

# **AGREEMENT BETWEEN THE BELGO-LUXEMBOURG ECONOMIC UNION AND THE REPUBLIC OF MADAGASCAR ON THE RECIPROCAL ENCOURAGEMENT AND PROTECTION OF INVESTMENTS**

The Government of the Kingdom of Belgium,

The Walloon Government,

The Flemish Government,

The Government of the Brussels-Capital Region

And

The Government of the Grand Duchy of Luxembourg,

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 intensify economic cooperation through the creation of favourable conditions for investment by investors of one Contracting Party in the territory of the other Contracting Party;

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement,

1. The term "investment" means every asset any and all direct or indirect contributions in cash, in-kind, or in services, invested or reinvested in any sector of the economy.

The following shall be considered in particular, though not exclusively, as investments within the meaning of this Agreement:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, pledges, usufruct and similar rights;
- b) Shares, stocks and any other forms of participation, or even indirect minority, in companies formed in the territory of one of the contracting parties;
- c) The obligations and rights, claims to any performance having an economic value;
- d) Copyrights, industrial property rights, technical processes, trade names and goodwill;
- e) The concessions under public law or under contract, including those relating to prospecting, culture, extract or exploit natural resources.

Any alteration of the form in which assets and capital invested or reinvested does not affect their status as investments within the meaning of the present agreement on condition that such change is not contrary to the legislation of the

Contracting Party in whose territory the investment is made.

2. The term "investor" means:

a) "nationals": any natural person who, according to the legislation of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Madagascar is considered as a citizen of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Madagascar respectively;

b) "companies", i.e. any legal person constituted in accordance with the legislation of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Madagascar and having its registered office in the territory of the Kingdom of Belgium, the Grand-Duchy of Luxembourg or of the Republic of Madagascar respectively.

3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, interests, profits, capital increases, dividends, royalties or fees.

4. The term "territory" shall apply:

a) In the territory of the Kingdom of Belgium and the territory of the Grand Duchy of Luxembourg as well as the maritime areas, i.e. sub-marines and marine areas which extend beyond the territorial waters of the Kingdom of Belgium upon which it exercises, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploitation and exploration for and preservation of natural resources;

b) the territory of the Republic of Madagascar including its maritime zone, hereinafter defined as the economic zone and the continental shelf which extend beyond the limit of the territorial waters of the Republic of Madagascar and over which the Republic of Madagascar has jurisdiction and exercises sovereign rights, in accordance with international law, for the purpose of exploring, exploiting or preserving natural resources.

5. The term "environmental law" means the laws and regulations in force in the contracting parties or any provision in those laws and regulations, who focus primarily on the Protection of the environment or the prevention of a danger to the life or health human, animal or plant by the following means:

a) Prevention, reduction or control of discharge, dumping or emission of pollutants or environmental contaminants products;

b) Control of chemical substances, materials or toxic and hazardous wastes on the environment and dissemination of information related thereto;

c) The protection or conservation of wild flora and fauna, including endangered species and their habitats, and specially protected natural areas in the territory of the Contracting Parties.

6. The term "labour laws" means the laws and regulations in force in the contracting parties or any provision in those laws and regulations that are directly related to internationally recognized labor rights set out below:

a) The right of association;

b) The right to organise and to bargain collectively;

c) The prohibition on the use of any form of forced or compulsory labour;

d) A minimum age for admission to employment;

e) Acceptable conditions of work with respect to minimum wages and working hours, as well as the health and safety of workers.

## **Article 2. Investment Promotion**

1. Each Contracting Party shall promote investments in its territory by investors of the other Contracting Party and admit such investments in accordance with its legislation.

2. In particular, each Contracting Party shall not preclude the conclusion and the carrying out of licensing agreements and contracts for commercial, administrative or technical assistance, in so far as these activities were related to investments.

## **Article 3. Protection of Investments**

1. All investments made by investors of either Contracting Party shall enjoy, in the territory of the other contracting party fair

and equitable treatment.

2. Subject to the measures related to public order, morality, public health and environmental protection, such investments will enjoy constant protection and security, excluding any unjustified or discriminatory measure which could adversely affect, in law or in fact, the management, maintenance, use, enjoyment or disposal of such investments.

#### **Article 4. National Treatment and Most Favoured Nation**

1. For all matters relating to the treatment of investments of investors of either Contracting Party shall enjoy, in the territory of the other party, of national treatment and most-favoured-nation treatment.

2. As regards the exploitation, management, maintenance, use, enjoyment, sale or other disposition of investments, each Contracting Party shall accord to investors in its territory of the other contracting party a treatment which shall not be less favourable than that it accords to its own investors to investors or of any third State if such treatment is more favourable.

3. This treatment shall not apply to 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.

4. The provisions of this Article shall not apply to tax matters, and in particular to agreements for the avoidance of double taxation.

