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THE REPUBLIC OF MADAGASCAR

Tanindrazana - Fahafahana – Fandrosoana

MADAGASCAR INVESTMENT LAW

[dated

] at Antananarivo

MINISTRY OF ECONOMY, PLANNING,
PRIVATE SECTOR AND TRADE

MINISTRY OF FINANCE
AND BUDGET

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MINISTRY OF ECONOMY, PLANNING,
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PREAMBLE

The Republic of Madagascar wishes to attract investors and make the private sector the main engine for its development. Leaning on reference documents such as the Vision "Madagascar, Naturally" and the Madagascar Action Plan (MAP), the government has defined its main priorities in pursuing a high economic growth based on the development of a strong and competitive private sector.

The objective of the present blue-print law is to provide a climate which is practical, attractive, transparent and avant-garde for all investment activities in Madagascar. It aims to adapt and boost rapidly the local economic fabric so that it converges into an international economic context which is particularly competitive and in which Madagascar must constantly be in harmony with the main global trends. This perspective would efficiently attract the necessary capital to create new jobs so that Madagascar grows to be an economically emerging country. By virtue of this blue-print law, the State plays a role in becoming a facilitator for the private sector which is the main creator of the Nation's wealth, the main actor for economic growth through jobs creation, increase of productivity and standard of living whilst generating a tax base that is broadened and sustained in the medium and long run.

To execute this blue-print law, the Economic Development Board of Madagascar (EDBM) was put in place. That board is an autonomous body acting on behalf of the Malagasy State and tied to the Presidency. The EDBM is in charge of facilitating the approval of investment projects as well as promoting and developing investments in Madagascar.

The underlying principles behind that law are as follows:

- Establishing an incentive framework to carry out private investments in Madagascar without showing a preference for any particular kind of investors, whether they are national or foreign investors already established in Madagascar or wishing to do so;
- Simplifying several administrative procedures in order to change business climate in Madagascar;
- Reinforcing the competitiveness of companies already established in Madagascar;
- Access to land property business for companies under the Malagasy law whether or not they are controlled by foreign interests.

Based on these principles, the present law has been divided into 7 chapters:

- Chapter I: General provisions
- Chapter II: The Economic Development Board of Madagascar’s roles and prerogatives
- Chapter III: Registration and Companies Acts
- Chapter IV: Visas and Work permits
- Chapter V: Access to commercial property business
- Chapter VI: Dispute settlement
- Chapter VII: Final provisions

To be able to deal with international competition and to built a tangible competitive advantage, Madagascar needs to offer a very attractive business climate and must accordingly adopt a blue-print law applicable for all local and foreign investors, a law which has been drawn up following long dialogues between the public and private sectors stakeholders.

In order to improve the living standard of Malagasy people through jobs creation, acquiring expertise and growing improvement of productivity, there is a need to substantially transform investments climate in Madagascar, to work towards the booming of entrepreneurship and to provide private initiatives with the necessary guarantees for their accomplishment.

Above-mentioned is the purpose of the present bill subject to your approbation.

Done at Antananarivo on.....

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THE REPUBLIC OF MADAGASCAR

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PRESIDENCY OF THE REPUBLIC

**BILL N° 23/2007 dated 11th June 2007
relating to investments in Madagascar**

The National Assembly and the Senate have adopted in their respective session
dated.....and.....

THE PRESIDENT OF THE REPUBLIC,

Considering the Constitution
Considering the decision N°.....- HCC/D dated

proclaims the law which follows:

CHAPTER I - GENERAL PROVISIONS

Article 1 - Definitions

Pursuant to this law,

1. **"Investment"** means a set of financial resources including, inter alia, capital assets, advance on current account and loans allocated to carry out an economic project, whether it is infrastructural, commercial, handcrafted, service-orientated, agricultural, tourist or industrial, as well as products carried out by investing these resources and allocated to accomplish an economic project.
2. **"Investors"** means any natural person or legal entity who wholly or partially contributes towards an investment as defined above.

