:
(i) the income tax;
(ii) the corporation tax;
including any withholding tax, prepayment (précompte) or advance payment with respect

to the aforesaid taxes;
(hereinafter referred to as “French tax”);

(b) in the case of Mauritius:
— the income tax;
(hereinafter referred to as “Mauritius tax”).

4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the States shall notify each other of substantial changes which have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

(a) the terms "a State" and "the other State" mean France or Mauritius, as the case may be; the term "both States" means France and Mauritius;
(b) the term "person" includes an individual, a company and any other body of persons;
(c) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes; this term also means a "company" within the meaning of the laws of Mauritius;

(d) the terms "enterprise of a State" and "enterprise of the other State" mean respectively an enterprise carried on by a resident of a State and an enterprise carried on by a resident of the other State;

(e) the term "nationals" means:

(i) all individuals possessing the nationality of a State;

(ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a State.

(f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a State except when the ship or aircraft is operated solely between places in the other State;

(g) the term "competent authority" means:

(i) in the case of France, the Minister of Budget or his authorized representative;
(ii) in the case of Mauritius, the Minister of France or his authorized representative, the Commissioner of Income Tax.

2. As regards the application of the Convention by a State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4
RESIDENT

1. For the purposes of this Convention, the term "resident of a State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both States, then his status shall be determined as follows:
(a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests),
(b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
(d) if he is a national of both States or of neither of them, the competent authorities of both States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

ARTICLE 5
PERMANENT ESTABLISHMENT

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management,
(b) a branch,
(c) an office,
(d) a factory,
(e) a workshop,
(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, and
(g) a farm or plantation.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

4. An enterprise, shall be deemed to have a permanent establishment in a State if it carries on supervisory activities, for a period of more than six months, in connection with a building site or construction or installation project situated in that State.

5. Notwithstanding the preceding provisions of this Article the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

6. Notwithstanding the provisions of paragraphs 1 and 2, where a person- other than an agent of an independent status to whom paragraph 7 applies- is acting on behalf of an enterprise and has, and habitually exercises, in a State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

7. (a) An enterprise shall not be deemed to have a permanent establishment in a State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(b) Notwithstanding the provisions of sub-paragraph (a), an enterprise of a State shall be deemed to have a permanent establishment in the other State if an agent, although being of an independent status, carries on his activity in that other State exclusively or almost exclusively for the enterprise and is controlled by the enterprise.

8. The fact that a company which is a resident of a State controls or is controlled by a company which is a resident of the other State or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6
INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a State, from immovable property(including income, from agriculture or forestry) situated in the other State may be taxed in that other State.

2. The term "immovable, property" shall have the meaning which it has under the law of the State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7
BUSINESS PROFITS

1. The profits of an enterprise of a State shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to the permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a State carries on business in the other State through a permanent establishment situated therein, there shall in each State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. (a) For determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(b) However, amounts paid by the permanent establishment to the enterprise, by way of royalties or similar payments as a consideration for the use of patents or similar rights or by way of interest from money lent by the enterprise to the permanent establishment, are allowed as deductions expenses only if they correspond to actual expenses of the enterprise.

(c) in the case of banking institutions, the provisions of sub-paragraph (b) above shall not apply to interest paid by the permanent establishment to the enterprise.

4. Insofar as it has been customary in a State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary, the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary

7. Where profits include items of income which are dealt with separately in other Articles of this convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8
SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

ASSOCIATED ENTERPRISES

Where

(a) an enterprise of a State participates directly or indirectly in the management, control or capital of an enterprise of the other State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a State and an enterprise of the other State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

The following paragraph 1 of Article 17 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

Where a [*Contracting State*] includes in the profits of an enterprise of that [*Contracting State*] — and taxes accordingly — profits on which an enterprise of the other [*Contracting State*] has been charged to tax in that other [*Contracting State*] and the profits so included are profits which would have accrued to the enterprise of the first-mentioned [*Contracting State*] if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other [*Contracting State*] shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of [*the Convention*] and the competent authorities of the [*Contracting States*] shall if necessary consult each other.

ARTICLE 10
DIVIDENDS

1. Dividends paid by a company which is a resident of a State to a resident of the other State may be taxed in that other State.

2. However, such dividends may also be taxed in the State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed

(a) five per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends
(b) fifteen per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. Notwithstanding the provisions of paragraph 2, dividends paid by a company which is a resident of Mauritius to a resident of France may be taxed in Mauritius and according to the laws of Mauritius, as long as dividends paid by companies which are residents of Mauritius are allowed as deductible expenses for determining their taxable profits.
However, the tax charged shall not exceed the rate of the Mauritius tax on profits of companies.

4. (a) Dividends paid by a company which is a resident of France, which, if received by a resident of France, would entitle such resident to a tax credit (avoir fiscal), when they are paid to recipients which are residents of Mauritius, entitle such recipients to a payment by the French

Treasury of an amount equal to such tax credit (avoir fiscal) subject to the deduction of the tax provided for in sub-paragraph (b) of paragraph 2.

