AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF MADAGASCAR AND THE GOVERNMENT OF THE FRENCH REPUBLIC ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS

The Government of the French Republic and the Government of the Republic of Madagascar, hereinafter referred to as "the Contracting Parties",

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investment in Madagascar and Malagasy investment in France;

Convinced that the encouragement and protection of such investments are likely to stimulate the transfer of capital and technology between the two countries, in the interest of their economic development;

Being understood that the assets concerned by this agreement must be or have been invested in accordance with the laws and regulations of the Contracting Party in whose territory or maritime zone the investment is made, whether before or after the entry into force of this agreement, with the exception of investments covered by the special agreement of 1 October 1998 and its amendments,

Have agreed on the following provisions:

Article 1. Definitions

For the purposes of this Agreement:

1. The term "investment" means all assets, such as property, rights and interests of every kind, and more particularly but not exclusively:

(a) Movable and immovable property, as well as all other real rights such as mortgages, liens, usufructs, bonds and all similar rights;

(b) Shares, share premiums and other forms of participation, even if minority or indirect, in companies incorporated in the territory of one of the contracting parties;

(c) Bonds, debts and rights to any benefits of economic value;

(d) Intellectual, commercial and industrial property rights, such as copyrights, patents, licenses, trademarks, industrial models and designs, technical processes, know-how, registered names and goodwill;

(e) concessions granted by law or by contract, including concessions for the exploration, cultivation, extraction or exploitation of natural resources, including those located in the maritime zone of the contracting parties.

No change in the form of investment of assets shall affect their qualification as investment, provided that such change is not contrary to the legislation of the Contracting Party in whose territory or maritime zone the investment is made.

2. The term "nationals" means natural persons possessing the nationality of one of the Contracting Parties.

3. The term "companies" means any legal entity incorporated in the territory of one of the Contracting Parties, in accordance with the legislation thereof and having its registered office there, or controlled directly or indirectly by nationals of one of the Contracting Parties, or by legal entities having their registered office in the territory of one of the Contracting Parties and incorporated in accordance with the legislation thereof.

4. The term "income" means all sums produced by an investment, such as profits, royalties or interest, during a given

period. Income from the investment and, in the case of reinvestment, income from reinvestment shall enjoy the same protection as the investment.

5. This Agreement shall apply to the territory of each Contracting Party and to the maritime area of each Contracting Party, hereinafter defined as the economic zone and the continental shelf which extend beyond the limits of the territorial waters of each Contracting Party and over which they have, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploring, exploiting and conserving natural resources.

6. Nothing in this Agreement shall be construed to prevent either contracting party from making any provision for the regulation of investments by foreign investors and the conditions under which such investors operate, in the context of measures designed to preserve and promote cultural and linguistic diversity.

Article 2. Scope of the Agreement

Each of the Contracting Parties shall, within the framework of its legislation and the provisions of this Agreement, encourage and admit investments made by the nationals and companies of the other Party in its territory and in its maritime zone.

For the purposes of this Agreement, it is understood that the Contracting Parties are responsible for the actions or omissions of their public authorities, and in particular of their federated states, regions, local authorities or any other entity over which the Contracting Party exercises trusteeship, representation or responsibility in its international relations or sovereignty.

Article 3. Fair and Equitable Treatment

Each Contracting Party undertakes to ensure, in its territory and in its maritime zone, fair and equitable treatment, in accordance with the principles of international law, to investments of nationals and companies of the other Party and to ensure that the exercise of the right so recognized is not impeded in law or in fact.

In particular, although not exclusively, any particular measure which may directly or indirectly affect the investments of nationals or companies of either Party, any restriction on the purchase and transportation of raw and auxiliary materials, energy and fuel, and means of production and operation of any kind, any impediment to the sale and transportation of products within the country and abroad, and any other measures having a similar effect, shall be considered as impediments in law or in fact to fair and equitable treatment.

The Contracting Parties shall, within the framework of their domestic legislation, give sympathetic consideration to applications for entry and authorization to stay, work and travel submitted by nationals of a Contracting Party in connection with an investment made in the territory or maritime area of the other Contracting Party.

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

Each Contracting Party shall apply, in its territory and maritime zone, to the nationals or companies of the other Party, in respect of their investments and activities related to such investments, treatment no less favourable than that accorded to its nationals or companies, or the treatment accorded to the nationals or companies of the most favoured nation, whichever is more favourable. In this connection, nationals authorized to work in the territory and maritime area of one of the contracting parties shall be entitled to benefit from existing and appropriate material facilities for the exercise of their professional activities.

This treatment shall not, however, extend to the privileges which a Contracting Party grants to the nationals or companies of a third State by virtue of its participation in or association with a free trade area, a customs union, a common market or any other form of regional economic organization.

The provisions of this Article do not apply to tax matters.

Article 5. Dispossession and Compensation

1. Investments made by nationals or companies of either Contracting Party shall enjoy full protection and security in the territory and maritime area of the other Contracting Party.

2. The Contracting Parties shall not take any measures of expropriation or nationalization or any other measures the effect of which is to dispossess, directly or indirectly, the nationals and companies of the other Party of investments belonging to them in their territory and maritime zone, except in the public interest and provided that such measures are not

discriminatory or contrary to any particular undertaking.

