



Kingdom of Lesotho

AGREEMENT

BETWEEN

**THE GOVERNMENT OF THE KINGDOM OF
LESOTHO**

AND

**THE GOVERNMENT OF THE REPUBLIC OF
MAURITIUS**

FOR

**THE ELIMINATION OF DOUBLE TAXATION WITH
RESPECT TO TAXES ON INCOME AND ON
CAPITAL AND THE PREVENTION OF TAX
EVASION AND AVOIDANCE**

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

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

Intending to conclude an Agreement for the elimination of double taxation with respect to taxes on income and on capital 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 this Agreement for the indirect benefit of residents of third States),

Have agreed as follows:

ARTICLE 1

PERSONS COVERED

1. This Agreement shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. This Agreement shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or 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.
3. The existing taxes to which this Agreement shall apply are in particular:
 - (a) in Lesotho, the taxes imposed under the Income Tax Act, 1993;
(hereinafter referred to as "Lesotho tax");
 - (b) in Mauritius, the income tax;
(hereinafter referred to as "Mauritius tax").
4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting States shall notify each other of changes which have been made in their respective taxation laws, and if it seems desirable to amend any Article of this Agreement, without affecting the general principles

thereof, the necessary amendments may be made by mutual consent by means of an Exchange of Notes.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:
 - (a) the term "Lesotho" means the sovereign Kingdom of Lesotho comprising all the areas that immediately before 4 October 1966 were comprised in the former colony of Basutoland together with such other areas that may, in accordance with international law, be declared by an Act of the Lesotho Parliament to form part of Lesotho;
 - (b) the term "Mauritius" means the Republic of Mauritius and includes:
 - (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;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean Lesotho or Mauritius, as the context requires;
 - (d) the term "business" includes the performance of professional services and of other activities of an independent character;
 - (e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) the term "competent authority" means:
 - (i) in Lesotho, the Commissioner General for the Lesotho Revenue Authority or an authorised representative of the Commissioner General; and
 - (ii) in the case of Mauritius, the Director General, Mauritius Revenue Authority or an authorised representative of the Director General.
 - (g) the term "enterprise" applies to the carrying on of any business;



- (h) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (i) the term "international traffic" means any transport by a ship, aircraft or rail or road transport vehicle operated by an enterprise of a Contracting State, except when the ship, aircraft or rail or road transport vehicle is operated solely between places in the other Contracting State;
- (j) the term "national", in relation to a Contracting State, means:
 - (i) any individual possessing the nationality or citizenship of that Contracting State; and
 - (ii) any legal person, partnership (société) or association deriving its status as such from the laws in force in that Contracting State;
- (k) the term "person" includes an individual, a company, a trust and any other body of persons that is treated as an entity for tax purposes;
- (l) the term "recognised pension fund" of a State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:
 - (i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or
 - (ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i)

2. As regards the application of the Agreement at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of incorporation, place of management or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof as well as a recognised pension fund of that State. This term,

however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:

- (a) the individual shall be deemed to be a resident solely of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident solely of the State with which the individual's personal and economic relations are closer (centre of vital interests);
- (b) If the State in which the centre of vital interests of the individual is situated cannot be determined or if the individual has not a permanent home available in either State the individual shall be deemed to be a resident solely of the State in which the individual has an habitual abode;
- (c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;
- (d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting 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 Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of this Agreement, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Agreement except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

ARTICLE 5

PERMANENT ESTABLISHMENT

1. For the purposes of this Agreement, 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 warehouse, in relation to a person providing storage facilities for others; and
- (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. The term "permanent establishment" also encompasses:

- (a) a building site or construction, installation or assembly project, or supervisory activities in connection therewith only if the site, project or activity lasts more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue within a Contracting State for a period or periods aggregating to more than four months in any twelve-month period commencing or ending in the fiscal year concerned; and
- (c) an installation or structure used for the exploration for natural resources provided that the installation or structure continues for a period of not less than 90 days.