(b) The provision of sub-paragraph (a) shall apply only to the following recipients which are residents of Mauritius.

(i) individuals who are subject to Mauritius tax in respect of the total amount of the dividends paid by the company which is a resident of France and of the payment which corresponds to these dividends and which is mentioned in subparagraph (a).

(ii) companies which are subject to Mauritius tax in respect of the total amount of the dividends paid by the company which is a resident of France and of the payment which corresponds to these dividends and which is mentioned in subparagraph (a) and which own directly or indirectly less than ten per cent of the share capital of the French Company paying the dividends.

5. Unless he receives the payment provided for in paragraph 4, a resident of Mauritius who receives dividends paid by a company which is a resident of France may obtain the refund of the prepayment (précompte) relating to such dividends, in the event it had been paid by such company. Such refund shall be taxable in France according to the provisions of paragraph 2.

The gross amount of the prepayment (precompte) refunded shall be deemed to be dividends for the purposes of the provisions of this Convention.

6. The term "dividends" as used in this Article means income from shares, “jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

7. The provisions of paragraphs 1 to 5 shall not apply if the beneficial owner of the dividends, being a resident of a State, carries on business in the other State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

8. Where a company which is a resident of a State derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State nor subject the company's undistributed profits, to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

INTEREST

1. Interest arising in a State and paid to a resident of the other State may be taxed in that other State.

2. However, such interest may also be taxed in the State in which it arises, and according to the laws of that State.

3. Notwithstanding the provisions of paragraph 2, any such interest as is mentioned in paragraph 1 shall be taxable only in the State of which the recipient is a resident, if such recipient is the beneficial owner of the interest and if such interest is paid to that State, to a public body of that State or to a banking institution of that State.

4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a State carries on business in the other State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Interest shall be deemed to arise in a State when that payer is that State itself, a local authority, a public body or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a State or not, has in a State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

ARTICLE 12

ROYALTIES

1. Royalties arising in a State and paid to a resident of the other State may be taxed in that other State.

2. However, such royalties may also be taxed in the State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed fifteen per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copy-right of literary, artistic or scientific work including cinematographic films and works recorded for broadcasting or television, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

4. Notwithstanding the provisions of paragraph 2, payments of any kind received as a consideration for the use of or the right to use, any copyright of literary, artistic or scientific work, including cinematographic films and works recorded for broadcasting or television shall be taxable only in the State of which the recipient is a resident, if such recipient is the beneficial owner of the payments.

5. The provisions of paragraph 1, 2 and 4 shall not apply if the beneficial owner of the royalties, being a resident of a state, carries on business in the other state in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or article14, as the case may be, shall apply.

6. Royalties shall be deemed to arise in a state when the payer is that State itself, a local authority, a public body or a resident of that state. Where however, the person paying the royalties, whether he is a resident of a State or not, has in a state a permanent establishment or a fixed base with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State which the permanent establishment or fixed based is situated.

7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last- mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

ARTICLE 13
CAPITAL GAINS

1. Gains derived by a resident of a State from the alienation of immovable property referred to in Article 6 and situated in the other State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a State has in the other State or of movable property pertaining to a fixed base available to a resident of a State in the other St4,te for the purpose of performing independent personal services including such gains from the alienation of such a permanent establishment (alone or with the whole entreprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the State of which the alienator is a resident.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers,' architects, dentists and accountants.

ARTICLE 15
DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a state in respect of an employment shall be taxable only in that state unless the employment is exercised, in the other State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a State in respect of an employment exercised in the other State shall be taxable only in the first mentioned State if:

(a) the recipient is present in the other State for a period or periods, not exceeding in the aggregate 183 days in the fiscal year concerned, and
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived from an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the State in which the place of effective management of the enterprise is situated.

ARTICLE 16
DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a State in his capacity as a member of the board of directors of a company which is resident of the other State may be taxed in that other State.

ARTICLE 17
ARTISTS AND ATHLETES

1. Notwithstanding the provisions of Articles 14 and 15, income derived by resident of a State as an entertainer, such as a theatre, motion picture, radio or television artist, or a musician, or as an athlete, from his personal activities as such exercised in the other State may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person that income may, notwithstanding the provisions of Articles 7, 14 and 15 be taxed in the State in which the activities of the entertainer or athlete are exercised.

3. Notwithstanding the provisions of paragraph 1, remuneration or profits, and wages, salaries and other similar income derived by an entertainer or an athlete, who is a resident of a State,

from his personal activities as such exercised in the other State, shall be taxable only in the first-mentioned State if these activities in the other State are supported substantially by public funds of the first mentioned State, one of its local authorities or of a public body thereof.

4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such in a State accrues not to the entertainer or athlete himself but to another person, that income, notwithstanding the provisions of Articles 7, 14and 15 shall be taxable only in the other State, if that other person is supported substantially by public funds of that other State, one of its local authorities or of a public body thereof, or if that other person is a non-profit organisation of that other State.