All measures of dispossession, including but not limited to expropriation and immediate possession, which may be taken shall be subject to the payment of prompt and adequate compensation:

Such compensation, the amount thereof and the manner of payment shall be fixed not later than the date of dispossession and, failing amicable agreement, by judicial decision. This compensation is effectively realizable, paid without delay and freely transferable. It shall bear interest until the date of payment, calculated at the appropriate market interest rate.

The amount of the compensation, equal to the real value of the investments concerned, must be assessed in relation to a normal economic situation prior to any threat of dispossession.

3. The nationals or companies of one of the contracting parties whose investments have suffered losses as a result of war or any other armed conflict, revolution, state of national emergency or revolt in the territory or maritime area of the other contracting party shall be accorded by the latter treatment no less favourable than that accorded to its own nationals or companies or to those of the most favoured nation.

Article 6. Free Transfer

Each contracting Party shall, in the territory or maritime area of which investments have been made by nationals or companies of the other contracting Party, accord to such nationals or companies the free transfer of

(a) Interest, dividends, profits and other current income ;

(b) royalties derived from intangible rights referred to in paragraph 1(d) and (e) of Article 1

c) Payments made for the repayment of loans regularly contracted;

d) Proceeds from the sale or liquidation of the investment, in whole or in part, including capital gains on the investment;

(e) the compensation for loss or dispossession provided for in Article 5, paragraphs 2 and 3, above.

Nationals of each of the Contracting Parties who have been authorized to work in the territory or maritime area of the other Contracting Party, in connection with an approved investment, shall also be authorized to transfer to their country of origin an appropriate portion of their remuneration.

The transfers referred to in the preceding paragraphs shall be made without delay at the normal rate of exchange officially applicable on the date of transfer.

In the event of exceptional balance of payments difficulties, each contracting party may exercise restrictions on the free transfer for a limited period of time, either for less than six months or for another period if the restrictions are part of a program with the International Monetary Fund. Such restrictions shall be implemented in an equitable, nondiscriminatory and good faith manner.

Article 7. Settlement of Disputes between an Investor and a Contracting Party

Any investment dispute between one of the Contracting Parties and a national or company of the other Contracting Party shall be settled amicably between the two Parties concerned.

If such a dispute has not been settled within six months from the time it was raised by either of the parties to the dispute, it shall be submitted at the request of either of these parties to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Agreement on the Settlement of Investment Disputes between States and Nationals of Other States, signed in Washington on March 18, 1965.

Article 8. Guarantees and Subrogation

1. To the extent that the regulations of one of the Contracting Parties provide for a guarantee for investments made abroad, such guarantee may be granted, on a case-by-case basis, to investments made by nationals or companies of that Party in the territory or maritime zone of the other Party.

2. Investments by nationals and companies of one of the Contracting Parties in the territory or maritime area of the other Party may not obtain the guarantee referred to in the preceding paragraph unless they have first obtained the approval of the latter Party.

3. If one of the Contracting Parties, by virtue of a guarantee given for an investment made in the territory or maritime zone of the other Party, makes payments to one of its nationals or to one of its companies, it is thereby subrogated to the rights and actions of that national or company.

4. Such payments shall not affect the rights of the beneficiary of the guarantee to have recourse to ICSID or to pursue the actions brought before it until the proceedings for full compensation for the loss have been completed, without such actions giving rise to double compensation.

Article 9. Specific Commitment

Investments which have been the subject of a specific commitment by one of the Contracting Parties to the nationals and companies of the other Contracting Party shall be governed, without prejudice to the provisions of this Agreement, by the terms of that commitment insofar as it contains provisions more favourable than those provided for by this Agreement.

Article 10. Settlement of Disputes between Contracting Parties

1. Disputes concerning the interpretation or application of this Agreement shall be settled, if possible, through diplomatic channels.

2. If the dispute is not settled within twelve months of its being raised by either Contracting Party, it shall be submitted, at the request of either Contracting Party, to an arbitration tribunal.

3. The said tribunal shall be constituted for each particular case in the following manner: each Contracting Party shall appoint one member, and the two members shall appoint, by mutual agreement, a national of a third State who shall be appointed chairman of the tribunal by both Contracting Parties. All members shall be appointed within two months of the date on which one Contracting Party has notified the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits laid down in paragraph 3 above have not been observed, either Contracting Party shall, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or is otherwise unable to serve, the most senior Under-Secretary-General who is not a national of either Contracting Party shall make the necessary appointments.

5. The arbitration tribunal shall take its decisions by a majority vote. Such decisions shall be final and binding on the Contracting Parties.

The tribunal shall determine its own rules. It shall interpret the award at the request of either Contracting Party. Unless the Tribunal decides otherwise, taking into account particular circumstances, the costs of the arbitration proceedings, including the fees of the arbitrators, shall be shared equally by the Contracting Parties.

Article 11. Entry Into Force and Duration

Each Party shall notify the other of the completion of the internal procedures required for the entry into force of this agreement, which shall take effect one month after the day of receipt of the last notification.

The agreement is concluded for an initial period of ten years. It shall remain in force after that period unless either Party denounces it through diplomatic channels with one year's notice.

Upon the expiration of the period of validity of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of fifteen years.

For the Government of the French Republic :

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