

Agreement between the Government of the Arab Republic of Egypt and the Government of the Republic of Malta for the Promotion and Reciprocal Protection of Investments

The Government of the Arab Republic of Egypt and the Government of the Republic of Malta, hereinafter referred to as the Contracting Parties,

Desiring to intensify their economic cooperation to the mutual benefit of both states on a long term basis,

Having as their objective the creation of favourable conditions for investments by investors of either Party on the territory of the other Party,

Recognizing that the promotion and protection of investments, on the basis of the present Agreement, will stimulate the initiative in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1. "Investment" means every kind of asset and in particular, though not exclusively includes:

- a) Movable and immovable property and any other property rights such mortgages, liens or pledges,
- b) Shares in an stock and debentures of a company and any other form of participation in a company,
- c) Intellectual property rights, goodwill, technical processes and know-how,
- d) business concessions conferred by law of under contract, including concessions to search for, cultivate, extract or exploit natural resources,
- e) goods that under a leasing agreement are placed at the disposal of a lessee in the territory of a Contracting Party in conformity with its laws and regulations.

2. "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

3. "Investor" shall comprise, with regard to either Contracting Party:

- a) Natural persons having the nationality of that Contracting Party in accordance with its law,
- b) Legal persons constituted in accordance with the law of that Contracting Party.

4. " Territory " means in respect of either Contracting Party, the territory under its sovereignty including the territorial sea, as well as the exclusive economic zone and submarine areas over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investment

1. Each Contracting Party promotes in its territory investments by investors of the other Contracting Party and admits such investments subject to and in accordance with the terms and conditions of its legislation.

2. Investments by investors of a Contracting Party shall, at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Each Contracting Party shall ensure that the

management, maintenance, use, enjoyment or disposal, in its territory, of investments by investors of the other Contracting Party, is not in any way impaired by unjustifiable or discriminatory measures.

3. A possible change in the form in which the investments have been made does not affect their substance as investments, provided that such a change does not contradict the laws and regulations of the relevant Contracting Party.

4. Returns from the investments and, in cases of reinvestment, the income ensuing therefrom enjoy the same protection as the initial investments.

5. Each Contracting Party shall observe any other obligation it may have entered into, with regard to investments of investors of the other Contracting Party.

Article 3. Most Favoured-nation and National Treatment Provisions

1. Neither Contracting Party shall subject investments effected in its territory in accordance with article 2.1 hereof, owned wholly or partially by investors of the other Contracting Party to treatment less favourable than that which it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable.

2. Neither Contracting Party shall subject investors of the other Contracting Party, as regards their activity in connection with investments in its territory, to treatment less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

3. Such treatment shall not relate to privileges or advantages which either Contracting Party accords to investors of third States:

a) on account of its membership of, or association with a customs or economic union, a common market, a free trade area or similar institutions,

b) by virtue of a double taxation agreement or other agreements regarding matters of taxation.

Article 4. Expropriation

Investments by investors of either Contracting Party shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization in the territory of the other Contracting Party except under the following conditions:

1. a) the measures are taken in the public interest and under due process of law,

b) the measures are clear and not discriminatory, and

c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investments affected immediately before the measures referred to above in this paragraph, occurred or became public knowledge and it shall be freely transferrable in convertible currencies from the Contracting Party, at the bank rate of exchange applicable on the date used for the determination of value. The compensation shall be transferrable without delay and shall include interest until the date of payment.

2. Furthermore:

a) the Investors shall have the opportunity to have the legality of the expropriation reviewed by the competent judicial authorities of the Contracting Party having induced the expropriation,

b) the investors may challenge the quantum of compensation before the international tribunal, in accordance with Article 10 of this agreement.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency or other exceptional situations in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party, treatment as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable. Resulting payments shall be made without delay and be freely transferable in convertible.

