

No. 13190

**UNITED STATES OF AMERICA
and
MALTA**

**Loan Agreement (with annex). Signed at Valletta on 15 June
1973**

Authentic text: English.

Registered by the United States of America on 27 March 1974.

**ÉTATS-UNIS D'AMÉRIQUE
et
MALTE**

**Accord de prêt (avec annexe). Signé à La Valette le 15 juin
1973**

Texte authentique : anglais.

Enregistré par les Etats-Unis d'Amérique le 27 mars 1974.

LOAN AGREEMENT¹

AGREEMENT, dated 15th June 1973, between the UNITED STATES OF AMERICA, acting through the Agency for International Development ("A.I.D.") and the GOVERNMENT OF MALTA ("Borrower").

Article 1. THE LOAN

Section 1.1. THE LOAN. Subject to the terms and conditions of this Agreement, A.I.D. hereby agrees to lend Borrower pursuant to the Foreign Assistance Act of 1961, as amended, (the "Act") up to five million United States dollars (\$5,000,000) (the "Loan") for the foreign exchange cost of commodities and services, which may include technical assistance and training services, necessary to promote the economic development of Malta, in categories approved by A.I.D. Such commodities and services authorized to be financed hereunder are hereinafter referred to as "Eligible Items". The aggregate amount disbursed hereunder is hereinafter referred to as "Principal".

Article 2. TERMS OF REPAYMENT AND INTEREST

Section 2.1. INTEREST. Borrower shall pay interest semi-annually to A.I.D. in United States Dollars on the unrepaid principal and on any interest due and unpaid, computed on the basis of a 365-day year and at the rates hereinafter stated. The first such payment shall be due and payable six (6) months after the first disbursement hereunder. Interest shall accrue from the dates of the respective disbursements at the rate of two per cent (2%) per annum for the ten (10) years following the date of such first disbursement, and thereafter at the rate of three per cent (3%) per annum. Disbursements hereunder shall be deemed to occur on the dates on which payments by A.I.D. are made to Borrower or to its designee or to a banking institution pursuant to a letter of commitment.

Section 2.2. PRINCIPAL. Borrower shall repay the principal to A.I.D. in United States Dollars in semi-annual installments in accordance with the terms of this Agreement and the amortization schedule to be provided to Borrower by A.I.D. after all disbursements have been made. Such amortization schedule shall provide for repayment of the Loan within forty (40) years of the first disbursement hereunder in sixty-one (61) approximately equal semi-annual payments of principal and interest, the first installment to be payable nine and one-half (9½) years after the date on which the first interest payment is due.

Section 2.3. APPLICATION AND PLACE OF PAYMENT. All payments shall be applied first to accrued interest and then to principal. Except as A.I.D. may otherwise direct in writing, payments shall be made to the Controller, Agency for International Development, Washington, D.C. 20523, and shall be deemed to have been made when received by A.I.D. at such address.

Section 2.4. PREPAYMENT. Borrower shall have the right to prepay all or any part of the principal, without penalty, on any date on which interest is due. Except as A.I.D. may otherwise agree, all prepayments shall be applied first to accrued interest

¹ Came into force on 15 June 1973 by signature.

and then to the remaining installments of principal in the inverse order of their maturity.

Article 3. CONDITIONS PRECEDENT

Section 3.1. CONDITIONS PRECEDENT TO FINANCING. Prior to the issuance of the first letter of commitment and to any disbursement hereunder, Borrower shall furnish A.I.D. in form and substance satisfactory to A.I.D.:

- (a) An opinion of the Crown Advocate General of Malta or of other counsel satisfactory to A.I.D., that this Agreement has been duly authorized or ratified by, and executed on behalf of, Borrower and constitutes a valid and legally binding obligation of Borrower in accordance with its terms;
- (b) Evidence of the authority of the person or persons who will act for Borrower pursuant to section 5.1, and a specimen signature of each such person certified as to its authenticity.

