

CONFIDENTIALMEMORANDUM FOR CABINET BY THE MINISTER OF  
COMMONWEALTH AND FOREIGN AFFAIRSAgreement between the Government of Malta and the  
Government of the United States of America relating  
to United States Government Investment Guarantees

The Embassy of the United States of America has invited the Malta Government to enter into an agreement with the United States Government on investment guarantees and submitted a draft agreement to this end.

2. Such guarantees are authorized by Title III of the Act for International Development of 1961, as amended. Under this legislation, the United States Agency for International Development would be enabled to issue investment guarantees for eligible United States investment projects in Malta which would further the development of the economic resources and productive capacities of Malta.

3. The Ministries of Finance, Customs and Port and of Trade, Industry and Agriculture were consulted and they agreed that in principle the Malta Government should conclude the Agreement.

4. The Ministry of Justice and Parliamentary Affairs was also consulted. The reply was that the question of entering into such an agreement is one of policy. Nonetheless the Ministry submitted suggestions for amending two paragraphs of the agreement which were accepted by the United States Embassy and the attached draft agreement incorporates the two amendments at paragraph 2 and the second part of paragraph 7.

5. As amended paragraph 2 ensures that Government should know beforehand that a particular investment will be guaranteed and also what the terms of the guarantee are. The second amendment has been effected in order to make matters clearer.

6. Under the proposed Agreement the two governments would assume certain clearly defined obligations, in addition to such international law obligations as might otherwise arise out of an investment by a national of one in an enterprise within the national territory of the other:

(1) Each government agrees to consult, upon the request of the other, respecting projects or activities in which nationals of the United States of America propose to invest with the assistance of guarantees issued pursuant to the proposed Agreement, and it is agreed that approval of such projects or activities by the Government of Malta shall be required before the procedures of the Agreement shall be applicable with respect to guaranteed investments.

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(2) The Government of the United States of America agrees that it will not seek to exchange local currency acquired by it in connection with the discharge of such guarantee obligations unless private United States investors in the host country are lawfully able to convert local currency into United States dollars.

(3) Both Governments agree that appropriate arrangements shall be made for the transfer of any property to which the Government of the United States may become entitled through discharge of such guarantee obligations to an entity eligible to own such property under the laws of Malta.

(4) Both Governments agree to follow the procedures prescribed in the Agreement for resolution of any inter-governmental claim under international law arising out of the treatment of a guaranteed investment. The Agreement specifies that such international law questions shall be submitted, first, to inter-governmental negotiations, then if not resolved by mutual agreement, to international arbitration. The questions thus made subject to possible arbitration are expressly limited to (i) differences between the two governments concerning the proper interpretation of the provisions of the Agreement, and (ii) international law claims against either government arising out of the treatment of investments guaranteed in accordance with the Agreement.

7. In addition to the foregoing obligations to be assumed by the two governments, the proposed Agreement restates, in the context of the potential succession by the Government of the United States of America to claims and property interests of the guaranteed investor, certain governmental obligations which would exist independently of the Agreement, such as:

(1) To recognize the transfer from a guaranteed investor to the Government of the United States of America of any local currency, including the right of the Government of the United States of America to use and dispose of such currency to meet its expenditures in the national territory of Malta.

(2) To recognize the transfer from a guaranteed investor to the Government of the United States of America of any other local property or commercial claims including the right to use and dispose of such property or prosecute such commercial claims, it being understood that the proposed Agreement in no way gives the Government of the United States of America greater rights in such transferred property or claims than those of the guaranteed investor.

(3) To recognize the interest of the Government of the United States of America as subrogee to the guaranteed United States investor's claim - if such claim should exist - for compensation from the host country, it being understood that the Government of the United States of America shall assert no greater rights than those of the guaranteed investor under the laws of Malta with respect to such claim.

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The rights and obligations of an investor guaranteed under the proposed Agreement would be as established and recognized under Maltese law and the enforcement thereof would be within the jurisdiction of the Maltese Courts to the same extent as would be the case in the absence of the Agreement. The Government of Malta assumes no contractual obligation to an investor by virtue of the investor's receiving investment guarantees issued pursuant to the Agreement. The only inter-governmental claims against the host country government which would be subject to diplomatic discussion and arbitration in connection with payments under an invoked investment guarantee would be claims recognized as international under public international law principles.

8. It would appear from the terms of the Agreement that at this stage of her industrial development Malta stands to gain from the proposed Agreement in that American investors will be encouraged to invest their money in Malta.

9. It is, therefore, recommended that Malta should accept the United States Government's invitation to enter into the Agreement under reference and Hon. Members are invited to express their agreement to this step.

25th June, 1966.

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Exchange of Notes  
concerning an  
Agreement between the Government of Malta and the  
Government of the United States of America relating  
to United States Government Investment Guarantees

Excellency,

I have the honour to refer to conversations which have recently taken place between representatives of our two governments relating to investments in Malta which further the development of the economic resources and productive capacities of Malta and to guarantees of such investments by the Government of the United States of America. I also have the honour to confirm the following understandings reached as a result of those conversations:

1. When nationals of the Government of the United States of America (the Guaranteeing Government) propose to invest, with the assistance of guarantees issued pursuant to this Agreement, in a project or activity within the territorial jurisdiction of the Government of Malta (the Host Government), the two governments shall, upon the request of either, consult respecting the nature of the project or activity and its contribution to economic and social development in Malta.

