

# Treaty between the Federal Republic of Germany and the Republic of Madagascar on the mutual encouragement and protection of investments

The Federal Republic of Germany and the Republic of Madagascar -

In the desire to deepen economic cooperation between the two countries,

In the endeavor to create favorable conditions for investments by investors of one State in the territory of the other State,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples -

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Treaty

1. The term "investments" means assets of any kind invested by investors of one Contracting State in accordance with the laws and regulations of the other Contracting State, in particular

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens;
- b) Share rights in companies and other types of participations in companies;
- c) Claims on money used to create an economic value or claims on an economic value;
- d) Intellectual property rights, in particular copyrights, patents, utility models, industrial designs, trade names, business and business secrets, technical procedures, know-how and goodwill;
- e) Commercial concessions granted by law or by virtue of legal transactions, in particular concessions for exploration and production, cultivation, exploration or reduction of natural resources;

A change in the form in which assets are invested shall not affect their property as an investment, provided that such change is in accordance with the laws and regulations of the other Contracting State;

2. The term "income" means the amounts accruing to an investment for a certain period, such as profit shares, dividends, interest, royalties or other charges;

3. The term "investor"

a) In relation to the Federal Republic of Germany:

- Germans within the meaning of the Basic Law for the Federal Republic of Germany,
- any legal person or any commercial or other company or association with or without legal personality established in the territory of the Federal Republic of Germany, whether or not its activity is directed to profit or not,

b) As regards the Republic of Madagascar:

- Madagascans in the sense of the laws applicable to the Republic of Madagascar,
- legal persons, firms or associations formed or established in accordance with the laws and regulations applicable in the territory of the Republic of Madagascar, whether or not their activity is directed to profit.

## **Article 2. Promotion and Approval of Investments**

- (1) Each State Party shall, as far as possible, promote investments in its territory by investors of the other Contracting State and allow such investments in accordance with its laws.
- (2) Each State Party shall treat the investments of investors of the other Contracting State in a fair and fair manner.
- (3) A State Party shall in no way affect the management, maintenance, use or use of the investments of investors of the other Contracting State or the disposal of such investments in its territory by means of arbitrary or discriminatory measures.

## **Article 3. National Treatment and Most-favored-benefit Clause**

- (1) Each State Party shall treat investments in its territory which are owned or under the influence of investors of the other Contracting State no less favorable than the investments of its own investors or the investees of third States.
- (2) Each Contracting State shall treat investors of the other Contracting State as less favorably than its own investors or investors of third States in respect of its operations in connection with investments in its territory.
- (3) This treatment does not relate to the privileges granted by a Contracting State to investors of third countries because of their membership in a customs or economic union, a common market or a free trade area or because of its association with it.
- (4) The treatment provided for in this article does not apply to benefits granted by a Contracting State to investors of third countries under a double tax treaty or other agreements on tax questions.

## **Article 4. Protection of Investments, Expropriation and Compensation**

- (1) Investments by investors of a Contracting State shall enjoy full protection and full security in the territory of the other Contracting State.
- (2) Investments made by investors of a Contracting State may be directly or indirectly, in the territory of the other Contracting State, expropriated directly or indirectly, nationalized or subject to other measures which are equivalent to expropriation or nationalization. The compensation must correspond to the value of the expropriated investment immediately before the date on which the actual or imminent expropriation, nationalization or comparable measure became publicly known. The compensation must be paid without delay and is payable at the usual bank interest rate until the time of payment; It must in fact be usable and freely transferable. At the latest at the time of expropriation, nationalization or comparable measure must be taken in an appropriate manner for the determination and performance of the compensation provision. The legality of the expropriation, nationalization or comparable measure and the amount of the compensation must be able to be verified in ordinary court proceedings.
- (3) Investors in a Contracting State who suffer losses from investments in the territory of the other Contracting State through a war or other armed conflict, revolution, state or turmoil shall be treated no less favorably by the State Party in respect of repayments, settlements, compensation or other consideration than its own investors. Such payments must be freely transferable.
- (4) With regard to the matters governed by this Article, the investors of a Contracting State shall enjoy most-favored-nation treatment in the territory of the other Contracting State.

