AGREEMENT BETWEEN THE ITALIAN REPUBLIC AND THE LEBANESE REPUBLIC ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Lebanese Republic and the Government of the Italian Republic herein referred to as the "Contracting Parties",

Desiring to encourage economic cooperation to the mutual benefit of both States,

Intending to create and maintain favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the encouragement and contractual protection of such investments are apt to stimulate private business initiative and to increase the prosperity of both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

1 — The term "investor" means any natural or legal person of a Contracting Party investing in the territory of the other Contracting Party as well as the subsidiaries and branches registered and having a seat in the territory of one of the Contracting Parties and controlled in anyway by the above natural and legal persons:

a) The term "natural person", in reference to either Contracting Party, means any natural person holding the nationality of that State in accordance with its laws;

b) The term "legal person", in reference to either Contracting Party means any public institution, foundation, association or any entity registered in either Contracting Party and having its head office in its territory which are constituted or otherwise duly organized under the law of that Contracting Party.

2 — The term "investment" means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter and shall include particularly, but not exclusively:

a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, and pledges;

b) Debentures, shares and other kinds of interest in companies, irrespective whether these companies are publicly or privately owned;

c) Claims to money which have been used to create an economic value or claims to any performance having an economic value;

d) Intellectual property rights, such as copyrights, patents, industrial designs or models, trade or service marks, trade names, technical processes, know-how and goodwill, as well as other similar rights recognized by the laws of the Contracting Parties;

e) Business concessions under public law, including concessions to search, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law; and

f) Additional contributions to capital for the maintenance or development of an existing investment as well as reinvested income.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment.

3 — The term "returns" means amounts yielded by an investment and includes, in particular, though not exclusively, profits, dividends, interest, capital gains, royalties, management and technical assistance or other fees, irrespective of the form in which the return is paid.

4 — The term "territory" means:

a) For the Lebanese Republic, in addition to the zones contained within the internationally recognized boundaries, the marine and submarine zones over which Lebanon exercises sovereignty, sovereign and jurisdictional rights, in accordance with international law.

b) For the Italian Republic, in addition to the zones contained within the land boundaries, the marine and submarine zones over which Italy exercises sovereignty, sovereign and jurisdictional rights, in accordance with international law.

Article 2. Promotion and Protection of Investments

1 — Each Contracting Party shall in its territory promote investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

2 — Each Contracting Party, in accordance with its laws and regulations, shall allow the investor to engage top managerial and technical personnel of his choice, regardless of nationality and grant the related permits.

3 — Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of such investments. In particular, each Contracting Party or its competent authorities shall issue the necessary permits mentioned in paragraph 2 of this Article.

4 — Each Contracting Party shall create and maintain, in its territory favorable economic and legal conditions in order to ensure the effective application of this Agreement.

Article 3. National Treatment and Most Favored Nation Treatment

1 — Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to the investments made within its territory by its own investors, or than that granted by each Contracting Party to the investments made within its territory by investors of any third State, if this latter treatment is more favourable.

2 — The most favoured nation treatment shall not be construed so as to oblige a Contracting Party to extend to the investors and investments of the other Contracting Party the advantages resulting from any existing or future customs or economic union, a free trade area or regional economic organization or international multilateral economic agreement, to which either of the Contracting Parties is or becomes a member, or in the case of Lebanon the treatment granted to investors who are nationals of Arab countries in relation to their investment in real estate properties. Nor shall such treatment relate to any advantage which either Contracting Party accords to investors of a third State by virtue of a double taxation agreement or other agreements on a reciprocal basis regarding tax matters or to facilitate cross border trade.

Article 4. Expropriation and Compensation

1 — Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

2 — Neither of the Contracting Parties shall take, either directly or indirectly, de jure or de facto, measures of expropriation, nationalization or any other measures having the same nature or the same effect against investments of investors of the other Contracting Party, unless the measures are taken in the public interest as established by law, on a nondiscriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation, according to the enforced national law without any kind of discrimination. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. Once the amount of the compensation is fixed, it shall be paid within a period of three months and shall carry the interest calculated on a basis of Libor standards until the time of payment; it shall be effectively realizable and freely transferable. Provisions shall have been made in an appropriate manner at or prior to the time of expropriation, nationalization or comparable measure for the determination and payment of such compensation. The legality of any such expropriation, nationalization or comparable measure and the amount of

compensation shall be subject to review by due process of law.

3 — If the real market value is denominated in a freely convertible currency, the compensation paid shall be no less than the real market value prior to the date on which the decision to nationalize or expropriate is announced or made public, plus interest, calculated on the basis of Libor standards, accrued from the date of expropriation until the date of payment. If the real market value is denominated in a currency that is not freely convertible, the compensation paid — converted into the currency of payment — shall be no less than:

a) The real market value, prior to the date on which the decision to nationalize or expropriate is announced or made public, converted into a freely convertible currency at the market rate of exchange prevailing on the date of payment, plus

b) Interest, calculated on the basis of Libor standards for that freely convertible currency, accrued from the date of expropriation until the date of payment.

4 — The provisions of paragraph 2 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is constituted under the laws in force in any part of its own territory and in which investors of the other Contracting Party own shares.

5 — If, after the dispossession, the asset concerned has not been utilized, wholly or partially, for public purpose or national interest, the owner or his assignees are entitled to the repurchasing of the asset at the market price.

6 — Investors of either Contracting Party whose investments suffer losses or damages in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, civil strife, or revolt, shall be accorded treatment, as regards restitution, indemnification, compensation or other valuable consideration, no less favourable than that the latter Contracting Party accords to its own investors or to investors of any third State whichever is more favourable. Such payments shall be freely transferable.

