

**SYNTHESISED TEXT OF THE MULTILATERAL CONVENTION TO IMPLEMENT TAX TREATY
RELATED MEASURES TO PREVENT BASE EROSION AND PROFIT SHIFTING AND THE
CONVENTION BETWEEN THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND
THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS FOR THE AVOIDANCE OF DOUBLE
TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON
INCOME AND ON CAPITAL**

This document was prepared in consultation with the competent authorities of Luxembourg and Mauritius and represents a shared understanding of the modifications made to the Convention by the Multilateral Convention.

General disclaimer on the synthesised text document

This document presents the synthesised text for the application of the Convention between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital signed on 15 February 1995, as amended by the Protocol signed on 28 January 2014 (together “the Convention”), as modified by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting signed by Luxembourg on 7 June 2017 and by Mauritius on 5 July 2017 (the “MLI”).

The document was prepared on the basis of the MLI position of Luxembourg submitted to the Depositary upon ratification on 9 April 2019 and of the MLI position of Mauritius submitted to the Depositary upon ratification on 18 October 2019. These MLI positions are subject to modifications as provided in the MLI. Modifications made to MLI positions could modify the effects of the MLI on the Convention.

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

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

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

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

References

The authentic legal text of the Convention can be found at the following link:

impotsdirects.public.lu

The text of the MLI and the MLI position of Luxembourg submitted to the Depositary upon ratification on 9 April 2019 and of the MLI position of Mauritius submitted to the Depositary upon ratification on 18 October 2019 can be found on the [MLI Depositary \(OECD\) webpage](#).

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

Entry into Effect of the MLI Provisions

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

Dates of the deposit of instruments of ratification, acceptance or approval: 9 April 2019 for Luxembourg and 18 October 2019 for Mauritius.

Entry into force of the MLI: 1 August 2019 for Luxembourg and 1 February 2020 for Mauritius.

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

In Luxembourg:

- with respect of taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 January 2021;
- with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 August 2020.

In Mauritius:

- with respect of taxes withheld at source on amounts paid or credited to non-residents, where the event giving rise to such taxes occurs on or after 1 July 2020;
- with respect to all other taxes, for taxes levied with respect to taxable periods beginning on or after 1 August 2020.

CONVENTION BETWEEN

THE GOVERNMENT OF THE GRAND DUCHY OF LUXEMBOURG AND THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the Grand Duchy of Luxembourg and the Government of the Republic of Mauritius.

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

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

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

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

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

Have agreed as follows:

Article 1

Personal scope

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

Article 2

Taxes covered

- (1) The existing taxes to which this Convention shall apply are:
- (a) in Mauritius:
 - the income tax;
 - (hereafter referred to as "Mauritius tax")
 - (b) in the Grand Duchy of Luxembourg:
 - (i) the income tax on individuals (l'impôt sur le revenu des personnes physiques);
 - (ii) the corporation tax (l'impôt sur le revenu des collectivités);
 - (iii) the capital tax (l'impôt sur la fortune);
 - (iv) the communal trade tax (l'impôt commercial communal);

(hereafter referred to as "Luxembourg tax").

- (2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes.
- (3) The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

Article 3

General definitions

- (1) For the purposes of this Convention, unless the context otherwise requires:
 - (a) the term "Mauritius" means all the territories, including all the islands, which, in accordance with the laws of Mauritius, constitute the State of Mauritius and includes:
 - (i) the territorial sea of Mauritius; and
 - (ii) 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 "Luxembourg" means the territory of the Grand Duchy of Luxembourg;
 - (c) the term "national" means:
 - (i) any individual possessing the nationality or citizenship of a Contracting State;
 - (ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;
 - (d) the terms "a Contracting State" and "the other Contracting State" mean Mauritius or Luxembourg as the context requires;
 - (e) the term "person" includes an individual, a trust, a company and any other body of persons;
 - (f) the term "company" means any body corporate or any entity which is treated as a company or 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 which has its place of effective management in a Contracting State,

except when the ship or aircraft is operated solely between places in the other Contracting State;

(i) the term "competent authority" means, in the case of Mauritius, the Minister of Finance or his authorized representative, and in the case of Luxembourg, the Minister of Finance or his authorized representative;

(j) the term "tax" means Mauritius tax or Luxembourg tax as the context requires.

