



MADAGASCAR
PROTECTED AREAS
AND BIODIVERSITY
FUND

STATUTES

INVESTIR POUR UNE NATURE QUI NOUS PROTÈGE
INVESTING IN NATURE THAT PROTECTS US

Within the general framework of the implementation of the National Environment Charter and the contribution of environmental actions to economic development and poverty reduction in Madagascar, it is necessary to put in place a sustainable financing strategy for these actions.

One of the objectives of the National Environmental Action Plan, which is the foundation of all environmental action, is to establish, conserve and sustainably manage a network of protected areas representative of biological diversity and natural heritage of Madagascar, which is unique in the world.

To this end, the undersigned :

- The Malagasy Government
- WWF (World Wide Fund for Nature)
- Conservation International (CI)

decided to create a foundation recognized as being of public utility, which will be governed by the law n° 2004-014 of August 19th, 2004 on the reform of the regime of Foundations in Madagascar as well as by the provisions of the present statutes.

TITLE I - MISSION OF THE FOUNDATION

Article 1 - Mission

1.1 The mission of the «Foundation for Protected Areas and Biodiversity of Madagascar» is to provide support for the biodiversity conservation in Madagascar by promoting and financing the expansion, the creation, and the valorization of the protected areas.

In accordance with this mission, the Board of Trustees will give priority to the National Network of Protected Areas, as originally defined in the Protected Areas Code.

It is understood that sites outside the National Network are within the mandate of the Foundation.

1.2 The «Foundation for Protected Areas and Biodiversity of Madagascar», hereinafter referred to as «Foundation», is established for an unlimited period of time.

1.3 It has its headquarters in Antananarivo, Madagascar.

Article 2 - Means of action

2.1 The Foundation shall use all lawful means that appear to be the most in keeping with its character as a private institution of public utility and the most appropriate for the realization of its disinterested object.

2.2 It may enter into any agreement necessary for the accomplishment of its mission, in particular for the management of its assets and the investment of its funds, as well as for its organization and operation.

2.3 The Foundation shall not:

- a. Contribute to or assist in the funding of projects that are considered to be harmful to the environment.
- b. enter into obligations or make payments that constitute, or appear to constitute, an existing or potential conflict of interest. A conflict of interest is defined as a transaction in which a Trustee's or employee's personal, professional or financial interests conflict or appear to conflict with his or her official responsibilities to the Foundation.

2.4 The Foundation, by virtue of its disinterested character, shall further refrain from:

- a. work for the benefit of private interests. In particular, no part of the Foundation's assets or income may be used to satisfy individual or private interests; the distribution of assets or income to founders, donors, senior management, Trustees and employees is prohibited except as provided in Articles 34 and 44 of the Law on Foundations;
- b. support the adoption of any law or regulation in the interest of any individual, public or private organization and/or political party, or intervene in any way in an election campaign for the benefit of a candidate or party. However, at the request of the Government, the Foundation may provide advice or technical assistance. The Foundation may also be heard by, or communicate with, a legislative or executive entity in connection with a proposed decision that may affect its existence, prerogatives or obligations and especially its statutes as a private institution recognized as being of public utility.

TITLE II - ADMINISTRATION AND FUNCTIONING

The administration and functioning of the Foundation shall be carried out by :

- a. a. the Board of Trustees ;
- b. b. the Executive Committee and the Committees;
- c. c. the Executive Director.

A - The Board of Trustees

Article 3 - Composition and election

3.1 The Foundation shall be administered by a Board of Trustees consisting of nine members, qualified in the fields of intervention of the Foundation.

3.2 The first Board of Trustees shall be appointed jointly by the founders, according to a special agreement to be applied at the time of the Foundation's creation.

3.3 Only individuals may become members of the Board of Trustees.

3.4 The term of office of the Trustees shall be four years for the first term. Thereafter, the Board of Trustees shall be renewed by thirds every two years under the conditions fixed by the Internal Regulations.

3.5 If a member of the Board of Trustees ceases to hold office, he is replaced under the conditions laid down in the Internal Regulations. The term of office of the new member ends at the time when the term of office of the member he replaces would normally have expired.

3.6 Trustees act in their individual capacity and do not represent organizations to which they may belong.

Article 4 - Meetings

4.1 The Board of Trustees shall meet as often as circumstances require, but at least twice a year, at the written invitation of the President or, if applicable, the Vice-president, or at the request of one-third of the Trustees.

4.2 The first annual meeting of the Board of Trustees shall be held within three months of the end of the fiscal year as defined in Article 14.1.

