



**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF MALTA**  
**AND**  
**THE GOVERNMENT OF THE ITALIAN REPUBLIC**  
**ON**  
**THE PROMOTION AND PROTECTION**  
**OF INVESTMENTS**

The Government of Malta and the Government of the Italian Republic, hereafter referred to as the "Contracting Parties",

Desiring to establish favourable conditions for improved economic co-operation between the Contracting Parties, and especially in relation to capital investment by investors of one Contracting Party in the territory of the other Contracting Party;

and

acknowledging that offering encouragement and mutual protection to such investment, based on international agreements, will contribute to stimulate business ventures, which foster the prosperity of both Contracting Parties,

Have agreed as follows:

Parties and recognised by its laws and regulations, such as public institutions, corporations, partnerships, foundations and associations, regardless of whether their liability is limited or otherwise.

5. The term "income" shall be construed to mean the money accruing from an investment, including in particular profits or interests, interest income, capital gains, dividends, royalties or payments for technical and other services as well as any consideration in kind such as, but not exclusively, raw materials, produce, products or live-stock.

6. The term "territory" shall be construed to mean, in addition to the areas contained within the land boundaries, the maritime zones. The latter also comprise the marine and submarine zones over which the Contracting Parties exercise sovereign rights or jurisdiction under international law.

7. The term "investment agreement" shall mean an agreement that a Contracting Party may stipulate with an investor of the other Contracting Party in order to regulate the specific relationship concerning the investment.

8. The term "non-discriminatory treatment" shall mean treatment that is the more favourable between national treatment and the most-favoured-nation treatment.

9. The term "right of access" shall mean the right to be admitted to invest in the territory of the other Contracting Party.

Subject to the provisions of Article 3 paragraph 3 of this Agreement, investors of either Contracting Party shall have the right of access to investment activities in the territory of the other Contracting Party in accordance with its laws and regulations.

10. The term "activities connected with an investment" shall include, *inter alia* :

- a) the organisation, control, operation, administration and disposal of companies, branches, agencies, offices or other organisations for the conduct of business;
- b) the access to the financial markets;
- c) the borrowing of funds, the purchase, sale and issue of shares and other securities and the purchase of foreign exchange for imports necessary for the conduct of business affairs;
- d) the marketing of goods and services;
- e) the procurement, sale and transport of raw and processed materials, energy, fuels and means of production;
- f) the dissemination of commercial information.

**ARTICLE 2**  
**Promotion and Protection of Investments**

1. Each Contracting Party shall encourage investors of the other Contracting Party to invest in its territory and shall, in accordance with its laws, give the necessary authorisations in connection with such investments.
2. Investors of either Contracting Party shall have the right of access to investments in the territory of the other Contracting Party, which shall not be less favourable than that under article 3.1..
3. Each Contracting Party shall at all times ensure just and fair treatment of the investments of investors of the other Contracting Party. Each Contracting Party shall ensure that the management, maintenance, use, transformation, enjoyment or assignment of the investments effected in its territory by investors of the other Contracting Party, as well as companies and enterprises in which these investments have been effected, shall in no way be subjected to unjustifiable or discriminatory measures.
4. Each Contracting Party shall create and maintain in its territory a legal framework capable of guaranteeing to investors the continuity of legal treatment, including compliance in good faith to all undertakings entered into with regard to each individual investor.
5. Neither Contracting Party shall set any conditions for the establishment, expansion or continuation of investments which might imply taking over or imposing any obligations on export production and specifying that goods must be produced locally or any other condition to that effect.
6. Each Contracting Party shall, in accordance with its laws and regulations, treat as favourably as possible matters connected with the entry, stay and movement in its territory of the nationals of the other Contracting Party involved in the investment, and members of their families. Companies constituted under the laws and regulations of one Contracting Party and which are owned or controlled by investors of the other Contracting Party shall be permitted to engage top managerial personnel of their choice, regardless of nationality, in accordance with the laws of the host Contracting Party.

**ARTICLE 3**  
**National Treatment and the Most Favoured Nation Clause**

1. Each Contracting Party shall, within the limits of its own territory, offer investments effected by, and the income accruing to investors of the other Contracting Party treatment which is not less favourable than that accorded to investments effected by, and income accruing to its own nationals or investors of third states.