ARTICLE 18
PENSIONS

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to a resident of a State in consideration of past employment shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a State shall be taxable only in that State.

3. The provisions of paragraph 1 shall not apply if the recipient of the income is not subject to tax in respect of such income in the State of which he is a resident and according to the laws of that State. In such a case, such income may be taxed in the State where they arise.

ARTICLE 19
GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a State or a local authority thereof, or by a public body thereof, to an individual in respect of services rendered to that State or authority or public body shall be taxable only in that State.

(b) Notwithstanding the provisions of sub-paragraph (a), such remuneration may also be taxed in the other State if the services are rendered in that State and the individual is a resident of that State who

(i) is a national of that State, or

(ii) is not a resident of that State solely for the purpose of rendering the services.

2. (a) Any pension paid by, or out of funds created by, a State or a local authority thereof, or by a public body thereof, to an individual in respect of services rendered to that State or authority or public body shall be taxable on] in that State.

(b) Notwithstanding the provisions of sub-paragraph (a) such pension may also be taxed in the other State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a State or a local authority or a public body thereof.

ARTICLE 20
STUDENTS

1. Payments which a student or business apprentice who is or was immediately before visiting a State a resident of the other State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments are from sources outside that State.

2. Notwithstanding the provisions of Articles 14 and 15, remuneration which a student or business apprentice who is, or was immediately before visiting a State, a resident of the other State and who is present in the first-mentioned State solely for the purpose of his education or training, derives in respect of services rendered in the first mentioned State shall not be taxed in the first-mentioned State, provided that such services are in connection with his education or training or that the remuneration of such services is necessary to supplement the resources available to him for the purpose of his maintenance.

ARTICLE 21
TEACHERS AND RESEARCH WORKERS

1. Remuneration which a teacher or a research worker who is or was immediately before visiting a State a resident of the other State, and who is present in the first-mentioned State solely for the purpose of teaching or engaging in research, derives in respect of such activities shall not be taxed in that State for a period not exceeding two years, if such remuneration is liable to tax in the other State.

2. The provisions of paragraph 1 shall not apply to remuneration derived in respect of research undertaken not in the public interest but primarily forthe private benefit of a specific person or persons.

ARTICLE 22
OTHER INCOME

1. Items of income of a resident of a State, wherever arising, not dealt within the foregoing articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a State, carries on business in the other State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In

such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

ARTICLE 23
CAPITAL

1. Capital represented by immovable property referred to in Articles 6, owned by a resident of a State and situated in the other State, may be taxed in that other State.

2. Capital represented by moveable property forming part of the business property of a permanent establishment which an enterprise of a State has in the other State or by moveable property pertaining to a fixed base available to a resident of a State in the other state for the purpose of performing independent personal services may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by moveable property pertaining to the operation of such ships and air-craft shall be taxable only in the State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a State shall be taxable in that State.

ARTICLE 24
METHOD FOR ELIMINATION OF DOUBLE TAXATION

Double taxation shall be avoided in the following manner

1. In the case of Mauritius:

(a) Income other than that referred to in sub-paragraph (b) below shall be exempt from the Mauritius tax referred to in sub-paragraph (b) of paragraph 3 of Article 2 if the income is taxable in France under the Convention.

(b) Income referred to in Articles 10, 11, 12, 14, 16, 17 and in sub-paragraph (b) of paragraph 1 and in sub-paragraph (b) of paragraph2 of Article 19 received from France may be taxed in Mauritius in accordance with the provisions of these articles, on their gross amount. The French tax levied on such income entities residents of Mauritius to a tax credit corresponding to the amount of French tax levied but which shall not exceed the amount of Mauritius tax attributable to such income. Such credit shall be allowed against the tax referred to in sub-paragraph (b) of paragraph 3 of Article 2, in the bases of which such income is included.

(c) Notwithstanding the provisions of sub-paragraphs (a) and (b), Mauritius tax is computed on income chargeable in Mauritius by virtue of the Convention at the rate appropriate to the total of the income chargeable in accordance with the Mauritius laws.

2. In the case of France:

(a) Income other than that referred to in sub-paragraphs (b) and (c) below shall be exempt from the French taxes referred to in sub-paragraph (a) of paragraph 3 of Article 2 if the income is taxable in Mauritius under the Convention.

(b) Income referred to in Articles 11, 12, 14, 16 and 17 received from Mauritius may be taxed in France in accordance with the provisions of these Articles, on their gross amount. The Mauritius tax levied on such income entitles residents of France to a tax credit corresponding to the amount of Mauritius tax levied.

(c) Income referred to in Article 10 received from Mauritius may be taxed in France in accordance with the provisions of this Article, on their gross amount. The residents of France receiving such income shall be entitled to a tax credit equal to twenty five percent of the amount of these dividends.

(d) The tax credits referred to in sub-paragraphs (b) and (c) shall not exceed the amount of French tax attributable to the income concerned. They are allowed against taxes referred to in sub-paragraph (a) of paragraph 3 of Article 2, in the bases of which the income concerned is included.

