

# **AGREEMENT FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF MADAGASCAR**

Pursuant to the provisions of Article 2 of the General Framework Agreement for Cooperation between the Government of the Republic of Mauritius and the Government of the Republic of Madagascar signed on 6 April 2004, at Antananarivo;

The Government of the Republic of Mauritius on the one hand,

And the Government of the Republic of Madagascar on the other hand,

Hereinafter referred to as the contracting parties;

Desiring to enhance economic relations, particularly with regard to investments of Mauritius in the Republic of Madagascar in Madagascar Malagasy and investments in the Republic of Mauritius;

Recognizing that the promotion and protection of such investments will be conducive to stimulating business initiative and private capital flows and technology between the two countries;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

a. The term means every kind of investment assets invested by investors of one Contracting Party, in accordance with the laws and regulations of the other Contracting Party in the territory of the latter, and particularly but not limited to:

Movable and immovable property as well as any other rights in rem relating to all categories of assets such as mortgages, liens, usufruct rights, and similar bonds;

The premium, actions and other forms of participation, even indirect minority or to companies established in the territory of one of the contracting parties;

The rights of creditors; rights related to other assets or rights relating to any performance having an economic value;

Intellectual property rights, commercial and industrial such as copyrights, trademarks, patents, licences, non-commercial customers, business secrecy and business models and industrial processes, designs, technical know-how;

The rights granted by law or contract from those legally trained, including concessions granted for prospecting, exploration, extraction, and exploitation of resources naturelles. movable and immovable property as well as any other rights in rem relating to all categories of assets such as mortgages, liens, usufruct rights, and similar bonds;

The premium, actions and other forms of participation, even indirect minority or to companies established in the territory of one of the contracting parties;

The rights of creditors; rights related to other assets or rights relating to any performance having an economic value;

Intellectual property rights, commercial and industrial such as copyrights, trademarks, patents, licences, non-commercial customers, business secrecy and business models and industrial processes, designs, technical know-how;

The rights granted by law or contract from those legally trained, including concessions granted for prospecting, exploration, extraction, and exploitation of natural resources.

Any alteration of the form in which assets are invested shall not affect their classification as investment, provided that such change is not contrary to the legislation of the Contracting Party in the territory or maritime area in which the investment is made.

b. The term investor "includes, for each of the two contracting parties:

Natural persons having the nationality of that Contracting Party;

Legal entities, including companies and economic organizations established in accordance with the laws in force in the territory of the Contracting Party and of having its seat effective management;

Legal persons not incorporated under the laws of that Contracting Party but controlled directly or indirectly by natural persons as defined under (i) or by legal persons as defined in (ii).

In order to be qualified investors means any natural or legal person of one Contracting Party, referred to in (i), (ii) and (iii), shall carry out an investment in the territory of the other Contracting Party in accordance with the laws and regulations of that dernière. natural persons having the nationality of that Contracting Party;

c. The term means all amounts yielded returns by an investment interests, such as profits, royalties or during a period of time. Investment income and in case of reinvestment, income from their reinvestment shall enjoy the same protection as the investment.

d. The term "territory" means the entire territory and islands of each of the Contracting Parties, including its maritime area, hereinafter referred to as defined as the economic zone and the continental shelf extending beyond the limits of the territorial waters of each of the Contracting Parties and in which they have jurisdiction and sovereign rights, in accordance with their respective legislation and international law, for the purpose of exploration and exploitation and preservation of natural resources.

## **Article 2. Investment Promotion and Admission**

a. Each Contracting Party undertakes, within the framework of its laws and regulations, to promote cooperation for the promotion and protection of investments made in its territory by investors of the other contracting party.

b. Subject to its right to exercise the powers conferred by its laws and regulations, each Contracting Party shall admit such investments.

## **Article 3. Fair and Equitable Treatment**

a. Each Contracting Party undertakes to provide in its territory for investments of investors of the other contracting party fair and equitable treatment to direct or indirect investments and related activities, in accordance with the provisions of this Agreement.

b. These investments and activities enjoy a constant protection and security, excluding any unjustified or discriminatory measure which could adversely affect, in law or in fact, management, maintenance, use, enjoyment or disposal p.

c. Nothing in this Agreement shall be construed to prevent a Contracting Party from taking any measure necessary for the protection of its own essential security interests and public order, the environment, public health and prevention of animal and plant diseases affecting.

d. The Contracting Parties shall consider sympathetically, within the framework of their national legislation, applications for entry and residence permits, and movement made by investors of one Contracting Party in respect of an investment in the territory or maritime zones of the other contracting party.

