

AGREEMENT BETWEEN THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS AND THE GOVERNMENT OF MALTA CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Kingdom of the Netherlands and the Government of Malta,

Desiring to create favourable conditions for investments by nationals and companies of either State in the territory of the other State, and

Recognizing that encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both nations,

Have agreed as follows:

Article 1.

For the purposes of the present Agreement:

a) The term "investments" shall comprise every kind of asset and more particularly, though not exclusively: The term "investments" shall comprise every kind of asset and more particularly, though not exclusively:

i) Movable and immovable property as well as any other rights in rem;

ii) Shares or other kinds of interests in companies;

iii) Title to money or to any performance, such as goodwill, having an economic value;

iv) Rights in the fields of the intellectual property, technical processes and know how;

v) Such business concessions under public law, including concessions regarding the prospecting for or the extraction or the winning of natural resources, as give to their holders a legal position of some duration.

b) The term "nationals" shall comprise with regard to either Contracting Party: The term "nationals" shall comprise with regard to either Contracting Party:

i) Natural persons having the nationality of that Contracting Party in accordance with its law;

ii) Without prejudice to the provisions of (iii) hereafter, legal persons constituted in accordance with the law of that Contracting Party;

iii) Legal persons controlled, directly or indirectly, by nationals of that Contracting Party but constituted in accordance with the law of the other Contracting Party.

Article 2.

Either Contracting Party shall, within the framework of its laws and regulations, promote economic cooperation between its nationals and nationals of the other Contracting Party, through the protection in its territory of investments of nationals of the other Contracting Party.

Article 3.

1) Each Contracting Party shall ensure fair and equitable treatment to the investments of nationals of the other Contracting Party and shall not impair by unjustified or discriminatory measures, the operation, management, maintenance, use,

enjoyment or disposal thereof by those nationals.

2) More particularly, each Contracting Party shall accord to such investments the same security and protection as it accords either to those of its own nationals or to those of nationals of any third State, whichever is more favourable to the investor.

3) Paragraph 2 of this Article shall not apply to entry and sojourn.

Article 4.

Recognizing the principle of the freedom of transfer each Contracting Party shall authorize, in conformity with its relevant most favourable rules the transfer, without undue restriction and delay, to the country of the other Contracting Party and in the currency of that country or any other freely convertible currency of payments resulting from investment activities and in particular of the following items:

- a) Net profits, interests, dividends and other current income;
- b) Funds necessary Funds necessary
- i) For the acquisition of raw or auxiliary materials, semifabricated or finished products or
- ii) To replace capital assets in order to safeguard the continuity of an investment;
- c) Additional funds necessary for the development of an investment;
- d) Earnings of natural persons;
- e) The proceeds of liquidation of capital;
- f) Funds in repayment of loans;
- g) Management fees;
- h) Royalties.

Article 5.

Neither Contracting Party shall take any measures depriving directly or indirectly, nationals 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 or contrary to any undertaking which the former Contracting Party may have given;
- c) The measures are accompanied by provision for the payment of just compensation. Such compensation shall represent the genuine value of the investments affected and shall, in order to be effective for the claimants, be paid and made transferable without undue delay, to the country of which those claimants are nationals and in the currency of that country or any other freely convertible currency.

Article 6.

If a national of the one Contracting Party has transferred any rights and securities to that Party or to another national of that Party because of that Party's or the latter national's obligation, under a legal system of guaranteeing against non commercial risks, to reimburse the former national as to damage in respect of an investment made by that national in the territory of the other Contracting Party and approved by that Party the latter Contracting Party recognizes the subrogation of the grantor into the said rights and securities of the investor.

Article 7.

The present Agreement shall apply to all investments (whether or not within the framework of a joint venture) made in the territory of the one Contracting Party by a national of the other Contracting Party.

Article 8.

- 1) The Contracting Parties hereby establish a Mixed Commission, composed of representatives appointed by them.
- 2) The Mixed Commission shall meet at the request of one of the Contracting Parties, to discuss any matters pertaining to the implementation of the present Agreement.

Article 9.

In respect of any matter governed by the present Agreement nothing in this Agreement shall prevent a national of the one Contracting Party from benefiting from any right more favourable to him and accorded by the other Contracting Party.

Article 10.

- 1) Any dispute between the Contracting Parties concerning the interpretation or application of the present Agreement which cannot be settled, within a reasonable lapse of time, by means of diplomatic negotiations, shall be submitted, at the request of any party to the dispute, to an arbitral tribunal, composed of three members. Each party shall appoint one arbitrator and the two arbitrators thus appointed shall together appoint a third arbitrator as their chairman who is not a national of either party.
- 2) If one of the parties fails to appoint its arbitrator and has not proceeded to do so within two months after an invitation from the other party to make such appointment the latter party may invite the President of the International Court of Justice to make the necessary appointment.
- 3) If the two arbitrators are unable to reach agreement, in the two months following their appointment on the choice of the third arbitrator, either party may invite the President of the International Court of Justice to make the necessary appointment.
- 4) If, in the cases provided for in the second and third paragraph of this Article the President of the International Court of Justice is prevented from discharging the said function or is a national of either party, the Vice-President should make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either party, the most senior member of the Court who is not a national of either party should make the necessary appointments.
- 5) The tribunal shall decide on the basis of respect for the law. Before the tribunal decides, it may at any stage of the proceedings propose to the parties that the dispute be settled amicably. The foregoing provisions shall not prejudice the power of the tribunal to decide the dispute *ex aequo et bono* if the parties so agree.
- 6) Unless the parties decide otherwise, the tribunal shall determine its own procedure.
- 7) The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the parties to the dispute.

Article 11.

As regards the Kingdom of the Netherlands, the present Agreement shall apply to the territory of the Kingdom in Europe only.

Article 12.

- 1) The present Agreement shall enter into force on the first day of the second calendar month following the date on which both Contracting Parties will have informed each other in writing that the procedures constitutionally required therefor in their respective countries have been complied with and shall remain in force for a period of 15 years.
- 2) Unless notice of termination has been given by either Contracting Party at least six months before the date of the expiry of its validity, the present Agreement shall be extended tacitly for periods of 10 years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least six months before the date of expiry of the current period of validity.
- 3) In respect of investments made before the date of the termination of the present Agreement the foregoing Articles thereof shall continue to be effective for a further period of 10 years from that date.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

DONE at The Hague, this 10th day of September 1984.

For the Government of the Kingdom of the Netherlands:

H. VAN DEN BROEK

For the Government of the Republic of Malta:

P. FARRUGIA