4. 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 or display 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 or display;
- (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 for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise; and
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (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.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting 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 4 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.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting 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.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting 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 Contracting State from immovable property, (including income from agriculture or forestry) situated in the other Contracting 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 Contracting 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, boats, aircraft and rail or road transport vehicles 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.

ARTICLE 7

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting 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 (a) that permanent establishment; (b) sales in that other State of goods or merchandise of the same or similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting 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. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in determining the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

4. In so far as it has been customary in a Contracting 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 Contracting 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 Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

INTERNATIONAL TRANSPORT

1. Profits of an enterprise of a Contracting State from the operation of ships, aircraft or rail or road transport vehicles in international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits that are derived by an enterprise of a Contracting State that operates ships, aircraft or rail or road transport vehicles in international traffic shall include profits derived by that enterprise:

- (a) from the rental on a bare boat basis of ships or aircraft used in international traffic,
- (b) from the use or rental of containers or other related equipment,

but only to the extent that such profits are incidental to the profits to which the provisions of paragraph 1 apply.

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

1. Where:

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

2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other 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 this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 2 shall not apply where judicial, administrative or other legal proceedings have resulted in a final ruling that by actions giving rise to an adjustment of profits under paragraph 1, one of the enterprises concerned is liable to penalty with respect to fraud, gross negligence or wilful default.

ARTICLE 10

DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting 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 to the beneficial owner shall not exceed 10 per cent of the gross amount of the dividends.

The competent authorities of the Contracting States may settle the mode of application of these limitations by mutual agreement.

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

3. The term "dividends" as used in this Article means income from shares or other rights participating in profits (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 Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company except in so far as such dividends are paid to a resident

of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, nothing in this Agreement shall be construed as preventing the other Contracting State from imposing an income tax (referred to as "branch profits tax") on the repatriated income of the permanent establishment in addition to any income tax imposed in accordance with this Agreement on the chargeable income of the permanent establishment; provided that any branch profits tax so imposed shall not exceed 10 per cent of the amount of the repatriated income.

ARTICLE 11

INTEREST

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

2. However, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

The competent authorities of the Contracting States may settle the mode of application of this limitation by mutual agreement.

3. 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. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such

interest shall be deemed to arise in the State in which the permanent establishment is situated.

6. 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 a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 12

ROYALTIES

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

2. However, royalties arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

The competent authorities of the Contracting States may settle the mode of application of this limitation by mutual agreement.

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 copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment 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, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. 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 paid, 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 a case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

FEES FOR TECHNICAL SERVICES

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, subject to the provisions of Articles 8, 16 and 17, fees for technical services arising in a Contracting State may also be taxed in the Contracting State in which they arise and subject to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed 7.5 per cent of the gross amount of the fees.

3. The term "fees for technical services" as used in this Article means any payment to any person in consideration for any services of a managerial, technical or consultancy nature, unless the payment is made:

- (a) to an employee of the person making the payment;
- (b) for teaching in an educational institution or for teaching by an educational institution;
- (c) by an individual for services for the personal use of an individual; or
- (d) for reimbursement of actual expenses incurred by that person with respect to the services.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State and the fees for technical service are effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the fees, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligations to pay the fees was incurred, and such fees are borne by the permanent establishment.

6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State or a third State through a permanent

establishment situated in that other State or the third State and such fees are borne by that permanent establishment.

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 technical fees 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 Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting 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 Contracting State has in the other Contracting State including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains of an enterprise of a Contracting State from the alienation of ships, aircraft or rail or road transport vehicles operated in international traffic or movable property pertaining to the operation of such ships, aircraft or rail or road transport vehicles, shall be taxable only in that State.

4. Gains derived by a resident of a Contracting State from the alienation of shares or any other comparable interest deriving, at any time during the 365 days preceding the alienation, more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.