(e) Notwithstanding the provisions of sub-paragraphs (a) to (d), French tax is computed on income chargeable in France by virtue of the Convention at the rate appropriate to the total of the income chargeable in accordance with the French laws.

ARTICLE 25
NON-DISCRIMINATION

1. Nationals of a State shall not be subjected in the other State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the States.

2. Stateless persons who are residents of a state shall not be subjected in either State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of the State concerned in the same circumstance are or maybe subjected.

3. The taxation of a permanent establishment which an enterprise of a State has in the other State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a State to grant to residents of the other State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of Article 9, paragraph 7 of Article 11, or paragraph 7 of Article 12,

apply, interest, royalties and other disbursements paid by an enterprise of a State to a resident of the other State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts, of an enterprise of a State to a resident of the other State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Enterprises of a State, the capital of which is wholly or partly owned or controlled directly or indirectly, by one or more residents of the other State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

ARTICLE 26
MUTUAL AGREEMENT PROCEDURE

1. **[The first sentence of paragraph 1 of Article 26 of this Convention is replaced by paragraph 1 of Article 16 of the MLI]** [Where a person considers that the actions of one or both of the States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the State of which he is a national.] The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

The following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph [1] of Article [26] of this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

Where a person considers that the actions of one or both of the [*Contracting States*] result or will result for that person in taxation not in accordance with the provisions of [*this Convention*], that person may, irrespective of the remedies provided by the domestic law of those [*Contracting States*], present the case to the competent authority of either [*Contracting State*].

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the States.

3. **[REPLACED by the first sentence of paragraph 3 of Article 16 of the MLI]** [The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties arising as to the application of the Convention.]

The following first sentence of paragraph 3 of Article 16 of the MLI replaces the first sentence of paragraph [3] of Article 26 of this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

The competent authorities of the [*Contracting States*] shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of [*the Convention*]

In particular, the competent authorities of the State may consult together to endeavour to reach an agreement:

(a) in order that the profits attributable to a permanent establishment situated in a State an owned by an enterprise of the other State maybe attributed in the same manner in the two States,
(b) in order that the income receivable by a resident of a State and an associate person referred to in Article 9 who is a resident of the other State may allocated in the same manner.

They may also consult together for the elimination of double taxation incases not provided for in the Convention.

4. The competent authorities of the States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the States.

5. The competent authorities of the States shall by mutual agreement settle the mode of application of the Convention and, especially, the requirements to which the residents of a State shall be subjected in order to obtain in the other State, the tax reliefs or exemptions provided for by the Convention.

The following Part VI of the MLI applies to this Convention:[1]

[1] In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI shall have effect with respect to this Convention:

a) with respect to cases presented to the competent authority of a Contracting State on or after 1 February 2020; and

b) with respect to cases presented to the competent authority of a Contracting State prior to 1 February 2020, on the date when both Contracting States have notified the Depositary that they have reached mutual agreement pursuant to paragraph 10 of Article 19 of the MLI, along with information regarding the date or dates on which such cases shall be considered to have been presented to the competent authority of a Contracting State according to the terms of that mutual agreement.

PART VI OF THE MLI – ARBITRATION

Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

a) under *[paragraph 1 of Article 26 of this Convention]*, a person has presented a case to the competent authority of a *[Contracting State]* on the basis that the actions of one or both of the *[Contracting States]* have resulted for that person in taxation not in accordance with the provisions of *[the Convention]*; and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to *[paragraph 2 of Article 26 of the Convention]*, within a period of three years beginning on the start date referred to in paragraph 8 or 9 *[of Article 19 of the MLI]*, as the case may be (unless, prior to the expiration of that period the competent authorities of the *[Contracting States]* have agreed to a different time period with respect to that case and have notified the person who presented the case of such agreement),

any unresolved issues arising from the case shall, if the person so requests in writing, be submitted to arbitration in the manner described in *[Part VI of the MLI]*, according to any rules or procedures agreed upon by the competent authorities of the *[Contracting States]* pursuant to the provisions *[of paragraph 10 of Article 19 of the MLI]*.

2. Where a competent authority has suspended the mutual agreement procedure referred to in paragraph 1 *[of Article 19 of the MLI]* because a case with respect to one or more of the same issues is pending before court or administrative tribunal, the period provided in subparagraph b) of paragraph 1 *[of Article 19 of the MLI]* will stop running until either a final decision has been rendered by the court or administrative tribunal or the case has been suspended or withdrawn. In addition, where a person who presented a case and a competent authority have agreed to suspend the mutual agreement procedure, the period provided in subparagraph b) of paragraph 1 *[of Article 19 of the MLI]* will stop running until the suspension has been lifted.

3. Where both competent authorities agree that a person directly affected by the case has failed to provide in a timely manner any additional material information requested by either competent authority after the start of the period provided in subparagraph b) of paragraph 1 *[of Article 19 of the MLI]*, the period provided in subparagraph b) of paragraph 1 *[of Article 19 of the MLI]* shall be extended for an amount of time equal to the period beginning on the date by which the information was requested and ending on the date on which that information was provided.