2. The treatment accorded to investment related activities of the investors of each Contracting Party shall not be less favourable than that accorded to similar investment related activities of its own investors or those of third states.

3. If a Contracting Party awards special advantages and privileges to investors of third states by virtue of an agreement establishing a custom or economic union, a common market, a free trade area, a regional or sub regional agreement, international multilateral economic agreements or any other agreement concluded in order to prevent double taxation or to facilitate cross border trade, that Contracting Party shall not be obliged to accord such advantages and privileges to investors of the other Contracting Party.

#### **ARTICLE 4**

#### **Compensation for Damage or Losses**

Should investors of one of the Contracting Parties incur losses or damages affecting their investments in the territory of the other Contracting Party due to war, other forms of armed conflict, a state of emergency, civil strife or other similar events, the Contracting Party in which the investment has been effected shall offer adequate compensation in respect of such losses or damages, irrespective of whether such losses or damages have been caused by governmental forces or other subjects. Compensation payments shall be freely transferable without undue delay and shall be made in a freely convertible currency.

The investors concerned shall receive the same treatment as the nationals of the other Contracting Party which, in all events, shall not be less favourable than the treatment accorded to investors of third states.

#### **ARTICLE 5**

#### **Nationalisation and Expropriation**

1. The investments to which this Agreement relates shall not be subject to any measure which might limit the right of ownership, possession, control or enjoyment of the investments, permanently or temporarily, save where specifically provided by current national or local legislation or regulations and orders handed down by courts or tribunals having jurisdiction.

2. Investments of investors of one of the Contracting Parties shall not be "de jure" or "de facto", directly or indirectly nationalised, expropriated, requisitioned or subjected to any measures having an equivalent effect in the territory of the other Contracting Party, including measures affecting companies and their assets controlled by the investor, except for public purposes or national interest and in exchange of immediate, full and effective compensation, and on condition that these measures are taken on a non-discriminatory basis and in conformity with all legal provisions and procedures.

3. The just compensation shall be equivalent to the fair market value of the expropriated investment immediately prior to the moment in which the decision to nationalise or expropriate was announced or made public.

Whenever there are difficulties in ascertaining the fair market value, it shall be determined in accordance with internationally acknowledged evaluation standards.

Compensation shall be calculated in a freely convertible currency at the prevailing exchange rate applicable on the date on which the decision to nationalise or expropriate was announced or made public and shall include interests calculated on the basis of EURIBOR standards from the date of nationalisation or expropriation to the date of payment and shall be freely collectable and transferable.

Once the compensation has been determined, it shall be paid without undue delay and in any case within 1 month.

4. In case the object of the expropriation is a joint-venture constituted in the territory of either Contracting Party, the compensation to be paid to the investor of a Contracting Party shall be calculated by taking into account the value of the share of such investor in the joint-venture, in accordance with relevant official documents of the joint-venture company and adopting the same evaluations criteria referred to in paragraph 3 of this Article.

5. A national or company of either Contracting Party asserting that all or part of its investments has been expropriated shall enjoy the right of a prompt review by the appropriate judicial or administrative authorities of the other Contracting Party, in order to determine whether any such expropriation occurred and, if so, whether expropriation and any compensation thereof conform with the provisions of this Agreement, and in order to decide all other relevant matters.

6. If, after the expropriation, the expropriated investment does not serve the purpose for which it was expropriated, wholly or partially, the former owner or his/his assignee/s shall be entitled to repurchase it. The price of such expropriated investment shall be calculated with reference to the date in which the repurchasing takes place, adopting the same valuation criteria taken into account when calculating the compensation referred to in paragraph 3 of this Article.

#### **ARTICLE 6**

#### **Repatriation of Capital, Profits and Income**

1. Each of the Contracting Parties shall guarantee that the investors of the other Contracting Party may transfer abroad the following, without undue delay, in any convertible currency,

a) capital and additional capital, including reinvested income, used to maintain and increase investment;

b) the net income, dividends, royalties, payments for technical and other services, interests and other profits;

c) income deriving from the total or partial sale or the total or partial liquidation of an investment;

d) funds to repay loans connected with an investment and the payment of the related interests;

e) remuneration and allowances paid to nationals of the other Contracting Party for work and services performed in relation to an investment effected in the territory of the other Contracting Party, in the amount and manner prescribed by the national legislation and regulations in force;

f) compensation payments under article 4.

