

AGREEMENT BETWEEN THE GOVERNMENT OF MALTA AND THE GOVERNMENT OF THE REPUBLIC OF CYPRUS FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of Malta and the Government of the Republic of Cyprus hereinafter referred to as the Contracting Parties;

Desiring to intensify their economic co-operation to the mutual benefit of both States on a long-term basis;

Having as their objective to create favourable conditions for investments by investors of either Party in the territory of the other Party;

Recognising that the promotion and protection of investments, on the basis of the present Agreement, will stimulate initiatives in this field;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The terms "investment" shall comprise every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with its laws and regulations and shall include in particular though not exclusively:

(a) movable and immovable property and any other rights in rem such as mortgages, hypothecs, privileges, usufructs, sureties, liens or pledges;

(b) rights derived from shares, bonds and other kinds of interests in companies;

(c) claims or title to money, goodwill and other assets and to any performance having an economic value;

(d) rights in the field of intellectual property including, but not limited to, copyrights and neighbouring rights, industrial property rights, trademarks, patents, industrial designs, technical processes and know-how, rights in plant varieties, trade secrets, trade names and goodwill;

(e) business concessions conferred by law or under contract including concessions to search for, cultivate, extract or exploit natural resources.

A possible change in the form in which the investments or reinvestments have been made, does not affect their substance, provided that such a change does not contradict the laws and regulations and written permits of the Contracting Party in the territory of which the investment has been made.

2. The term "income" means those net amounts received from the investments for a certain period of time, such as shares of profits, dividends, interest, royalties and other fees, proceeds from total or partial liquidation of the investments as well as any other sums emanating from such investments which are considered as income under the laws of the Contracting Party in the territory of which the investment has been made. The term "income" should also include income derived from approved re-investments.

3. The term "investors" shall comprise with regard to either Contracting Party:

(a) natural persons having the citizenship of one Contracting Party who makes an investment in the territory of the other Contracting Party;

(b) legal persons constituted or incorporated in compliance with the law of one Contracting Party and having its seat and

performing real business activity in the territory of the same Contracting Party and making an investment in the territory of the other Contracting Party.

4. The term "guarantor" means:

(a) either of the two Contracting Parties; or

(b) any government or semi-government institution of the Contracting Parties; or

(c) any other public institution of the Contracting Parties for which the said Parties have mutually agreed in advance as to its acceptability as a guarantor; or

(d) any multilateral institution which is mutually acceptable to the Contracting Parties and to which both Parties are members by virtue of a relevant international convention.

5. The term "territory" shall mean with respect to each Contracting Party, the territory of the Contracting Party including the territorial sea, as well as the Continental Shelf and the Exclusive Economic Zone over which that Contracting Party exercises sovereign rights or jurisdiction in conformity with International Law, for the purposes of exploration and exploitation of natural resources of such areas.

6. The term "without delay" shall mean such period as is normally required for the completion of the necessary formalities for the transfer of payments. The said period shall commence on the day on which the request for transfer has been submitted and may on no account exceed two months.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

2. Investments permitted in accordance with the laws and regulations of the Contracting Party in the territory of which they are made, shall enjoy the protection of the present Agreement.

Article 3. Treatment of Investments

Each Contracting Party shall ensure fair and equitable treatment to the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment and disposal of those investments.

More particularly, each Contracting Party shall accord to such investments full security and protection which in any case shall not be less than that accorded to investments of its own investors or to investors of any third State.

If a Contracting Party has accorded special advantages to investors of any third State by virtue of agreements establishing a common market, customs unions, economic unions or institutions, 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.

The treatment granted under the present Article shall not extend to taxes, fees, charges and to fiscal deductions and exemptions granted by either Contracting Party to investors of third States by virtue of a Double Taxation Agreement or other Agreements regarding matters of taxation, or on the basis of reciprocity with a third State.

The treatment referred to in paragraph 1 and 2 of this Article shall be granted on the basis of reciprocity.

Article 4. Compensation

1. Neither Contracting Party shall take any measures depriving, directly or indirectly, investors of the other Contracting Party of their investments unless the following conditions are complied with:

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

(b) the measures are not discriminatory; and

(c) the measures are accompanied by provision for the payment of prompt, adequate and effective compensation.