Article 2 – Freedom of investment

Any natural person or legal entity, Malagasy or foreign, is free to invest and settle down on the national territory, in accordance with the laws and regulations in force, subject to provisions applicable to some activity sectors which are themselves subjected to specific regulations. These concern banking, insurance, mining, oil and gas, telecommunications, medical, paramedical and pharmaceutical activities.

Article 3 – Equality of Treatment

Foreign and Malagasy investors are equally treated.

They are free to hold up to 100% of the shares or stocks of the company in which they carry out their activities subject to provisions applicable to some activity sectors themselves subjected to specific regulations as mentioned in Article 2 above.

Provisions in this article as well as those stated in Article 2 above do not prejudice to wider rights and privileges investors can claim by virtue of agreement or treaties concluded between the Republic of Madagascar and other partner countries.

Article 4 – Protection of patent rights

The state guarantees that the individual or collective patent rights are respected.

The investor is guarded against any privatisation, expropriation or requisition measures with the exception of a public interest case provided for. Failing this, the investor will be granted a fair and preliminary compensation in accordance with the appropriate laws and regulations.

Article 5 – Freedom of transfers

Foreign or local investors are authorised to freely transfer abroad without prior authorisation all profits after full payment of taxes, dividends, miscellaneous payments and repayments including refunds of advances on the partners' current account and their income, proceeds on transfer of shares or share capital, goodwill transfer or asset disposal, retrieval of assets, their entitlement in any surplus in the event of liquidation and expropriation indemnities. Freedom of transfers also applies to expatriate employees' income, indemnities and savings.

Article 6 – Stability

The state uses its best endeavours to establish and maintain a favourable climate for investment by granting tax, customs, financial and social incentives to investors within the context of carrying out their investment projects referred to in this Act.

Investors benefiting from privileges provided for in this Act will enjoy any new and more beneficial legal and regulatory measure which will be subsequently adopted following the publication of this Act.

Investors benefiting from privileges provided for in this Act will continue to do so in spite of any new legal or regulatory measure aiming to cut out or reduce those benefits and which will be subsequently adopted following the publication of this Act.

Article 7 – Fight against HIV/AIDS

In compliance with the principles presented in Law 2005-040 dated 20th February 2006 relating to fight against HIV/AIDS and protection of the rights of those infected with HIV/AIDS, all companies must set up an awareness and education program for their staff as well as make it easy for those wishing to undergo a screening test.

CHAPTER II - THE ECONOMIC DEVELOPMENT BOARD OF MADAGASCAR

Article 8 – Introduction

In order to implement this Act effectively and in order to introduce and maintain a favourable investment climate in Madagascar, an organisation called the Economic Development Board of Madagascar (EDBM) was created.

The EDBM is in charge of promoting, facilitating and speeding up the approval of all investments projects.

It receives, processes and delivers the required different administrative documents.

In that capacity, the EDBM takes charge of assisting investors with the right steps to take, listing and looking into administrative procedures companies have to face. It is also in charge of proposing any amendment aiming to cancel, simplify and/or rationalise these procedures.

Different missions and activities may be entrusted to the EDBM within the framework of its supportive role towards investors.

The EDBM is a public institution of an industrial and commercial nature and is subjected to the rules stipulated in the codification of accounts in force.

The different ministries and public authorities assigned to grant visas, permits, licences and authorisations mentioned in Article 9 are represented by the EDBM as a one-stop shop.

Nevertheless, these visas, permits, licences and authorisations are granted and signed by the relevant ministers or their delegates or the competent administrative authority.

Article 9 – Scope of duties

1. To facilitate and accelerate administrative procedures which are necessary to carry out investments and set up businesses.

With the exception of any other State Service and public authorities, the EDBM processes applications relating to investment projects. The EDBM also makes sure that the delegates from different administrations it represents carry out its instructions and that they take action in the most transparent manner and within the best time limits.

In particular, the EDBM must receive and be informed of the following applications:

- Issuance of entry visas, extendible stay visas or change to long-stays visas in accordance with the provisions in Article 15 of this Act;
- Issuance of visas for professional workers in accordance with the provisions of Article 15 of this Act;
- Issuance of certificate of registry for companies operating under the law on Free Zones in accordance with the provisions in the Act relating to the Law on Companies operating in Free Zones in Madagascar.
- Issuance of authorisation for Land ownership in accordance with the provisions in Article 19 in this Act.

- Registration, registration amendment, removal from a register at the Register of Companies;
- Delivery of tax ID number and statistical identifier;
- Issuance of licences, permits and authorisations required by the regulations relating to undertaking activities in the tourist industry;
- Issuance of planning permissions and licences for opening an establishment when these licences are required by a specific regulation.
- The EDBM receives declarations from companies who have ceased their business activities. It also receives decisions relating to withdrawal of visa or permits and notifies the concerned companies and investors stating the legal consequences resulting from the withdrawal.

By way of exception to the provisions in this paragraph, when the creation of a non-trading or commercial company does not require any administrative formality, other than the company registration or the issuance of a Tax ID number and statistical identifier, this then can be carried out by the authorities competent in their jurisdiction depending on the registered office.

2. Improving legal and tax frameworks for investments

Furthermore, the EDBM will be able to deliver a prior opinion with regard to the legislative or regulatory part of any bill which is likely to cause changes to the investments climate in Madagascar. This includes provisions on tax or customs and/or provisions of this Act or its implementing provisions.

Working closely with the concerned ministries, the EDBM will also take part in negotiating new treaties relating to the protection of investments, treaties on free trade as well as agreements intended to avoid double taxation.

3. Conflict resolution

The EDBM will be able to act as a mediator during settlement of disputes between companies or between companies and the public service in accordance with mediation proceedings it will establish.

Article 10 – Time limit for applications

With the exception of a specific time limit mentioned in this Act and without prejudice to shorter time limits to be expected by means of special provisions, the EDBM ensures that authorisations, visas, permits and certificates which are within its jurisdictions, are delivered within twenty (20) calendar days upon receipt of a complete application. It also ensures that the same time limit is applied if an application is refused. Failing this time limit, the authorisation, visa, permit or certificate are deemed to have been granted, without prejudice to the sanctions the responsible issuer agent is liable to.

In that case, the initial applicant can refer to the EDBM in order to be given a document certifying the filing of the initial application and the non-response obtained within the twenty-day time limit; that document reminds the provisions of this Article stating that the expected decision is deemed to have been granted failing that time limit. The EDBM shall be obliged to deliver, within ten (10) days, that document which will be enforced against any administrative authorities and third parties and which will serve as a certificate issued by the competent authority as long as the authorisation, visa, permit or certificate applied for would not have been delivered by the latter.

Article 11 – Reinforcing transparency of companies

The EDBM assists towards the transparency of companies as ordered by the Register of Companies in compliance with Articles 5.1 and 6.3 of the Commercial Code.

For this purpose, the EDBM is in charge of receiving part of the resources generated by the subscribed declarations of registered companies or by publication of rights held by third parties on companies' assets such as pledge securities, security interest, leasing agreements and reservations of title clause. Such resources, perceived by the local registers as royalties, must be assigned to business assets and the necessary amortisation. The EDBM also receives royalties emanating from individual consultation of the national Register of Companies database as well as the marketing of set and subsets of national data.

In consultation with the competent authorities of the Ministry of Justice, it is the EDBM's responsibility to decide on how much of those resources are allocated to maintenance and information systems evolution, as well as replacement of equipment and supply of consumables for computerised sites.

For its own needs and those of investors, the EDBM can directly consult the national Register of Companies. Wherever the place of registration of the concerned company may be, the appointed clerk to the EDBM is entitled to deliver certificates, copies or extracts of entries in the Register in compliance with the regulations in force.

The EDBM shall make any suggestions with regard to improvements to the system as well as any changes to the royalties' amount due at the Register of Companies.

The procedures for implementing this Article will be specified by a decree examined by the Council of the Government.

CHAPTER III - REGISTRATION AND MEMORANDUM OF ASSOCIATIONS

Article 12 – Registration of Companies

Companies are registered at the Register of Companies without distinction on grounds of its managing agent's nationality or residence. However, within three months of the company being registered, at least one of the managing agents must reside in Madagascar whether he is a Malagasy or an expatriate citizen holding a residence visa or the receipt of its filed application. Failing this, the company is running the risk of calling into question the benefits it is entitled to, particularly in regard to its free zone legal status or its access to land property. Any party concerned could then ask for its dissolution.

