

LEGAL SUPPLEMENT

to the Government Gazette of Mauritius No. 48. of 31 May 1997

Government Notice No. 53 of 1997

THE INCOME TAX ACT 1995**Regulations made by the Minister under section 76
of the Income Tax Act 1995**

1. These regulations may be cited as the Double Taxation Agreement (State of Kuwait) Regulations 1997.
2. In these regulations —
“Agreement” means the agreement entered into with the Government of the State of Kuwait in pursuance of section 76 of the Income Tax Act 1995 and set out in the Schedule to these regulations.
3. The Agreement shall come into operation on the date specified in Article 30 thereof.

Made by the Minister on 12th May 1997.

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SCHEDULE
(regulation 2)
AGREEMENT
between the
Government of the Republic of Mauritius
and the
Government of the State of Kuwait
for the
Avoidance of Double Taxation
and the
Prevention of Fiscal Evasion with respect
to
Taxes on Income and Capital

The Government of the State of Kuwait and the Government of the Republic of Mauritius desiring to promote their mutual economic relations by removing fiscal obstacles through the conclusion of an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital,

HAVE AGREED as follows :

ARTICLE 1

PERSONAL SCOPE

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 thereof, 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, as well as taxes on capital appreciation.

3. The existing taxes to which this Agreement shall apply are :

(a) in the case of Mauritius :

- (1) income tax; and
- (2) capital gains tax (morcellement);

(hereinafter referred to as "Mauritius tax")

(b) in the case of Kuwait :

- (1) the corporate income tax;
- (2) the contribution from the net profits of the Kuwaiti shareholding companies payable to the Kuwait Foundation for Advancement of Science (KFAS); and

- (3) the Zakat;

(hereinafter referred to as "Kuwaiti tax").

4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial 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. For the purposes of this Agreement, unless the context otherwise requires :

(a) 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;

(b) the term "Kuwait" means the territory of the State of Kuwait including any area beyond the territorial sea which in accordance with international law has been or may be designated under the laws of Kuwait as an area over which Kuwait may exercise sovereign rights or jurisdiction;

(c) the terms "a Contracting State" and "the other Contracting State" mean Mauritius or Kuwait as the context requires;

(d) the term "person" includes an individual, a company and any other body of persons;

(e) the term “national” means :

- (i) in the case of Mauritius, any individual possessing the citizenship of Mauritius or any legal person, partnership, association and any other entity deriving its status as such from the laws in force in Mauritius;
- (ii) in the case of Kuwait , any individual possessing the nationality of Kuwait or any legal person, partnership, and association deriving its status as such from the laws in force in Kuwait,

(f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;

(g) 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;

(h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term “tax” means Mauritius tax or Kuwaiti tax, as the context requires; and

(j) the term “competent authority” means :

- (i) in Mauritius, the Minister of Finance or his authorized representative;
- (ii) in Kuwait, the Minister of Finance or his authorized representative.

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

ARTICLE 4
RESIDENT

1. For the purposes of this Agreement, the term “resident of a Contracting State” means :

- (a) in the case of Mauritius, any person who, under the laws of Mauritius, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. This term does not include any person who is liable to tax in Mauritius in respect only of income from sources in Mauritius; and
- (b) in the case of Kuwait, an individual who has his domicile in Kuwait and is a Kuwaiti national, and a company which is incorporated in the State of Kuwait.

2. For the purposes of paragraph 1, a resident of a Contracting State shall include :

- (a) the Government of that Contracting State or any political subdivision or local authority thereof; and
- (b) any governmental institution created in that Contracting State under public law such as a corporation, Central Bank, fund, authority, foundation, agency or other similar entity; and
- (c) in the case of Kuwait, any inter-governmental entity established in Kuwait in whose capital Kuwait subscribes together with other States.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting 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;
- (b) if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

- (c) if the Contracting 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 Contracting State in which he has an habitual abode;
- (d) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (e) if his status cannot be determined under the provisions of subparagraphs (a) to (d), the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated, or if that cannot be established, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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. A building site or a construction, assembly, erection or installation project or a supervisory activity in connection therewith constitutes a permanent establishment only if such site, project or activity continues for a period of more than 9 (nine) months.