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

Article 4

Resident

(1) For the purposes of this Convention, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3), any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein. The terms "resident of Mauritius" and "resident of Luxembourg" shall be construed accordingly.

(2) Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, his status shall be determined in accordance with the following rules:

(a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; 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);

(b) 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 Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(c) 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;

(d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

Article 5

Permanent establishment

- (1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- (2) The term "permanent establishment" shall include 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;
 - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
 - (h) an installation or structure used for the exploration of natural resources;
 - (i) a farm or plantation.
- (3) A building site or construction or assembly project, or supervisory activities in connection therewith, constitutes a permanent establishment only if the site, project or activity lasts more than six months.
- (4) Notwithstanding the preceding provisions, the term "permanent establishment" shall be deemed not to include:
 - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), subject to the overall activity of the fixed

place of business resulting from this combination being of a preparatory or auxiliary character.

- (5) Notwithstanding the provisions of paragraphs (1) and (2), where a person - other than an agent of an independent status to whom paragraph (6) applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
- (6) An enterprise 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 State through a broker, a general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. An agent shall not be regarded as of an independent status if the agent acts exclusively or almost exclusively for the enterprise.
- (7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6

Income from immovable property

- (1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
- (2) (a) The term "immovable property" shall, subject to the provisions of sub-paragraph (b), be defined in accordance with the law of the Contracting State in which the property in question is situated;

(b) the term "immovable property" shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats 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 State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State, but only so much of them as is attributable to 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 at arm's length 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 all expenses of the enterprise 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. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment.

Likewise no account shall be taken, in determining the profits of permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

- (4) 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.

- (5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
- (6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
- (7) Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and air transport

- (1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- (2) If the place of effective management of a shipping enterprise is aboard a ship then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.
- (3) The provisions of paragraph (1) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated enterprises

- (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) **[Replaced by paragraph 1 of Article 17 of the MLI]** [Where a Contracting State includes, in accordance with the provisions of paragraph (1), 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 where the competent authorities of the Contracting States agree, upon consultation, that all

or part of 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 agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention.]

The following paragraph 1 of Article 17 of the MLI replaces paragraph (2) of Article 9 of this Convention:

ARTICLE 17 OF THE MLI – CORRESPONDING ADJUSTMENTS

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

Article 10

Dividends

- (1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- (2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends, the tax so charged shall not exceed:
 - (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends;
 - (b) 10 per cent of the gross amount of the dividends in all other cases.

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

- (3) 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 which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

- (4) The provisions of paragraphs (1) and (2) shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, 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.
- (5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Article 11

Interest

- (1) Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the interest.
- (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 premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
- (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 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.
- (4) 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 Convention.

Article 12

Royalties

- (1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if such resident is the beneficial owner of the royalties.
- (2) 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, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
- (3) The provisions of paragraph (1) 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 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.
- (4) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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 be taxed in that other State.
- (2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State 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 together with the whole enterprise) or of such a fixed base, may be taxed in that other State.

- (3) Notwithstanding the provisions of paragraph (2), gains from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- (4) Gains from the alienation of any property other than that mentioned in paragraphs (1), (2) and (3) 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 State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.
- (2) The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent personal services

- (1) Subject to the provisions of Articles 16, 18, 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 State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
- (2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any period of 12 months; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
 - (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
- (3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Article 16

Directors' fees

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

Article 17

Artistes and sportsmen

- (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 a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
- (2) Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.
- (3) The provisions of paragraphs (1) and (2) shall not apply to income derived as aforesaid if the activities of the entertainer or sportsman in the Contracting State are supported wholly or substantially from public funds of the other Contracting State, a political subdivision, local authority or a public body thereof.