Article 5. Free Transfer

1 — Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer of the payments relating to these investments, after all fiscal obligations have been met by the investors, particularly but not exclusively the following:

a) Investment returns according to Article 1, paragraph 3 of this Agreement;paragraph 3 of this Agreement;

b) Amounts relating to loans incurred, or other contractual obligations undertaken, for the investment;

c) Proceeds accruing from the total or partial sale, alienation or liquidation of an investment;

d) The earnings and other compensations of nationals of the other Contracting Party who are allowed to work in connection with an investment in the territory of the other Contracting Party;

e) Capital and additional amounts to maintain or increase the investment;

f) Payment of compensation under Article 4 of this Agreement; andArticle 4 of this Agreement; and

g) Payment provided for in Article 6 of this Agreement.Article 6 of this Agreement.

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

3 — The host Contracting Party of the investment shall allow the investors of the other Contracting Party access to the foreign exchange market in a non-discriminatory manner and to purchase the necessary foreign currency to make transfers pursuant to this Article, at the prevailing market rate of exchange applicable on the date on which the investor applies for such transfer.

4 — The Contracting Parties undertake to facilitate the procedures needed to make these transfers without delay, according to the practices followed in international financial centers. Both Contracting Parties should undertake to carry out the formalities required for the acquisition of foreign currency and for its effective transfer abroad within a period of one month. Moreover, the Contracting Parties should agree to accord to transfers referred to in the present Article a treatment no less favourable than that accorded to transfers originated from investments made by investors of any third state.

Article 6. Principle of Subrogation

If either Contracting Party or its designated agency makes payment to one of its investors under any financial guarantee against non-commercial risks it has granted in respect of an investment in the territory of the other Contracting Party, the latter shall, without prejudice to the rights of the former Contracting Party under Article 8 of this Agreement, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or title of that investor to the first Contracting Party or its designated agency. The latter Contracting Party shall also recognize the subrogation of the former Contracting Party to any such right or claim which that Contracting Party shall be entitled to assert to the same extent as its predecessor in title. The other Contracting Party shall be entitled to set off taxes and other public charges due and payable by the investor.

Article 7. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1 — In case of disputes regarding investments between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the Parties concerned with a view to solving the case, as far as possible, amicably.

2 — If these consultations do not result in a solution within six months from the date of written request for settlement, the investor may submit the dispute, at his choice, for settlement to:

a) The competent court of the Contracting Party in the territory of which the investment has been made; or

b) The International Center for Settlement of Investment Disputes (ICSID) provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of the other States, opened for signature at Washington, on March 18, 1965, in case both Contracting Parties have become members of this Convention; or

c) An ad hoc arbitral tribunal which, unless otherwise agreed upon by the Parties to the dispute, shall be established under the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL)

The choice made as per subparagraphs a, b, and c herein above is final.

3 — The arbitral tribunal shall decide the dispute in accordance with the provisions of this Agreement and the applicable rules and principles of international law. The awards of arbitration shall be final and binding on both parties to the dispute. Each Contracting Party shall carry out without delay any such award and such award shall be enforced in accordance with domestic law.

4 — The Contracting Party which is a party to the dispute shall, at no time whatsoever during the procedures involving investment disputes, assert as a defense its immunity or the fact that the investor has received compensation under an insurance contract covering the whole or part of the incurred damage or loss.

Article 8. Settlement of Disputes between Contracting Parties

1 — Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled amicably through diplomatic channels.

2 — If both Contracting Parties cannot reach an agreement within six months from the start of the negotiations, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

3 — If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4 — If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5 — If, in the cases specified under paragraphs 3 and 4 of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not national of either Contracting Party.

6 — The tribunal shall reach its decision by a majority of votes.

7 — The tribunal shall issue its decision on the basis of respect for the law, the provisions of this Agreement, as well as of the universally accepted principles of international law.

8 — Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

9 — Each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs.

10 — The decisions of the tribunal are final and binding for each Contracting Party.

Article 9. Other Obligations

1 — If the legislation of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a provision, whether general or specific, entitling investments by investors of the other Contracting Party to treatment more favourable than that provided for by this Agreement, such a provision shall, to the extent that it is more favourable, prevail over this Agreement.

2 — Each Contracting Party shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

3 — In case a Contracting Party shall issue legislation which is contrary to the provisions of this Agreement, such provisions would remain in force and hence will not be affected.

Article 10. Application of the Agreement

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its laws and regulations by investors of the other Contracting Party prior to the entry into force of this Agreement. However, the Agreement shall not apply to disputes that have arisen before its entry into force.

Article 11. Relations between Governments

This Agreement shall be in force irrespective of whether or not diplomatic or consular relations exist between the Contracting Parties.

Article 12. Final Provisions

1 — This Agreement shall enter into force on the thirtieth day after the day of the reception of the last notification by which the Contracting Parties have notified each other that their constitutional requirements for the entry into force of this Agreement have been fulfilled.

2 — This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force for an unlimited period unless denounced in writing by either Contracting Party twelve months in advance.

3 — In case of official notice as to the denunciation of the present Agreement, the provisions of Article 1 to 11 shall continue to be effective for a further period of ten years for investments made before the official notice was given.Article 1 to 11 shall continue to be effective for a further period of ten years for investments made before the official notice was given.

Done at ..... , on .....in two originals, in Arabic, Italian and English languages, each text being equally authentic. In case of difference of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE LEBANESE REPUBLIC

FOR THE GOVERNMENT OF THE ITALIAN REPUBLIC