4. The furnishing of services, including consultancy services, by an enterprise of a Contracting State through employees or other engaged personnel in the other Contracting State constitutes a permanent establishment provided that such activities continue for the same project or a connected project for a period or periods aggregating more than 9 (nine) months within any 12 (twelve) month period.

5. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if substantial equipment in that other Contracting State is being used or installed by, for or under contract with the enterprise.

6. 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 for the purpose of advertising or the collection or supply of 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 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.

7. Notwithstanding the provisions of paragraphs 1 and 2 above, where a person - other than an agent of an independent status to which paragraph 8 applies - is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, in respect of any activities which that person undertakes for the enterprise, if :

- (a) he has and habitually exercises in the first-mentioned Contracting State a general authority to negotiate and conclude contracts in the name of such enterprise; or
- (b) he has no such authority, but habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to such enterprise from which he regularly delivers goods or merchandise on behalf of such enterprise; or
- (c) he habitually secures orders in the first-mentioned Contracting State, exclusively or almost exclusively for the enterprise itself or for such enterprise and other enterprises which are controlled by it or have a controlling interest in it; or
- (d) in so acting, he manufactures in that Contracting State for the enterprise goods or merchandise belonging to the enterprise.

8. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting 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. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

9. 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 Contracting 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 Contracting State, but the tax so charged shall be reduced by an amount equal to (50%) fifty percent of such tax.

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 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 Contracting State shall be taxable only in that Contracting 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 Contracting State but only so much of them as is attributable to 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 permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. 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.

5. Insofar 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.

6. 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.

7. If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in paragraph 2 shall affect the application of any law of that Contracting State relating to the determination of the tax liability of that permanent establishment by making of an estimate

of the profits to be taxed of that permanent establishment by the competent authority of the Contracting State, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

8. For the purpose 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.

ARTICLE 8

INTERNATIONAL TRAFFIC

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that Contracting State.

2. The provisions of paragraph 1 shall also apply to profits derived 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 one of the Contracting States 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 this Agreement 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 Contracting State to a resident of the other Contracting State shall be taxed only in the other Contracting State.

2. 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, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident.

3. The provisions of paragraph 1 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, 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.

4. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting 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 Contracting 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 Contracting 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 Contracting State.

ARTICLE 11

INTEREST

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

2. 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 premium and prizes attaching to such securities, bonds or debentures.

3. The provisions of paragraph 1 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, or performs in that other Contracting 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, but the tax so charged shall not be more than (5%) five percent of the gross amount of such interest.

4. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that Contracting 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 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 Contracting State in which the permanent establishment or fixed base is situated.

5. 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 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 Contracting State.

2. However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10% (ten per cent) of the gross amount of such 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 copyright of literary, artistic or scientific work, including cinematograph films, films or tapes or discs for television or radio broadcasting, any patent, trade mark, design or model, computer software, plan, secret formula or process for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience including consultancy and technical assistance.

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, or performs in that other Contracting 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 Article 14, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that Contracting 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 or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base 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, 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 payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 13

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 in the event that such gains become subject to tax, be taxed in the other Contracting State, but the tax so charged shall be reduced by an amount equal to 50 percent of such tax.

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 or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may in the event that such gains become subject to tax, be taxed in the other Contracting State, but the tax so charged shall be reduced by an amount equal to 50% (fifty) percent of such tax.

3. Gains derived by an enterprise of a Contracting State 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 that Contracting State.

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

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State. However, such income may be taxed in the other Contracting State in the following circumstances :

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities (in which case only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State); or
- (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days during any twelve month period.

2. The term "professional services" includes especially but not exclusively 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, 19, 20 and 21, 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 Contracting 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 Contracting 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 Contracting State if :

- (a) the recipient is present in the other Contracting 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 Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State.