4. a) The arbitration decision with respect to the issues submitted to arbitration shall be implemented through the mutual agreement concerning the case referred to in paragraph 1 *[of Article 19 of the MLI]*. The arbitration decision shall be final.

b) The arbitration decision shall be binding on both *[Contracting States]* except in the following cases:

i) if a person directly affected by the case does not accept the mutual agreement that

implements the arbitration decision. In such a case, the case shall not be eligible for any further consideration by the competent authorities. The mutual agreement that implements the arbitration decision on the case shall be considered not to be accepted by a person directly affected by the case if any person directly affected by the case does not, within 60 days after the date on which notification of the mutual agreement is sent to the person, withdraw all issues resolved in the mutual agreement implementing the arbitration decision from consideration by any court or administrative tribunal or otherwise terminate any pending court or administrative proceedings with respect to such issues in a manner consistent with that mutual agreement.

ii) if a final decision of the courts of one of the *[Contracting States]* holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 *[of Article 19 of the MLI]* shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings) *[of the MLI]*). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.

iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.

5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 *[of Article 19 of the MLI]* shall, within two calendar months of receiving the request:

a) send a notification to the person who presented the case that it has received the request; and
b) send a notification of that request, along with a copy of the request, to the competent authority of the other *[Contracting State]*.

6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other *[Contracting State]*) it shall either:

a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
b) request additional information from that person for that purpose.

7. Where pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:

a) that it has received the requested information; or

b) that some of the requested information is still missing.

8. Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], the start date referred to in paragraph 1 [*of Article 19 of the MLI*] shall be the earlier of:

a) the date on which both competent authorities have notified the person who presented the case pursuant to subparagraph a) of paragraph 6 *[of Article 19 of the MLI]*; and
b) the date that is three calendar months after the notification to the competent authority of the other *[Contracting State]* pursuant to subparagraph b) of paragraph 5 *[of Article 19 of the MLI]*.

9. Where additional information has been requested pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], the start date referred to in paragraph 1 [*of Article 19 of the MLI*] shall be the earlier of:

a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7 [*of Article 19 of the MLI*]; and

b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

If, however, one or both of the competent authorities send the notification referred to in subparagraph b) of paragraph 7 [*of Article 19 of the MLI*], such notification shall be treated as a request for additional information under subparagraph b) of paragraph 6 [*of Article 19 of the MLI*].

10. The competent authorities of the [*Contracting States*] shall by mutual agreement pursuant to [*Article 26 of the Convention*] settle the mode of application of the provisions contained in this Part, including the minimum information necessary for each competent authority to undertake substantive consideration of the case. Such an agreement shall be concluded before the date on which unresolved issues in a case are first eligible to be submitted to arbitration and may be modified from time to time thereafter.

12. Notwithstanding the other provisions of [*Article 19 of the MLI*],

a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by [*the MLI*] shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either [*Contracting State*];

b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting State*], a decision concerning the issue is rendered by a court or administrative tribunal of one of the [*Contracting States*], the arbitration process shall terminate.

Article 20 (Appointment of Arbitrators) of the MLI

1. Except to the extent that the competent authorities of the [*Contracting States*] mutually agree on different rules, paragraphs 2 through 4 [*of Article 20 of the MLI*] shall apply for the purposes of *[Part VI of the MLI]*.

2. The following rules shall govern the appointment of the members of an arbitration panel:

   a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.

   b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 [*of the MLI*].The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either [*Contracting State*].

   c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the [*Contracting States*] and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.

3. In the event that the competent authority of a [*Contracting State*] fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 [*of Article 20 of the MLI*] or agreed to by the competent authorities of the [*Contracting States*], a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either [*Contracting State*].

4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 [*of Article 20 of the MLI*] or agreed to by the competent authorities of the [*Contracting States],* the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either [*Contracting State*].

Article 21 (Confidentiality of Arbitration Proceedings) of the MLI

1. Solely for the purposes of the application of the provisions of *[Part VI of the MLI]* and of the provisions of [*the Convention*] and of the domestic laws of the [*Contracting States*] related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive

from the arbitration panel shall be considered information that is exchanged under the provisions of [*the Convention*] related to the exchange of information and administrative assistance.

2. The competent authorities of the [*Contracting States*] shall ensure that members of the arbitration panel and their staff agree in writing, prior to their acting in an arbitration proceeding, to treat any information relating to the arbitration proceeding consistently with the confidentiality and nondisclosure obligations described in the provisions of [*the Convention*] related to exchange of information and administrative assistance and under the applicable laws of the [*Contracting States*].