#### **Article 5. Environment**

1. Recognising that each Contracting Party has the right to establish its own levels of environmental protection and determine its policies and priorities in relation to the environment and development; and to adopt or modify laws accordingly its ad hoc, each Contracting Party shall endeavour to ensure that its legislation will ensure a high level of environmental protection and shall strive to improve those laws.

2. The Contracting Parties recognise that it is inappropriate to ease the domestic legislation in the field of environment in order to encourage investment. In this regard, each contracting party will ensure that it is not granted exemption or derogation in any way to the said legislation, nor be offered opportunities for exemption or derogation to promote the establishment, maintenance or expansion of an investment in its territory.

3. The Contracting Parties reaffirm their commitments under international agreements in the field of environment. They shall ensure that such commitments are fully recognized and applied in accordance with their national legislation.

4. The Parties recognise that enhanced mutual cooperation provides opportunities to improve environmental standards. At the request of one of the Parties, the other Party shall accept that representatives of their Governments shall meet for consultations on any matter falling within the scope of this Article.

#### **Article 6. Labour**

1. Recognising that each Contracting Party has the right to determine its own labour standards of protection and to adopt or modify laws accordingly its ad hoc, each Contracting Party shall endeavour to ensure that its legislation provides labour standards consistent with the internationally recognized labor rights set forth in paragraph 6 of Article 1 and will continue to improve those standards.

2. The Contracting Parties recognise that it is inappropriate to ease labour legislation in order to encourage investment. In this regard, each Contracting Party will ensure that it is not granted exemption or derogation from any other way to such legislation, nor be offered opportunities for exemption or derogation to promote the establishment, maintenance or expansion of an investment in its territory.

3. The Contracting Parties reaffirm their obligations as members of the International Labour Organization (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its follow-up. The Contracting Parties shall ensure that the universally accepted principles and rights of workers set forth in paragraph 6 of Article 1 are recognized and protected in their domestic legislation.

4. The Contracting Parties recognize that enhanced mutual cooperation provides opportunities to improve labor standards of protection. At the request of one of the Parties, the other Party shall accept that representatives of their Governments shall meet for consultations on any matter falling within the scope of this Article.

## **Article 7. Deprivation or Restriction of Property**

1. Each Contracting Party undertakes not to take any measure of expropriation or nationalization or any other measure the purpose of which is directly or indirectly dispossessing investors of the other contracting party of their investments in its territory.

2. If the requirements of public security or national interest justify derogation from paragraph 1, the following conditions shall be complied with:

- a) The measures shall be taken under due process of the Contracting Party in whose territory the investment is made;
- b) They are neither discriminatory nor contrary to a specific commitment;
- c) They shall be accompanied by provisions for the payment of adequate and effective compensation.

3. The amount of compensation will correspond to the market value of the affected investments immediately before the date on which the measures taken or to be made public.

The compensations shall be paid in the currency of the State of which the investor is a national or in any other convertible currency. They shall be made without delay and freely transferable. It shall include interest at a normal commercial rate from the date of the establishment of the amount until the date of payment.

4. Investors of one Contracting Party whose investments have suffered losses due to war or any other armed conflict, revolution, state of emergency or national revolt in the territory of the other Contracting Party benefit, on the part of this latter, from a treatment not less than that accorded to the investors of the most favoured nation treatment, as regards restitution, indemnification, compensation or other remedies.

## **Article 8. Transfers**

1. Each Contracting Party shall accord to investors of the other Contracting Party the free transfer of all payments relating to an investment, and in particular:

- a) sums intended to establish, maintain or develop the investment;
- b) Amounts intended for the payment of contractual obligations, including the amounts required for the repayment of loans; royalties and other payments deriving from franchises, licences, concessions and other similar rights as well as salaries of expatriate personnel;
- c) Investment income;
- d) The proceeds of the total or partial liquidation of investments, including capital gains or increases in the capital invested;
- e) Compensation paid pursuant to Article 7.

2. The nationals of either Contracting Party who are authorised to work in connection with an investment in the territory of the other Contracting Party shall also be authorised to transfer appropriate a proportion of their earnings to their country of origin.

3. The transfers shall be made in a freely convertible currency, at applicable to spot transactions at the date of transfer.

4. Each Contracting Party shall issue the required authorisations to ensure the execution of transfers without undue delay and without any other charges that the usual bank charges.

5. In the event of exceptional difficulties in the balance of payments, either Contracting Party may exercise restrictions on the free transfer for a limited period, either for a term not exceeding nine months or for 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 9. Subrogation**

1. 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, the other Contracting Party shall recognize that the investor rights are transferred to the Contracting Party or to the public body, as the insurer.

2. 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 10. Applicable Rules**

Where a matter relating to investments is governed both by this Agreement and by the national legislation of one of the Contracting Parties or by international conventions, to which the Parties have acceded or will accede in the future, in force at present or entered into by the Parties in the future, investors of the other Contracting Party may avail themselves of the provisions which are most favourable to them.

