LEGAL NOTICE NO. 2

THE PRIVILEGES AND IMMUNITIES ACT
(Cap. 179)

IN EXERCISE of the powers conferred by section 9 of the Privileges and Immunities Act, the Cabinet Secretary for Foreign Affairs and International Trade makes the following Order—

THE PRIVILEGES AND IMMUNITIES (AFRICAN INSTITUTE FOR REMITTANCES) ORDER, 2015

1. This Order may be cited as the Privileges and Immunities (African Institute for Remittances) Order, 2015.

2. The African Union Institute, in this Order referred to as “the Institute”, being an international organization of which the Government of the Republic of Kenya and other Governments are members, is hereby declared to be an organization to which section 9 of the Act shall apply.

3. The Institute shall have—
   (a) the legal capacity of a body corporate;
   (b) the privileges and immunities specified in Part I of the Fourth Schedule to the Act.

4. The representatives of member states shall have the privileges and immunities specified in Part II of the Fourth Schedule to the Act.

5. Any person who is an official of the Institute shall, while residing in Kenya and performing duties in the service of the Institute, have the privileges and immunities specified in Part III of the Fourth Schedule to the Act:

Provided that the provisions of this paragraph shall not apply to citizens of Kenya or to any person who is ordinarily resident in Kenya except solely for the purpose of being an employee of, and working exclusively for, the Institute.

Dated the 19th December, 2014.

AMINA C. MOHAMED,
Cabinet Secretary for Foreign Affairs & International Trade.
declares that the arrangements specified in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the Slovak Republic for Promotion and Reciprocal Protection in relation to foreign investments, entered into on the 14th of December, 2011, shall notwithstanding anything to the contrary in the Foreign Investment Protection Act or in any other written law, have effect in relation to investments promotion and protection.

SCHEDULE

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

RECOGNIZING that this Agreement is concluded between the Government of the Slovak Republic and the Government of the Republic of Kenya, which act on behalf of the Slovak Republic and the Republic of Kenya respectively;

RECOGNIZING the need to protect investments of the investors of one Contracting Party in the territory of the other Contracting Party on a non-discriminatory basis;

DESIRING to promote greater economic co-operation between them, with respect to investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

RECOGNIZING that agreement on the promotion and protection to be accorded such investments will stimulate the flow of private capital and the economic development of the Contracting Parties;

AGREEING that a stable framework for investments will contribute to maximizing the effective utilization of economic resources and improve living standards;

RECOGNIZING that the development of economic and business ties can promote respect for internationally recognized labour rights;

AGREEING that these objectives can be achieved without relaxing health, safety and environmental measures of general application; and

Having resolved to conclude an Agreement concerning the promotion and protection of investments;

H ave A greed as follows:

ARTICLE 1

DEFINITIONS

For the purpose of this Agreement:

(1) The term ‘investment’ means every kind of assets established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party, including in particular, though not exclusively:
(a) Movable and immovable property and any other property rights such as mortgages, liens, pledges, leases, usufruct and other similar rights;

(b) Invested and reinvested returns;

(c) Shares in stocks and debentures of, and any other forms of participation in a company or any business enterprise and rights or interest derived there from;

(d) Claims to money or to any performance under contract having an economic value;

(e) Intellectual property rights such as patents, copyrights, trademarks, industrial designs, business names, franchises, geographical indications as well as technical processes, know-how, trade secrets and goodwill associated with and investment; and

(f) Concessions, rights and permits having an economic value conferred by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.

Investments made in the territory of one Contracting Party by any legal entity of that Contracting Party, but actually owned or controlled, directly or indirectly, by investors of the other Contracting Party, shall likewise be considered as investments of investors of the latter Contracting Party, if they have been made in accordance with the laws and regulations of the former Contracting Party.

Any change of the form in which assets are invested or reinvested shall not affect their character as an investment.

(2) The term ‘returns’ means amounts yielded by investments and shall, in particular, though not exclusively; include profits, dividends, interest, royalties, capital gains or any payments in kind related to the investments.

