

AGREEMENT BETWEEN THE REPUBLIC OF MALTA AND THE REPUBLIC OF TUNISIA ON THE PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Malta and the Republic of Tunisia, hereinafter referred to as the "Contracting Parties",

Desiring to strengthen the economic relations and intensify cooperation to the mutual benefit of both countries.

Desiring to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that the promotion and protection of such investments will contribute to stimulate investment initiatives,

Have agreed as follows:

Article 1. Definitions

For the purpose of this Agreement:

1. The term "Malta" means the Republic of Malta

2. The term "Tunisia" means the Republic of Tunisia

3. The term "investment" means every kind of asset owned or controlled, directly or indirectly by an investor of one Contracting Party in the territory of the other Contracting Party (host Contracting Party) in accordance with the laws and regulations of the latter Contracting Party, including in particular, though not exclusively:

(a) movable and immovable property as well as any other rights in rem, such as leases, mortgages, liens, pledges and usufructs;

(b) shares, stocks, bonds, debentures and any other kind of Participation in a company and rights derived therefrom;

(c) claims to money or to any right to performance having and economic value;

(d) intellectual property rights, such as copyrights, patents, industrial designs, trade marks, trade names, know-how and goodwill;

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

Any alteration in the form in which investments are made shall not affect their character as investment, provided that such alteration is in accordance with the laws and regulations of the host Contracting Party.

4. The term "investor" means:

(a) any natural person who is a national of either Contracting Party in accordance with its laws and regulations, and

(b) any legal person such as a company, corporation, association or other legal entity incorporated, constituted or registered under the laws and regulations of that Contracting Party.

5. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interest, capital gains, royalties and other fees.

Reinvested returns in conformity with the laws and regulations of the Contracting Party in the territory of which the investment was made shall enjoy the same treatment as the original investment.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote and encourage in its territory investments by investors of the other Contracting Party and shall admit such investments in its territory in accordance with its laws and regulations.

2. Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair by arbitrary or discriminatory measures the operation, management, maintenance, use, enjoyment, sale or liquidation of investments in its territory by investors of the other Contracting Party. Each Contracting Party shall accord to such investments full security and protection.

Article 3. National and Most Favoured Nation Treatment

1. Each Contracting Party shall in its territory accord investments by investors of the other Contracting Party and returns on those investments, fair and equitable treatment which in no case shall be less favourable than that accorded to its own investors or investors of any third country and their investments, whichever is more favourable to the investor.

2. Each Contracting Party shall in its territory accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments and returns, fair and equitable treatment which in no case shall be less favourable than that which it accords to its own investors or to investors of any third country and their investments, whichever is more favourable to the investor.

3. The provisions of this Agreement shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege by virtue of:

(a) any existing or future free trade area, customs union, common market or other economic regional agreement to which one of the Contracting Parties is or may become a party,

(b) any international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Expropriation and Compensation

1. Investments by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised, or subject to any other measures having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for a public interest, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.

2. The compensation referred to in paragraph 1 of this Article shall be computed on the basis of the fair market value of the investment immediately before the expropriation or impending expropriation became public knowledge, whichever is earlier. The compensation shall be paid in a freely convertible currency and made transferable without delay to the territory of the investor or any other country agreed upon by the investor and the expropriating authority of the Contracting Party and shall include a fair compensation for any delay in payment caused by the Contracting Party.

3. The investor, whose investments are expropriated, shall have the right to prompt review by a judicial or other competent authority of the host Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses due to war, armed revolution, state of national emergency, revolt, insurrection or riot shall be accorded by the latter Contracting Party treatment, as regards restitution, compensation or other settlement, no less favourable than that which the host Contracting Party accords to its own investors or investors of any third country, whichever is more favourable to the investor.

Article 6. Free Transfer

1. Each Contracting Party shall allow investors of the other Contracting Party to freely transfer all payments in connection with their investments. Such transfers include in particular though not exclusively:

(a) capital and returns;

(b) proceeds obtained from the total or partial sale or liquidation of an investment;

(c) funds in repayments of loans regularly contracted;

(d) any compensation payable pursuant to Articles 4 and 5 of this agreement;

(e) payment arising out of the settlement of a dispute;

(f) an appropriated amount of remuneration of nationals engaged from abroad working in connection with an investment permitted under the prevailing laws and regulations of the host Contracting Party.