Article 22 (Resolution of a Case Prior to the Conclusion of the Arbitration) of the MLI

For the purposes of *[Part VI of the MLI]* and the provisions of [*the Convention*] that provide for resolution of cases through mutual agreement, the mutual agreement procedure, as well as the arbitration proceeding, with respect to a case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*]:

a) the competent authorities of the [*Contracting States*] reach a mutual agreement to resolve the case; or

b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure

Article 23 (Type of Arbitration Process) of the MLI

Final offer arbitration

1. Except to the extent that the competent authorities of the [*Contracting States*] mutually agree on different rules, the following rules shall apply with respect to an arbitration proceeding pursuant to [*Part VI of the MLI*]:

a) After a case is submitted to arbitration, the competent authority of each [*Contracting State*] shall submit to the arbitration panel, by a date set by agreement, a proposed resolution which addresses all unresolved issue(s) in the case (taking into account all agreements previously reached in that case between the competent authorities of the [*Contracting States*]). The proposed resolution shall be limited to a disposition of specific monetary amounts (for example, of income or expense) or, where specified, the maximum rate of tax charged pursuant to [*the Convention*], for each adjustment or similar issue in the case. In a case in which the competent authorities of the [*Contracting States*] have been unable to reach agreement on an issue regarding the conditions for application of a provision of [*the Convention*] (hereinafter referred to as a “threshold question”), such as whether an individual is a resident or whether a permanent establishment exists, the competent authorities may submit alternative proposed resolutions with respect to issues the determination of which is contingent on resolution of such threshold questions.

b) The competent authority of each [*Contracting State*] may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.

c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the [*Contracting States*]. The arbitration decision shall have no precedential value.

5. Prior to the beginning of arbitration proceedings, the competent authorities of the [*Contracting States*] shall ensure that each person that presented the case and their advisors agree in writing not to disclose to any other person any information received during the course of the arbitration proceedings from either competent authority or the arbitration panel. The mutual agreement procedure under [*the Convention*], as well as the arbitration proceeding under [*Part VI of the MLI*], with respect to the case shall terminate if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*], a person that presented the case or one of that person's advisors materially breaches that agreement.

Paragraph 2 of Article 24 (Agreement on a Different Resolution) of the MLI

2. Notwithstanding paragraph 4 of Article 19 [*of the MLI*], an arbitration decision pursuant to [*Part VI of the MLI*] shall not be binding on the [*Contracting States*] and shall not be implemented if the competent authorities of the [*Contracting States*] agree on a different resolution of all unresolved issues within three calendar months after the arbitration decision has been delivered to them.

Article 25 (Costs of Arbitration Proceedings) of the MLI

In an arbitration proceeding under [*Part VI of the MLI*], the fees and expenses of the members of the arbitration panel, as well as any costs incurred in connection with the arbitration proceedings by the [*Contracting States*], shall be borne by the [*Contracting States*] in a manner to be settled by mutual agreement between the competent authorities of the [*Contracting States*]. In the absence of such agreement, each [*Contracting State*] shall bear its own expenses and those of its appointed panel member. The cost of the chair of the arbitration panel and other expenses associated with the conduct of the arbitration proceedings shall be borne by the [*Contracting States*] in equal shares.

Paragraphs 2 and 3 of Article 26 (Compatibility) of the MLI

2. Any unresolved issue arising from a mutual agreement procedure case otherwise within the

scope of the arbitration process provided for in *[Part VI of the MLI]* shall not be submitted to arbitration if the issue falls within the scope of a case with respect to which an arbitration panel or similar body has previously been set up in accordance with a bilateral or multilateral convention that provides for mandatory binding arbitration of unresolved issues arising from a mutual agreement procedure case.

3. [*Nothing*] in [*Part VI of the MLI*] shall affect the fulfilment of wider obligations with respect to the arbitration of unresolved issues arising in the context of a mutual agreement procedure resulting from other conventions to which the [*Contracting States*] are or will become parties.

Subparagraph a) of paragraph 2 of Article 28 (Reservations) of the MLI

Pursuant to Subparagraph a) of paragraph 2 of Article 28 of the MLI, the Republic of Mauritius formulates the following reservation with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI of the MLI.

1. Mauritius reserves the right to exclude from the scope of Part VI cases involving the application of Mauritius's domestic anti-avoidance rules contained in Section 90 of the Income Tax Act or case law interpreting same. Any subsequent provisions replacing, amending or updating these anti-avoidance rules would also be comprehended. Mauritius shall notify the Depositary of any such subsequent provisions.

2. Mauritius reserves the right to exclude from the scope of Part VI any case involving recourse to Part XII (Offences) of the Income Tax Act. Any subsequent provisions replacing, amending or updating provisions in Part XII (Offences) of the Income Tax Act would also be comprehended. Mauritius shall notify the Depositary of any such subsequent provisions.

Pursuant to Subparagraph a) of paragraph 2 of Article 28 of the MLI, France formulates the following reservation with respect to the scope of cases that shall be eligible for arbitration under the provisions of Part VI of the MLI.