(3) The term ‘investor’ means for either Contracting Party, any of the following subjects invest in the territory of the other Contracting Party in accordance with the laws and regulations of the latter Contracting Party and the provisions of this Agreement:

(a) Any natural person, who is a national of either Contracting Party in accordance with its laws and regulations; or

(b) Any legal entity such as company, corporation, firm, partnership, business association, institution or organization incorporated or constituted in accordance with the laws and regulations of the Contracting Party and having its registered office or central administration or principal place of business within the jurisdiction of that Contracting Party, whether or not for profit and whether its liabilities are limited or not.
The term ‘territory’ means:

(a) As regards the Slovak Republic, the land territory, internal waters and the air space above them, over which it exercises its sovereignty, sovereign rights and jurisdiction in accordance with international law;
(b) As regards the Republic of Kenya, the land territory, internal waters, territorial sea and the airspace above them, as well as the maritime zones beyond the territorial sea, including the seabed and subsoil, over which the Republic of Kenya exercises sovereign rights or jurisdiction in accordance with its national laws in force and international law, for the purpose of exploration and exploitation of the natural resources of such areas.

(4) The term ‘freely convertible currency’ means the currency that is widely used to make payments for international transactions and widely exchanged in principal international exchange markets.

ARTICLE 2

PROMOTION AND PROTECTION OF INVESTMENTS

1. Each Contracting Party shall promote in its territory investments by investors of the other Contracting Party and shall, in accordance with its laws and regulations admit such investments.

2. Each Contracting Party shall in its territory accord to investments and returns of investments of investors of the other Contracting Party fair and equitable treatment and full and constant protection and security.

3. Neither Contracting Party shall in its territory impair by unreasonable or arbitrary measures the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments of investors of the other Contracting Party.

ARTICLE 3

TREATMENT OF INVESTMENTS

1. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments a treatment no less favourable than the treatment it accords to its own investors and their investments with respect to the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments.

2. Each Contracting Party shall accord to investors of the other contracting Party and to their investments, a treatment no less favourable than the treatment it accords to investors of the most favoured nation and to their investments with respect to the establishment, acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments.
3. Neither Contracting Party shall mandate or enforce in its territory measures on investments by investors of the other Contracting Party, concerning purchase of materials, means of production, operation, transport, marketing of its products or similar orders having discriminatory effects. Such requirements do not include conditions for the receipt or continued receipt of an advantage.

4. Paragraph 1 of this Article is supplemented by a Protocol which shall be an integral part of this Agreement.

ARTICLE 4
EXEMPTIONS

The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors and investments by investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of any existing or future:

(a) Free trade area, customs union, common market, economic and monetary union or other similar regional economic integration agreement, including regional labour market agreements, to which one of the Contracting Parties is or may become a party; or

(b) Agreement for the avoidance of double taxation or other international agreement relating wholly or mainly to taxation or

(c) Multilateral agreement relating wholly or mainly to investments.

ARTICLE 5
EXPROPRIATION

1. Investments by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subjected to any other measures directly or indirectly, having an effect equivalent to expropriation or nationalization (hereinafter referred to as 'expropriation'), except for a purpose which is in public interest, on a non-discriminatory basis in accordance with due process of law and against prompt and full compensation.

2. Such compensation shall amount to the fair market value of the expropriated investments at the time immediately before expropriation was taken or before the impending expropriation became public knowledge, whichever is the earlier. The fair market value shall be determined in accordance with generally accepted principles of valuation, taking into account, inter alia, the capital invested, replacement value, appreciation, current returns, the projected flow of future returns, goodwill and other relevant factors.

3. Compensation shall be fully realizable, effective and shall be paid without any restriction or delay. It shall include interest at the
applicable commercial rate established on the market basis for the currency of payment from the date of dispossession of the expropriated property until the date of actual payment. Compensation shall be made in a freely convertible currency.

4. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its territory, and in which investors of the other Contracting Party own shares, debentures or other forms of participation, it shall ensure that the provisions of the paragraphs 1 to 3 of this Articles are applied to the extent necessary to guarantee compensation in respect of their investments to such investor of the other Contracting Party who are owners of those shares, debentures or other forms of participation.

5. Without prejudice to the provisions of Article 9 of this Agreement, the investor of one of the Contracting Parties whose investments are expropriated shall have the right to prompt review of its case and of the valuation of its investments in accordance with the principles set out in this Article, by a judicial or other competent and independent authority of that Contracting Party.

ARTICLES 6

COMPENSATION FOR LOSSES

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than the one accorded by the latter Contracting Party to its own investors or investors of the most favoured nation, whichever, according to the investor, is more favourable.

2. Without prejudice to paragraph 1 of this Articles, investors of one Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their investments or a part thereof by latter’s authorities; or

(b) destruction of their investments or a part thereof by latter’s authorities which was not required by the necessity of the situation,

shall be accorded by latter Contracting Party restitution or compensation which in either case shall be prompt and full with respect to compensation, shall be in accordance with Article 5 paragraphs 2-3 from the date of requisitioning or destruction until the date of actual payment.
ARTICLES 7

FREE TRANSFERS

1. Each Contracting Party shall ensure to investors of the other Contracting Party the free transfer, into and out of its territory, of their investments and transfer of payments related to investments. Such payments shall include in particular, though not exclusively:

(a) principal and additional amounts to maintain, develop or increase the investment;
(b) returns and any other income accruing from investments;
(c) proceeds obtained from the total or partial sale or disposal of an investment including the sale of shares;
(d) proceeds from total or partial liquidation of investments;
(e) amounts required for the payment of expenses, which arise form the operation of the investment, such as loan repayments, payments of royalties, payments related to import letters of credit, management fees, license fees, advance payments and other similar expenses;
(f) compensation payable pursuant to Articles 5, 6, 8 and 9
(g) earnings and other remuneration of personnel engaged from abroad and working in connection with an investment.

2. Each Contracting Party shall further ensure that the transfers referred to in paragraph 1 of this Articles shall be made without any restriction in a freely convertible currency of the choice of the investor and at the prevailing market rate of exchange applicable on the date of transfer to the currency to be transferred and shall be promptly transferable.

3. Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may delay a transfer through the application of measures ensuring investors' compliance with the host Contracting Party's laws and regulations on the payment of taxes and dues in force at the time request for transfer was made and provided that the application of such laws and regulations shall not unnecessarily impair the free transfer ensured by this Agreement.

4. In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for the conversions of currencies into Special Drawings Rights.

5. In case of an unjustified delay in transfer caused by the host Contracting Party, the transfer shall also include interest at a commercial rate established on a market basis for the currency in question from the date on which the transfer was requested until the date of actual transfer and shall be borne by the Contracting Party.

6. Notwithstanding paragraphs (1) and (2) above, a Contracting Party may adopt or maintain measures relating to cross-
border capital and payment transactions adopted by each contracting party and particularly but not limited by the following cases:

(a) in the event of serious balance of payments and external financial difficulties or threat thereof; or

(b) in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies; or

(c) in the exceptional cases of economic sanctions:

7. Measures referred to paragraph (6) of this Article:

(a) shall not exceed those necessary to deal with the circumstances set out in paragraph (6) of this Article;

(b) shall be temporary and shall be eliminated as soon as conditions permit; and

(c) shall be promptly notified to the other Contracting Party.

ARTICLE 8

SUBROGATION

1. If a Contracting Party or its designated agency makes a payment under an indemnity, guarantee or contract of insurance given in respect of an investment of an investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment of any right or claim of such investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right and claim to the same extent as its predecessor in title.

2. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

ARTICLE 9

DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY

1. Any dispute arising directly from an investment between one Contracting Party and an investor of the other contracting Party should be settled amicably between the parties to the dispute.