2. Without restricting the scope of Article 3 of this Agreement, the Contracting Parties undertake to apply to the transfers mentioned in paragraph 1 of this Article the same favourable treatment that is accorded to investments effected by investors of Third States, in case it is more favourable.

#### **ARTICLE 7**

##### **Subrogation**

In the event that one Contracting Party or an entity representing the interests of that Contracting Party has provided a guarantee in respect of non-commercial risks for investment effected by one of its investors in the territory of the other Contracting Party, and has effected payment to the said investor on the basis of that guarantee, the other Contracting Party shall recognise the assignment of the rights of the investor to the first-named Contracting Party. In relation to the transfer of payments to the Contracting Party or an entity representing the interests of that Contracting Party by virtue of this assignment, the provisions of Articles 4, 5 and 6 of this Agreement shall apply.

#### **ARTICLE 8**

##### **Transfer procedures**

1. The transfers referred to in Articles 4, 5, 6 and 7 shall be effected without undue delay and, in all events, within six months after all fiscal obligations have been met, and shall be made in a freely convertible currency. All the transfers shall be made at the prevailing exchange rate applicable on the date on which the investor applies for the related transfer, with the exception of the provisions under paragraph 3 of article 5 concerning the exchange rate applicable in case of nationalisation or expropriation.

The provisions of this Agreement shall not, however, limit the application of the national legal provisions aimed at preventing fiscal evasion and tax avoidance. To this end the competent Authorities of each Contracting Party commit themselves to provide any useful information upon the other Contracting Party's request.

2. The fiscal obligations under the previous paragraph are deemed to be complied with when the investor has fulfilled the proceedings provided for by the law of the Contracting Party in the territory of which the investment has been carried out.
3. Invested profits shall enjoy the same protection accorded to the original investment.

#### ARTICLE 9

##### Settlement of Disputes between Investors and Contracting Parties

1. Any disputes which may arise between one of the Contracting Parties and the investors of the other Contracting Party on investments, including disputes relating to the amount of compensation, shall, as far as possible, be settled amicably.

2. Where an investor of one Contracting Party has concluded an investment agreement with the other Contracting Party or an entity representing the interests of that other Contracting Party, the procedure laid down in such an agreement shall apply to any disputes arising between the investor and the other Contracting Party, or the above mentioned entity, concerning the issues covered by that agreement.

3. In the event that such disputes cannot be settled amicably within six months from the date of the written application for settlement, the investor in question may submit at his choice the dispute for settlement to:

- a) the Contracting Party's Court having territorial jurisdiction; or
- b) an ad hoc Arbitration Tribunal, in compliance with the arbitration regulation of the UN Commission on the International Trade Law (UNCITRAL). Each Contracting Party hereby undertakes to accept any such reference to the said arbitration; or
- c) the International Centre for Settlement of Investment Disputes, for the implementation of the arbitration procedures under the Washington Convention of 18 March, 1965, on the settlement of investment disputes between States and nationals of other States, if or as soon as both the Contracting Parties have acceded to it. As long as both Contracting Parties have not acceded to the above-mentioned Convention, each Contracting Party agrees that the dispute may be submitted to arbitration pursuant to the rules of the Additional Facilities of the International Centre for Settlement of Investment Disputes of 1978.

4. Under paragraph 3 (b) of this Article, arbitration shall be conducted pursuant to the following provisions:

the Arbitration Tribunal shall be composed of three arbitrators. If the arbitrators are not nationals of either Contracting Party, they shall be nationals of States having diplomatic relations with both Contracting Parties, appointed by the President of the Arbitration Institute of the Stockholm/Paris Chamber, in his capacity as Appointing Authority. The arbitration shall take place in Stockholm/Paris, unless the two parties in the arbitration have agreed otherwise. When delivering its decision, the Arbitration Tribunal shall apply the provisions contained in

this Agreement, as well as the principles of international law recognised by the two Contracting Parties. Recognition and implementation of the arbitration decision in the territory of the Contracting Parties shall be governed by their respective national legislation, in compliance with the relevant international conventions they are parties to.

