

THE INVESTMENT PROMOTION ACT

**Regulations made by the Minister under section 28A
of the Investment Promotion Act**

1. These regulations may be cited as the Investment Promotion and Protection Agreement (United Republic of Tanzania) Regulations 2009.

2. In these regulations-

“Agreement” means the agreement entered into with the Government of the United Republic of Tanzania in pursuance of section 28A of the Investment Promotion Act and set out in the Schedule to these regulations.

3. The Agreement shall come into operation on such date as specified by the Minister in a notice published in the Government Gazette.

Made by the Minister on 15 October 2009

SCHEDULE
(regulation 2)

PREAMBULE

The Government of the Republic of Mauritius and the Government of the United Republic of Tanzania (hereinafter referred to as the “Contracting Parties”);

DESIRING to create favourable conditions for greater flow of investments made by investors of either Contracting Party in the territory of the other Contracting Party;
and

RECOGNISING that the promotion and reciprocal protection of such investments will lend greater stimulation to the development of business initiatives and will increase prosperity in the territories of both Contracting Parties;

HAVE agreed as follows:

ARTICLE 1

DEFINITIONS

- (1) In this Agreement,
 - (a) "investment" means every kind of asset admissible under the relevant laws and regulations of the Contracting Party in whose territory the respective business undertaking is made, and in particular, though not exclusively, includes:
 - (i) movable and immovable property as well as other rights in rem such as mortgages, liens or pledges;
 - (ii) shares, debentures and any other form of participation in a company;
 - (iii) claims to money, or to any performance under contract having an economic value;
 - (iv) industrial and intellectual property rights, in particular copyrights, patents, utility-model patents, designs, trade-marks, trade-names, technical processes, know-how, and goodwill;
 - (v) economic value of concession rights or permits conferred in accordance with the law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;
 - (b) "return" means the amount yielded by an investment and in particular, though not exclusively, profit, interest, capital gains, dividends, royalties and fees;
 - (c) "investor" means in respect to either Contracting Party:
 - (i) the "national", that is a natural person deriving his or her status as a national of that Contracting Party from the relevant laws of that Contracting Party; and
 - (ii) the "company" that is a legal person, such as a corporation, firm or association, incorporated or constituted in accordance with the law of that Contracting Party;

- (d) "territory" means:
- (1) in the case of the Republic of Mauritius:
 - (i) all the territories and islands which, in accordance with the laws of Mauritius constitute the State of Mauritius;
 - (ii) the territorial sea of Mauritius; and
 - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with the respect to sea, the sea-bed and sub-soil and their natural resources may be exercised;
 - (2) in the case of the United Republic of Tanzania:

the territory of the United Republic of Tanzania as well as the exclusive economic zone, the sea-bed and sub-soil, over which the United Republic of Tanzania exercises, in accordance with international law, sovereign rights or jurisdiction.
- (2) Any change in the form in which assets are or have been invested does not affect their character as investments as defined in this Agreement.

ARTICLE 2

SCOPE AND APPLICATION OF THE AGREEMENT

- (1) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning investment which arose, or any claim concerning investment which was settled before its entry into force.
- (2) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

ARTICLE 3

PROMOTION AND PROTECTION OF INVESTMENT

- (1) Each Contracting Party shall, subject to its general policy in the field of foreign investment encourage the making of investments in its territory by investors of the other Contracting Party, and, subject to compliance with the provisions of its laws, shall admit such investments.
- (2) Each Contracting Party shall use its best endeavours to grant, in accordance with its laws, the necessary permits in connection with the carrying out of such investments and, whenever necessary, licensing agreements and contracts for technical, commercial or administrative assistance.
- (3) Investments approved under Article 2 shall be accorded fair and equitable protection in accordance with this Agreement.

ARTICLE 4

TREATMENT OF INVESTMENTS

- (1) Investments and returns of investors of either Contracting Party shall at all times be accorded fair and equitable treatment in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable nor discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory by investors of the other Contracting Party.
- (2) Each Contracting Party shall in its territory accord to investors and to investments and returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments and returns of investors of any third State.
- (3) The provisions of paragraph (2) shall not be construed so as to oblige either Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:
 - (a) any customs union, free trade area, common market or any similar international agreement or interim arrangement leading up to such customs union, free trade area, or common market of which either of the Contracting Parties is a member;

- (b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;
 - (c) special advantages to foreign development finance institutions operating in the territory of either Contracting Party for the exclusive purpose of development assistance through mainly non-profit activities.
- (4) Each Contracting Party shall observe the obligations under its laws and under this Agreement which bind the Contracting Party and its investors and the investors of the other Contracting Party in matters relating to investments.
- (5) Each Contracting Party may, in accordance with its laws and regulations, grant incentives, treatment, preferences or privileges through special policies or measures to its nationals only for the purpose of promoting small and medium sized enterprises and infant industries, persons or areas in its territory subject to the condition that these shall not significantly affect the investments and activities of one of the other Contracting Party.