Section 3.2. TERMINAL DATE FOR FULFILLMENT OF CONDITIONS PRECEDENT. Except as A.I.D. may otherwise agree in writing, if the conditions required by section 3.1 have not been satisfied within forty-five (45) days from the date of this Agreement, A.I.D. at its option may at any time thereafter terminate this Agreement by written notice to Borrower.

Article 4. DISBURSEMENTS

Section 4.1. REQUEST FOR LETTERS OF COMMITMENT. To obtain disbursement of the Loan, the Borrower may from time to time submit financing requests to A.I.D. for the issuance of letters of commitment to one or more banking institutions in the United States designated by the Borrower and satisfactory to A.I.D., committing A.I.D. to reimburse such bank or banks for payments made, through letters of credit or otherwise, to the Borrower or any designee of the Borrower, pursuant to such documentation requirements as A.I.D. may prescribe. Banking charges incurred in connection with letters of commitment and disbursements shall be for the account of the Borrower and may be financed by the Loan.

Section 4.2. OTHER FORMS OF DISBURSEMENT. Disbursement of the Loan also may be made through such other means and by such other procedures as the Borrower and A.I.D. may agree to in writing.

Section 4.3. TERMINAL DATE FOR REQUESTS FOR LETTERS OF COMMITMENT. Except as A.I.D. may otherwise agree in writing, no letters of commitment shall be issued in response to a financing request received after thirty (30) months from the date of signing of this Agreement.

Section 4.4. TERMINAL DATE FOR REQUESTS FOR DISBURSEMENT. Except as A.I.D. may otherwise agree in writing, no disbursement of the Loan shall be made against documentation submitted after thirty-six (36) months from the date of signing of this Agreement.

Article 5. MISCELLANEOUS

Section 5.1. USE OF REPRESENTATIVES. (a) All actions required or permitted to be performed or taken under the Agreement by the Borrower or A.I.D. may be performed by their respective duly authorized representatives.

(b) The Borrower hereby designates the Accountant General of the Malta Government as its representative with authority to designate in writing other representatives of the Borrower in its dealings with A.I.D. in accordance with the

above sub-section. The Borrower's representatives named pursuant to the preceding sentence, unless A.I.D. is given notice otherwise, shall have authority to agree on behalf of the Borrower to any modification or amplification of this Agreement which does not substantially increase the Borrower's obligations hereunder. Until receipt by A.I.D. of written notice of revocation by the Borrower of the authority of any of its representatives, A.I.D. may accept the signature of such representatives on any instrument as conclusive evidence that any action effected by such instrument is authorized by the Borrower.

Section 5.2. REPORTS. A.I.D. shall be furnished with such reports and information relating to commodities and services financed by the Loan and the performance of Borrower's obligations under this Agreement as it may reasonably request.

Section 5.3. COMMUNICATIONS. Any notice, request or other communication given, made or sent by the Borrower or A.I.D. pursuant to this Agreement shall be in writing and shall be deemed to have been duly given, made or sent to the party to which it is addressed when it shall be duly delivered by hand or by mail, telegram, cable or radiogram to such other party at the following addresses:

To A.I.D.

Mail Address:

Agency for International Development
Washington, D.C. 20523

Cable Address:

AID, Washington, D.C.

To the Borrower:

Mail Address:

Accountant General
St. Calcedonius Square
Floriana

Cable Address:

Accgen Malta.

Other addresses may be substituted for the above upon the giving of notice and acknowledgement of such substitution.

All communications and documents submitted to A.I.D. hereunder shall be in English, and all technical and engineering specifications therein shall be in terms of U.S. standards, except as A.I.D. may otherwise agree in writing.

Section 5.4. A.I.D. REGULATION I AND STANDARD PROVISIONS ANNEX. The Standard Provisions Annex attached hereto and, except as A.I.D. may otherwise specify in writing, A.I.D. Regulation I, as from time to time amended and in effect as of the time of each relevant transaction are hereby incorporated herein and made a part hereof. If any provision of this Agreement or the said Annex is inconsistent with any provision of A.I.D. Regulation I, this Agreement or the said Annex shall govern. The definitions contained in A.I.D. Regulation I shall be applicable to this Agreement and to said Annex. References in said Annex to "this Agreement" are to the Agreement.