2. If the dispute has not been settled within four (4) months from the date on which it was raised in writing, the dispute may, at choice of the investor, be submitted to:

(a) The competent courts of the Contracting Party in whose territory the investment is made; or

(b) Arbitration by the International Center for Settlement of Investment Disputes (ICSID) established pursuant to the
Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as 'centre'), if the Centre is available; or

(c) An ad hoc arbitration tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(d) Any other previously agreed ad hoc arbitration tribunal;

3. An investor who has submitted the dispute to a national court may nevertheless have recourse to one of the arbitral proceedings mentioned in paragraphs 2(b) to 2(d) of this Article if, before a judgment has been delivered on the subject matter by a national court, the investor declares not to pursue the case any longer through national proceedings and withdraws the case.

4. Any arbitration under this Article shall, at the request of either Party to the dispute be held in a state that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature at New York 10th June, 1958. Claims submitted to arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for the purpose of the Article 1 of the New York Convention.

5. Each Contracting Party hereby gives its unconditional consent to the submission of a dispute between it and investor of the other Contracting party to arbitration in accordance with this Article. Once the investor has submitted the dispute under any of the procedures stipulated above, that choice is final.

6. Neither of the Contracting Parties, which is the party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of insurance or guarantee contract.

7. The award granted pursuant to this article shall be final and binding on the parties to the dispute and shall be executed in accordance with law of the contracting Party in whose territory the award is relied upon, by the competent authorities of the Contracting Party by dates indicated in the award.

ARTICLE 10

DISPUTES BETWEEN THE CONTRACTING PARTIES

1. The Contracting Parties agree to consult promptly on the request of either Contracting Party to resolve any disputes in connection with this Agreement.
2. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement shall, as far as possible, be settled through diplomatic channels.

3. If the dispute cannot thus be settled within nine (9) months following the date on which either Contracting Party requested such negotiations, it shall at the request of either Contracting Party be submitted to an Arbitral Tribunal.

4. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within to (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of Arbitral Tribunal. The Chairman shall be appointed within four (4) months from the date of appointment of the other two members.

5. If the necessary appointments have not been made within the periods specified in paragraph 4 of this Article, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party or not otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

6. The Arbitral Tribunal shall reach its decision by a majority of votes. The decisions of the Arbitral Tribunal shall be final and binding on both Contracting Party and of its representation in the arbitral proceedings. Both contracting parties shall assume an equal share of the costs of the Chairman, as well as any other costs. The Arbitral Tribunal may make a different decision regarding the sharing of costs. In all other respects, the Arbitral Tribunal shall determine its own rules of procedure.

7. Issues subject to dispute referred to in paragraph 2 of this Article shall be decided in accordance with the provisions of this Agreement and the generally recognized principles of international law.

**ARTICLE 11**

**PERMITS**

1. Each Contracting Party shall, subject to its laws and regulations, treat favorably the application relating to investments by investors of the other Contracting Party.

2. Each Contracting Party shall, subject to its laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to natural persons who are employed from abroad as executives, managers, specialists or technical personnel in connection with an investment by an investor of the other Contracting Party, and who are essential for the enterprise, as long as these person continue to meet the requirements of this paragraph. Immediate family
members of such personnel shall also be granted a similar treatment with regard to entry and temporary stay in the territory of the host Contracting Party.

ARTICLE 12
APPLICATION OF OTHER RULES

1. If the provisions of either Contracting Party or obligations under international law, existing at present or established hereafter between the Contracting Parties in addition to this Agreement, contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided by this Agreement, such provisions shall, to the extent that they are more favourable to the investor, prevail over this Agreement.

2. Each Contracting Party shall observe any other obligation it may have with regard to a specific investment of an investor of the other Contracting Party.

ARTICLE 13
APPLICATION OF THE AGREEMENT

1. This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment that arose or any claim that was settled before it entry into force.

2. Notwithstanding the Most Favoured Nation treatment provisions set out in this Agreement, disputes between an investor and the other Contracting Party shall be governed by dispute settlement procedures set out in this Agreement.