2. The compensation shall be equivalent to the market value of the investments affected immediately before the measures

referred to in paragraph (1) above, were taken or became public. The compensation shall be paid without unreasonable delay and be remitted abroad at the request of the investor in a freely convertible currency at the market rate of exchange on the date of transfer. The amount of compensation shall carry interest from the date of expropriation until the date of payment, corresponding to the interest rate of the Contracting Party in the territory of which the investment was made.

Article 5. Expropriation

1. The investments made by nationals or companies 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, direct or indirect, unless the following conditions are complied with:

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

(b) on a non-discriminatory basis; and

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

1. Compensation shall be equivalent to the market value of the affected investments 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.

2. The compensation shall be paid without unreasonable delay and be remitted abroad at the request of the investor in a freely convertible currency at the prevailing market rate of exchange on the date of transfer. The amount of compensation shall carry interest from the date of expropriation until the date of payment, corresponding to the interest rate of the Contracting Party in the territory of which the investment was made.

3. When a Contracting Party expropriates the assets of a company established in its territory, it shall apply the provisions of paragraph 1, 2 and 3 of this Article, to the physical or legal persons of the other Contracting Party who are shareholders of the company.

Article 6. Repatriation of Investment and Income

1. Each Contracting Party shall guarantee, in respect of investments of investors of the other Contracting Party, the unrestricted transfer of the investment and the ensuing income. The transfers shall be effected, without delay, in a freely convertible currency and at the market rate of exchange, applicable on the date of transfer, so long as the investor has complied with all his fiscal obligations.

2. Such transfers include in particular, though not exclusively:

(a) capital and additional amounts to maintain or increase the investment;

(b) profits, interest, dividends and other current income;

(c) funds in repayment of loans;

(d) royalties and other fees;

(e) proceeds of sale or liquidation of the whole or any part of the investment;

(f) normal earnings of nationals of the Contracting Party who work in connection with an investment in the territory of the other Contracting Party;

(g) compensation as provided in Articles 4 and 5 of this Agreement.

Article 7. Subrogation

1. If the guarantor, pays compensation to the investors of one Contracting Party pursuant to a guarantee providing coverage for an investment made in the territory of the other Contracting Party, the latter shall recognise that the guarantor is subrogated into the rights of the indemnified investors; the subrogation of rights shall also apply to the rights of transfer referred to in Article 6 of this Agreement.

2. Any payment of compensation, as per paragraph 1 of this Article, shall not affect the right of the investors of one Contracting Party to take arbitration proceedings against the other Contracting Party in accordance with Article 9 of this Agreement. The guarantor shall exercise the subrogated rights to the same extent as its predecessor in title.

3. As far as the transferred rights are concerned, the other Contracting Party shall be entitled to invoke against the guarantor, who is subrogated into the rights of the indemnified investor, the relevant obligations of the latter under law of contract including payments of taxes and fees.

4. So as to facilitate the subrogation provisions of this Article, it is hereby agreed that the investors and guarantors covered under this Agreement shall follow the internationally recognised accounting practices as regards the guaranteed investments in the territory of the other Contracting Party.

5. (a) In case where the guarantor falls under the categories noted in paragraph 4(a) or (b) of Article 1 of this Agreement disputes between the guarantor and the other Contracting Party shall be settled in accordance with the provisions of Article 10 of this Agreement.

(b) In case the guarantor falls under category (c) of paragraph 4 of Article 1 of this Agreement, any dispute between the guarantor and the other Contracting Party shall be settled under the procedure of arbitration as provided in Article 9 of this Agreement.

(c) In case the guarantor is a multilateral institution, as per paragraph 4(d) of Article 1 of this Agreement, any dispute between the guarantor and the other Contracting Party shall be settled under the principles of international law and the relevant rules provided for by the International Convention establishing the aforesaid multilateral institution.

Article 8. Application of other Rules

If the provision of law of either Contracting Party or provision of international agreement established between the Contracting Parties contain at present or thereafter rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than that provided for by the present Agreement, such rules shall prevail over the present Agreement.