Article 18

Pensions

- (1) Subject to the provisions of paragraph (2) of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that Contracting State.
- (2) The term "annuity" as used in paragraph (1) means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to effect payment of that stated sum in return for adequate and full consideration.
- (3) Notwithstanding the provisions of paragraph (1), pensions paid and other payments made under a public scheme which is governed by the social security legislation of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

Article 19

Governmental functions

- (1) (a) Remuneration, other than a pension, paid by, or out of funds created by, a Contracting State or a political subdivision, a local authority or a public body thereof to an individual in respect of services rendered to that State or subdivision, authority or public body shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (2) (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision, a local authority or a public body thereof to an individual in respect of services rendered to that State or subdivision, authority or public body shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident, and a national, of that State.
- (3) The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision, a local authority or a public body thereof.

Article 20

Students

An individual who, immediately before visiting a Contracting State, was a resident of the other Contracting State and whose visit to the first-mentioned Contracting State is solely for the purpose of:

- (a) studying at a university or other recognized educational institution; or
- (b) securing training to qualify him to practice a profession or trade; or
- (c) studying or carrying out research as a recipient of a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organization, shall be exempt from tax in the first-mentioned State on
 - (i) remittance from abroad for the purpose of his maintenance, education, study, research or training;
 - (ii) the grant, allowance or award; and
 - (iii) income from personal services rendered in that State provided the income constitutes earnings reasonably necessary for his maintenance and education.

Article 21

Professors and teachers

- (1) An individual who is a resident of a Contracting State at the time he becomes temporarily present in the other Contracting State, at the invitation of that other State or of a university, college, school or other recognized educational institution in the other State, for the primary purpose of teaching or engaging in research, or both, at a university, college, school or other recognized educational institution shall be exempt from tax by that other State on his income from personal services for teaching or research at such university, college, school or educational institution, for a period not exceeding two years from the date of his arrival in that other State.
- (2) This article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 22

Income not expressly mentioned

- (1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
- (2) The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, shall apply.

Article 23

Capital

- (1) Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.
- (2) Capital represented by 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 by 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, may be taxed in that other State.
- (3) Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

- (4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 24

Elimination of double taxation

- (1) Double taxation shall be avoided in accordance with the following paragraphs.
- (2) In the case of Mauritius:
- (a) Subject to the other sub-paragraphs of this paragraph and to the provisions of the laws of Mauritius regarding the allowance as a credit against Mauritius tax of tax payable in a territory outside Mauritius (which shall not affect the general principle hereof), where a resident of Mauritius derives profits, income or gains from sources within Luxembourg and which, under the laws of Luxembourg and in accordance with this Convention are taxable or may be taxed in Luxembourg, whether directly or by deduction, Mauritius shall allow as a credit against any Mauritius tax computed by reference to the same profits, income or gains the Luxembourg tax paid and computed by reference to those profits, income or gains.
 - (b) In the case of dividends, the credit referred to in sub-paragraph (a) shall only take into account such tax in respect thereof as is additional to any tax payable in Luxembourg by the company on the profits out of which the dividends are paid and are ultimately borne by the recipient of the dividends without any reference to any tax so payable.
 - (c) Where a company which is a resident of Luxembourg pays dividends to a company which is a resident of Mauritius and which holds directly at least 10 per cent of the capital of the company paying the dividends, the credit shall take into account (in addition to any Luxembourg tax for which credit may be allowed under the provisions of sub-paragraphs (a) and (b) of this paragraph) the Luxembourg tax payable by the first-mentioned company in respect of the profits out of which such dividends are paid.
- (3) In the case of Luxembourg:
- (a) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in Mauritius, Luxembourg shall, subject to the provisions of sub-paragraphs (b) to (d), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted.
 - (b) Where a resident of Luxembourg derives income which, in accordance with the provisions of Article 10 may be taxed in Mauritius, Luxembourg shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Mauritius. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Mauritius.