4.3 The Board of Trustees may only deliberate on matters included in the agenda.

4.4 Decisions are recorded in minutes recorded in a special register and signed and initialled by the president and the secretary of the meeting

Article 5 - Quorum - Voting

5.1 The Board of Trustees shall not validly deliberate unless at least the majority of its members participate in the meeting. If this quorum is not reached, a new meeting is convened under the conditions specified in the Internal Regulations.

5.2 Decisions are taken by a majority of the members attending the meeting.

5.3 However, the following decisions require the approval of at least seven members: amendment of the Statutes and the Internal Regulations ;

- co-option and removal of Trustees;
- merger with a similar institution or dissolution of the Foundation;
- adoption of the investment policy;
- recruitment of the financial advisor and selection of fund managers
- appointment and replacement of the Statutory auditor and his/her alternate.

5.4 Each Trustee has one vote and no form of representation is allowed. In the event of a tie,, the President of the Board of Trustees or the President of the meeting has the casting vote.

Article 6 – Powers

6.1 In accordance with the provisions of the law, the Board of Trustees is the guiding and administrative body of the Foundation.

6.2 It shall be responsible for guiding the Foundation’s actions towards the achievement of its objectives. To this end, it issues directives and monitors their execution.

6.3 As a policy-making body, the Board of Trustees, on the proposal of the Executive Director :

- a. establishes the Foundation’s priority intervention programs
- b. approve the criteria for the selection of funding to be granted by the Foundation;
- c. approve, in accordance with these criteria, the action and financing programs proposed by the Executive Director
- d. define the general policy for the investment of the Foundation’s assets, approve the investment criteria and recruit the fund manager(s) of its choice
- e. receive and hear the annual moral and financial report prepared by the Executive Director
- f. receive, discuss and approve the accounts for the fiscal year;
- g. establish the procurement rules for projects funded by the Foundation.

These powers may not be delegated.

6.4 As the administrative body, the Board of Trustees is vested with all the necessary powers for the proper functioning of the Foundation.

6.5 The Board of Trustees may delegate part of its administrative powers to the Executive Committee, to the President of the Board or to the Executive Director under the conditions and within the limits set by the Board in the Internal Regulations. However, in accordance with the law , it is only empowered to :

- a. amend the provisions of the Statutes ;
- b. adopt the Rules of Procedure and the Operating Manuals, as well as their subsequent amendments ;
- c. recruit the Executive Director and establish his or her employment contract in accordance with the conditions established in the Internal Regulations ;

- d. approve the organizational chart and the general personnel regulations proposed by the Executive Director
- e. grant any surety or guarantee as well as any mortgage on the property of the Foundation ;
- f. approve the budget of the Foundation ;
- g. accept donations made to the Foundation and the related conditions ;
- h. decide on the creation of the representative offices of the Foundation;
- i. decide on the dissolution of the Foundation or its merger with another foundation;
- j. appoint or replace the statutory auditor and his deputy
- k. discuss issues affecting the Trustees ;
- l. ensure the follow up of the audit recommendations.

Article 7 - Volunteering

7.1 Trustees and committee members shall serve on a voluntary basis subject to reimbursement of reasonable expenses incurred by them in the performance of their duties within or on behalf of the Foundation and according to the modalities defined by the Internal Regulations or by the manual of the Board of Trustees.

B - Executive committee and committies

Article 8 - Executive committee

8.1 The Board of Trustees elects a Vice-President and a Treasurer among its members, every two years, at the first meeting of the Board a President, who shall form the Executive Committee. The Board of Trustees supervises the affairs of the Foundation and ensures the implementation of all resolutions of the Board of Trustees and may delegate this power to the President or the Executive Committee.

The President of the Board of Trustees leads the meetings of the Board of Trustees. He represents the Foundation in legal proceedings and in dealings with third parties, concurrently with the Executive Director.

8.2 The Vice President shall act in the place of the President and shall exercise all the powers and duties of the President in the event of the President's absence or temporary impediment. If the President is permanently unable to act, the Vice President shall act in his place until the election of a new President.

8.3 In case of impediment or absence of the President and the Vice-President, the members present at a meeting of the Board of Trustees shall appoint a chairperson among them.

8.4 The Treasurer shall have special responsibility for overseeing the financial activities of the Foundation because of his or her personal technical skills.

8.5 The Executive Committee assumes the responsibilities expressly assigned to it by the Board of Trustees.

8.6 The members of the Executive Committee are eligible for re-election under the conditions set out in the Internal Regulations.