5. Each Contracting Party shall refrain from negotiating through diplomatic channels any matter relating to arbitration or judicial procedures underway until these procedures have been concluded. If one of the Contracting Parties has failed to comply with the ruling of the arbitration tribunal or the court of law within the period envisaged by the ruling, or else within the period which can be determined on the basis of the applicable international or domestic law provisions, negotiation through diplomatic channels between the Contracting Parties may be undertaken on that matter.

#### **ARTICLE 10**

##### **Settlement of Disputes between the Contracting Parties**

1. Any disputes which may arise between the Contracting Parties relating to the interpretation and application of this Agreement shall, as far as possible, be settled amicably.

2. In the event that the dispute cannot be settled within six months from the date when one of the Contracting Parties notifies, in writing, the other Contracting Party, the dispute shall, at the request of one of the Contracting Parties, be laid before an ad hoc Arbitration Tribunal as provided in this Article.

3. The Arbitration Tribunal shall be constituted in the following manner: within two months from the moment on which the request for arbitration is received, each of the two Contracting Parties shall appoint a member of the Tribunal. The two members shall then choose a national of a Third State to serve as President. The President shall be appointed within three months from the date when the other two members are appointed.

4. If, within the period specified in paragraph 3 of this Article, the appointments have not been made, each of two Contracting Parties can, in default of any other arrangement, request the President of the International Court of Justice to make the appointment. In the event that the President of the Court is a national of one of the Contracting Parties or, for any reason, it is impossible for him to make the appointment, the request shall be made to the Vice-President of the Court. If the Vice-President of the Court is a national of one of the Contracting Parties, or is unable to make the appointment for any reason, the most senior member of the International Court of Justice, who is not a national of one of the Contracting Parties, shall be invited to make the appointment.

5. The Arbitration Tribunal shall decide by a majority vote, and its decision shall be binding. Both Contracting Parties shall pay the costs of the arbitrator designated by them and of their representative at the hearings. The President's costs and any other costs shall be divided equally between the Contracting Parties.



The Arbitration Tribunal shall lay down its own procedures.

#### **ARTICLE 11** **Relations between Governments**

The provisions of this Agreement shall be applied irrespective of whether or not the Contracting Parties have diplomatic or consular relations.

#### **ARTICLE 12** **Application of other Provisions**

1. If a matter is governed both by this Agreement and another international agreement to which both Contracting Parties are signatories, and by general international law provisions, the most favourable provision shall be applied to the Contracting Parties and to their investors.
2. Whenever the treatment accorded by one Contracting Party to the investors of the other Contracting Party, under its laws and regulations or other provisions or specific contract or investment authorisation or agreements, is more favourable than that provided under this Agreement, the most favourable treatment shall apply.
3. Should any substantial modification in the legislation of a Contracting Party regarding directly or indirectly an investment be made after the date when the investment has been made, it shall not be applied retroactively and such an investment shall therefore be protected under the provisions of this Agreement.
4. 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.

#### **ARTICLE 13** **Entry into Force**

This Agreement shall become effective as from the date of receipt of the last of the two notifications by which the two Contracting Parties notify each other that their respective constitutional procedures regarding the ratification of this Agreement have been completed.

**ARTICLE 14**  
**Duration and Expiry**

1. The present Agreement shall remain effective for a period of ten (10) years from the date of notification under Article 13 and shall be extended automatically for a further period of five (5) years thereafter unless notice of termination has been given in writing by one of the Contracting Parties at least six (6) months before the expiry of the original ten (10) year period.

2. In the case of investments effected prior to the expiry dates, as provided under paragraph 1 of this Article, the provisions of Articles 1 to 12 shall remain effective for a further (five) years after the aforementioned dates.

IN WITNESS WHEREOF, the undersigned representatives, being authorized by their respective Governments, have signed the present Agreement.

DONE AT Rome, this the 2<sup>nd</sup> day of December two thousand and two, in two originals, each in the Italian and in English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF  
MALTA



FOR THE GOVERNMENT OF THE  
ITALIAN REPUBLIC