2. The Contracting Parties shall further ensure that transfers referred to in paragraph 1 of this Article be made without restriction or delay, in a freely convertible currency and at the prevailing market rate of exchange applicable on the date of transfer with respect to spot transactions in the currency to be transferred and shall be effectively realisable and immediately transferable.

Article 7. Subrogation

If a Contracting Party or its designated agency makes a payment to its own investor under a guarantee against non-commercial risks it has accorded in respect of an investment in the territory of the other Contracting Party, the host Contracting Party shall recognise the assignment, whether under the law or pursuant to a legal transaction to the first Contracting Party of all the rights and claims resulting from such an investment, and shall recognise that the latter Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

Article 8. Settlement of Disputes between an Investor and the Host Contracting Party

1. Any dispute arising under this Agreement between one Contracting Party and an investor of the other Contracting Party shall be settled amicably through negotiations.

2. If the dispute has not been settled within four (4) months, from the date when it was raised in writing, the dispute may, at the choice of the investor, be submitted:

(a) to the competent courts of the Contracting Party in whose territory the investment is made; or

(b) to arbitration by the International Centre for the Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965; or

(c) an ad hoc arbitration tribunal, which unless otherwise agreed upon by the parties to the dispute, is to be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(d) any other form of arbitration agreed upon by the parties to the dispute.

Both Contracting Parties give their irrevocable consent in respect of the fact that all disputes relating to investments are submitted to the above mentioned court, tribunal or alternative arbitration procedures.

3. If the investor submits the dispute to the competent court of the host Contracting Party or to an arbitration tribunal, the choice of one of these procedures shall be final.

4. A Contracting Party shall not assert as a defence, counter-claim, right of set off or any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received in terms of Article 7 of this Agreement.

5. The award shall be final and binding on both parties to the dispute.

Article 9. Settlement of Disputes between Contracting Parties

1. Any dispute arising between the Contracting Parties concerning the application or interpretation of this Agreement shall, if possible, be settled through diplomatic channels within six (6) months from the date when either Contracting Party requested negotiations.

2. If such a dispute cannot thus be settled within six (6) months from the date when either Contracting Party requested negotiations, either Contracting Party may by written notice to the other Contracting Party submit the matter to arbitration in accordance with the provisions of this Article.

3. The arbitration tribunal shall be constituted for each individual case. Each Contracting Party shall appoint one member. These two members shall then agree upon a national of a third state, who on approval by the two Contracting Parties shall be appointed Chairman of the tribunal. The members shall be appointed within two months and the Chairman within four months from the date of the receipt of the written notice under paragraph (2) of this Article.

4. If within the periods referred to in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other arrangement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of a Contracting Party or is otherwise prevented from discharging this task, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Contracting Party or 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 shall be invited to make the necessary appointments.

5. The arbitration tribunal shall take its decisions by a majority of votes, and determine its own procedures. The tribunal shall determine the dispute in accordance with this Agreement and the applicable rules and principles of international law. The arbitral award shall be final and binding upon the Contracting Parties.

6. Each Contracting Party shall be responsible for the costs of its own member and of its representation in the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of

Article 10. 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 this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than that provided for by this Agreement, such provisions shall prevail over this Agreement.

Article 11. Scope of the Agreement

This Agreement shall apply to all investments established or acquired after the entry into force of this Agreement.

This Agreement shall also apply to all investments established or acquired after the 1st day of January 1957 and existing at the entry into force of this Agreement. This Agreement shall not apply to disputes which arose before its entry into force.

Article 12. Final Clauses

1. This Agreement shall enter into force on the thirtieth day after the day on which the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for a period of ten years. Thereafter it shall remain in force for twelve months from the date on which either Contracting Party has in writing notified the other Contracting Party of its decision to terminate this Agreement.

3. In respect to investments made prior to the date when notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 12 remain in force for a further period of ten years from the date of notification referred to in paragraph (2) of this Article.

Done at Tunis on October 26, 2000 in duplicate in the English and Arabic languages, all texts being equally authentic. However, in case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Malta

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For the Government of the Republic of Tunisia

Fethi Merdessi