5. Gains from the alienation of any property other than that referred to in the preceding paragraphs shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting 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 Contracting State in respect of an employment exercised in the other Contracting 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 any 12-month period commencing or ending 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 which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship, aircraft or rail or road that is exercised aboard a ship, aircraft or rail or road transport vehicle operated in international traffic other than aboard a ship, aircraft or rail or road operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 16

DIRECTORS' FEES

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

ARTICLE 17

ENTERTAINERS AND SPORTSPERSON

1. Notwithstanding the provisions of Articles 7 and 15, income derived by a resident of a Contracting State as an entertainer such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that resident's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting State from activities exercised in the other Contracting State as envisaged in paragraphs 1 and 2, shall be exempt from tax in that other State if the visit to that other State is supported wholly or mainly by public funds of the first-mentioned

Contracting State, a political subdivision or a local authority thereof, or takes place under a cultural agreement or arrangement between the Governments of the Contracting States.

ARTICLE 18

PENSIONS AND ANNUITIES

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

2. The term "annuity" as used in this Article means a stated sum payable periodically at stated times, during life or during a specified period or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

ARTICLE 19

GOVERNMENT SERVICE

1. (a) Salaries, wages, and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting 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) did not become 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 Contracting State or a political subdivision, local authority or statutory body thereof to an individual in respect of services rendered to that State or subdivision, authority or body shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3. The provisions of Articles 15, 16, 17 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting State, or a political subdivision, local authority or statutory body thereof.

ARTICLE 20

PROFESSORS AND TEACHERS

1. Notwithstanding the provisions of Article 15, a professor or teacher who makes a temporary visit to one of the Contracting States for a period not exceeding two years from the date of first arrival in that State, solely for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that State and who is, or immediately before such visit was, a resident of the other Contracting State shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned State, provided that such remuneration is derived by the professor or teacher from outside that State.

2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

ARTICLE 21

STUDENTS AND BUSINESS APPRENTICES

A student or business apprentice who is present in a Contracting State solely for the purpose of the student's or business apprentice's education or training and who is, or immediately before being so present was, a resident of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purposes of the student or business apprentice's maintenance, education or training.

ARTICLE 22

OTHER INCOME

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Agreement and arising in the other Contracting State may also be taxed in that other State.

ARTICLE 23

ENTITLEMENT TO BENEFITS

1. Notwithstanding the other provisions of this Agreement, a benefit under this Agreement 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 this Agreement.

2. Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.

3. In order to determine whether or not one of the principal purposes of any person concerned with an arrangement or transaction is to obtain benefits under this Agreement, the competent authorities of the Contracting States agree to undertake an objective analysis of the aims and objects of all persons involved in putting that arrangement or transaction in place and to consider all circumstances surrounding the arrangement or event on a case by case basis. Merely reviewing the tax effect of an arrangement or transaction does not necessarily enable a conclusion to be drawn about its purposes.

4. Where a benefit under this Agreement is denied, any consequential adjustment to be made needs to achieve a just and reasonable result. The competent authority of each Contracting State shall ensure that any consequential adjustments made do not involve any element of double taxation.

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated as follows:

1. In the case of Lesotho, subject to the provisions of the law of Lesotho which relates to the allowance of credit against Lesotho tax of tax paid in a country

outside Lesotho (which shall not affect the general principle of this Article), Mauritius tax paid under the law of Mauritius and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Lesotho from sources in Mauritius shall be allowed as a credit against Lesotho tax payable in respect of that income.

2. In the case of Mauritius:

- (a) Where a resident of Mauritius derives income from Lesotho the amount of tax on that income payable in Lesotho in accordance with the provisions of this Agreement may be credited against the Mauritius tax imposed on that resident.
- (b) Where a company which is a resident of Lesotho pays a dividend to a resident of Mauritius who controls, directly or indirectly, at least 5% of the capital of the company paying the dividend, the credit shall take into account (in addition to any Lesotho tax for which credit may be allowed under the provisions of subparagraph (a)) the Lesotho tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid.

Provided that any credit allowed under this paragraph shall not exceed the Mauritius tax (as computed before allowing any such credit), which is appropriate to the profits or income derived from sources within Lesotho.

ARTICLE 25

NON - DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting 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 in particular with respect to residence, 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 Contracting States.

2. Stateless persons who are residents of a Contracting State shall not be subjected in either Contracting 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 circumstances, in particular with respect to residence, are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting 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 Contracting State to grant to residents of the other Contracting 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 paragraph 1 of Article 9, paragraph 5 of Article 11, or paragraph 5 of Article 12, apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting 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.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting 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 that 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. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State. 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 this Agreement.