2. The following paragraphs of this Agreement shall apply only with respect to guaranteed investments in projects or activities approved by the Host Government after notice of the intention to issue a guarantee and of the terms thereof has been given in writing by the Guaranteeing Government to the Host Government.

3. If the Guaranteeing Government makes payment to any investor under a guarantee issued pursuant to the present Agreement, the Host Government shall, subject to the provisions of the following paragraph, recognize the transfer to the Guaranteeing Government of any currency, credits, assets, or investment on account of which payment under such guarantee is made as well as the succession of the Guaranteeing Government to any right, title, claim, privilege, or cause of action existing, or which may arise, in connection therewith.

4. To the extent that the laws of the Host Government partially or wholly invalidate the acquisition of any interests in any property within its national territory by the Guaranteeing Government, the Host Government shall permit such investor and the Guaranteeing Government to make appropriate arrangements pursuant to which such interests are transferred to an entity permitted to own such interests under the laws of the Host Government. The Guaranteeing Government shall assert no greater rights than those of the transferring investor under the laws of the Host Government with respect to any interests transferred or succeeded to as contemplated in paragraph 3. The Guaranteeing Government does, however, reserve its rights to assert a claim in its sovereign

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capacity in the eventuality of a denial of justice or other question of state responsibility as defined in international law.

5. Amounts in the lawful currency of the Host Government and credits thereof acquired by the Guaranteeing Government under such guarantees shall be accorded treatment neither less nor more favourable than that accorded to funds of nationals of the Guaranteeing Government deriving from investment activities like those in which the investor has been engaged, and such amounts and credits shall be freely available to the Guaranteeing Government to meet its expenditures in the national territory of the Host Government.

6. (a) Differences between the two governments concerning the interpretation of the provisions of this Agreement shall be settled, insofar as possible, through negotiations between the two governments. If such a difference cannot be resolved within a period of three months following the request for such negotiations, it shall be submitted, at the request of either Government, to an ad hoc arbitral tribunal for settlement in accordance with the applicable principles and rules of public international law. The arbitral tribunal shall be established as follows: Each Government shall appoint one arbitrator these two arbitrators shall designate a President by common agreement who shall be a citizen of a third State and be appointed by the two governments. The arbitrators shall be appointed within two months and the President within three months of the date of receipt of either Government's request for arbitration. If the foregoing time limits are not met, either Government may, in the absence of any other agreement, request the President of the International Court of Justice to make the necessary appointment or appointments, and both Governments agree to accept such appointment or appointments. The arbitral tribunal shall decide by majority vote. Its decision shall be binding. Each of the Governments shall pay the expense of its member and its representation in the proceedings before the arbitral tribunal, the expenses of the President and the other costs shall be paid in equal parts by the two governments. The arbitral tribunal may adopt other regulations concerning the costs. In all other matters, the arbitral tribunal shall regulate its own procedures.

(b) Any claim, arising out of investments guaranteed in accordance with this Agreement, against either of the two governments, which, in the opinion of the other, presents a question of public international law shall, at the request of the Government presenting the claim, be submitted to negotiations. If at the end of three months following the request for negotiations the two governments have not resolved the claim by mutual agreement, the claim, including the question of whether it presents a question of public international law, shall be submitted for settlement to an arbitral tribunal selected in accordance with paragraph (a) above. The arbitral tribunal shall base its decision exclusively

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on the applicable principles and rules of public international law. Only the respective Governments may request the arbitral procedure and participate in it.

7. This Agreement shall continue in force until six months from the date of receipt of a note by which one Government informs the other of an intent no longer to be a party to the Agreement. In such event, the provisions of the Agreement with respect to guarantees issued while the Agreement was in force shall remain in force after the denunciation of the Agreement for the duration of those guarantees provided that such duration shall not extend beyond twenty years from the date of issuance.

8. This Agreement shall enter into force on the date of the note by which the Host Government communicates to the Guaranteeing Government that the Agreement has been approved in conformity with the Host Government's constitutional procedures.

Upon receipt of a note from Your Excellency indicating that the foregoing provisions are acceptable to the Government of Malta, the Government of the United States of America will consider that this note and your reply thereto constitute an Agreement between our two Governments on this subject, the Agreement to enter into force in accordance with paragraph 8 above.

Accept, Excellency, the renewed assurance of my highest consideration.

L-ARKIVI NAZZJONALI TA' MALTA

transpose the areas earmarked for development from the existing map (Scale 1/25,000) to a larger scale map, on which the boundaries would be easily identifiable. Only then could the plan be presented to the public although, as a purely provisional step, I intend to exhibit the plan now in hand which indicates on general lines the areas reserved for building and those set aside for other uses.

14. Before development takes place it is essential that the approved plan be studied by the Departments concerned in order to plan drainage, water and electricity services.

Owing to the delicate nature of the matter the planners have produced only one copy of the map. This map may be consulted at the office of the Secretary to Cabinet.

A copy of the detailed report is annexed herewith.

2nd July, 1966.

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