3. This Agreement shall not apply to an investor whose operation does not possess real and continuous link with the economy of the other Contracting Party.

ARTICLE 14
GENERAL DEROGATIONS

1. Nothing in this Agreement shall be construed as prevented a Contracting Party from taking any action that it considers necessary for the protection of its essential security interests in time of war or armed conflict, financial, economic, social crisis or other emergency in international relations, provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination by a contracting party, or a disguised investment restriction, nothing in this agreement shall be construed as preventing the contracting parties from taking any measure necessary for the maintenance of public order.

2. The provisions of this Article shall not apply to Article 7 paragraph (1) f of this Agreement.
ARTICLE 15
TRANSPARENCY

1. Each contracting party shall promptly publish, or otherwise make available to the investor, its laws, regulations, judicial decisions of general application and other relevant information as well as international agreements, which may affect the investment of investors of the other contracting party in the territory of the former Contracting Party.

2. Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investor.

ARTICLE 16
CONSULTATIONS

The contracting parties shall, at the request of either contracting party, hold consultations for the purpose of reviewing the implementation of this Agreement and studying any issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the contracting parties in a place and at a time agreed on through appropriate channels.

ARTICLE 17
ENTRY INTO FORCE, DURATION AND TERMINATION

1. The Contracting Parties shall notify each other when their constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the ninetieth (90) day following the date of receipt of the last notification.

2. This agreement shall remain in force for a period of twenty (20) years and shall thereafter remain in force on the same terms until either Contracting Party notifies the other in writing of its intention to terminate the Agreement in twelve (12) months.

3. In respect of investments made prior to the date of termination of this Agreement, the provisions of Articles 1 and 16 shall remain in force for a further period of twenty (20) years from the date of termination of this Agreement.

4. This Agreement may be amended in writing by mutual consent of both Contracting Parties at any time after it is in force. Any alteration or modification of this Agreement shall be done without prejudice to the rights and obligations arising from this Agreement.

Upon signing the Agreement between the Government of the Slovak Republic and the Government of the Republic of Kenya on the promotion and Protection of Investments, the undersigned representatives of both Contracting Parties have agreed with respect to Kenya on the following provisions, which constitute an integral part of the Agreement.

Ad Article 3 paragraph 1

The provision "...a treatment no less favourable than the treatment it accords to its own investors and their investments..." does not apply to non-conforming measures maintained within the territory of Kenya at the time of this signing of the Agreement or to any future non confirming measures as relates to granting incentives to its own investors in order to protect small and medium sized businesses and stimulate the creation of local industries, provided that such incentives do not significantly affect the investments and activities of investors of Slovak Republic.

The principle of most favoured nation treatment shall be observed in case of foreign participation in such businesses.

Kenya will take appropriate actions to endeavour to remove such non-conforming measures.

Dated the 16th December, 2014.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.

LEGAL NOTICE NO. 4

THE FOREIGN INVESTMENT PROTECTION ACT
(Cap. 518)

DECLARATION OF SPECIAL ARRANGEMENTS FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

IN EXERCISE of the powers conferred by section 8B of the Foreign Investment Protection Act, the Cabinet Secretary for Finance declares that the arrangements specified in the Schedule hereto, between the Government of the Republic of Kenya and the Government of the Republic of Mauritius for Promotion and Reciprocal Protection in relation to foreign investments, entered into on the 7th of May, 2012, shall notwithstanding anything to the contrary in the Foreign Investment Protection Act or in any other written law, have effect in relation to investments promotion and protection.