United States of America:

By JOHN I. GETZ
Title: Ambassador

Government of Malta:

By J. F. ABELA
Title: Minister of Finance
and Customs

STANDARD PROVISIONS ANNEX

Article 100. COVENANTS CONCERNING PROCUREMENT

Section 100.1. SOURCE OF PROCUREMENT. Except as A.I.D. may otherwise agree in writing, all eligible items shall have their source and origin in the United States.

Section 100.2. DATE OF PROCUREMENT. Except as A.I.D. may otherwise agree in writing, no commodity or service may be financed hereunder which was the subject of an order or contract firmly placed or entered into prior to the eligibility date, which shall be the date of this Agreement.

Section 100.3. SPECIFIC ITEMS. A.I.D. may decline to finance any specific commodity or service when, in its judgement, such financing would be inconsistent with the purposes of this loan or the Foreign Assistance Act of 1961, as amended, or of other legislation or policies applicable to A.I.D.

Section 100.4. MINIMUM SIZE OF TRANSACTIONS. The minimum size of transactions shall be as specified in the implementation letter.

Section 100.5. PROCEDURES. (a) A.I.D. will issue an implementation letter or letters and a Commodity Procurement Instruction or Instructions (CPI) for the information and reference of both parties which will record

— further details of A.I.D. requirements,

— a description of the procurement authorized by this Agreement, and arrangements and procedures for the procurement of eligible items under this Agreement.

(b) The provisions of section 201.22 of A.I.D. Regulation 1 regarding competitive bid procedures shall apply to procurement hereunder unless A.I.D. otherwise agrees in writing.

Section 100.6. UNITED STATES OWNED PROPERTY. Notwithstanding section 201.11 (a) of A.I.D. Regulation 1, Borrower shall avail itself of opportunities to procure U.S. Government-owned excess property to the maximum extent practicable and consistent with the purpose of this Loan.

Article 101. COVENANTS, REPRESENTATIONS AND WARRANTIES

Section 101.1. EXECUTION OF ARRANGEMENTS. Borrower shall carry out the arrangements contemplated hereunder with due diligence and efficiency and in conformity with sound financial, administrative and procurement arrangements satisfactory to A.I.D. Borrower shall obtain A.I.D. concurrence prior to any material modification or cancellation of any such arrangement, or any other arrangements, contracts, plans, specifications, or other documents or submissions approved by A.I.D.

Section 101.2. UTILIZATION OF COMMODITIES. Borrower shall use its best efforts to prevent the use of commodities to promote or assist any project or activity associated with or financed by any country not included in code 935 of the A.I.D. Geographic Code Book as in effect at the time of such projected use except with the prior written consent of A.I.D. Borrower agrees that all commodities and services shall be used for economic development.

Section 101.3. NOTICE OF MATERIAL DEVELOPMENT. Borrower represents and warrants that it has disclosed to A.I.D. all circumstances which may materially affect the arrangements contemplated hereunder or the discharge of Borrower's obligations under this Agreement and covenants that it will inform A.I.D. of any conditions which interfere, or which it is reasonable to believe will interfere, with these arrangements or the discharge of Borrower's obligations under this Agreement.

Article 102. GENERAL COVENANTS AND WARRANTIES

Section 102.1. NON-TAXATION OF AGREEMENT. This Agreement and the Loan shall be free from, and the principal and interest shall be paid without deduction for and free from, any taxation or fees imposed under any laws in effect within Malta.

Section 102.2. COMMISSIONS, FEES AND OTHER PAYMENTS. Borrower warrants and covenants that in connection with obtaining the assistance to be furnished hereunder or any action under this Agreement it has not paid and will not pay or agree to pay nor to the best of its knowledge has there been paid or will there be paid or agreed to be paid by any other person or entity, commissions, fees or other payments of any kind, except as regular compensation to Borrower's full-time officers and employees or as compensation for bona fide professional, technical or other comparable services, and if the amount of any such commission, fee or payment is deemed unreasonable by A.I.D., Borrower shall cause a reduction satisfactory to A.I.D. to be made therein.