1. La France se réserve le droit d'exclure des cas pouvant être soumis à l'arbitrage en vertu des dispositions de la partie VI les cas concernant des éléments de revenu ou de fortune non imposés par une Juridiction contractante dès lors que ces éléments de revenu ou de fortune ne sont pas inclus dans une base imposable dans cette Juridiction contractante ou sur la base que ces éléments de revenu ou de fortune bénéficient d'une exemption ou d'un taux d'imposition nul en vertu de la législation nationale fiscale de cette Juridiction contractante.

2. La France se réserve le droit d'exclure des cas pouvant être soumis à l'arbitrage en vertu des dispositions de la partie VI les cas pour lesquels un contribuable fait l'objet d'une sanction administrative ou pénale pour fraude fiscale, omission volontaire, manquement grave à une obligation déclarative.

3. La France se réserve le droit d'exclure des cas pouvant être soumis à l'arbitrage en vertu des dispositions de la partie VI les cas qui portent en moyenne et par exercice ou par année d'imposition sur une base imposable inférieure à 150 000 €.

4. La France se réserve le droit d'exclure des cas pouvant être soumis à l'arbitrage en vertu des dispositions de la partie VI les cas entrant dans le champ d'application d'une procédure d'arbitrage prévue par un instrument juridique élaboré sous l'égide de l'Union européenne, tel que la

Convention relative à l'élimination des doubles impositions en cas de correction des bénéfice d'entreprises associées (90/436/CEE), ou tout autre instrument postérieur.

5. La France se réserve le droit d'exclure des cas pouvant être soumis à l'arbitrage en vertu des dispositions de la partie VI d'un commun accord avec l'autorité compétente de l'autre Etat. Cet accord sera formulé avant le début de la procédure d'arbitrage et notifié à la personne qui a soumis le cas.

6. Lorsqu'une réserve formulée par un autre Etat en vertu de l'article 28(2)(a) de la Convention fait référence à son droit interne, la France se réserve le droit d'exclure des cas pouvant être soumis à l'arbitrage en vertu des dispositions de la partie VI les cas qui seraient exclus des cas pouvant être soumis à l'arbitrage en vertu des dispositions de cette même partie VI si les réserves de l'autre Etat étaient formulées en se référant à toute disposition similaire de droit français ou à toute disposition ultérieure remplaçant, amendant ou modifiant ces dispositions. Les autorités compétentes françaises consulteront les autorités compétentes des autres Etats contractants afin de préciser dans l'accord prévu à l'article 19(10) chacune de ces dispositions similaires existant dans le droit français.

ARTICLE 27
EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is forseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States or of their local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. Each Contracting State shall take the necessary measures to ensure the availability of information as well as the ability of its competent authority to access information and to transmit it to its counterpart.

The provisions of paragraphs 1 and 2 shall not be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 28
DIPLOMATIC AGENTS AND CONSULAR OFFICERS

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and their personal domestics, of members of consular missions, or of members of permanent missions to international organisations under the general rules of international law or under the provisions of special agreements.

2. Notwithstanding the provisions of Article 4 an individual who is a member of a diplomatic mission, consular post or permanent mission of a State which is situated in the other State or in a third State shall be deemed for the purposes of this Convention to be resident of the sending State if:

(a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State or on capital situated outside that State; and

(b) he is liable in the sending State to the same obligations in relation to tax on his total world income or capital as are residents of that State.

3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who being members of a diplomatic or consular or permanent mission of a third State, are present in a State and are not treated in either State as residents in respect of taxes on income and capital application of the Convention to any territory to which it has been extended under this Article.

ARTICLE 29
TERRITORIAL SCOPE

1. This Convention shall apply:

(a) in the case of Mauritius, to all the islands, the territorial seas and the continental shelf which, in accordance with international law and the laws of Mauritius are under the jurisdiction of Mauritius ;

(b) in the case of France, to the European and overseas departments of the French Republic, and to any area outside the territorial sea of those departments which is, in accordance with international law, an area within which France may exercise rights with respect to the seabed and sub-soil and their natural resources.

2. This Convention may be extended, either in its entirely or with any necessary modifications, to the overseas territories of the French Republic which impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

3. Unless otherwise agreed by both States, the termination of the Convention by one of them under Article 31 shall also terminate, in the manner provided for in that Article, the

The following paragraph 1 of Article 7 of the MLI applies and supersedes the provisions of this Convention:

ARTICLE 7 OF THE MLI –PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

Notwithstanding any provisions of [*the Convention*], a benefit under [*the Convention*] shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of [*the Convention*].

ARTICLE 30
ENTRY INTO FORCE

1. Each State shall notify to the other the completion of the procedure required by its law for the bringing into force of this Convention. This Convention shall enter into force one month after the date of receipt of theater of these notifications.

2. Its provisions shall apply for the first time:
(a) as regards taxes withheld at source, to amounts payable on or after the date of entry into force of this Convention
(b) as regards other taxes on income:
- with respect to Mauritius tax, to income derived during the income year in which this Convention entered into force, or relating to the accounting period ending during that year ;
- with respect to French tax, to income derived during the calendar year in which this Convention entered into force, or relating to the accounting period ending during that year.

