

AGREEMENT ON THE ENCOURAGEMENT, GUARANTEE AND PROTECTION OF INVESTMENT BETWEEN THE REPUBLIC OF MALTA AND THE GREAT SOCIALIST PEOPLE'S LIBYAN ARAB JAMAHIRIYA

The Republic of Malta and The Great Socialist People's Libyan Arab Jamahiriya, referred to hereafter as the Two Contracting Parties;

Desiring to foster and enhance economic cooperation between them, particularly investment set up by investors of the two Contracting Parties in the territory of the other Contracting Party; and

Recognising that the reciprocal encouragement, guarantee and protection of such investment would be an incentive to activate economic cooperation between the Two Contracting Parties.

Have agreed as follows:

Article 1. DEFINITIONS

For the purpose of implementing this Agreement:

(a) "investment" means every kind of asset and in particular, though not exclusively, includes:

- 1) movable and immovable property and any other rights in rem such as mortgages, hypothecs, privileges, usufructs, sureties, liens or pledges;
- 2) shares in and stock and debentures of a company and any other form of participation in a company;
- 3) claims to money or to any performance under contract having a financial value in connection with an investment;
- 4) intellectual property rights, know-how and goodwill;
- 5) any rights granted by virtue of permits or licences, or by contract in accordance with the legislation of either Contracting Party including the rights for exploitation and extraction of natural or agricultural resources.

Any such investment shall be made in accordance with the laws and regulations and national policies of either Contracting Party.

Any changes in the form in which the money is invested or re-invested shall not affect the nature of that investment, on condition that such change would be in conformity with the permit granted, if any, regarding the assets which have been invested.

(b) "investor" means:

- 1) any natural person having the nationality of either contracting party according to the law in force in that Contracting Party; and
- 2) any legal person set up or established according to the law in force in the territory of either Contracting Party;

(c) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(d) "territory" means the territory of either Contracting Party as well as those maritime areas including the sea bed and subsoil adjacent to the outer limit of the territorial sea, that is, the Exclusive Economic Zone and the Continental Shelf of that Contracting Party, including the airspace over such territory, over which the Contracting Party concerned exercises in accordance with international law, sovereign rights for the purpose of exploration and exploitation of natural resources of such areas.

(e) "convertible currency" means any freely transferable currency valid for cash payments in international trade transactions and exchangeable in main international foreign exchange markets.

Article 2. PROMOTION AND PROTECTION OF INVESTMENT

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and shall admit such investments in accordance with its laws.

(2) Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Contracting Party.

Article 3. NATIONAL TREATMENT AND MOST-FAVOURLED-NATION PROVISIONS

(1) Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

(2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, use, enjoyment or disposal of their investments to treatment less favourable than that which it accords to its own investors or to investors of any third State.

(3) The investors of either Contracting Party remain subject on the territory of the other Contracting Party, to the legislation and to the agreements in force in so far as concerns entry and sojourn.

(4) If a Contracting Party has accorded special advantages to investors of any third State by virtue of its membership, in association with a free trade area, customs union, common market or on the basis of interim agreements leading to such unions or institutions, that Contracting Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

(5) The treatment granted under the present article shall not extend to taxes, fees, charges and to fiscal deductions and exceptions granted by either Contracting Party to investors of third States by virtue of a double taxation agreement or other agreements regarding fiscal matters.

Article 4. COMPENSATION FOR LOSSES

Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification or compensation, a treatment no less favourable than that accorded to its investors or that accorded to investors of any third State.

Article 5. EXPROPRIATION

(1) The investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be subjected to any expropriation or nationalisation measures or any other measures of dispossession, unless the following conditions are complied with:

(a) the measures are taken in the public interest and under due process of law;

(b) they are not discriminatory;

(c) they are accompanied by provisions for the payment of adequate and effective compensation.

(2) The amount of such compensation shall represent the real market value of the expropriated investment on the date on which the measure was taken or, should the case arise, on the day before the date on which the impending measure became public knowledge. Such compensation shall be paid in a freely convertible currency to the persons entitled thereto, shall include interest from the date of expropriation and shall be freely transferred without delay. A transfer shall be deemed to be made without undue delay if effected at such period as is reasonably required for the completion of transfer of proceeds. The said period shall commence on the day on which the relevant request has been submitted and shall not exceed three (3) months.

(3) In case of expropriation of a joint venture existing in the territory of one of the two Contracting Parties, the value due for compensation shall be paid to the investor of the other Contracting Party, on the basis of its share in this joint venture.

In case the investor and the host Contracting Party fail to reach an agreement, resort shall be made to measures of settlement of investment disputes, in terms of this Agreement.