Article 13 – Registration of Memorandum of Associations

With the exception of acts proving the incorporation, extension of the duration, transformation or dissolution of a company, the increase, amortisation or reduction of its capital and memorandum of associations do not necessarily have to be formally registered. These acts, in their original unaltered state, are admissible by all administrative services and particularly the Register of Companies. Statements of the produced documents, in particular the date sealed on the documents, prevail, as appropriate unless countering evidence or plea of forgery is shown.

Article 14 – Dispense from legalising signatures

Agreements, acts, minutes or documents which require an administrative formality of registration, transcription, publication, filing of a deed or any other formality, are subjected to no legalisation process or recognition of the parties' signature.

The authenticity of signatures sealed on the documents prevails unless countering evidence is proved.

This provision is not applicable to conventions which prove the sale of real estates by means of a transfer or the constitution of a perpetual lease.

CHAPTER IV - VISAS AND WORK PERMITS

Article 15 – Extension and Transformation of entry visas and residence permits for investors

The extension of entry visas and residence permits delivered by the Home Office services at the frontier as well as changing the nature of those visas to a professional one are carried out by the EDBM.

Article 16 – Resident visa for professionals

An Immigrant Visa called 'Professional Visa' issued to all foreign investors, whether they are tied to a Malagasy company or by an employment contract or whether they fulfil their term of office within that company to assume the duties of a manager, general manager, assistant general manager, general director, chairman to the board of directors or Chief Executive Officer. That visa is delivered by the EDBM on behalf of the Home Office.

That professional visa is valid for three (3) years starting upon receipt of the application.

Once granted, that visa is as good as a residence permit. Furthermore, a certificate is issued in compliance with the legislation in force.

Application for the visa renewal must be filed one (1) year before its expiry date.

Spouse and children dependent upon the holder automatically benefit from the same rights during the same period.

Article 17 – Freedom to hire and fire expatriate employees

Any company is free to hire or fire specialised expatriate employees it may need for the good run of its business.

Expatriate employees' employment contracts may validly not comply with the labour laws and the social regulations with regard to the following:

- Insurance under a social security scheme in Madagascar;
- Insurance to the corporate medical service;
- Length and grounds for appeal to a fixed-term contract;
- Applicable recruitment regulations.

Practical arrangements for the derogation cases above-mentioned will be established by regulatory means.

Those derogations shall not undermine the fundamental rights of employees as recognised by Conventions and international agreements to which Madagascar is a party.

These specialised expatriate employees are automatically granted a professional resident visa.

CHAPTER V - ACCESS TO COMMERCIAL PROPERTY BUSINESS

Article 18 – Foreign investors' access to real estate property

- a) Companies operating under the Malagasy law, whose management is controlled by foreigners or organisations themselves depending on foreigners pursuant to the modified Article 22 of the order 62-041 dated 19th September 1962 relating to the general provisions of domestic law and international private law, are authorised to acquire immovable property subject to fulfilling the two following cumulative conditions:
 - Prior to the final conclusion of any deed of land, the companies must have successfully applied to the EDBM an authorisation so-called "authorisation of land property acquisition" which shall be issued under terms fixed by Article 19 set out below;
 - Immovable property must be solely and continuously assigned to carry out a commercial activity, in particular in the fields of tourism, service, agriculture or fishery. Acquiring an immovable property with a plan to sell it in its original state or after some developments or building works have been carried out, cannot be considered as a commercial activity.
- b) Foreign natural or legal entities cannot directly have land access. However, they are free, without any prior authorisation, to agree to a perpetual lease which maximum and renewable length cannot exceed ninety nine years.