ARTICLE 31
TERMINATION

1. This Convention shall remain into force indefinitely. However, on and after 1982, each State may, by giving at least six months notice of termination through diplomatic channels, denounce the Convention for the end of a calendar year.

2. In such an event, its provisions shall apply for the last time

(a) as regards taxes withheld at source, to amounts payable on or before the 31st of December of the calendar year for the end of which the termination has been notified;
(b) as regards other taxes on income:
- with respect to Mauritius tax, to income derived during the income year in which the termination will take effect or relating to the accounting period ending during that year;
- with respect to French tax, to income derived during the calendar year, for the end of which the termination has been notified or relating to the accounting period ending during that year.

In witness whereof, the undersigned have signed this Convention.

Done at Port Louis, Mauritius, this 11th day of December 1980, in duplicate, in the English and French languages, both texts being equally authoritative.

For the Government of Mauritius

V. Ringadoo

For the Government of the French Republic

J. J. Mano

PROTOCOL

At the time of signature of the Convention between the Government of Mauritius and the Government of the French Republic for the avoidance of double taxation with respect to taxes on income and on capital, the undersigned have agreed upon the following provisions.

ARTICLE I

1. In respect of paragraph (1f) of Article 3, the term "international traffic" also means any transport by a container where such transport is supplementary to a transport in international traffic.

2. In respect of Article 6, income from shares, rights or participation in a company or a legal person owning immovable property situated in a State, which, under the laws of that State, is subjected to the same taxation treatment as income from immovable property, may be taxed in that State.

3. (a) In respect of paragraphs 1 and 2 of Article 7, where an enterprise of a State sells goods or merchandise or carries on business in the other State through a permanent establishment situated therein, the profits of this permanent establishment are not determined on the basis of the total amount received by the enterprise, but are determined only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business.

In the case of contracts for the survey, supply, installation or construction of industrial, commercial or scientific equipment or premises, or of public works, when the enterprise has a permanent establishment, the profits of such permanent establishment are not determined on the basis of the total amount of the contract, but are determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the State where the permanent establishment is situated. The profits related to that part of the contract which is carried out by the head office of the enterprise shall be taxable only in the State of which the enterprise is a resident.

(b) In respect of paragraph 1 of Article 7, payments of any kind received as a consideration for the use of, or the right to use, industrial, commercial or scientific equipment shall be deemed to be profits of an enterprise to which the provisions of Article 7 apply. Similarly, payments received as a consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for engineering contracts including blue prints related thereto, or for consultant or supervisory services shall be deemed to be profits to which the provisions of Article 7 apply.

4. Notwithstanding the provisions of paragraph 8 of Article 10, where a company which is a resident of Mauritius carries on an industrial or commercial activity in France through a permanent establishment situated therein, the profits of this permanent establishment after having borne the Corporation tax, may be taxed at a rate not exceeding fifteen per cent, according to the French laws.

5. In respect of Article 11, interest arising in Mauritius and paid to a resident of France shall be taxable only in France if it is paid in respect of a loan made or guaranteed, or of a credit granted or guaranteed, by the French Bank of External Trade (La Banque Française pour le Commerce Extérieur).

6. (a) In respect of Article 13, gains from the alienation of shares, rights or participation in a company or a legal person owing immovable property situated in a State, which under the laws of that State, are subjected to the same taxation treatment as gains from the alienation of immovable property may be taxed in that State.

(b) Notwithstanding the provisions of paragraph 4 of Article 13, gains from the alienation of shares or rights, forming part of a substantial interest in the capital of a company which is a resident of a State may be taxed in that State, according to the laws of that State. A substantial interest shall be deemed to exist when the alienator, alone or together with associated or related persons, holds, directly or indirectly shares or rights, which together give right to 25 per cent or more of the company profits.

7. In respect of Article 23, elements of capital represented by shares, rights or participation in a company or a legal person owing immovable property situated in a State, which, under the laws of that State are subjected to the same taxation treatment as immovable property, may be taxed in that State.

8. In respect of Article 25:

(a) Nothing in paragraph 1 shall be construed as preventing France from granting only to persons possessing the French nationality the benefit of the exemption of the capital gains derived from the alienation of immovable property or part of immovable property constituting a residence in France of French persons who are not domiciled in France, as provided for in Article 6-II of Law No. 76.660 of July 19, 1976.

(b) Nothing in paragraph 4 shall be construed as preventing France from applying the provisions of Article 212 of the "Code général des Impots" as regards interest paid by a French company to a foreign parent company.

ARTICLE II

This Protocol shall remain in force as long as the Convention signed this day between the Government of Mauritius and the Government of the French Republic for the avoidance of double taxation with respect to taxes on income and on capital shall remain in force.

Done at Port Louis, Mauritius, this 11th day of December 1980 in duplicate, in the English and French languages, both texts being equally authoritative.

For the Government of Mauritius

V. Ringadoo

For the Government of the French Republic

J. J. Mano