- (c) The provisions of sub-paragraph (a) shall not apply to the income attributable to a permanent establishment in Mauritius of a Luxembourg enterprise, which is subject in Mauritius to tax at a rate equivalent to less than 15 per cent calculated on a basis computed in accordance with the Luxembourg income tax law. In such case, Luxembourg shall allow as a deduction from the tax on the income of that enterprise an amount equal to the tax paid in Mauritius. Such deduction shall not however exceed that part of the tax, as computed before the deduction is given, which is attributable to such income derived from Mauritius.
- (d) Where a company which is a resident of Luxembourg derives dividends from Mauritius sources, Luxembourg shall exempt such dividends from tax, provided that the company which is a resident of Luxembourg holds since the beginning of its accounting year directly at least 10 per cent of the capital of the company paying the dividends and that the last mentioned company is subjected in Mauritius to tax at a rate equivalent to at least 15 per cent calculated on a basis computed in accordance with the Luxembourg income tax law. The shares in the Mauritius company are, under the same conditions, exempt from the Luxembourg capital tax.
- (4) For the purposes of paragraphs (2) and (3) of this Article, profits, income and gains owned by a resident of a Contracting State which is taxable or may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

Article 25

Non-discrimination

- (1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
- (2) 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.
- (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 Contracting 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) Nothing contained in this Article shall be considered as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

- (5) Except where the provisions of paragraph (1) of Article 9, paragraph (4) of Article 11, or paragraph (4) of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
- (6) In this Article the term "taxation" means taxes of every kind and description.

Article 26

Mutual agreement procedure

- (1) **[The first sentence of paragraph (1) of Article 26 of this Convention is replaced by the first sentence of paragraph 1 of Article 16 of the MLI]** [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 Convention, he may, irrespective of the remedies provided by the domestic law of those 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 following first sentence of paragraph 1 of Article 16 of the MLI replaces the first sentence of paragraph (1) of Article 26 of this Convention:

ARTICLE 16 OF THE MLI – MUTUAL AGREEMENT PROCEDURE

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

The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

- (2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. 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 the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

- (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. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a Commission consisting of representatives of the competent authorities of the Contracting States.
- (5) **[Part VI of the MLI applies and supersedes paragraph 5 of Article 26 of this Convention]** [Where,
- (a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- (b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

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

*The following Part VI of the MLI applies and supersedes paragraph (5) of Article 26 of this Convention:*¹²

PART VI OF THE MLI (ARBITRATION)

Article 19 (Mandatory Binding Arbitration) of the MLI

1. Where:

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

¹ In accordance with paragraph 1 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI have effect with respect to this Convention with respect to cases presented to the competent authority of a Contracting State on or after 1 February 2020.

² In accordance with paragraph 2 of Article 36 of the MLI, the provisions of Part VI (Arbitration) of the MLI apply to a case presented to the competent authority of a Contracting State prior to 1 February 2020 only to the extent that the competent authorities of both Contracting States agree that it will apply to that specific case.

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

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

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

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

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

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

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

- ii) if a final decision of the courts of one of the [*Contracting States*] holds that the arbitration decision is invalid. In such a case, the request for arbitration under paragraph 1 [*of Article 19 of the MLI*] shall be considered not to have been made, and the arbitration process shall be considered not to have taken place (except for the purposes of Articles 21 (Confidentiality of Arbitration Proceedings) and 25 (Costs of Arbitration Proceedings) [*of the MLI*]). In such a case, a new request for arbitration may be made unless the competent authorities agree that such a new request should not be permitted.
 - iii) if a person directly affected by the case pursues litigation on the issues which were resolved in the mutual agreement implementing the arbitration decision in any court or administrative tribunal.
5. The competent authority that received the initial request for a mutual agreement procedure as described in subparagraph a) of paragraph 1 [*of Article 19 of the MLI*] shall, within two calendar months of receiving the request:
- a) send a notification to the person who presented the case that it has received the request; and
 - b) send a notification of that request, along with a copy of the request, to the competent authority of the other [*Contracting State*].
6. Within three calendar months after a competent authority receives the request for a mutual agreement procedure (or a copy thereof from the competent authority of the other [*Contracting State*]) it shall either:
- a) notify the person who has presented the case and the other competent authority that it has received the information necessary to undertake substantive consideration of the case; or
 - b) request additional information from that person for that purpose.
7. Where pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], one or both of the competent authorities have requested from the person who presented the case additional information necessary to undertake substantive consideration of the case, the competent authority that requested the additional information shall, within three calendar months of receiving the additional information from that person, notify that person and the other competent authority either:
- a) that it has received the requested information; or
 - b) that some of the requested information is still missing.
8. Where neither competent authority has requested additional information pursuant to subparagraph b) of paragraph 6 [*of Article 19 of the MLI*], the start date referred to in paragraph 1 [*of Article 19 of the MLI*] shall be the earlier of:

