EXPLANATORY MEMORANDUM

ON THE PROTOCOL AMENDING

THE DOUBLE TAXATION AGREEMENT WITH PROTOCOL

BETWEEN

THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

AND

THE GOVERNMENT OF THE REPUBLIC OF MALTA

In order to accommodate changes which the Government of the Republic of South Africa and the Government of the Republic of Malta desire to enact to the Double Taxation Agreement entered into between the Republic of South Africa and the Republic of Malta for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Rome, Italy on 16 May 1997(in this Protocol referred to as "the Agreement"), a Protocol to the Agreement has been negotiated.

The following amendments have been agreed upon.

ARTICLE I

Article 4 of the Agreement is amended by:

Deleting paragraph 1 and replacing it with a new paragraph which has the same definition of "resident" for both South Africa and Malta. The definition follows the OECD Model and includes the following points:

- Criteria for taxation as a resident are domicile, residence, place of management or any other criterion of a similar nature;
- The term also includes specific reference to the State itself and any political subdivision or local authority thereof;
- This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

ARTICLE II

Article 10 is the Article dealing with dividends in the Agreement. In this Protocol paragraph 2 of Article 10 is deleted and the provisions of a new paragraph 2 are introduced in line with other South African treaties.

The new paragraph 2 of Article 10 provides for the common international tax treatment of cross-border dividends, in terms of which the source State in which the dividends are declared may impose a limited withholding tax on the non-resident shareholder.

The limitation on withholding tax rates in the source State, imposed by paragraph 2, is as follows:

(a) where the dividends are paid by a South African resident company to a resident of Malta who is the beneficial owner of the dividends, the tax levied in South Africa shall not exceed:
   (i) 5% of the gross amount of the dividends if the beneficial owner is a company which holds at least 10% of the capital of the company paying the dividends, This limitation is intended to encourage substantial (i.e. at least 10%) investment by companies resident in Malta in South African companies;
   (ii) in all other cases the rate of tax is limited to 10% of the gross amount of the dividends.

(b) where the dividends are paid by a company resident in Malta to a resident of South Africa who is the beneficial owner thereof, Malta tax on the gross amount of the dividends shall not exceed the tax leviable on the profits out of which the dividends are paid.

The mode of application of these limitations shall be settled by the competent authorities of the two States.

Tax on the profits of the company will not be affected by this paragraph.

ARTICLE III

Paragraph 1 stipulates that the Government of the Republic of Malta and the Government of the Republic of South Africa will notify each other in writing through the diplomatic channel of completion of their domestic requirements for the entry into force of this Protocol which will form an integral part of the Agreement. This Protocol shall enter into force in both Contracting States on the date of the later of these notifications.

Paragraph 2 specifies that: the Protocol will only come into effect once taxation at shareholder level of dividends becomes effective in South Africa. South Africa is obliged to notify Malta in writing of the completion of the procedures required by its law for the introduction, and date of entry into force, of the new system of taxation of dividends.

ARTICLE IV

This Article makes provision for the Protocol to remain in force as long as the Agreement remains in force.