

# Treaty between the Federal Republic of Germany and the Malagasy Republic on the encouragement of investments

THE FEDERAL REPUBLIC OF GERMANY AND THE REPUBLIC OF MADAGASCAR,

DESIRING to deepen economic cooperation between the two countries,

IN THE EFFECT TO create favorable conditions for the investments of nationals and companies of one State in the territory of the other State,

And

RECOGNIZING that the promotion and the contractual protection of these investments are likely to stimulate private economic activity and increase the prosperity of the two peoples

HAVE AGREED AS FOLLOWS:

## Article 1.

Each Contracting Party shall, as far as possible, promote the investments made by nationals or companies of the other Contracting Parties within its territory. It will in any case treat these investments fairly and cheaply.

## Article 2.

No Contracting Party shall, in identical cases, subject within its territory the nationals and companies of the other Contracting Party, in respect of investments which they own or which are under their effective control, in respect of the professional and economic activities connected with their investments, and in respect of the administration, enjoyment and use of such investments, to conditions less favourable than those to which its own nationals and companies are subject.

## Article 3.

(1) The investments made in the territory of a Contracting Party by nationals and companies of the other Contracting Party enjoy full protection and full security.

(2) The investments made by nationals or companies of the other Contracting Party in the territory of a Contracting Party may only be expropriated if the general good is required by law and only on the condition of a just compensation which must correspond to the value of the expropriated investment. Such compensation must in fact be recoverable, be made immediately and be freely transferable. At the latest at the time of expropriation, provision must be made for the setting and performance of the compensation. The legality of the expropriation and the amount of the compensation must be able to be re-examined in ordinary court proceedings.

(3) Nationals and companies of a Contracting Party whose investments are damaged by armed conflicts, revolution or turmoil in the territory of the other Contracting Party shall not be treated less favorably by the Contracting Party as regards their repayments, compensation, compensation or other compensation than their own nationals or companies, Third state. The amounts paid for this purpose are freely transferable.

(4) Paragraphs 1, 2 and 3 shall also apply to income from investments.

## Article 4.

Each Contracting Party guarantees the transfer to the nationals and companies of the other Contracting Parties:

a) Of the income from investments as defined in Article 8 (2);

- b) The liquidation proceeds of investments;
- c) The expropriation allowance prescribed in Article 3 (2);
- d) Of the amounts paid as refunds, compensation, compensation or other compensation under Article 3 (3).

In the cases referred to in Article 5, the free transfer shall also cover the other Contracting Party.

## **Article 5.**

Where a Contracting Party makes payments to one of its nationals or one of its companies on the basis of a guarantee for an investment, the other Contracting Party shall, without prejudice to the rights of the former Contracting Party pursuant to Article 10, recognize the transfer of all rights and claims of that national or of that company to the former By virtue of law or on the basis of a legal transaction, and the entry of the former Contracting Party into all these rights and claims which it may perceive as its legal predecessor.

## **Article 6.**

(1) In so far as the parties concerned are not subject to a derogation with the approval of the competent authorities of the Contracting Party in whose territory the investment is situated, transfers pursuant to Article 4 shall take place within the usual time limits and on the day of the day on the terms laid down in Article 4 Of the transfer.

(2) The rate valid for current transactions is based on the par value (par value) agreed with the International Monetary Fund and must be parity within the range of fluctuation permitted under Article IV Section 3 of the Agreement on the International Monetary Fund.

(3) If there is no conversion rate for a Contracting Party at the time of transfer, as defined in paragraph 2, the official rate determined by that Contracting Party for its currency in relation to the US dollar or any other freely convertible currency or gold shall be applied. Should such a price not be fixed, the competent authorities of the Contracting Party in whose territory the investment is situated shall allow a conversion rate which is fair and fair.

## **Article 7.**

If, under the legislation of a Contracting Party or international obligations which exist between the Contracting Parties in addition to this Treaty or which are justified in the future by agreements between the Contracting Parties, a system whereby a more favorable treatment is granted to the investments of the nationals and companies of the other Contracting Parties Than is provided for under this Treaty, this more favorable provision shall be governed by the provisions of this Treaty. Each Contracting Party shall comply with any other obligation which it has assumed in relation to the investments of nationals or companies of the other Contracting Parties.

## **Article 8.**

(1) The expression "investments" includes all assets, in particular but not exclusively:

- a) Movable and immovable assets as well as other rights in rem such as mortgages, lien, usufruct or similar;
- b) Share rights in companies and other types of participations;
- c) Claims for money or services having an economic value;
- d) Industrial property rights, patents, trade marks, goodwill;
- e) Operating concessions on the basis of public law, including concessions for the purpose of exploring, promoting or extracting mineral resources which give their holders a legal position of a certain duration.

A change in the form in which assets are invested does not affect their property as an investment.

(2) The term "earnings" means those amounts which are attributable to an investment as profit or interest.

(3) The term "nationals"

- a) With regard to the Federal Republic of Germany:

German in the sense of the Basic Law for the Federal Republic of Germany;

b) As regards the Republic of Madagascar:

Those persons who, according to the legal and administrative provisions governing the Malagasy nationality, are Madagascens.

(4) For the purposes of this Treaty, the term "companies" of a Contracting Party shall mean any legal person, any trading company or other company or association, with or without legal personality, having its registered office in the territory of that Contracting Party Shareholders, members or members, or whether their activities are directed at profit or not.

## **Article 9.**

The provisions of this contract shall also be subject to investments made by nationals and companies of one Contracting Party in accordance with the laws of the other Contracting Parties in their territory before the entry into force of this Treaty, but not before 14 October 1958.

## **Article 10.**

(1) Any disputes concerning the interpretation or application of this Agreement shall, as far as possible, be settled by the Governments of the two Contracting Parties.

(2) If a dispute can not be settled in this way, it shall be submitted to an arbitration court at the request of one of the two contracting parties.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting Parties, and both members as members of a third State as chairman to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months to order the chairman within three months after the one party to the agreement has informed the other that they intend to submit the dispute to an arbitration court.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President has prevented the nationality of either Contracting Party or any other country for another reason, the Vice-President shall make the appointments. If the Vice-President also has the nationality of one of the Contracting Parties or if he is also prevented from doing so, the next member of the Court of First Instance who is not a national of either Contracting Party shall make the appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitral tribunal shall regulate its own procedures.

## **Article 11.**

The provisions of this Agreement shall also remain in force in the event of disputes between the Contracting Parties, without prejudice to the right to take temporary measures which may be permitted on the basis of the general rules of international law. Measures of this kind will be lifted no later than the date of the actual termination of the dispute, irrespective of whether the diplomatic relations are restored.

## **Article 12.**

This Agreement shall also apply to the Land of Berlin, unless the Government of the Federal Republic of Germany makes a contrary declaration to the Government of the Republic of Madagascar within three months after the entry into force of this Treaty.

## **Article 13.**

(1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible in Tananarive.

(2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It shall remain in force

for a period of ten years and shall be extended indefinitely unless terminated in writing by one of the two Contracting Parties a year before its expiry. After ten years, the contract may be terminated at any time but remains in force for one year after termination.

(3) For investments made up to the date of the expiry of the contract, Articles 1 to 12 shall continue to apply for a further twenty years from the date of termination of this contract.

DONE at BONN, on September 21, 1962, in four copies, two in German and two in French, each text being equally authentic.

For the Federal Republic of Germany:

Lahr

For the Republic of Madagascar:

Rabemananjara