Article 6. TRANSFERS

(1) Each Contracting Party shall allow the free transfer of payments with respect to the investments of investors of the other Contracting Party in any freely convertible currency, without any restrictions or hindrance. Such payments shall include:

- (a) initial capital and additional amounts to maintain or increase the investments;
- (b) returns;
- (c) proceeds from the liquidation of the whole or any part of the investment;
- (d) funds allocated for settlement of dues or loans;
- (e) compensation due, according to the provision of article 5 of this agreement; and
- (f) suitable amounts from the income earnings of nationals of any of the two Contracting Parties, employed and permitted to work in connection with investment.

(2) Transfer of payments in terms of clause (1) shall be effected at the market rate of exchange applicable on the date of transfer, pursuant to the regulations in force of the Contracting Party in the territory of which the investment was made.

Article 7. SETTLEMENT OF DISPUTES BETWEEN THE CONTRACTING PARTIES

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should as far as possible be settled by the two Contracting Parties.

(2) If a dispute cannot thus be settled within a period of three months from the date on which the matter was raised by either Contracting Party, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.

(3) Such arbitration tribunal shall be constituted ad hoc as follows: each Contracting Party shall appoint one member, and these two members shall agree upon a national of a third state as their chairman to be appointed by the two Contracting Parties. Such members shall be appointed within two months and such chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

(4) If the periods specified in paragraph 3 above have not been observed, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make the 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 should 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 court next in seniority who is not a national of either Contracting Party should make the necessary appointments.

(5) The arbitration tribunal shall reach its decisions by a majority of votes such decisions shall be binding. Each Contracting Party shall bear the cost of its own member and of its representatives in the arbitration proceedings; the cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

(6) The chairman of the arbitration tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

Article 8. SETTLEMENT OF DISPUTES BETWEEN A CONTRACTING PARTY AND AN INVESTOR OF THE OTHER CONTRACTING PARTY

(1) Disputes concerning investments between a Contracting Party and an investor of another Contracting Party shall as far as possible be settled amicably between the parties in dispute.

(2) If the dispute cannot be settled within six months of the date when it has been raised by one of the parties in dispute, it shall, at the request of the investor of the other Contracting Party be submitted for arbitration. Unless the parties in dispute have agreed otherwise, the provisions of article 7(3) to (5) shall be applied mutatis mutandis on condition that the

appointment of members of the arbitration tribunal in accordance with article 7(3) is effected by the parties in dispute and that, insofar as the periods specified in the article 7(3) are not observed, either party in dispute may, in the absence of other arrangements, invite the President of the Court of International Arbitration of the International Chamber of Commerce in Paris to make the required appointments. The award shall be enforced in accordance with domestic law.

(3) During arbitration proceedings or the enforcement of an award the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

(4) In the event of both Contracting Parties having become Contracting States of the Convention of 18th March 1965 on the settlement of investment disputes between States and nationals of other States, disputes under this article between the parties in dispute shall be submitted for arbitration under the aforementioned Convention, unless the parties in dispute agree otherwise; each Contracting Party herewith declares its acceptance or such a procedure.

Article 9. SUBROGATION

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 7, recognise the transfer of any right or title of such an investor to the former Contracting Party or its designated agency.

Article 10. SCOPE OF APPLICATION

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party prior to the entry into force of this Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

Article 11. OTHER PROVISIONS

If the legislation of either Contracting Party or rights or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a provision whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such provision shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 12. AMENDMENTS

This Agreement may be amended by agreement between the two Contracting Parties at any time after the coming into force of this Agreement. Provided that such amendment shall be effected without prejudice to the rights and obligations arising from this Agreement which were existing before the entry into force of such amendment.

Article 13. ENTRY INTO FORCE, DURATION AND TERMINATION

(1) This Agreement shall be subject to ratification. The instruments of ratification shall be exchanged as soon as possible.

(2) This Agreement shall enter into force one month after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall be extended thereafter for an unlimited period unless denounced in writing through diplomatic channels by either Contracting Party twelve months before its expiration. After the expiry of the period of ten years this Agreement may be denounced at any time by either Contracting Party giving twelve months notice.

(3) In respect of investments made prior to the date of termination of this Agreement, the provisions of the preceding Articles shall continue to be effective for a further period of twenty years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned duly authorised have signed this Agreement.

DONE in duplicate at Valetta this 24th day of October 2003, in the Maltese, Arabic, and English languages, all texts being equally authentic. In case of divergence the English text shall prevail.

For the Republic of Malta

For the Great Socialist People's Libyan Arab Jamahiriya