Article 9 – Committees

9.1 The Board of Trustees may appoint duly mandated Committees to perform or carry out any specific duty and responsibility. Each committee shall be chaired by a Trustee who shall report to the President of the Board of Trustees.

C - The Executive Director

10.1 The Executive Director shall be responsible for implementing the objectives of the Foundation. He/she shall be responsible for the day-to-day management of the Foundation and shall ensure the proper functioning of the Foundation, including:

- a. he is the head of the staff, under the conditions established by the Internal Regulations and the General Staff Regulations;
- b. he/she shall authorize all specific studies or local or external assistance necessary for the successful implementation of the projects financed by the Foundation;
- c. he/she recruits department officer and other staff members according to the procedures established in the Operations Manual;
- d. he/she decides the opening in the name of the Foundation both in Madagascar and abroad of any postal cheque account and with financial institutions, any deposit account, current account or securities advance account;
- e. he/she shall conclude the contracts necessary for the proper functioning of the Foundation;
- f. he/she shall supervise the granting of donations and implement the Foundation's action and financing programs
- g. he/she establishes and maintain the accounts of the Foundation
- h. it draws up the moral and financial reports to be presented to the Board of Trustees.

10.2 He/she reports to the Board of Trustees.

10.3 He/she is recruited by the Board of Trustees under the conditions provided by the Internal Regulations.

D - The administration of the foundation

Article 11 - Rules of procedure - Operating manuals

11.1 Bylaws, policies and operating manuals shall be approved by the Board of Trustees.

11.2 The internal regulation is intended to specify the various matters assigned by or not provided for in these statutes, including the terms of appointment, recruitment, and the roles and responsibilities of the Board of Trustees, the Committees, the President of the Board and the Executive Director of the Foundation.

11.3 The operating manuals and policies adopted by the Board of Trustees include, among other things, all the measures concerning

- the organization and administration of the Foundation ;
- the internal control;
- the granting of funding;
- the personnel management; and
- the investment and fundraising guidelines.

TITRE III - RESOURCES ET CAPITAL

Article 12 – Resources

- 12.1 The resources of the Foundation shall be provided in particular by :
- a. donations and legacies ;
 - b. public and private donations, both national and international;
 - c. external aid funds;
 - d. investment income;
 - e. proceeds from the valuation of movable and immovable property;
 - f. income from any services provided by the Foundation;
 - g. extraordinary and miscellaneous income;
 - h. grants.
- 12.2 The Foundation may manage the following four types of funds
- a. ENDOWMENT FUNDS OR CAPITAL: The capital of the foundation derived from the resources, property or rights permanently allocated to the achievement of the foundation's objectives, of which only the income from the endowment may be used to finance its activities. The endowment fund consists of the initial capital and any subsequent donations allocated to the endowment.
 - b. SINKING FUNDS: -funds in which the principal and any income that may be generated by its investment is disbursed over a period of time. Its investments are disbursed over a specified period of time.
 - c. REVOLVING FUNDS:funds that receives income, sometimes on a regular basis, including fees, fines, or fees, fines, or assigned taxes.
 - d. FUNDS WITH MANAGEMENT MANDATE: Resources used to finance specific activities within the scope of the foundation's mission which management is entrusted to it without these funds being legally transferred to it.
- 12.3 The resources generated by the capital and other resources made available to the Foundation may be used for specific purposes.
- 12.4 The funds shall be managed and invested in accordance with the provisions of the Law on Foundations and the mission of the Foundation, while respecting internationally recognized management standards. Specific guidelines composed the funding and the investment policy approved by the Board of Trustees.
- 12.5 The Board of Trustees shall give priority to allocating the available resources of the Foundation to the pursuit of its objectives and particularly to the activities eligible for its funding according to the priorities defined in its funding policy.

Article 13 – Capital

- 13.1 The capital of the Foundation shall consist of:
- a. The initial capital amounting to the sum of _____ FMG consisting of _____, according to the declaration received by Mr____Notary, on _____, in Antananarivo, Madagascar, and subscribed by the founders, namely the Malagasy State, WWF (World Wide Fund for Nature) and Conservation International (CI) in view of the recognition of the Foundation as a private institution of public utility;
 - b. Subsequent endowments provided either by the founders or by any other donor or funding

- agency, under the conditions defined in the Article 6.5.g ;
- c. The value of any donations or bequests received whose capitalization will have been decided.