## **Article 4. National Treatment and Most-favoured-nation Treatment**

a. Each Contracting Party shall, in its territory or in its maritime area, to investors of the other contracting party as regards their investments and activities associated with such investments, treatment no less favourable than that accorded to its own investors or the treatment accorded to investors of the most favoured nation, whichever is more favourable.

b. This treatment does not extend to the privileges which either Contracting Party accords to investors of a third State by virtue of its association or participation in a free trade area, customs union, Common Market or any other form of regional economic organization.

c. The treatment granted under the present article shall not apply to advantages accorded by a contracting party to investors of third States by virtue of an agreement for the avoidance of double taxation or any other arrangement relating to taxation.

## **Article 5. Expropriation and Compensation**

a. Neither Contracting Party shall take from investors of the other Contracting Party measures of expropriation, nationalization or other similar measures which are directly or indirectly dispossessing investors of the other contracting party of their investments in the territory, unless the following conditions are met:

(i) The measures are taken for a public purpose and under the framework of the proper administration of justice;

(ii) The measures are not discriminatory or contrary to the commitments entered into by the contracting party;

(iii) The measures taken shall be subject to the payment of compensation adéquate, including the amount and terms shall be determined in accordance with the legislation in force in the territory of the Contracting Party taking the measure of expropriation;

b. Compensation shall correspond to the market value of the affected investments immediately before the date of expropriation or nationalization, the actual or imminent similar measure has been made publicly available.

c. The compensation shall be assessed and paid in the currency of the Contracting Party, convertible freely transferable and at the rate of exchange applicable on the date of transfer. It produces until the date of payment at a normal commercial rate of interest.

d. The legality of expropriation, nationalization or similar measure as well as the amount of compensation shall be audited by judicial proceedings.

## **Article 6. Compensation for Losses Resulting from Wars and Conflicts**

Investors of one Contracting Party who suffer due to a war or any other armed conflict, revolution, a national state of emergency, revolt, riot, insurrection or of a terrorist act, in relation to investments made in the territory of the other Contracting Party, shall be accorded by the latter Contracting Party, as regards restitution, indemnification, compensation or other treatment indemnities, which shall not be less favourable than that accorded to investors of that Contracting Party to investors or of any third States, in any case the treatment that is the more favourable to the investors concerned.

## **Article 7. Free Transfer**

a. Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of payments relating to investment activities.

The modalities of transfers will be carried out in accordance with the legislation of the Contracting Party.

They shall include in particular, though not exclusively:

(i) Profits, dividends, interests and other current income;

(ii) Royalties from intangible rights referred to in paragraph 1, letter (iv) and (v) of article 1;

Payments made for the reimbursement of loans contracted regularly;

The proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;

The compensation for expropriation or loss under Articles 5 and 6 ci-dessus. payments made for the reimbursement of loans contracted regularly;

The proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;

The compensation for expropriation or loss under Articles 5 and 6 above.

b. Natural persons, investors of either Contracting Party who have been authorised to work in the territory of the other Contracting Party in respect of an approved investment shall also be authorised to transfer their country of origin in a proportion appropriate remuneration.

c. The transfers referred to in the preceding paragraphs shall be effected without delay in the normal official rate of exchange applicable on the date of transfer.

d. In the event of exceptional difficulties in the balance of payments, either Contracting Party may exercise of restrictions on free transfer for a limited period, either for a period not exceeding six months, or by another period if the restrictions fall within the framework of a programme with the International Monetary Fund. These restrictions should be implemented in a manner that is fair, non-discriminatory and in good faith.

## **Article 8. Subrogation**

a. If one of the contracting parties or a public agency thereof pays compensation to its own investors under a guarantee given in respect of an investment in the territory or maritime zones of the other contracting party, the latter shall recognize that the investor rights are transferred to the contracting party or the public body, as the insurer.

b. As far as the transferred rights, the other contracting party may claim against the insurer subrogated into the rights of the investors indemnified the obligations under a legal or contractual relationship with them.