## **Article 11. Specific Agreements**

1. Investments covered by a special agreement between investors of one Contracting Party and the other party shall be governed by the provisions of this Agreement and in accordance with the provisions of this Agreement.

2. Each Contracting Party shall at all times ensure respect the obligations it has entered into in respect of investors of the other Contracting Party.

## **Article 12. Settlement of Investment Disputes**

1. Any investment dispute which may arise between an investor of one Contracting Party and the other Contracting Party shall be subject to a written notification, accompanied by an aide-memoire sufficiently detailed, by the most expeditious party.

As far as possible, the parties shall attempt to settle the dispute by negotiation, possibly with the expert advice of a third party, or by conciliation between the Contracting Parties through diplomatic channels.

2. In the absence of an amicable settlement by direct agreement between the parties to the dispute or by conciliation through diplomatic channels within six months of its notification, the dispute shall be submitted, at the choice of the investor, either to national arbitration within the State where the investment has been made, or to the competent court of the State where the investment has been made, or to international arbitration, as the case may be.

To this end, each Contracting Party shall give its prior and irrevocable consent to submit any dispute to such international arbitration. This consent implies that they renounce to require the exhaustion of domestic administrative or judicial remedies.

3. In the event of recourse to international arbitration, the dispute shall be submitted to one of the arbitration bodies designated below, at the choice of the investor:

- 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 in Washington, D.C., on March 18, 1965, when each State Party to this Agreement shall be a member thereof. As long as this condition is not fulfilled, each of the Contracting Parties consents to the submission of the dispute to arbitration in accordance with the ICSID Additional Facility Rules;

- to the Court of Arbitration of the International Chamber of Commerce in Paris;

If the arbitration proceedings have been initiated by a Contracting Party, the Contracting Party shall invite the investor concerned in writing to express its choice as to the arbitration body to which the dispute should be referred.

4. No Contracting Party, party to a dispute, shall raise an objection, at any stage of the arbitration proceedings or of the enforcement of an arbitration award, to the fact that the investor, the adverse party to the dispute, has received compensation covering all or part of its losses under an insurance policy or under the guarantee provided for in Article 9 of this Agreement.

5. Arbitration awards shall be final and binding on the parties to the dispute. Each Contracting Party undertakes to enforce the awards in accordance with its national legislation.

## **Article 13. Disputes between the Contracting Parties Concerning the Interpretation or Application of this Agreement**

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

channels.

2. In the absence of rules through diplomatic channels within six months, the dispute shall be submitted to a joint commission composed of representatives of both parties.

3. If the Joint Commission cannot settle the dispute within two months, the dispute shall be submitted, at the request of either of the Contracting Parties to an arbitral tribunal constituted for each individual case in the following way:

- Each Contracting Party shall appoint an arbitrator within two months from the date on which either Contracting Party has informed the other of its intention to submit the dispute to arbitration. Within two months after their appointment, the two arbitrators shall appoint by mutual agreement a national of a third State who will serve as the Chairman of the arbitral tribunal.

- if the time limits have not been made, either Contracting Party may invite the President of the International Court of Justice to make the appointment or the necessary appointments (s).

If the President of the International Court of Justice is a national of either Contracting Party or of a State with which either contracting party does not maintain diplomatic relations or if he is otherwise prevented from exercising this function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointments or appointment (s).

4. The Court thus constituted shall determine its own rules of procedure. its decisions shall be taken by a majority of the votes; they shall be final and binding on the contracting parties.

5. Each Contracting Party shall bear the costs of its appointed arbitrator. The costs resulting from the appointment of the third arbitrator and costs of the Tribunal shall be borne in equal parts by the contracting parties unless the Tribunal provides otherwise.

## **Article 14. Previous Investments**

This Agreement shall also apply to 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 the laws and regulations of the latter.

## **Article 15. Entry Into Force and Duration**

1. This Agreement shall enter into force one month after the date on which the contracting parties have exchanged their instruments of ratification. It shall remain in force for a period of ten years.

Unless one of the Contracting Parties denounces it at least six months before the expiration of the period of validity, whenever it shall be automatically renewed for a further period of ten years, each Contracting Party reserving the right to terminate the agreement by a notification made at least six months before the date of expiry of the current period of validity.

2. Investments made prior to the date of termination of this agreement will be submitted for a period of ten years from that date.

Done at Antananarivo, on 29 September 2005 in two originals, each in French and Dutch all texts being equally authentic. The French text shall prevail in case of divergence of interpretation.

For the Belgo-Luxembourg Economic Union:

For the Government of the Kingdom of Belgium:

For the Government of the Grand Duchy of Luxembourg:

For the Walloon Government:

For the Flemish Government:

For the Government of the Brussels-Capital Region:

For the Government of the Republic of Madagascar: