



AGREEMENT
BETWEEN
MALTA
AND
THE STATE OF KUWAIT
FOR THE PROMOTION AND PROTECTION
OF INVESTMENTS

AGREEMENT

BETWEEN MALTA

AND

THE STATE OF KUWAIT

FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

Malta and the State of Kuwait (hereinafter collectively referred to as the Contracting States and each referred to as a Contracting State).

Desiring to create favourable conditions for greater economic co-operation between them and in particular for investments by investors of one Contracting State in the territory and maritime zones of the other Contracting State in different development activities which may be of mutual benefit to the interest of the two Contracting States.

Recognising that the encouragement and reciprocal protection under international agreements of such investments will be conducive to the stimulation of business initiative and will increase the prosperity in both Contracting States.

Have agreed as follows:

ARTICLE 1

Definitions

For the purposes of this Agreement

1 The term 'investment' shall comprise every kind of asset invested before or after the entry into force of this Agreement by a natural or juridical person including the Government of a Contracting State in the territory or maritime zones of the other Contracting State in accordance with the Laws and Regulations of that State Without restricting the generality of the foregoing, the term 'investment' shall include:

- (a) movable and immovable property as well as any other property rights in rem such as mortgages, liens, pledges, usufruct and similar rights;
- (b) shares, stocks and debentures of companies or other rights or interests in such companies and government issued securities;

- (c) claims to money or to any performance having economic value associated with an investment;
- (d) copyrights, trademarks, patents, industrial designs, technical processes and other industrial property rights, know-how, trade secrets, trade names and goodwill;
- (e) any right conferred by law or contract and any licences and permits pursuant to law, including the right to search for, extraction and exploitation of natural resources .

Any alteration of the form in which assets are invested shall not affect their classification as investment

- (2) The term 'investor' shall mean any natural or juridical person including the Government of a Contracting State who invests in the territory or maritime zones of the other Contracting State.
- (3) The term 'natural person' shall mean with respect to either Contracting State a natural person holding the nationality of that State in accordance with its laws.
- (4) The term 'juridical person' shall mean with respect to either Contracting State, any entity established in accordance with, and recognised as a juridical person by the law of the State, such as public institutions corporations, authorities, foundations, companies, partnerships, firms, establishments, organisations and associations irrespective of whether their liabilities are limited or otherwise; and any entity established outside the jurisdiction of a Contracting State as a juridical person and in which such State or any of its nationals or any juridical person established within its jurisdiction has a predominant interest.
- (5) The term 'returns' shall mean amounts yielded by an investment and in particular, though not exclusively, includes profits, interest, capital gains, share dividends, royalties or fees.
- (6) Maritime zones mean the marine and submarine zones over which the Contracting States exercise, under international law, sovereign rights or jurisdiction

- (7) "Associated activities" include the organisation, control, operation, maintenance and disposition of juridical persons, branches, agencies, offices, factories or other facilities for the conduct of business, the acquisition, use, protection and disposition of property of all kinds, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares, and the purchase of foreign exchange for imports.

ARTICLE 2

Promotion and Protection of Investments

- 1 Each Contracting State shall encourage and create favourable conditions for investors of the other Contracting State to make investments in its territory and maritime zones and, in exercise of powers conferred by its laws and regulations, shall admit such investments.
- 2 Each Contracting State shall at all times ensure fair and equitable treatment to the investments of investors of the other Contracting State. Each Contracting State shall ensure that the management, exercise of rights and powers, maintenance, use, enjoyment or disposal of investments or any associated activities in its territory and maritime zones of investors of the other Contracting State shall not in any way be subjected to or impaired by unreasonable or discriminatory measures. Each Contracting State shall observe any obligation it may have entered into with regard to investments by investors of the other Contracting State.
3. The Contracting States shall periodically consult between themselves concerning investment opportunities within the territories of each other in various sectors of the economy to determine where investments from one Contracting State into the other may be most beneficial in the interest of both Contracting States, and accord them appropriate facilities, exemptions, privileges, incentives and other form of encouragement (including inter alia tax relief) to such an extent and on such terms and conditions as shall, from time to time, be determined by agreement between the Contracting States.

- 4 To attain the objectives of this Agreement, the Contracting States, when they deem feasible, shall encourage the formation and establishment of the appropriate joint legal entities, including a Kuwaiti-Maltese Holding Company, other companies or other similar business organisations to develop and execute investment projects in different economic sectors in accordance with the laws and regulations of the host State.
- 5 Investors of either Contracting State shall be permitted to engage top managerial personnel of their choice regardless of nationality to the extent permitted by the laws of the host State. The Contracting States shall make available all necessary facilities including the issuance of visas and permits of stay to such managerial personnel and to their families in accordance with the laws and regulations of the two Contracting States.
- 6 Once established, investments shall not be subject in the host State to additional performance requirements which hinder their expansion or maintenance, which require or enforce commitments to export goods produced or which specify that goods or services must be purchased locally, or which impose any other similar requirements.
- 7 With respect to its tax policies, each Contracting State shall strive to accord fairness and equity in the treatment of investments of investors of the other Contracting State. Furthermore, the Contracting States shall endeavour to conclude an agreement for the avoidance of double taxation as soon as possible.

ARTICLE 3
Most-favoured Nation Provisions

- 1 Each Contracting State shall in its territory and maritime zones accord investments and returns of investors of the other Contracting State treatment not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is the most favourable.
- 2 Each Contracting State shall in its territory and maritime zones accord investors of the other Contracting State, as regards management, maintenance, use, enjoyment or disposal of their investments or any other associated activity, treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is the most favourable.

ARTICLE 4
Exceptions

Nothing in this Agreement shall be interpreted as imposing a legal obligation on either Contracting State to extend to the investors of the other contracting State, the benefit of any treatment, preference or privilege which may be accorded to any other State or its investors by virtue of the formation of a customs union, or economic union, a free trade area, regional or subregional arrangement or any other agreement or arrangement relating wholly or mainly to taxation or any regional or subregional arrangement relating to movement of capital or frontier trade to which such State may be a party.

ARTICLE 5
Compensation for Damage or Loss

1. When investments by investors of either Contracting State suffer loss owing to war, other armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events in the territory or maritime zones of the other Contracting State, they shall be accorded by the latter Contracting State treatment as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting State accords to its own investors or to investors of any third State whichever is the most favourable.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting State who in any of the events referred to in that paragraph suffer damage or loss in the territory or maritime zones of the other Contracting State resulting from:
 - (a) requisitioning of their property by its forces or authorities,
 - (b) destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded just and adequate compensation for the damage or loss sustained during the period of the requisitioning or as a result of the destruction of the property. Resulting payments shall be freely transferable without delay.

ARTICLE 6
Nationalisation or Expropriation

- 1 (a) Investments of either Contracting State or any of its investors shall not be subject to sequestration, confiscation or any similar measures in the territory or maritime zones of the other Contracting State save with the order of a court of competent jurisdiction in commercial and civil matters issued in accordance with laws in force.
- (b) Investments of either contracting state or any of its investors shall not be nationalised, expropriated or subjected to any other measures of dispossession, direct or indirect or having effect equivalent to nationalisation or expropriation in the territory or maritime zones of the other Contracting State except for a public purpose in the national interest of that State, and then only against prompt, adequate and just compensation and on condition that such measures are taken on a non-discriminatory basis and in accordance with domestic laws of general application.
- (c) Such compensation shall represent the real value of the investment concerned and shall be computed on the basis of the market value of the investment immediately prior to the point of time when the decision for expropriation, nationalisation or dispossession was announced or became publicly known and shall be determined in accordance with recognised principles of valuation such as market value. Where the market value cannot be readily ascertained, the compensation shall be determined in accordance with generally recognised principles of valuation and on equitable principles taking into account, inter alia, the capital invested, natural and site of investment, depreciation, capital already repatriated, replacement value and other relevant factors.

The compensation shall include interest at the current LIBOR rate of interest from the date of nationalisation, dispossession or expropriation until the date of payment. The determination of the compensation, in the absence of agreement being reached between the investor and the host state, shall be referred to the settlement procedures in accordance with Article 9 of this Agreement. The compensation as finally determined shall be promptly paid and allowed to be repatriated without delay.

(d) Where a Contracting State nationalises or expropriates the assets of a company, firm or other business association or business concern, which is established or licensed, under the law in force, in its territory or maritime zones and in which the other Contracting State or any of its investors owns shares, stocks, debentures or other rights or interest, it shall ensure that prompt, adequate and just compensation is received and allowed to be repatriated. Such compensation shall be determined on the basis of the recognised principles of the valuation such as the market value of the shares immediately prior to the point of time when the decision for nationalisation or expropriation was announced or became publicly known. The compensation shall include interest at the current LIBOR rate of interest from the date of nationalisation or expropriation until the date of payment.

2 The provisions of paragraph 1 of this Article shall also apply to the current returns from the investment and, in the event of their reinvestment, the returns therefrom, as well as, in the event of liquidation, to the proceeds from the liquidation.

ARTICLE 7 Transfers

1 Each Contracting State shall guarantee without delay the transfer out of its territory in any freely convertible currency of :

- (a) the net profits, dividends, royalties, technical assistance and technical service fees, interest and other current income accruing from any investment by an investor of the other Contracting State;
- (b) the proceeds accruing from the sale or the total or partial liquidation of any investment made by an investor of the other Contracting State;
- (c) funds in repayment of borrowings;
- (d) the earnings of nationals of the other Contracting State who are allowed to work in connection with an investment in its territory;
- (e) amounts spent for the management of the investment in the territory of the other Contracting State or a third State;
- (f) additional funds necessary for the maintenance of the investment ; and

(g) compensation pursuant to Articles 5 and 6 and other similar payments

2 Without restricting the generality of Article 3 of this Agreement, the Contracting States undertake to accord to transfers referred to in paragraph (1) of this Article a treatment as favourable as that accorded to transfers originating from investments made by investors of any third State.

3 For the purpose of this Agreement, exchange rates shall be the rates effective for current transactions or those which are determined in accordance with the official rates agreed with the International Monetary Fund or, where such rates do not exist, the official exchange rates for Special Drawing Rights or United States dollars or any other convertible currency agreed between the Contracting States;

Provided always, that in the event of the introduction of a two-tier exchange rate system the appropriate rate of exchange shall be applied.

4 Such transfers as above shall, however, be subject to such reasonable regulatory procedures as shall, from time to time, be in force in the host State and shall likewise be ~~SUBJECT TO THE RIGHT OF ITS GOVERNMENT TO IMPOSE REASONABLE~~ restrictions for temporary periods not exceeding three months to meet situations of fundamental economic disequilibrium, provided that at least 50% of such transfers are allowed to be repatriated during such periods.

Article 8 Subrogation

1 If a Contracting State (or its designated Agency) makes payment to any of its investors under an indemnity or a guarantee it has granted in respect of an investment or any part thereof in the territory or maritime zones of the host State, or has otherwise become subrogated to any of the rights of such investors, with respect to such investments, the host State shall recognise:

(a) the right of the other Contracting State (or its designated Agency) arising from the assignment, indemnity or other subrogation whether under law or pursuant to a legal transfer;

(b) that the other Contracting State (or its designated Agency) is entitled by virtue of subrogation to enforce such right.

2 If such other Contracting State any amounts in such manner as above, it shall be accorded in respect thereof treatment not less favourable than that accorded to the funds of investors of the host State or of any third State whichever is the most favourable deriving from investment activities similar to those in which the party indemnified was engaged.

ARTICLE 9 Settlement of Investment Disputes

1 Any dispute arising out of an investment, between either Contracting State and an investor of the other Contracting State, shall, as far as possible, be settled by consultations and negotiations between the parties to the dispute.

2 If the dispute cannot be resolved through consultations and negotiations, then the dispute shall be submitted for settlement in accordance with the applicable dispute-settlement procedures upon which a contracting State and an investor of the other Contracting State have previously agreed. With respect to expropriation by either Contracting State, any dispute-settlement procedures specified in an investment agreement between such Contracting State and such investor shall remain binding and shall be enforceable in accordance with the terms of the investment agreement and treaties and other international agreements regarding enforcement of arbitral awards to which such Contracting State has subscribed.

3 (a) In the event that the dispute has not been resolved under the procedures specified above, the investor concerned may choose to submit the dispute in writing to the International Centre for the Settlement of Investment Disputes ("Centre") for settlement by conciliation or binding arbitration at any time, if, within three (3) months of the date upon which it arose (i) the dispute has not been settled through consultations and negotiations; or (ii) the dispute has not for any reason in good faith, been submitted for resolution in accordance with any applicable dispute-settlement procedures previously agreed to by the parties to the dispute.

(b) Each Contracting State hereby irrevocably consents in advance to the submission of an investment dispute to the Centre for settlement by conciliation or binding arbitration. This consent implies renunciation of the requirement that the internal administrative or judicial remedies should be exhausted.

(c) Conciliation or binding arbitration of such disputes shall be done in accordance with the provisions of the Convention on the settlement of Investment Disputes Between States and Nationals of Other States ("Convention") and the Regulations and Rules of the Centre.