TITLE IV- ACCOUNTING AND CONTROL

Article 14 - Social year - Accounting

- 14.1 The business year shall begin on January 1st of each year and end on December 31st.
- 14.2 By exception, the first fiscal year shall include the time from the date of incorporation of the Foundation until December 31 of the following year.
- 14.3 The financial statements shall be prepared in accordance with the general chart of accounts in force in the territory of the Republic of Madagascar.
- 14.4 They shall be made available to the members of the Board of Trustees, at the headquarters, at least fifteen days before the date of the Board meeting called to approve the annual accounts

Article 15 - Audit of accounts

- 15.1 The Board of Trustees appoints a Statutory Auditor and an Alternate Auditor, chosen from among the members of the Chartered of Accountants and the Financial Experts of Madagascar. The Statutory Auditors and an alternate must be members of an internationally recognized network and authorized to sign on behalf of this network.
- 15.2 The Statutory Auditor's mission is to verify annually the Foundation's accounting books and to check the regularity and the sincerity of the accounts and all the presentation documents of these by the Board of Trustees. He shall also assess the effectiveness of the Foundation's internal control systems.
- 15.3 He may, at any time of the year, carry out such audits as he deems urgent.
- 15.4 He reports on his mandate to the Board of Trustees every year.
- 15.5 He may, in case of emergency, request the convening of a meeting of the Board of Trustees.
- 15.6 The Minister of Finance may order an audit of the management of the Foundation in general or of specific issues. Likewise, the founders and donors may conduct audits at their own expense on the use of the funds they have granted to the Foundation.

TITLE V- MERGER AND DISSOLUTION

Article 16 - Merger

16.1 The merger, whether by absorption or by the creation of a new entity, is permitted only with an institution pursuing purposes similar to those of the Foundation.

16.2 A merger agreement, determining the terms and conditions of the merger, as well as the mode of administration and operation of the new entity, shall be drawn up by the Board of Trustees of the parties. Before being signed, the merger agreement must be approved by all the founders. It will subsequently be submitted for approval by a decree issued by the Government Council.

Article 17 - Dissolution

17.1 The dissolution of the Foundation may be decided in accordance with the Articles 43 and 44 of the law governing foundations. In case of dissolution decided by the Board of Trustees or in case of withdrawal of the recognition of public utility, the existing assets and resources, after recovery of their respective capital contributions by the donors and after settlement of the liabilities, are devolved to the creation of a new foundation recognized as being of public utility and pursuing purposes similar to those of the Foundation for Protected Areas and Biodiversity of Madagascar.

17.2 In case a new foundation cannot be created, the assets and resources shall be vested, under the same conditions as in the preceding paragraph, in other foundations recognized as being of public utility which pursue purposes most similar to those of the Foundation for Protected Areas and Biodiversity of Madagascar. The foundations recognized as being of public utility in which the Trustees or executives of the Foundation for Protected Areas and Biodiversity of Madagascar hold any statutes or any interest may not be beneficiaries.

17.3 If these provisions cannot be applied, the proceeds of the realization of the assets and the non-vested financial resources shall be deposited in the Deposit and the consignments Fund by the Public Treasury, awaiting assignment in accordance with legal requirements.

17.4 According to article 24 of the law governing foundations, the prior authorization, under penalty of nullity, of all the founders is always required to validate the dissolution of the Foundation for Protected Areas and Biodiversity of Madagascar. The Minister in charge of the Interior, the Minister in charge of Finance and the Minister in charge of the Environment shall be notified of the decision.

17.5 The decision to dissolve shall appoint a liquidator and state his or her powers. The appointment of the liquidator ends the powers of the members of the Board of Trustees and the Executive Director.

TITRE VI - VARIOUS PROVISIONS

Article 18 - Amendement of the statutes

18.1 These statutes may be amended by a decision of the Board of Trustees taken under the conditions of Article 5.2 above and the Articles 3 and 24 of the law reforming the regime of foundations in Madagascar.

Article 19 - Revocation of capital donation

19.1 Any authentic deed of donation to the capital of the Foundation may contain conditions for the safeguarding of the donation in question. If the donor or his successors have reason to believe that the donation has been misused for the purpose for which it was made or that the management of the Foundation is dishonest, he or she may have the donation seized and ask for its restitution.

Article 20 - Statutes and internal regulations

20.1 Any provision of these present statutes may be supplemented and/or interpreted by the internal regulations. In case of a conflict between the statutes and the internal regulations, the provisions of the statutes shall prevail.

Article 21 - Compliance with legal and statutory provisions

21.1 The Trustees and the Executive Director of the Foundation shall at all times comply with the legislative provisions on foundations, to the provisions of the present Statutes and the Internal Regulations of the Foundation as well as to all other rules and principles not contrary to these provisions which may be decided within the Foundation.