

ACP Business Friendly Program | Results Story

MADAGASCAR

World Bank led Macro-Level Intervention

Thanks to the support provided by the World Bank Group through the ACP Business Friendly Program, **Madagascar completed the drafting and adoption of a new investment law**, which provides clearer protections to investors while preserving the balance between the rights and obligations of the State and investors.

The ACP Business-Friendly (BF) Program is an intra-ACP action funded by the European Union and the Organisation of African, Caribbean and Pacific States. The program aims to support business-friendly and inclusive national and regional policies and strengthen productive capacities and value chains.

Funded by:



European Union



Organisation of African, Caribbean, and Pacific States

Implemented by:



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Investment Climate Improvement Seminar (May 2023)

THE CHALLENGE

Private investment in Madagascar has been declining since 2013, a trend exacerbated by the global COVID-19 pandemic. To reverse this trend and spur private sector-led growth and job creation, the country required reforms aimed at enhancing the investment legal framework and institutional environment to boost investor confidence. Madagascar's legal framework, primarily based on the 2008 Investment Law, suffered from fragmentation and lacked clarity in investment policy. The law's effectiveness was further hindered by inadequate implementation regulations and policy reversals concerning land access for foreigners. Moreover, critical components such as key definitions, a clear scope of application, and dispute settlement provisions were absent in the 2008 law. The new government, elected in 2018, and reelected in 2023, injected fresh momentum into private investment by targeting structural reforms in key sectors like mining, telecommunications, and digital technologies, as well as improving the overall investment climate.

THE SOLUTION

A World Bank Group (WBG) led policy dialogue involving key stakeholders from both the public and private sectors, revealed the need to streamline and update the investment law. Subsequently, the World Bank (WB) ACP Business Friendly team provided support on the development of a new investment law. The WB team carried out extensive consultations, involving local legal experts and relevant governmental bodies such as EDBM and MICC. These discussions informed the draft law that would garner approval from the Government Council and Council of Ministers.

EARLY RESULTS

Following iterative revisions based on government feedback, the draft law secured approval from the Council of Government in August 2022 and from the Council of Ministers in March 2023. Leveraging a World Bank lending program, efforts were intensified to ensure the law's adoption by Parliament, a prerequisite for disbursement. Following multiple rounds of refinement, the new investment law received parliamentary approval in May 2023, subsequently endorsed by the High Constitutional Court in July 2023. The culmination of this process was the law's publication in the Official Gazette on September 18, 2023.

The new law clarifies existing provisions and introduces new ones aimed at strengthening the rights of both domestic and foreign investors with enhanced guarantees. It addresses access to land for foreign investors; reinforces equal treatment between national and foreign investors; clearly defines the contours of the guarantees to preserve the State's right to regulate; and provides different methods to settle disputes; it also reinforces the EDBM's role for investment promotion and retention and includes a short negative list of activities where FDI is not permitted. A notable amendment by Parliament, post-approval by the Council of Ministers, was the inclusion of a cap of 20% on foreign workers with specific skills in companies. Despite such local content requirements not aligning with best practices, this addition was instrumental in facilitating the law's passage through Parliament without altering the enhanced guarantees.

FUTURE OUTLOOK

After its enactment, the law was gazetted a few months before the Presidential elections; it currently awaits its three implementing decrees. The decrees include provisions simplifying the granting and renewal of visas, clarifying the corporate social responsibility of investors and the functions of the EDBM as well as the setting-up of an investor grievance management mechanism to better detect and resolve investor grievances before they become disputes or lead to divestments. The World Bank team through the ACP BF program provides assistance for the drafting of these decrees and capacity building to facilitate the implementation of the new texts.

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