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

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

- a) the latest date on which the competent authorities that requested additional information have notified the person who presented the case and the other competent authority pursuant to subparagraph a) of paragraph 7 [*of Article 19 of the MLI*]; and
- b) the date that is three calendar months after both competent authorities have received all information requested by either competent authority from the person who presented the case.

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

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

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

- a) any unresolved issue arising from a mutual agreement procedure case otherwise within the scope of the arbitration process provided for by [*the MLI*] shall not be submitted to arbitration, if a decision on this issue has already been rendered by a court or administrative tribunal of either [*Contracting State*];
- b) if, at any time after a request for arbitration has been made and before the arbitration panel has delivered its decision to the competent authorities of the [*Contracting States*], a decision concerning the issue is rendered by a court or administrative tribunal of one of the [*Contracting States*], the arbitration process shall terminate.

Article 20 (Appointment of Arbitrators) of the MLI

1. Except to the extent that the competent authorities of the [Contracting States] mutually agree on different rules, paragraphs 2 through 4 [of Article 20 of the MLI] shall apply for the purposes of [Part VI of the MLI].
2. The following rules shall govern the appointment of the members of an arbitration panel:
 - a) The arbitration panel shall consist of three individual members with expertise or experience in international tax matters.
 - b) Each competent authority shall appoint one panel member within 60 days of the date of the request for arbitration under paragraph 1 of Article 19 [of the MLI]. The two panel members so appointed shall, within 60 days of the latter of their appointments, appoint a third member who shall serve as Chair of the arbitration panel. The Chair shall not be a national or resident of either [Contracting State].
 - c) Each member appointed to the arbitration panel must be impartial and independent of the competent authorities, tax administrations, and ministries of finance of the [Contracting States] and of all persons directly affected by the case (as well as their advisors) at the time of accepting an appointment, maintain his or her impartiality and independence throughout the proceedings, and avoid any conduct for a reasonable period of time thereafter which may damage the appearance of impartiality and independence of the arbitrators with respect to the proceedings.
3. In the event that the competent authority of a [Contracting State] fails to appoint a member of the arbitration panel in the manner and within the time periods specified in paragraph 2 [of Article 20 of the MLI] or agreed to by the competent authorities of the [Contracting States], a member shall be appointed on behalf of that competent authority by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either [Contracting State].
4. If the two initial members of the arbitration panel fail to appoint the Chair in the manner and within the time periods specified in paragraph 2 [of Article 20 of the MLI] or agreed to by the competent authorities of the [Contracting States], the Chair shall be appointed by the highest ranking official of the Centre for Tax Policy and Administration of the Organisation for Economic Co-operation and Development that is not a national of either [Contracting State].

Article 21 (Confidentiality of Arbitration Proceedings) of the MLI

1. Solely for the purposes of the application of the provisions of [Part VI of the MLI] and of the provisions of [the Convention] and of the domestic laws of the [Contracting States] related to the exchange of information, confidentiality, and administrative assistance, members of the arbitration panel and a maximum of three staff per member (and prospective arbitrators solely to the extent necessary to verify their ability to fulfil the

requirements of arbitrators) shall be considered to be persons or authorities to whom information may be disclosed. Information received by the arbitration panel or prospective arbitrators and information that the competent authorities receive from the arbitration panel shall be considered information that is exchanged under the provisions of [*the Convention*] related to the exchange of information and administrative assistance.