4. An individual appointed by the head office of the national air carrier of a Contracting State to serve as ground staff in the other Contracting State shall be exempted from taxes levied on his remuneration in the other Contracting State if such individual was not, immediately before taking up such employment , a resident of the other Contracting 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 or

other similar organ of a company which is a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State.

ARTICLE 17

ARTISTES AND ATHLETES

1. Notwithstanding the provisions of Articles 14 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 an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other Contracting 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 Contracting State in which the activities of the entertainer or athlete are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits, salaries, wages and similar income derived by entertainers or athlete who are residents of a Contracting State from activities in the other Contracting State if their visit to that Contracting State is substantially supported from the public funds of the other Contracting State, including those of any political subdivision, a local authority or statutory body thereof, nor to income derived by a non-profit making organization in respect of such activities provided no part of its income is payable to, or is otherwise available for the personal benefit of its proprietors, founders or members.

ARTICLE 18

PENSIONS AND ANNUITIES

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

2. As used in this Article :

- (a) the terms “pensions and other similar remuneration” mean periodic payments made after retirement in consideration of past employment or by way of compensations for injuries received in connection with past employment.
- (b) the term “annuities” means a stated sum payable periodically at stated times during life, or during a specified 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) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that Contracting State and the individual is a resident of that Contracting State who :
 - (i) is a national of that Contracting State; or
 - (ii) did not become a resident of that Contracting 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 or a local authority thereof to an individual in respect of services rendered to that Contracting State or subdivision or authority shall be taxable only in that Contracting 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 Contracting 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 Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20

TEACHERS AND RESEARCHERS

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned Contracting State or of a university, college, school, museum or other public cultural institution in that first-mentioned Contracting State or under an official programme of cultural exchange, is present in that Contracting State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institution shall be exempt from tax in that Contracting State on his remuneration for such activity, provided that the payment of such remuneration is derived by him from outside that Contracting State.

ARTICLE 21

STUDENTS AND TRAINEES

1. Payments which a student or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting 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 Contracting State, provided that such payments arise from sources outside that Contracting State.

2. Notwithstanding the provisions of paragraph 1, remuneration which a student or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present

in the first-mentioned Contracting State solely for the purpose of his education or training derives from temporary services rendered in that other Contracting State shall not be taxed in that other Contracting State, provided that such services are in connection with his education or training and that the remuneration for such services is necessary to supplement the resources available to him for the purpose of his maintenance.

ARTICLE 22

OTHER INCOME

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 Contracting State.

ARTICLE 23

CAPITAL

If in the future a Contracting State will introduce a general tax on capital, the competent authorities shall by mutual agreement decide how this Agreement shall apply to such tax.

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

1. The laws in force in either of the Contracting States shall continue to govern the taxation in the respective Contracting State except where provisions to the contrary are made in this Agreement.

2. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article :

(a) In the case of Mauritius :

- (1) Where a resident of Mauritius derives profits or income from sources within Kuwait and which, under the laws of Kuwait and in accordance with this Agreement are taxable or may be taxed in Kuwait, whether directly or by deduction, Mauritius shall allow the Kuwaiti tax payable as a credit against

any Mauritius tax computed by reference to the same profits or income by reference to which the Kuwaiti tax payable is computed.

- (2) For the purpose of item (1) of this subparagraph the Kuwaiti Zakat tax mentioned in paragraph 3 of Article 2 shall be considered as income tax.

(b) In the case of Kuwait :

If a resident of Kuwait derives profit or income from sources within Mauritius and which under the laws of Mauritius and in accordance with the provision of this Agreement, may be taxed in Mauritius ,Kuwait shall allow the Mauritius tax payable against any Kuwaiti tax computed by reference to the same profit or income by reference to which the Mauritius tax payable is computed.

In such case the credit allowable in respect of the Mauritius tax shall not exceed that proportion of the aforesaid Kuwaiti tax which such income bears to the total income or profits.

