Agreement between the Swiss Confederation and the Republic of Madagascar concerning the reciprocal promotion and protection of investments

Preamble

The Swiss Federal Council and

The Government of the Republic of Madagascar,

Desiring to intensify economic cooperation in the mutual interest of both States;

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other contracting party,

Recognizing the need to promote and protect foreign investment in order to stimulate the flow of capital and technology, thus promoting economic prosperity of both States;

Convinced that these objectives can be achieved without reducing the standards of general application relating to health, safety and environment, have agreed as follows:

For the purposes of this Agreement:

(1) The term "investment" means all categories of assets and shall include in particular, though not exclusively:

(a) Ownership of movable and immovable property as well as any other rights in rem servitudes, charges, such as movable and immovable property, usufruits pledges, and all similar rights;

(b) The actions, and other forms of participation shares in companies;

(c) Monetary claims and rights to any performance having economic value;

(d) Copyrights, industrial property rights, such as patents, utility models, industrial designs or models, trade marks, trademarks, trade names, indication of origin), know-how and goodwill;

(e) The concessions under public law, including extract concessions to search for or exploit natural resources, as well as any other rights conferred by law, by contract or by decision of the Authority in accordance with the law.

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 approvals granted, where appropriate, in respect of the originally invested assets.

(2) The term refers investor with regard to either Contracting Party:

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal entities, including companies registered partnerships, corporations and other organizations, which are constituted or otherwise organised under the law of that Contracting Party and performing real economic activities in the territory of the same Contracting Party.

(3) The term means the returns derived from an investment amounts and includes in particular, though not exclusively, interests, capital gains, profits, dividends, royalties and fees.

(4) The term territory includes the maritime area of the Contracting Party concerned, hereinafter referred to as defined as the economic zone and the continental shelf extending beyond the limits of the territorial waters of the Contracting Party concerned and on which it has, in accordance with international law, sovereign rights or jurisdiction.

This Agreement shall apply to investments made in the territory of a Contracting Party in accordance with its laws and regulations, which are owned or controlled directly or indirectly by investors of the other contracting party. it shall apply to such investments made prior to or after its entry into force, but shall not apply to disputes arising out of events which occurred prior to that date.

(1) Each Contracting Party shall promote as far as possible investments by investors of the other contracting party in its territory, including through the exchange of information between the Contracting Parties on investment opportunities, and admit such investments in accordance with its laws and regulations.

(2) Once it has admitted an investment in its territory, each Contracting Party shall issue, in accordance with its laws and regulations, all licences and permits in connection with such investments, including those required for the performance of contracts, technical assistance, commercial or administrative and managerial and specialists chosen by the investor.

(3) Each Contracting Party shall promptly publish or otherwise make publicly available its laws, regulations, procedures and administrative rulings of general application as well as international agreements which may affect the investments of investors of the other contracting party.

(1) Each Contracting Party shall accord to investments made in its territory by investors of the other contracting party fair and equitable treatment and full protection and full and constant security. no Contracting Party shall in any way hinder unjustified or discriminatory measures by the Management, the management, maintenance, use, enjoyment, increased or disposal of such investments.

(2) Nothing in this Agreement shall be construed to prevent a Contracting Party from taking any action that otherwise consistent with this Agreement refers to the public interest, such measures relating to health, safety or environmental measures.

(1) Each Contracting Party shall accord in its territory to investments of investors of the other contracting party treatment no less favourable than that which it accords to its own investments of investors or to investments of investors of any third State, more favourable treatment to the investor concerned is crucial.

(2) Each Contracting Party shall accord to investors of the other contracting party, as regards the management, the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than that it accords to its own investors to investors or of any third State, more favourable treatment to the investor concerned is crucial.

(3) If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union or common market or by virtue of an agreement for the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other contracting party.

(1) Each Contracting Party shall accord to investors of the other Contracting Party the transfer without restriction or delay in a freely convertible currency, amounts relating to their investments and in particular, though not exclusively:

(a) Income;

(b) The amounts relating to contractual obligations, including loan agreements;

(c) The amounts intended to cover the management of the investment;

(d) Wages and remuneration of other personnel engaged from abroad in connection with the investment;

(e) The initial capital and additional contributions of capital necessary for the maintenance of the development or investment;

(f) Proceeds from the sale or the total or partial liquidation of the investment, including possible gains;

(g) Payments arising under articles 7 and 8 of this Agreement.

(2) Unless otherwise agreed with the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange of regulations in force the Contracting Party in whose territory the investment has been made.

(3) A transfer shall be deemed to have been made without delay "when it has been made within a period as normal for the completion of formalities transfer. the said period shall commence on the day on which the request for transfer and shall in no case exceed three months.

(1) Neither Contracting Party shall take, directly or indirectly, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other contracting party except for reasons of public interest and provided that such measures are not discriminatory, that they comply with the legal requirements and provide for payment of adequate and effective compensation. the award will correspond to the market value of the expropriated investment immediately before the expropriation was announced or they are known to the public, the first of those events in determining. the amount of compensation shall be settled in a freely convertible currency and paid without undue delay to the person entitled thereto without regard to its residence or domicile.