Article 19 – Authorisation for land property acquisition

- 1) The authorisation for land property acquisition is issued by the EDBM which acts on behalf of the Ministry of Public Lands. Application for that authorisation is submitted by the investor to the EDBM with the following documents:
 - Written request submitted on a printed application form handed by the EDBM;
 - Submission of the planned activity and reasons for applying for the property acquisition in order to carry out the activity;
 - The property's certificate of legal status, property which acquisition is envisaged if it is already registered or entered in the cadastral register.
- 2) Under no circumstances that authorisation constitutes a title deed for the property; it is only a document allowing parties to carry out the necessary legal formalities for the immovable property transfer.

- 3) The acquired immovable property by means of the Authorisation of land property acquisition can be freely transferred with the exception of transfers benefiting foreigners. The immovable property can also be transferred to companies operating under the Malagasy law whose management is controlled by foreigners or organisations themselves depending on foreigners, subject to the issuance of an authorisation for land property acquisition in accordance with the provisions in Article 17 above-mentioned and in this Article.

Article 20 – Withdrawal of the authorisation for land property acquisition

The authorisation for land property acquisition can be withdrawn in the following cases:

- Failure to comply with the fixed terms to gain the land property authorisation in particular if modifying, without prior permission, the land conditions of use to purposes other than those of the investment project;
- Failure to carry out the investment project within a six-month time limit starting when the title deed was issued. Within the meaning of this paragraph, carrying out an investment project means, depending on the cases, start of the activity, start of scheduled building works or development works or the completion of the administrative, financial or commercial procedures necessary for the project kick-off.

Prior to the withdrawal of the authorisation for land property acquisition, the investor must have been in the position of submitting his written remarks. In the light of the information provided, a time delay, which cannot exceed three (3) months, will be granted to rectify the situation

The withdrawal of the authorisation for the land property acquisition is established by a reasoned order from the Public lands minister by request from the EDBM or from any individual justifying an interest to this end.

The withdrawal of the authorisation for the land property acquisition automatically carries the cancellation of property right and transfer of immovable property and development works it has benefited from the State private domain without any kind of indemnity. However, fittings, industrial equipments and devices remain the property of the investor who is liable to retrieve them unless otherwise arranged. The same applies to property belonging to third parties in particular leasing institutions.

CHAPTER VI - DISPUTE SETTLEMENT

Article 21 – Dispute settlement

Disputes between national investors and the state relating to the interpretation or enforcement of this Act are submitted to the competent Malagasy jurisdictions unless the parties have agreed or agree to seek a different mean dispute settlement.

Disputes between national investors and the state relating to the interpretation or enforcement of this Act are regulated in compliance with a legal or arbitration proceeding emerging from:

- Agreements and treaties, relating to the protection of investments, between the Malagasy state and the investor-state; or failing this,
- The international Convention for dispute settlement, ratified by law N°66-011 dated 5th July 1966, relating to investments between States and nationals of other States.

However, if the foreign investor requests for the proceeding, he is free to choose to submit the dispute between him and the State to the Malagasy competent jurisdictions, in place of the arbitration proceeding above-mentioned.

CHAPTER VII - FINAL PROVISIONS

Article 22 – Miscellaneous provisions

The following articles are repealed:

- Articles 2 to 6 of law N°96-015 dated 13th August 1996 relating to abrogation of law N°89-026 dated 29th December 1989 relating to investments code and fixing the terms of the general investment guarantees in Madagascar as well as its related implementing provisions;
- Articles 11, 11 bis and 11 ter of the modified law N°62-066 dated 6th June 1962 laying down the organisation and control of immigration;
- Articles 10, 11 and 16 of law N° 2004-052 dated 28th January 2005 relating to lease-financing;

As well as all provisions contrary to this Act.

The following articles have been reinstated:

- Articles 18 and 19 of Decree N°99-717 dated 8th September 1999, relating to advertisement on mortgage, have been reinstated to their wording prior to law N°2004-052 above-mentioned.

Article 23– Statutory texts will determine the necessary rules implementing this Act.

Article 24 – This act shall be published in the Republic's Official Journal and shall be executed as state law.

Proclaimed in Antananarivo,

On _____ 2007

Marc RAVALOMANANA

Seen to be annexed to Decree N°2007-521 dated 11th June 2007

By the Prime Minister
Head of Government

Charles RABEMANANJARA