## **Article 9. Specific Commitments**

1. Where a matter relating to investment is governed by this Agreement and simultaneously by the national legislation of either Contracting Party or under existing international conventions and agreed by both parties in the future, investors of the other contracting party may avail itself of the provisions that are most favourable.

## **Article 10. Settlement of Disputes between an Investor and a Contracting Party**

a. Any investment dispute between a Contracting Party and an investor of the other Contracting Party should, as far as possible, be settled amicably between the two parties concerned.

b. If the difference cannot be settled within nine months from the date on which either party to the dispute has arisen, it shall be submitted upon request of the investor and choice of the other Contracting Party:

(i) In an arbitration body in the territory of the Contracting Party;

(ii) In judicial proceedings in the territory of the Contracting Party;

(iii) In an arbitration by the International Centre for Settlement of Investment Disputes (ICSID for settlement or arbitration in accordance with the Convention on the Settlement of Investment Disputes between States and investors of other States, opened for signature at Washington on 18 March 1965.

c. The arbitral tribunal shall decide on the basis of the national law of the Contracting Party, Party to the dispute, page in the territory of which the investment is located, as well as on the basis of the rules relating to conflicts of law, the provisions of this Agreement, the terms of the specific agreements to be concluded in connection with investment as well as the Principles of International Law. The arbitral award shall be binding and shall not be subject to review complaints or other than those provided by the arbitration agreement. Each Contracting Party shall execute them in accordance with its legislation.

d. During arbitration proceedings or of the execution of an arbitral award, the State party to the dispute shall not raise no exception based on the fact that the investor of the other Contracting Party has been partially or fully compensated by insurance.

## **Article 11. Settlement of Disputes between Contracting Parties**

a. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

b. If within 12 months from the date on which it was raised by either contracting party, the dispute is not settled, it shall be submitted, at the request of either contracting party to an arbitral tribunal.

c. The Tribunal shall be constituted for each individual case in the following way:

(i) Each Contracting Party shall appoint an arbitrator.

(ii) The two arbitrators so nominated shall designate by common agreement, an investor of a third State who shall be appointed Chairman of the Tribunal by the two contracting parties;

(iii) All arbitrators shall be appointed within two months from the date one Contracting Party has informed the other contracting party of its intention to submit the dispute to arbitration.

d. If the periods specified in paragraph 3 above have not been made, either Contracting Party, in the absence of any other agreement, invite the President of the International Chamber of Commerce to make the necessary appointments. If the President is investors of either Contracting Party or if he is otherwise prevented from exercising this function, the Vice-President and the oldest who is not a national of either Contracting Party shall make the necessary appointments.

e. The Tribunal shall act in accordance with the law. Before taking its decision, it may at any stage of the proceedings the parties to propose an amicable settlement of the dispute. The foregoing provisions shall not affect the competence of the Tribunal to decide *ex aequo et bono* if the parties so agree.

6. The arbitral tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and enforceable automatically to the contracting parties. The tribunal shall determine its own rules of. It shall interpret its decision at the request of either Contracting Party. Unless the Tribunal provides otherwise, in light of the particular circumstances, the expenses of the arbitral proceedings, including the business of the arbitrators shall be shared equally by the contracting parties.

## **Article 12. Scope**

Page

a. This Agreement shall also cover, upon its entry into force, investments made prior to its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations.

b. However, the investment disputes have arisen or which may arise before the entry into force, are not covered under this Agreement.

## **Article 13. Entry Into Force and Duration**

a. Each of the Contracting Parties shall notify each other of the completion of the procedures required by its Law for the entry into force of this Agreement. It shall take effect one month after the date of receipt of the last notification.

b. This agreement is concluded for an initial period of ten years. It shall remain in force after the term unless one of the Parties denounces through diplomatic channels after one year notice.

c. Investments made prior to the termination of this Agreement shall continue to benefit from the protection of the provisions of articles 1 to 11 for a further period of fifteen years from the date of expiry.

Done at Antananarivo, Madagascar, on 6 April 2004 in two originals in English and French

Pour le Gouvernement de la République de Maurice

For the Government of the Republic of Madagascar

Khushhal Chand KHUSHIRAM Ministre de l'Industrie, des Services Financiers et des Affaires corporatives

Marcel Ranjeva

Minister of Foreign Affairs