(2) The Investor affected by the expropriation shall have a right, under the law of the expropriating contracting party to proceed to a prompt review by a judicial or other independent authority of that Contracting Party, of his case and of the valuation of its investment in accordance with the principles set out in this article.

(3) If a Contracting Party expropriating the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other contracting party own shares, it shall ensure, to the extent necessary and in accordance with its laws, that the compensation referred to in paragraph (1) of this article is paid to those investors.

Investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of national emergency, revolt, civil disturbance or other similar events that took place in the territory of the other contracting party benefit, on the part of this latter, from a treatment in accordance with article 5 of this Agreement as regards restitution, indemnification, compensation or other settlement.

Each Contracting Party shall observe any other obligation it has entered into in respect of an investment of an investor of the other contracting party and to which the investor could rely in good faith in carrying out or by acquiring an increasing investment.

If the provisions of the legislation of a Contracting Party or rules of International Law accord to investments of investors of the other contracting party to more favourable treatment than is provided for by the present Agreement, the latter shall prevail to the extent that they are more favourable.

If a Contracting Party or its designated agency has made a payment under a financial guarantee against non-commercial risks with regard to an investment by one of its investors in the territory of the other contracting party, the latter shall recognize the rights of the first Contracting Party on the basis of the principle of subrogation to the rights of the investor.

(1) For the purpose of solving disputes with respect to investments between a Contracting Party and an investor of the other contracting party and without prejudice to the provisions of article 13 of the present Agreement (settlement of disputes between the contracting parties), consultations will take place between the parties concerned.

(2) If these consultations do not solution within six months from the date of the written request, to initiate the investor may submit the dispute to the courts or administrative tribunals of the Contracting Party in whose territory the investment has been made or to international arbitration. in the latter case, the investor shall have the choice between:

(a) The International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965 (hereinafter referred to as the "Washington Convention"); and

(b) An ad hoc arbitral tribunal which unless the parties to the dispute decide otherwise, is to be established under the Arbitration Rules of the United Nations Commission on United Nations Commission on International Trade Law (UNCITRAL).

(3) Each Contracting Party gives its consent to the submission to international arbitration to any dispute concerning an investment.

(4) A company which is incorporated or constituted under the laws in force in the territory of one Contracting Party and which, before a dispute arises, was controlled by investors of the other Contracting Party, shall be treated as defined in article 25 (2) (b) of the Washington Convention, as a company of the other contracting party.

(5) The Contracting Party which is a party to the dispute may, at any stage of the proceedings, assert its immunity or the fact that the investor has received pursuant to an insurance contract, compensation covering the whole or part of the damage incurred.

(6) Neither Contracting Party shall pursue through diplomatic channels a dispute submitted to international arbitration unless the other contracting party does not comply with the arbitral award.

(7) The arbitral award shall be final and binding upon the parties to the dispute and shall be executed without delay

according to the legislation of the Contracting Party concerned.

(1) Disputes between the contracting parties relating to the interpretation or application of the provisions of this Agreement shall, if possible, be settled through diplomatic channels.

(2) If both contracting parties fail to reach a settlement within six months from the time the dispute has been raised by either contracting party, the latter shall be submitted, at the request of either contracting party to an arbitral tribunal composed of three members. each Contracting Party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint a chairman who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other contracting party to make such appointment within two months of the arbitrator shall be appointed, upon request by the latter Contracting Party by the President of the International Court of Justice.

(4) If the two arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If in the cases specified in paragraph (3) and (4) of this article, the President of the International Court of Justice is prevented from carrying out this function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President and if the latter is prevented or if he is a national of either Contracting Party, they will be made by the most senior member of the Court who is not a national of either of the Contracting Parties.

(6) Unless the Contracting Parties decide otherwise, the tribunal shall determine its own rules of procedure. each Contracting Party shall bear the costs of its own member of the Tribunal and of its representation in the arbitration proceedings. the cost of the Chairman and the remaining costs shall be borne in equal parts by the contracting parties unless the arbitral tribunal decides otherwise.

(7) The decisions of the Tribunal shall be final and binding for each Contracting Party.

(1) This Agreement shall enter into force on the day on which the two Governments have notified each other that the legal requirements for the entry into force of international agreements have been completed; it shall remain valid for a period of ten years. if it is not denounced with six months notice in writing before the expiry of this period, it shall be considered on the same terms as renewed for a period of two years, and so on.

(2) In the event of termination, the provisions of articles 1 to 13 of this Agreement shall continue to apply for a further period of ten years for investments made before its expiration.

(3) This agreement replaces investment protection (articles 7 and 8) ("arbitral clause for the Protection of Investments") of the agreement on trade, investment protection and technical cooperation of 17 March 1964 between the Swiss Confederation and the Republic of Madagascar.

In WITNESS WHEREOF, the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

Done at Antananarivo, on 19 November 2008, in two originals in the French language.

For the Swiss Federal Council:

Carlos Orga

For the Government of the Republic of Madagascar:

Ivohasina Razafimahefa