SCHEDULE

The Government of the Republic of Mauritius and the Government of the Republic of Kenya (hereinafter referred to as the "Contracting Parties");
RECOGNISING the need to protect investments of the investors of one Contracting Party in the territory of the other Contracting Party on a non-discriminatory basis;

DESIRING to promote greater economic co-operation between them, with respect to investments by nationals and companies of one Contracting Party in the territory of the other Contracting Party;

RECOGNISING that agreement on the treatment to be accorded to such investments will stimulate the flow of private capital and the economic development of the Contracting Parties;

AGREEING that a stable framework for investment will contribute to maximising the effective utilisation of economic resources and improve living standards;

DESIRING to create favourable conditions for greater flow of investments made by investors of either Contracting Party in the territory of the other Contracting Party;

RECOGNISING that the promotion and reciprocal protection of such investments will lend greater stimulation to the development of business initiatives and will increase prosperity in the territories of both Contracting Parties; and

AGREEING that these objectives can be achieved without relaxing health, safety and environmental measures of general application;

HAVE AGREED as follows:

ARTICLE 1

DEFINITIONS

(1) In this Agreement,

(a) “investment” means every kind of asset invested in accordance with the relevant laws and regulations of the Contracting Party in whose territory the respective business undertaking is made, and in particular, though not exclusively, includes:

(i) movable and immovable property as well as other similar rights in rem such as mortgages, liens or pledges;

(ii) shares, debentures and any other form of participation in a company or business enterprise;

(iii) claims to money, or to any performance under contract having an economic value;

(iv) industrial and intellectual property rights, in particular copyrights, patents, utility-model patents, designs, trademarks, trade-names, technical processes, know-how and goodwill;

(v) concession rights or permits having an economic value conferred in accordance with the law or under contract,
including concessions to search for, cultivate, extract or exploit natural resources;

(vi) invested or re-invested returns;

(b) “return” means the amount yielded by an investment and in particular, though not exclusively, profit, interest, capital gains, dividends, royalties, fees and payments-in-kind related to the investments;

(c) “investor” means in respect to either Contracting Party:

(i) a “national”, that is a natural person deriving his or her status as a national of that Contracting Party from the relevant law of that Contracting Party; and

(ii) a “company”, that is a legal person, such as a corporation, firm or association, incorporated or constituted in accordance with the law of that Contracting Party;

(d) “territory” means—

(i) in the case of the Republic of Mauritius—

(a) all the territories and islands which, in accordance with the laws of Mauritius constitute the State of Mauritius;

(b) the territorial sea of Mauritius; and

(c) 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;

(ii) in the case of the Republic of Kenya, all territory of Kenya in state boundaries, including internal and territorial waters and also special economic zone and continental shelf, and all installations erected thereon as defined in the Continental Shelf Act, over which Kenya exercises its sovereign rights for the purpose of exploiting natural resources of the seabed, its subsoil and the superjacent waters, in accordance with international law;

(2) Any change in the form in which assets are or have been invested does not affect their character as investments as defined in this Agreement.

ARTICLE 2

SCOPE OF THE AGREEMENT

This Agreement shall only apply to investments made by investors of either Contracting Party in the territory of the other Contracting Party in conformity with the host Contracting Party’s laws.
ARTICLE 3
PROMOTION AND PROTECTION OF INVESTMENTS

(1) Each Contracting Party shall promote and encourage the making of investments in its territory by investors of the other Contracting Party, and, subject to compliance with the provisions of its laws and regulations, shall admit such investments.

(2) Each Contracting Party shall use its best endeavours to grant, in accordance with its laws, the necessary permits, clearances and licences required for the carrying out of such investments and, whenever necessary, provide the required facilitation.

(3) Each Contracting Party shall endeavour to encourage the use of local human and material resources for the promotion of investments in its territory.

ARTICLE 4
TREATMENT OF INVESTMENTS

(1) Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable nor discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.

(2) Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, a treatment no less favourable than the treatment it accords to its own investors and their investments with respect to the acquisition, expansion, operation, management, maintenance, use, enjoyment and sale or other disposal of investments.

(3) Each Contracting Party shall in its territory accord to investors and to investments and returns of investors of the other Contracting Party treatment no less favourable than that which it accords to investments and returns of investors of any third State.