## **Article 5. Free Transfer**

Each State Party shall ensure that the investors of the other Contracting State are free to transfer the payments relating to an investment, in particular

- a) Of the capital and additional amounts for the maintenance or expansion of the investment;
- b) Of income;
- c) The amounts repaying loans;
- d) Of the proceeds from the complete or partial liquidation or disposal of the investment;
- e) Of the compensation provided for in Article 4.

## **Article 6. Entry Into Rights**

If a Contracting State makes payments to its investors on the basis of a guarantee for an investment in the territory of the other Contracting State, that other Contracting State shall recognize the transfer of all rights or claims of such investors by law or by law to the former Contracting State. The other Contracting State shall also recognize the entry into force of all such rights or claims (transferred claims) which the former Contracting State is entitled to exercise to the same extent as its predecessor. Article 4 (2) and (3) and Article 5 shall apply mutatis mutandis to the transfer of payments under the transferred claims.

## **Article 7. Transfer Guarantee**

(1) Transfers pursuant to Article 4 (2) or (3), Article 5 or Article 6 shall be effected without delay at the market rate applicable on the date of the transfer.

(2) If there is no foreign exchange market, the cross rate is the rate of exchange resulting from the conversion rates that the International Monetary Fund would use as the basis for the conversion of the currencies into special drawing rights.

## **Article 8. Relationship with other Provisions**

(1) Where, under the laws of a Contracting State or under obligations under international law which exist or are established in the future between the Contracting States, a general or special rule giving the investments of the investors of the other Contracting State more favorable treatment than under this Treaty, This provision shall be governed by this Treaty in so far as it is more favorable.

(2) Each State Party shall comply with any other obligation which it has assumed in respect of investments of investors of the other Contracting State in its territory.

## **Article 9. Scope**

This Agreement shall also apply to investments made by investors of one Contracting State prior to the entry into force of this Treaty in accordance with the laws of the other Contracting State in its territory. On the other hand, the disputes concerning the investments which arose prior to the entry into force are not covered by this contract.

## **Article 10. Settlement of Disputes between the Contracting States**

(1) Disputes between the Contracting States concerning the interpretation or application of this Treaty shall, as far as possible, be settled by the Governments of the two Contracting States.

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

(3) The arbitral tribunal shall be constituted on a case-by-case basis by the appointment by each State Party of a Contracting State and the appointment of both members as members of a third State to be appointed by the Governments of the two Contracting States. The members shall be appointed within two months to appoint the chairman within three months after the one Contracting State has notified the other that he wishes to submit the dispute to an arbitration court.

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

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each State 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 shall be borne equally by the two Contracting States. The arbitral tribunal may adopt a different cost regime. In addition, the arbitral tribunal shall regulate its own procedures.

## **Article 11. Settlement of Disputes between an Investor and a Contracting State**

(1) Disputes with regard to investments between one of the Contracting States and an investor of the other Contracting

State shall, as far as possible, be settled amicably between the parties concerned.

(2) If a dispute can not be settled within a period of six months from the date of its assertion by one of the two parties, it shall, at the request of the investor of the other Contracting State, be submitted to one of the following procedures,

1. A legal procedure in the Contracting State in whose territory the investment was made;
2. (ICSID) for the purpose of settling or arbitrating the dispute between the States and nationals of other States, which has been opened for signature in Washington on 18 March 1965, Controversial parties shall enter into a different agreement.
- (3) The arbitration award shall be binding and shall not be subject to any other means of appeal or other remedies other than those provided for in the said Convention. It is enforced under national law.
- (4) The State Party to the dispute shall not argue during an arbitration or arbitration proceedings that the investor of the other Contracting State has received compensation for part of the loss or damage caused by an insurance.