Article 9. Disputes between an Investor and a Contracting Party

1. Disputes that may arise between one of the Contracting Parties and an investor of the other Contracting Party with regard to an investment in the sense of the present Agreement, shall be notified in writing, including detailed information, by the investor to the former Contracting Party. As far as possible, the Parties concerned shall endeavour to settle these disputes amicably.

2. If these disputes cannot be settled amicably within six (6) months from the date of the written notification mentioned in paragraph 1, the dispute may be submitted, at the choice of the investor, to:

- The competent court of the Contracting Party in whose territory the investment was made; or
- The Arbitration Institute of the Arbitral Tribunal of the Chamber of Commerce in Stockholm; or
- The Arbitral Tribunal of the International Chamber of Commerce in Paris; or
- The International Centre for the Settlement of Investment Disputes (ICSID) established by the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States.

3. In the case that the investor decides to submit the dispute to international arbitration, each Contracting Party hereby consents to the submission of such dispute to international arbitration.

4. The arbitral tribunal shall decide the dispute in accordance with the provisions of this Agreement and the applicable rules and principles of international law.

5. The awards of arbitration shall be final and binding on both Parties to the dispute. Each Contracting Party shall carry out without delay any such award and such award shall be enforced in accordance with domestic law.

6. During arbitration proceedings or the enforcement of the award, a 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.

Article 10. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channels.

2. If any dispute between the Contracting Parties cannot thus be settled within six (6) months from the start of the negotiations, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.
3. The arbitral tribunal shall be constituted in the following way: Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State as Chairman who on approval by the two Contracting Parties shall be appointed within two months from the date of appointment of the other two members.
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 the necessary appointments. If the President is a National of either Contracting Party or of a State with which one of the Contracting Parties does not maintain diplomatic relations 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 of a state with which one of the Contracting Parties does not maintain diplomatic relations 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 or of a state with which one of the Contracting Parties does not maintain diplomatic relations 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 member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairperson and the remaining costs shall be borne in equal parts 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 both Contracting Parties. The tribunal shall determine its own procedure.

Article 11. Review of the Agreement

Representatives of the Contracting Parties shall, whenever necessary, hold meetings in order to review the implementation of this Agreement. These meetings shall be held on the proposal of one of the Contracting Parties at a place and at a time agreed upon through diplomatic channels.

Article 12. Other Provisions

1. Either Contracting Party shall in accordance with its laws, regulations and administrative practices followed, examine in good faith applications for the entrance and stay of the investors, employees and workers of the other Party who are involved in activities connected with the investments.

Article 13. Application of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party whether existing at or made after the date of its entry into force, but, it shall not apply to claims arising out of events which occurred or to claims which had been settled, prior to its entry into force.

Article 14. Entry Into Force - Duration - Termination

1. This Agreement is concluded for an initial period of ten (10) years, and it shall enter into force thirty (30) days after the date on which the Contracting Parties inform each other through diplomatic channels, of its ratification or approval, according to their respective legislation.
2. This Agreement shall not prejudice the right of either of the Contracting Parties to amend in whole or in part or to terminate this Agreement at any time during its period of validity.
3. In such an eventuality, if the Contracting Parties do not reach agreement on any modification to or termination of this Agreement within six (6) months after a written request by the Contracting Party seeking such modification or termination to the other Contracting Party, the Party that had made the said request shall be entitled to denounce the whole Agreement within thirty (30) days from the lapse of the said six (6) months period. Such denunciation shall be made through diplomatic channels and shall be considered as a notice of termination of this Agreement. In such a case the Agreement shall terminate six (6) months after the date of receipt of the said notice by the other Contracting Party, unless such notice is withdrawn by mutual agreement before the expiry of this period of notice.
4. In respect of investments made before the date of the amendment or termination of this Agreement in accordance with

this Article, the foregoing provisions of the present Agreement shall continue to apply for a period often (10) years from that date.

Done and signed in..... on ... the in duplicate in the English and Greek languages, all texts being equally authentic. In case of disagreement as regards the interpretation of the text the English version will prevail.

For the Government of Malta

For the Government of the Republic of Cyprus