(4) The provisions of paragraphs (2) and (3) shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) any customs union, free trade area, common market or any similar international agreement or interim arrangement leading up to such customs union, free trade area, or common market of which either of the Contracting Parties is a member;

(b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;

(c) special advantages to foreign development finance institutions operating in the territory of either Contracting
Party for the exclusive purpose of development assistance through mainly nonprofit activities;

(5) Each Contracting Party may, in accordance with its laws and regulations, grant incentives, treatment, preferences or privileges through special policies or measures to its own investors only for the purpose of promoting small and medium sized enterprises and infant industries in its territory, subject to the condition that these shall not significantly affect the investments and activities of the investors of the other Contracting Party.

ARTICLE 5

COMPENSATION FOR LOSSES

(1) Investors of either Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever, according to the investors, is the most favourable.

(2) Without prejudice to the provisions of paragraph (1) of this Article, investors of either Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their investment or a part thereof by the forces or authorities of the latter Contracting Party, acting under and within the scope of the legal provisions relating to their competences, duties and command structures; or

(b) destruction of their investment or a part thereof by the forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation or observance of any legal requirement;

shall be accorded restitution or prompt and full compensation, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

ARTICLE 6

EXPROPRIATION

(1) Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation except for public purposes, under due process of law, on a non-discriminatory basis and against prompt and full compensation.

(2) Such compensation shall amount to the market value of the expropriated investment at the time immediately before the
expropriation or before the impending expropriation became public knowledge, whichever is the earlier. The market value shall be determined in accordance with generally accepted principles of valuation, taking into account, inter alia, the capital invested, replacement value, appreciation, current returns, the projected flow of future returns, goodwill and other relevant factors.

(3) Compensation shall be fully realisable, effective and shall be paid without any restriction or delay. It shall include interest at a commercial rate established on a market basis for the currency of payment from the date of dispossession of the expropriated investments until the date of actual payment.

(4) The investor affected by the expropriation shall have a right, under the law of the expropriating Contracting Party to prompt review of the expropriation case, by a court of law or other independent competent authority of that Contracting Party.

(5) Where a Contracting Party expropriates, nationalises or takes measures having effect equivalent to nationalisation or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this article are applied to the extent necessary to guarantee compensation as specified therein to such investors of the other Contracting Party who are owners of those shares.

ARTICLE 7

TRANSFER OF INVESTMENTS AND RETURNS

(1) Each Contracting Party shall, in accordance with its relevant laws, allow investors of the other Contracting Party the free transfer of funds relating to their investments and returns, including compensation paid pursuant to the provisions of Articles 5, 6, 8 and 10 of this Agreement.

(2) All transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of such a market exchange rate, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

(3) Notwithstanding paragraphs 1 and 2 of this Article, a Contracting Party may delay a transfer through the application of measures ensuring investors' compliance with the host Contracting Party’s laws and regulations on the payment of taxes and dues in force at the time the request for transfer is made, and provided that the
application of such laws and regulations shall not unnecessarily impair the free transfer ensured by this Agreement.

ARTICLE 8

SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY

(1) Any dispute arising directly from an investment between one Contracting Party and an investor of the other Contracting Party should be settled amicably between the two parties to the dispute.

(2) If the dispute has not been settled within six months from the date on which it was raised in writing, the dispute may, at the choice of the investor, be submitted to:

(a) the competent courts of the Contracting Party in whose territory the investment is made; or

(b) arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Centre"), if the Centre is available; or

(c) an ad hoc arbitration tribunal to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(d) any other previously accepted ad hoc arbitration tribunal.

(3) Any arbitration under this Article shall, at the request of either party to the dispute, be held in a state that is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention), opened for signature at New York on 10 June 1958. Claims submitted to arbitration under this Article shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

(4) Each Contracting Party hereby gives its unconditional consent to the submission of a dispute between it and an investor of the other Contracting Party to arbitration in accordance with this Article.

(5) Neither of the Contracting Parties, which is a party to a dispute, can raise an objection, at any phase of the arbitration procedure or of the execution of an arbitral award, on account of the fact that the investor, which is the other party to the dispute, has received an indemnification covering a part or the whole of its losses by virtue of an insurance.