3. Where in accordance with the laws of a Contracting State, aimed at promoting economic development taxes covered by this Agreement are exempted or reduced, the taxes which would have been payable in accordance with this Agreement but have been exempted or reduced, shall be deemed to have been paid for the purposes of the preceding paragraphs of this Article.

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 or connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. 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.

3. 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.

4. Notwithstanding the provisions of paragraphs 1,2, and 3 nothing in this article shall affect the right of a Contracting State to grant an exemption or reduction of taxation in accordance with its domestic laws, regulations or administrative practices to its own nationals who are residents of that Contracting State irrespective of their ownership of any proportion of the capital of a company which is resident in that Contracting State. Such exemption or reduction , however ,shall not be extended to nationals of the other Contracting State irrespective of their ownership of any proportion of the capital of the company.

5. Nothing in this Article shall be construed as imposing a legal obligation on a Contracting State to extend to the residents of the other Contracting State, the benefit of any treatment, preference or privilege which may be accorded to any other State or its residents by virtue of the formation of a customs union, economic union, special agreements, a free trade area or by virtue of any regional or sub-regional arrangement relating wholly or mainly to movement of capital and/or taxation to which the first-mentioned Contracting State may be a party.

6. In this Article, the term “taxation” means taxes which are the subject of this Agreement.

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 Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 25, to that of the Contracting 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 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 this 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 for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 27**EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted

by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. 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.

2. In no case shall the provisions of paragraph 1 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 practices 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).

ARTICLE 28

MISCELLANEOUS RULES

1. The provisions of this Agreement shall not be construed or restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded :

- (a) by the laws of a Contracting State in the determination of the tax imposed by that Contracting State; or
- (b) by any other special arrangement on taxation in connection with the economic or technical cooperation between the Contracting States.

2. The competent authorities of each Contracting State may prescribe regulations in order to carry out the provisions of this Agreement.

ARTICLE 29**DIPLOMATIC AND CONSULAR PRIVILEGES**

Nothing in this Agreement shall affect the fiscal privileges of members of a diplomatic mission, a consular post or an international organization under the general rules of international law or under the provisions of special agreements.

ARTICLE 30**ENTRY INTO FORCE**

1. The Contracting States shall notify each other that the constitutional requirement for entry into force of this Agreement have been complied with.

2. This Agreement shall enter into force 30 days after the later of the date of the notification referred to in paragraph 1 and its provisions shall have effect in both Contracting States:

- (a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of July of the year in which this Agreement is signed;
- (b) in respect of other taxes, for taxable periods beginning on or after the first day of July of the year in which this Agreement is signed.

ARTICLE 31**TERMINATION**

This Agreement shall remain in force for a period of five years and shall continue in force thereafter for similar period or periods unless either Contracting State notifies the other in writing, six months before the expiry of the initial or any subsequent period, of its intention to terminate this Agreement. In such event, this Agreement shall cease to have effect in both Contracting States :

- (a) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of July of the year next following that in which the notice of termination is given; and
- (b) in respect of other taxes, for taxable periods beginning on or after the first day of July of the year next following that in which the notice of termination is given.

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

Done at Port-Louis this fifteenth day of THUALEDA 1417 H corresponding to the twenty fourth day of March 1997, in duplicate, in the Arabic, and English languages, all texts being equally authentic. In case of divergency, the English text shall prevail.

Dr The Hon Vasant Kumar Bunwaree

H.E.M.S. Nabeela Al- Mulla

Minister of Finance
*For the Government of the
Republic of Mauritius*

.....
*For the Government of the
State of Kuwait*

Government Notice No. 54 of 1997

THE EDUCATION ACT

**Regulations made by the Minister under section 38
of the Education Act**

1. These regulations may be cited as the Education (Pre-primary Schools) Regulations 1997.

2. In these regulations —

“authorised officer” means a public officer authorised by the Minister;

“pre-primary school” means an establishment providing educational servicings, including custodial, to not less than 10 children above the age of 3 and up to the age of entry to a primary school.