Article 103. REMEDIES OF A.I.D.

Section 103.1. EVENTS OF DEFAULT: ACCELERATION. If any one or more of the following events ("events of default") shall occur:

- (a) Borrower shall fail to pay in full any interest or installment of principal when due;
- (b) Borrower shall fail to comply with any other provision contained herein or in any applicable provision of A.I.D. Regulation 1 or with any other of its undertakings submitted to A.I.D. in connection with obtaining this Loan; or
- (c) Any representation or warranty made by or on behalf of Borrower with respect to obtaining this Loan or made or required to be made hereunder is incorrect in any material respect;

Then A.I.D., in addition to the remedies provided in A.I.D. Regulation 1, at its option, may declare all or any part of the principal balance to be due and payable immediately, and upon any such declaration unless the default is cured within sixty (60) days thereafter, such principal and all accrued interest shall become due and payable immediately.

Section 103.2. TERMINATION OF DISBURSEMENTS: TRANSFER OF GOODS TO A.I.D. In the event that at any time:

- (a) An event of default, as defined in section 103.1 above, has occurred;
- (b) An event occurs which in the judgement of either party gives reasonable grounds to believe it improbable that the purposes of the loan will be attained or that Borrower will be able to perform its obligations hereunder; or
- (c) Any disbursement would be in violation of the legislation governing A.I.D.; or
- (d) A default shall have occurred under any other agreement between Borrower or any of its agencies and the United States or any of its agencies;

Then A.I.D., in addition to remedies provided in A.I.D. Regulation 1, at its option, may (i) decline to issue further letters of commitment or other disbursing authorizations, (ii) suspend or cancel outstanding letters of commitment or other disbursing authorizations to the extent that they have not been utilized through the issuance of irrevocable letters of credit, or to the extent that A.I.D. has not made direct reimbursement to the Borrower thereunder, giving notice to Borrower promptly thereafter, (iii) decline to make disbursements other than under letters of commitment, and (iv) at A.I.D.'s expense, direct that title to goods financed hereunder shall be transferred to A.I.D., if goods are in a deliverable state and have not been off-loaded in ports of entry of Malta.

Section 103.3. REFUNDS. (a) In addition to any refund otherwise required by A.I.D. pursuant to Regulation 1, if A.I.D. determines that any disbursement is not supported by valid documentation in accordance with this Agreement, or is in violation of the laws governing A.I.D. or that the assistance financed under this Agreement is not financed or used in accordance with the terms of this Agreement, the Borrower shall pay to A.I.D. within ninety days after receipt of request the full amount of such disbursement. Such refunds by the Borrower may be reused under the terms of this Agreement, should A.I.D. so specify in writing. Otherwise such refunds will be considered a reduction in the amount of A.I.D.'s obligation under this Agreement.

(b) In the event that A.I.D. receives a refund from any supplier or banking institution, or from any other third party connected with the Loan, with respect to goods or services financed under the Loan, and such refund relates to an unreasonable price goods or services, or to goods that did not conform to specifications, or to services that were inadequate, A.I.D. shall make such refund available for reuse for purposes of the program. However, if the refund shall be received by A.I.D. subsequent to the terminal date for requests for disbursement specified in this Loan Agreement, the refund shall be applied to principal and the amount of the Loan shall be reduced by the amount of such refund.

Section 103.4. WAIVERS. No delay in exercising or omitting to exercise, any right, power, or remedy accruing to A.I.D. under this Agreement shall be construed as a waiver of any of these rights, powers, or remedies.

Section 103.5. EXPENSES OF COLLECTION. All reasonable cost incurred by A.I.D. (other than salaries of its staff) in connection with the collection of amounts due under this Agreement may be charged to Borrower and reimbursed as A.I.D. may specify.