Article 6. Repatriation of Investment and Returns

1. Each Contracting Party shall guarantee, in respect of investments of investors of the other Contracting Party, the unrestricted transfer of the investment and its returns. The transfers shall be effected, without delay, in a freely convertible currency to be agreed upon between the investors and the contracting Party concerned and at the bank rate of exchange applicable on the date of transfer.

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 fees;
- e) proceeds of sale or liquidation of the whole or any part of the investment.

Article 7. Subrogation

Where one Contracting Party or its designated Agency has issued any financial guarantee against non-commercial risks in regard to an investment by an investor in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party or its designated Agency by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party or its designated Agency. The other Contracting Party shall be entitled to set off taxes and other public charges due and payable by the investor.

Article 8. Application

This Agreement shall apply to investments made both prior to and after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the latter's legislation.

Article 9. Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through diplomatic channels.
2. If the dispute cannot thus be settled within six months from the beginning of the negotiations, it shall upon the request of either Contracting Party be submitted to an arbitration tribunal.
3. The arbitration tribunal shall be constituted ad hoc as follows: Each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third state as chairman. The arbitrators shall be appointed within three months, the 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 within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, any Party to the dispute may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President of the Court is a national of any Party to this dispute or if he is otherwise prevented from discharging the said function, the Vice-President or if he is a national of any Party or is otherwise prevented from discharging the said function, the Member of the Court next in seniority who is not a national of any Party to the dispute shall be invited to make the necessary appointments.
5. The arbitration tribunal shall decide on the basis of respect for the law, including particularly the present Agreement and other relevant agreements existing between the two Contracting parties and the generally acknowledged rules and principles of International law.
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.
8. Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the chairman as well as the other costs will be borne in equal parts by the Contracting Parties.

Article 10. Settlement of Disputes between an Investor and a Contracting Party

1. Disputes between an investor of a Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement, in relation to an investment of the former shall, as far as possible be settled by the disputing parties in an amicable way.

2. If such dispute cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute to the competent court Of the Contracting Party , or to an international arbitration tribunal . Each Contracting Party herewith declares its acceptance of such an arbitration procedure. In the latter case, the provisions of Article 9 par. 3-8 shall be applied mutatis mutandis. Nevertheless the president of the Court of the International Arbitration of the International Chamber of Commerce in Paris shall be invited to make the necessary appointments whereas the arbitration tribunal shall determine its procedure by applying the UNCITRAL Arbitration Rules, as then in force. The award shall be final, binding and enforced in accordance with domestic law.

3. During arbitration 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 case both Contracting Parties have become members of the convention of 18 March 1965 on the settlement of Investment Disputes between States and Nationals of the other States, disputes between either Contracting Party and the investor of the other Contracting Party under the first paragraph of this Article may, at the request of the investor concerned, be submitted for settlement by conciliation or arbitration to the International Centre for the Settlement of Investment Disputes

Article 11. Application of other Rules

If The provisions Of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain a regulation, 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 regulation shall, to the extent that it is more favourable, prevail over the present Agreement.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on the amendment or any matter affecting the implementation of this Agreement. These consultations 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 13. Entry Into Force - Duration - Termination

1. This Agreement shall enter into force thirty days after the date on which the Contracting Parties inform each other through diplomatic channels of ratification or approval, according to their respective legislation.

2. This Agreement shall remain in force for a period of ten years. It shall be extended thereafter for an indefinite period, unless terminated by either Contracting Party giving notice of termination in writing twelve (12) months in advance.

In respect of investments made before the date of the amendment or termination of this Agreement in accordance with this Article, the foregoing provisions or the present Agreement shall continue to apply for a period of ten (10) years from that date.

Done in duplicate in Cairo on the Saturday 20th of February, 1999 in two original texts in the Arabic and English languages, both texts being equally authentic. In case of d if different interpretation the English text shall prevail.

FOR THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT

AMRE MOUSSA

MINISTER OF FOREIGN AFFAIRS

FOR THE GOVERNMENT OF THE REPUBLIC OF MALTA

GUIDO DE MARCO

DEPUTY PRIME MINISTER AND MINISTER OF FOREIGN AFFAIRS