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 Contracting State, with a view to the avoidance of taxation which is not in accordance with the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. 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 this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

a) under paragraph 1, 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 this Agreement, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the date when all the information required by the competent authorities in order to address the case has been provided to both competent authorities,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests in writing. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

ARTICLE 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement 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 political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 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

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Agreement or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time



when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraphs 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall, not in that State have any priority applicable to that revenue claim under the laws of the other Contracting State.

6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

- (a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who at that time, cannot under the laws of that State, prevent its collection, or
- (b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection.

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy (*ordre public*);
- (c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- (d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

ARTICLE 29

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 30

ENTRY INTO FORCE

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.
2. The provisions of this Agreement shall apply:
 - (a) in Lesotho:
 - (i) in respect of taxes withheld at source on amounts paid or credited on or after the first day of April next following the date upon which the Agreement enters into force; and
 - (ii) in respect of other taxes, for taxable years beginning on or after the first day of April next following the date upon which the Agreement enters into force.
 - (b) in Mauritius:
 - (i) in respect of taxes withheld at source on amounts paid or credited on or after the first day of July next following the date upon which the Agreement enters into force; and
 - (ii) in respect of other taxes, for taxable years beginning on or after the first day of July next following the date upon which the Agreement enters into force.
3. Notwithstanding the provisions of paragraph 2, the provisions of Articles 27 and 28 shall have effect with respect to any exchange of information that takes place, and any assistance in collection that is provided, on or after the entry into force of this Agreement.
4. The provisions of Article 23 shall not apply in respect of:
 - (a) income derived within a period of 3 years from the date of entry into force of this Agreement in relation to an arrangement or transaction made prior to that date; and



(b) gains derived from the disposal of property acquired under an arrangement or transaction made prior to the date of entry into force of this Agreement.

5. The Agreement between the Government of the Kingdom of Lesotho and the Government of the Republic of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and the Protocol signed at Pretoria on 29 August 1997, shall be terminated with effect from the date of entry into force of this Agreement and shall cease to have effect for any period thereafter for which the provisions of this Agreement shall apply.

ARTICLE 31

TERMINATION

1. This Agreement shall remain in force indefinitely but either of the Contracting States may terminate the Agreement through the diplomatic channel, by giving to the other Contracting State written notice of termination not later than 30 June of any calendar year starting five years after the year in which the Agreement entered into force.

2. In such event the Agreement shall cease to have effect:

(a) in Lesotho:

- (i) in respect of taxes withheld at source, on amounts paid or credited after the first day of April next following the calendar year in which such notice is given; and
- (ii) in respect of other taxes, for taxable years beginning on or after the first day of April next following the calendar year in which such notice is given.

(b) in Mauritius:

- (i) in respect of taxes withheld at source, on amounts paid or credited after the first day of July next following the calendar year in which such notice is given; and
- (ii) in respect of other taxes, for taxable years beginning on or after the first day of July next following the calendar year in which such notice is given.

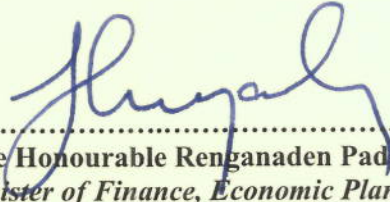
3. Notwithstanding the provisions of paragraph 2, in the case of the provisions of Articles 27 and 28, in respect of any exchange of information that would otherwise take place and any assistance in collection that would otherwise be provided, after the end of the calendar year in which such notice is given.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE at Maseru in two originals this^{2nd} day of MARCH of the year two thousand and 2021 and at Port Louis this^{14th} day of January of the year two thousand and twenty one


.....
Honourable Thabo Sophonea (MP)
Minister of Finance

**For the Government of
the Kingdom of Lesotho**


.....
Dr the Honourable Renganaden Padayachy
*Minister of Finance, Economic Planning
and Development*

**For the Government of
the Republic of Mauritius**