4 In any proceeding judicial, arbitral or otherwise, concerning an investment dispute between it and an investor of the other contracting state, a Contracting State shall not assert, as a defence, its immunity. Any counter-claim or right of set-off may not be based on the fact that the investor concerned has received or will receive, pursuant to an insurance contract, indemnification or other compensation for all or part of its alleged damages from any third party whatsoever, whether public or private, including such other Contracting State and its subdivisions, agencies and instrumentalities. Notwithstanding the foregoing, an investor of the other Contracting State shall not be entitled to compensation for more than the value of its affected assets, taking into account all sources of compensation within the territory of the State liable for compensation.

5 For the purpose of any proceedings initiated before the Centre in accordance with this Article, any company that, immediately prior to the occurrence of the event or events giving rise to the dispute was a company of the other Contracting State, shall be treated as a national or company of such other Contracting State.

5 Neither Contracting State shall pursue through diplomatic channels any matter referred to arbitration until the proceedings have terminated and a Contracting State has failed to abide by or to comply with the award rendered by the Arbitral Tribunal

If in case the Convention is not applicable, then the dispute shall be settled by an ad hoc arbitration.

ARTICLE 10

Settlement of disputes between the Contracting States

Should any dispute arise concerning the interpretation or application of this Agreement the Governments of the Contracting States shall try to settle the same by negotiations.

If the dispute cannot be so settled within three months it shall, upon the request of either Contracting State, be submitted to an Arbitral Tribunal in accordance with the provisions of this article

3 The Arbitral Tribunal shall be constituted in the following way. Within two months of the receipt of the request for arbitration, each Contracting State shall appoint one member of the Tribunal. The two members shall then select a national of a third state which has diplomatic relations with the two Contracting States to act as Chairman (hereinafter referred to as the Chairman). The Chairman shall be appointed within three months from the date of appointment of the other two members.

4 If within the periods specified in paragraph 3 of this Article either party shall not have appointed its arbitrator or the two arbitrators shall not have agreed on the Chairman a request may be made to the President of the International Court of Justice to make the appointment. If he happens to be a national of either Contracting State or if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the appointment. If the Vice-President also happens to be a national of either Contracting State 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 State shall be invited to make the appointment.

5 The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting State shall bear the cost of its own arbitrator and its counsel in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by both Contracting States. The Arbitral Tribunal shall determine its own procedure.

ARTICLE 11 **Relations between Governments**

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting States.

ARTICLE 12 **Application of Other Rules and Special Commitments**

1 Where a matter is governed simultaneously both by this Agreement and by another international agreement to which both Contracting States are parties, or by general principles of international law nothing in this Agreement shall prevent either Contracting State or any of its investors who own investments in the territory or maritime zones of the other Contracting State from taking advantage of whichever rules are the more favourable to his case.

2 If the treatment to be accorded by one Contracting State to investors of the other Contracting State in accordance with its laws and regulations or other specific provisions or contracts is more favourable than that accorded by this Agreement, the more favourable treatment shall be accorded.

3 Either Contracting State shall observe any other obligation it may have entered into with regard to investments in its territory or maritime zones by investors of the other Contracting State.

ARTICLE 13
Entry into Force

This Agreement shall enter into force on the latter date on which either Contracting State notifies the other that its constitutional requirements for the entry into force of this Agreement have been fulfilled.

ARTICLE 14
Duration and Termination

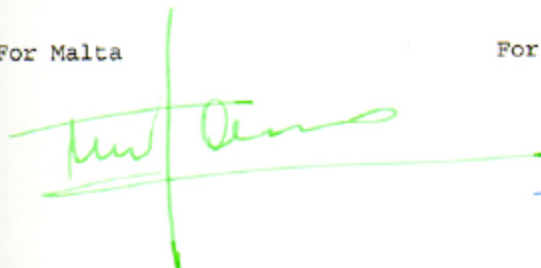
1 This Agreement shall remain in force for a period of thirty (30) years and shall continue in force thereafter for a similar period or periods unless, one year before the expiry of the inor any subsequent periods, either Contracting State notifies the other in writing of its intention to terminate the Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting State.

2 In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall continue to be effective for a period of twenty (20) years from the date of termination of the present Agreement.

In witness whereof the undersigned duly authorised thereto have signed this Agreement.

Done in duplicate at Kuwait on this 19th day of April 1995, corresponding to 19th day of Thulqida 1415H., in the English and Arabic languages both texts being equally authentic.

For Malta

A handwritten signature in green ink, appearing to be 'M. D. ...', is written over a horizontal green line. A vertical green line intersects the signature and the horizontal line.

For the State of Kuwait

A handwritten signature in blue ink, consisting of a large loop and a trailing flourish, is written over a horizontal blue line.