## **Article 12. Diplomatic Relations**

This Treaty shall apply regardless of whether diplomatic or consular relations exist between the two Contracting States.

## **Article 13. Protocol**

The attached protocol is an integral part of this contract.

## **Article 14. Entry Into Force, Duration and Termination of the Contract**

- (1) This Treaty shall be subject to ratification; The instruments of ratification shall be exchanged as soon as possible.
- (2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the term of validity shall be extended indefinitely, unless one of the Contracting States terminates the contract in writing with a period of twelve months before the expiry of the contract. After ten years, the contract may be terminated at any time by a period of twelve months.
- (3) For investments made up to the date of the expiry of this Agreement, the foregoing Articles 1 to 13 shall continue to apply for a further fifteen years from the date of expiry of the Treaty.
- (4) Upon the entry into force of this Treaty, the Treaty of 21 September 1962 between the Federal Republic of Germany and the Republic of Madagascar on the Promotion of Investments, its Protocol and the Exchange of Letters shall cease to have effect from the same date.

Done at Berlin, this 1st day of August 2006, in two originals, each in the French and German languages, both texts being equally authentic.

For the Federal Republic of Germany

Georg Boomgaarden

For the Republic of Madagascar

Alphonse Ralison

## **Protocol to the Treaty between the Federal Republic of Germany and the Republic of Madagascar on the Reciprocal Promotion and Protection of Capital Investments**

The Federal Republic of Germany and the Republic of Madagascar have agreed the following provisions to the Treaty of August 1, 2006, on the mutual promotion and protection of capital investments:

- (1) Ad Article 1

a) Income from the capital investment and, in the event of its reinvestment, also its proceeds, shall enjoy the same protection as the capital investment.

(b) In particular, and without prejudice to other procedures for determining nationality, a national of a Contracting State shall be deemed to be any person holding a national passport issued by the competent authorities of the Contracting State concerned.

(2) Ad Article 2

The Treaty shall also apply in the territories of the exclusive economic zone and the continental shelf to the extent that international law permits the exercise of sovereign rights or powers in these territories by the respective State Party.

(3) Ad Article 3

(a) For the purposes of paragraph 2 of Article 3, "operation" shall mean in particular, but not exclusively, the management, holding, use, enjoyment, and disposal of the investment. Less favorable" treatment within the meaning of Article 3 shall be deemed to include, in particular, differential treatment resulting from restrictions on the supply of raw materials and supplies, energy and fuels, and means of production and operation of all kinds, differential treatment resulting from obstacles to the sale of products at home and abroad, and other measures having a similar effect. Measures to be taken for reasons of public safety and order, public health, or morality shall not be considered as "less favorable" treatment within the meaning of Article 3.

b) Article 3 shall not require a Contracting State to extend to investors resident in the territory of the other Contracting State tax benefits, exemptions, and reductions which, under the tax laws, are available only to investors resident in its territory.

c) The Contracting States shall, within the framework of their national legislation, give favorable consideration to applications for the entry and residence of persons of one Contracting State who wish to enter the territory of the other Contracting State in connection with an investment of capital; the same shall apply to employees of one Contracting State who wish to enter and reside in the territory of the other Contracting State in connection with an investment of capital in order to carry on an activity as an employee. Applications for work permits shall also be favorably considered.

(4) Ad Article 7

For the purposes of Article 7, paragraph 1, a transfer shall be deemed to have been effected "without delay" if it is effected within a period of time normally required to comply with the formalities of the transfer. The period shall commence with the submission of an appropriate application and shall under no circumstances exceed three months.

(5) In the case of transfers of goods and persons in connection with a capital investment, a Contracting State shall neither eliminate nor impede the carriers of the other Contracting State and shall, to the extent necessary, grant authorizations to carry out the transfers.

a) goods directly intended for capital investment within the meaning of the Treaty or acquired in the territory of a Contracting State or of a third State by or on behalf of an enterprise in which assets within the meaning of the Treaty are invested;

(b) persons who, in connection with an investment, are travel.