

Agreement between The Government of the Kingdom of Sweden and The Government of Malta on the Promotion and Reciprocal Protection of Investments

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

Desiring to intensify economic co-operation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognising that the promotion and reciprocal protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term investment means any kind of asset, acquired, in whole or in part, directly or indirectly, by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

(a) Movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights;

(b) Shares and other kinds of interest in companies;

(c) Title to money of any performance having an economic value;

(d) Intellectual property rights, technical processes, trade names, know-how, goodwill and other similar rights; and

(e) Business concessions conferred by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments.

Goods, that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being an investor of the other Contracting Party, shall be treated no less favourably than an investment.

(2) The term "investor" shall mean with regard to a Contracting Party:

(a) Any natural person who is a national of that Contracting Party in accordance with its laws;

(b) Any legal person constituted under the law of that Contracting Party and recognised as a resident of that Contracting Party and subject to its laws; and

(c) Any legal person in which an ultimate controlling or predominant interest rests with a national or legal person of that Contracting Party as defined in (a) or (b).

(3) "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, include profit, interest, capital gains, dividends, royalties or fees.

(4) "territory" shall mean the territory of each Contracting Party as well as the exclusive economic zone, the seabed and subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdictions.

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) Each Contracting Party shall, subject to its laws and regulations relating to the entry, stay and work of natural persons, examine in good faith requests by Investors of the other Contracting Party, and key personnel who are employed by such Investors to enter and remain temporarily in its territory for the purpose of carrying out activities associated with an investment admitted in its territory.

(3) Each Contracting Party shall at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not, by unreasonable or discriminatory measures, in any way impair the management, maintenance, use, enjoyment or disposal thereof as well as the acquisition of goods and service relating thereto, and the sale of their production.

(4) The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, shall enjoy the full protection of this Agreement and in no case shall an investment be accorded treatment less favourable than that required by international law. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of the other Contracting Party.

(5) Reinvested returns yielded from an investment shall be given the same treatment and protection as an investment.

Article 3. National and Most Favoured Treatment of Investments

(1) Neither Contracting Party shall subject investments made in its territory by investors of the other Contracting Party to a treatment which is less favourable than that accorded to investments made by its own investors or by investors of third States, whichever is the more favourable.

(2) Neither Contracting Party shall subject in its territory investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investment, to treatment less favourable than that accorded to its own investors or to investors of any third State, whichever is the more favourable.

(3) Notwithstanding the provisions of Paragraph (1) and (2) of this Article, a Contracting Party which has concluded or may conclude an agreement regarding the formation of a customs union, a common market or a freetrade area shall be free to grant more favourable treatment to investments by investors of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.

(4) The provisions of Paragraph (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. Expropriation and Compensation

(1) Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other Contracting Party of an investment 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 distinct and not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable to any other State selected by the investor without delay in a freely convertible currency.

(2) Such compensation shall amount to the fair market value of the expropriated investment at the time immediately before the expropriation occurred (hereinafter referred to as the "Valuation Date"). The fair market value shall not reflect any change in value occurring because the expropriation had become publicly known earlier.

Such fair market value shall at the request of the investor be expressed in a freely convertible currency on the basis of the market rate of exchange existing for that currency on the Valuation Date. Compensation shall also include interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.

(3) The provision of Paragraph (1) of this Article shall also apply to the returns from a investment as well as, in the event of liquidation, to the proceeds from the liquidation.

(4) 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, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or to investors of any third State. Resulting payments shall be transferable without delay and in a freely convertible currency to any other State selected by the investor.

Article 5. Transfers

(1) Each Contracting Party shall allow without delay the transfer in a freely convertible currency of payments in connection with an investment, such as:

(a) The returns;

(b) The proceeds from a total or partial sale or liquidation of any investment by an investor of the other Contracting Party;

(c) Funds in repayment of loans; and

(d) The earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expense connected with the management of the investment.

(2) Any transfer referred to in this Agreement shall be effected at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred. In the absence of a market for foreign exchange, the rate to be used will be the most recent rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

Article 6. 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 8, recognise the transfer of any right or title of such an investor to the former Contracting Party or its designated agency.

Article 7. Disputes between an Investor and a Contracting Party

(1) Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

(2) Each Contracting Party hereby consents to submit, to the International Centre for Settlement of Investment Disputes (ICSID) for settlement by conciliation or arbitration under the Washington Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, any such dispute which has not been settled within six months following the date on which notification of the claim has been given to the other party to the dispute. If the parties to such a dispute do not agree as to whether resort to local remedies, conciliation or arbitration is the more appropriate method of settlement, the investor shall have the right to choose.

(3) For the purpose of this Article and in accordance with Article 25 (2) (B) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one Contracting Party and in which, before a dispute arises, an investor of the other Contracting Party held a predominant interest shall be treated as a legal person of the other Contracting Party.

(4) If it is not expedient or possible to obtain settlement through the Centre itself, each Contracting Party hereby consents that the dispute, at the choice of the investor, shall be submitted for settlement by binding arbitration either to the Additional Facility of the Centre or to an ad hoc arbitral tribunal to be set up under the Arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL). The appointing authority under UNCITRAL rules shall be the Secretary-General of ICSID.

(5) Any arbitration under paragraph (4) shall be held in a state that is party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York, June 10, 1958.

(6) The consent given by each Contracting Party in paragraph (2) and (4) and the submission of the dispute by the investor

under the said paragraphs shall satisfy the requirements of:

(a) Chapter II of the Washington Convention (Jurisdiction of the Centre) and the Additional Facility Rules for written consent of the parties to a dispute;

(b) Article 1 of the UNCITRAL Arbitration Rules for an agreement in writing on referral to arbitration by the parties to a contract; and

(c) Article II of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done in New York, June 10, 1958, for "an agreement in writing".

(7) Any arbitral award rendered pursuant to this Article shall be final and binding on the parties to the dispute subject to its post award-rights under the arbitral system utilised. Each Contracting Party shall give effect to the provisions of such award and provide for the enforcement of such an award in its territory.

(8) In any proceeding involving an investment dispute, a Contracting Party shall not assert, as a defence, counterclaim, 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 pursuant to an insurance or guarantee contract.

(9) Each Contracting Party hereby gives its consent to submit the dispute to arbitration as indicated above, irrespective of whether local remedies have been exhausted or not, if the investor has chosen to settle the dispute through arbitration, and irrespective of whether an arbitration clause is included in an agreement (if any) which has been concluded between the Contracting Party and the investor of the other Contracting Party, unless the dispute has been resolved under the dispute settlement provisions in any such agreements.

Article 8. Disputes between the Contracting Parties

(1) Any disputes between the Contracting Parties concerning interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Governments of the two Contracting Parties.

(2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall then agree upon a national of a third State as their chairman, to be appointed by the two Contracting Parties. The members shall be appointed within two months, and the chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

(4) If the limits referred to in Paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings; the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decisions direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 9. Application of the Agreement

(1) This Agreement shall apply to all investments, whether made before or after its entry into force, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before its entry into force.

(2) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 10. Entry Into Force, Duration and Termination

(1) The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the first day of the second month following the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 9 shall remain in force for a further period of twenty years from that date.

In witness whereof the undersigned, duly authorised to this effect, have signed this Agreement.

Done at Stockholm on 24 August 1999 in duplicate in the English language.

For the Government of the Kingdom of Sweden

Anna Lindh

For the Government of Malta

Joe Borg