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

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

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

- a) the competent authorities of the [*Contracting States*] reach a mutual agreement to resolve the case; or
- b) the person who presented the case withdraws the request for arbitration or the request for a mutual agreement procedure.

Article 23 (Type of Arbitration Process) of the MLI

Final offer arbitration

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

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

with respect to issues the determination of which is contingent on resolution of such threshold questions.

- b) The competent authority of each [*Contracting State*] may also submit a supporting position paper for consideration by the arbitration panel. Each competent authority that submits a proposed resolution or supporting position paper shall provide a copy to the other competent authority by the date on which the proposed resolution and supporting position paper were due. Each competent authority may also submit to the arbitration panel, by a date set by agreement, a reply submission with respect to the proposed resolution and supporting position paper submitted by the other competent authority. A copy of any reply submission shall be provided to the other competent authority by the date on which the reply submission was due.
- c) The arbitration panel shall select as its decision one of the proposed resolutions for the case submitted by the competent authorities with respect to each issue and any threshold questions, and shall not include a rationale or any other explanation of the decision. The arbitration decision will be adopted by a simple majority of the panel members. The arbitration panel shall deliver its decision in writing to the competent authorities of the [*Contracting States*]. The arbitration decision shall have no precedential value.

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

Article 25 (Costs of Arbitration Proceedings) of the MLI

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

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

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

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

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

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

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

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

Article 27

Exchange of information

- (1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
- (2) Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or

authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

- (3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
 - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).
- (4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.
- (5) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information upon request solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 28

Diplomats

- (1) Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.
- (2) Notwithstanding the provisions of paragraph (1) of Article 4, an individual who is a member of the diplomatic, consular or permanent mission of a Contracting State or any third State which is situated in the other Contracting State and who is subjected to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

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

ARTICLE 7 OF THE MLI – PREVENTION OF TREATY ABUSE

(Principal purposes test provision)

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

The following paragraph 4 of Article 7 of the MLI applies to paragraph 1 of Article 7 of the MLI :

Where a benefit under [*the Convention*] is denied to a person under [*paragraph 1 of Article 7 of the MLI*], the competent authority of the [*Contracting State*] that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or capital, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in [*paragraph 1 of Article 7 of the MLI*]. The competent authority of the [*Contracting State*] to which a request has been made under this paragraph by a resident of the other [*Contracting State*] shall consult with the competent authority of that other [*Contracting State*] before rejecting the request.

Article 29

Entry into force

- (1) This Convention shall be ratified and the instruments of ratification shall be exchanged as soon as possible.
- (2) This Convention shall enter into force on the date of the exchange of the instruments of ratification and its provisions shall have effect:
 - (a) in Mauritius:

in respect of income tax for any year of assessment beginning on or after 1 July next following the date on which the Convention enters into force;
 - (b) in Luxembourg:
 - (i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year during which the Convention enters into force;
 - (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year during which the Convention enters into force.

Article 30

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through the diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after a period of five years from the date on which the Convention enters into force. In such event, the Convention shall cease to have effect:

- (a) in Mauritius: - in respect of income tax for any year of assessment beginning on or after 1 July of the calendar year next following that in which the notice is given;
- (b) in Luxembourg:
 - (i) in respect of taxes withheld at source, to income derived on or after 1 January of the calendar year next following that in which the notice is given;
 - (ii) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after 1 January of the calendar year next following that in which the notice is given.

Protocol

At the signing today of the Convention between the Government of the Grand Duchy of Luxembourg and the Government of the Republic of Mauritius for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, the undersigned have agreed upon the following provision which shall form an integral part of the Convention:

Concerning Article 4 it is understood that the term "resident of a Contracting State" does not include:

- (1) In the case of Mauritius a company which is not subjected in Mauritius to tax at a fixed rate equivalent to at least 15 per cent calculated on a basis computed in accordance with the Luxembourg income tax law;
- (2) In the case of Luxembourg:
 - (a) a Holding company within the meaning of the Act of 31 July, 1929 and the Decree (arrêté grand-ducal) of 17 December, 1938;
 - (b) an Investment Fund within the meaning of the Act of 30 March, 1988.