(6) Each party concerned shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman in discharging his arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of
costs shall be borne by one of the two parties, and this award shall be binding on both parties.

(7) The award shall be final and binding on the parties to the dispute and shall be executed in accordance with national law of the Contracting Party in whose territory the award is relied upon, by the competent authorities of the Contracting Party by the date indicated in the award.

ARTICLE 9
SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

(1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations between the Governments of the two Contracting Parties.

(2) If the dispute cannot be settled within a period of six months following the date on which such negotiations were requested by either Contracting Party, it may upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator for the tribunal. Those two arbitrators shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two arbitrators.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party and is not otherwise prevented from discharging such functions shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall determine its own procedure and reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator to the tribunal and of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs shall be borne equally by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs
shall be borne by one of the two Contracting Parties, and this award shall be binding on, and executed by, both Contracting Parties.

ARTICLE 10

SUBROGATION

(1) If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee it has given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognise the assignment to the former Contracting Party of all the rights and claims of the indemnified investor, and shall also recognise that the former Contracting Party or its designated Agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

(2) Any payment made by one Contracting Party or its designated Agency to its own investor as provided in paragraph (1) shall not affect the right of such investor to make his claims against the other Contracting Party in accordance with Article 8 provided that the exercise of such a right does not overlap and that such claims shall be limited only to any amount outstanding by virtue of subrogation under that paragraph.

ARTICLE 11

APPLICATION OF OTHER RULES

(1) If the provisions of the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to the present Agreement, contain rules, whether general or specific, entitling investments and returns of investors of the other Contracting Party to treatment more favourable than that provided for by the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.

(2) Each Contracting Party shall, however, honour any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

ARTICLE 12

PROHIBITIONS AND RESTRICTIONS

(1) The provisions of this Agreement shall not be construed as preventing a Contracting Party from taking any action necessary for the protection of its essential security interests in time of war or armed conflict, or other emergency in international relations or for the protection of public health or the prevention of diseases and pests in animals or plants.

(2) Provided that such measures are not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination by a Contracting Party, or a disguised investment restriction, nothing in
this Agreement shall be construed as preventing the Contracting Parties from taking any measure necessary for the maintenance of public order.

ARTICLE 13

TRANSPARENCY

(1) Each Contracting Party shall promptly publish, or otherwise make available to the investor, its laws, regulations, judicial decisions of general application and other relevant information as well as international agreements, which may affect the investments of investors of the other Contracting Party in the territory of the former Contracting Party.

(2) Nothing in this Agreement shall require a Contracting Party to furnish or allow access to any confidential or proprietary information, including information concerning particular investors or investments, the disclosure of which would impede law enforcement or be contrary to its laws protecting confidentiality or prejudice legitimate commercial interests of particular investors.

ARTICLE 14

OTHER PROVISIONS

(1) This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement but shall not apply to any dispute concerning an investment that arose or any claim that was settled before its entry into force. For the avoidance of any doubt, it is declared that all investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

(2) The Contracting Parties shall, at the request of either Contracting Party, hold consultations for the purpose of reviewing the implementation of this Agreement and studying any issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties in a place and at a time agreed on through appropriate channels.

ARTICLE 15

ENTRY INTO FORCE, DURATION AND TERMINATION

(1) The Contracting Parties shall notify each other promptly of the fulfillment of their legal procedures required for entry into force of this Agreement. The Agreement shall enter into force on the day following the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination of this Agreement to the other Contracting Party.
(3) In respect of investments admitted and/or made prior to the date the notice of termination of this Agreement becomes effective, the provisions of the preceding articles shall remain in force with respect to such investments for a further period of ten years from that date or for any longer period as provided for or agreed upon in the relevant contract or approval granted to the investor.

Dated the 16th December, 2014.

HENRY ROTICH,
Cabinet Secretary for the National Treasury.