3. (1) No person shall run a pre-primary school (1) unless the school has been registered under these regulations.

(2) A person who wishes to run a pre-primary school shall make an application for the registration of the school not later than 31 July of the year preceding the year in which the school is to begin to function.

(3) An application under paragraph (2) shall be made to the Minister on a form set out in the First Schedule.

4. (1) Where the Minister grants an application made under paragraph 3(3), he shall, on payment of the fee of 25 rupees, issue a Certificate of registration in the form set out in the Second Schedule.

(2) A Certificate of Registration issued under paragraph (1) shall be valid for a period of 2 years and may be renewed for further periods of 2 years on payment of a fee of 25 rupees.

5. (1) A pre-primary school shall not be registered unless it complies with such requirements relating to—

- (a) the premises;
- (b) sanitary conditions;
- (c) furniture and equipment;
- (d) health and safety,

as may be imposed by the Minister.

(2) Where a pre-primary school which was in operation before the commencement of these regulations does not satisfy the requirements specified in paragraph (1), the Minister may grant a certificate of provisional registration for such period as the Minister may determine.

6. (1) A pre-primary school shall be under the responsibility of a manager.

(2) Every manager of a pre-primary school shall be registered.

(3) An application for registration as manager shall be made to the Minister on a form approved by the Minister.

(4) The Minister may issue such directions as he thinks fit for the effective running of the pre-primary school.

(5) No manager shall be responsible for more than one pre-primary school.

7. (1) No person shall teach in a pre-primary school unless he is registered.

(2) An application for registration under paragraph (1) shall be made to the Minister on a form approved by the Minister.

(3) No person under 18 years of age shall be registered.

(4) Subject to paragraph (5), no person shall be registered to teach in a pre-primary school unless—

(a) he is the holder of the Cambridge School Certificate or an equivalent qualification acceptable to the Minister;

(b) he has followed a relevant and appropriate training course to the satisfaction of the Minister; and

(c) he produces a medical fitness certificate and X-ray certificate.

(5) Where a person establishes, to the satisfaction of the Minister, that he has, for a period of 5 years immediately preceding the commencement of these regulations, continuously been teaching in a pre-primary school or other similar institution, the Minister may exempt the person from the requirements under paragraph 4(a) and (b).

(6) A teacher registered under these regulations shall, every 3 years after such registration, submit to the Minister a new medical fitness certificate and X-ray certificate.

8. Every manager of a pre-primary school shall keep—

(a) an admission register;

(b) an attendance register;

(c) a register of teaching and non-teaching staff;

(d) an inspection register;

(e) a cash book;

(f) a visitor's book;

(g) an inventory of furniture and equipment;

(h) a time-table;

(i) a Health Record Card for each pupil; and

(j) a record of every pupil's skill in such activities as may be designated by the Minister.

9. A pre-primary school teacher shall keep—

- (a) a weekly plan of work;
- (b) lesson notes.

10. An authorised officer may at any reasonable time visit and inspect a pre-primary school.

11. In every pre-primary school—

- (a) there shall be at least one teacher for every 30 children;
- (b) the teaching time shall be not less than 5 hours daily;
- (c) there shall be 3 terms which shall be the same as those of the primary sector or as otherwise approved by the Minister.

12. The manager of every pre-primary school shall, by the end of January in every year submit to the Minister a list of pupils as well as a list of members of the staff.

13. Every pre-primary school may be inspected by such medical and sanitary officers as may be deputed by the Permanent Secretary of the Ministry of Health.

14. Any person who contravenes these regulations shall commit an offence and shall, on conviction, be liable to a fine not exceeding 1,000 rupees.

15. The Education (Pre-school Institutions) Regulations 1987 are repealed.

16. These regulations shall come into operation on 16 May 1997.

Made by the Minister on 15 May 1997.