ARTICLE 5

COMPENSATION FOR LOSSES

- (1) Investors of either Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.
- (2) Without derogating from the provisions of paragraph (1) of this Article, investors of either Contracting Party who, in any of the situations referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from:
- (a) requisitioning of their property by the forces or authorities of the latter Contracting Party, acting under and within the scope of the legal provisions relating to their competences, duties and command structures; or

(b) destruction of their property by the forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation or observance of any legal requirement;

shall be accorded restitution or adequate compensation, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

ARTICLE 6

EXPROPRIATION

- (1) Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be nationalized, expropriated or subjected to measures having effects equivalent to nationalization or expropriation except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall be made without delay, and be effectively realizable. Resulting payments shall be freely transferable at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.
- (2) The investor affected by the expropriation shall have a right, under the law of the expropriating Contracting Party to prompt review, by a court of law or other independent and impartial forum of that Contracting Party of the expropriation case.
- (3) Where a Contracting Party expropriates, nationalizes or takes measures having effect equivalent to nationalization or expropriation against the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this article are applied to the extent necessary to guarantee compensation as specified therein to such investors of the other Contracting Party who are owners of those shares.

ARTICLE 7

TRANSFER OF INVESTMENT CAPITAL AND RETURNS

- (1) Each Contracting Party shall, in accordance with its relevant laws, allow investors of the other Contracting Party the free transfer of funds relating to their investments and returns, including compensation paid pursuant to the provisions of Articles 5 and 6 of this Agreement, after payment of all tax dues
- (2) All transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of such a market exchange rate, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

ARTICLE 8

SETTLEMENT OF DISPUTES BETWEEN AN INVESTOR AND A CONTRACTING PARTY

- (1) Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible be settled amicably through negotiations between the parties to the dispute.
- (2) If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to:
 - (a) initiate judicial action before the competent court of the Contracting Party accepting the investment;
 - (b) initiate arbitration proceedings either to:
 - (i) the International Center for the Settlement of Investment Disputes (having regard to the provisions, where applicable, of the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, done at Washington on 18 March 1965, and the Arbitration and Fact-Finding proceedings); or
 - (ii) an international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement between the parties under the Arbitration Rules of the United Nations Commission on International Law (UNCITRAL)

- (3) The decision of the Arbitral tribunal shall be final and binding on both parties. Each Contracting Party shall carry out without delay the provisions of any such award and provide in its territory for the enforcement of such award.
- (4) Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairperson in discharging the arbitral function and the remaining costs of the tribunal shall be borne equally by the parties concerned. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two parties, and this award shall be binding on both parties.

ARTICLE 9

SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

- (1) Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations between the Governments of the two Contracting Parties.
- (2) If the dispute cannot be settled within a period of six months following the date on which such negotiations were requested by either Contracting Party, it may upon the request of either Contracting Party, be submitted to an arbitral tribunal.
- (3) Such an arbitral tribunal shall be constituted for each individual case in the following way: within two months of the receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator for the tribunal. Those two arbitrators shall then select a national of a third State who, upon approval by the two Contracting Parties, shall be appointed Chairperson of the tribunal. The Chairperson shall be appointed within two months from the date of appointment of the other two arbitrators.

- (4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other Agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party and not prevented from discharging such functions shall be invited to make the necessary appointments.
- (5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own arbitrator to the tribunal and of its representation in the arbitral proceedings. The cost of the Chairperson and the remaining costs shall be borne equally by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on, and executed by, both Contracting Parties.
- (6) Apart from the above, the tribunal shall determine its own procedure.

ARTICLE 10

SUBROGATION

- (1) If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee it has given in respect of an investment made in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party of all the rights and claims of the indemnified investor, and shall also recognize that the former Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

- (2) Any payment made by one Contracting Party or its designated Agency to its own investor as provided in paragraph (1) shall not affect the right of such investor to make his claims against the other Contracting Party in accordance with Article (8) provided that the exercise of such a right does not overlap, or is not in conflict with, the exercise of a right in virtue of subrogation under that paragraph.

ARTICLE 11

APPLICATION OF OTHER RULES

- (1) If the provisions of the law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties, in addition to the present Agreement, contain rules, whether general or specific, entitling investments and returns of investors of the other Contracting Party to treatment more favourable than that provided for by the present Agreement, such rules shall, to the extent that they are more favourable, prevail over the present Agreement.
- (2) Each Contracting Party shall, however, honour any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

ARTICLE 12

ENTRY INTO FORCE, DURATION AND TERMINATION

- (1) This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, whether made before or after the coming into force of this Agreement. For the avoidance of any doubt, it is declared that all investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.
- (2) The Contracting Parties shall notify each other promptly of the fulfillment of their legal procedures required for the entry into force of this Agreement. This Agreement shall enter into force on the thirtieth (30th) day from the date of notification of the latter Contracting Party.

- (3) This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination of this Agreement to the other Contracting Party.
- (4) In respect of investments approved and/or made prior to the date of the notice of termination of this Agreement becomes effective, the provisions of the preceding articles shall remain in force with respect to such investments for a further period of ten years from that date or for any longer period as provided for or agreed upon in the relevant contract or approval granted to the investor.
- (5) This Agreement or any part thereof may be amended by mutual agreement of the Contracting Parties through Exchange of Letters or Protocols.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement in Dar es Salaam, on this 4th day of May of the year of 2009, in two originals.

H. E Mr. Alain Laridon

Ambassador

**For the Government of the
Republic of Mauritius**

H. E Mr. Bernard Kamilius Membe

*Minister of Foreign Affairs and
International Cooperation*

**For the Government the
United Republic of Tanzania**