

# AGREEMENT BETWEEN THE LEBANESE REPUBLIC AND THE KINGDOM OF SWEDEN ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Lebanese Republic and the Government of the Kingdom of Sweden 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 reciprocal 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 with regard to either Contracting Party:

- a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
- b) Legal entities, including companies, corporations, business associations and other organizations, including holding or offshore companies registered in either of the Contracting Parties, which are constituted or otherwise duly organized under the law of that Contracting Party and have their seat in the territory of that same Contracting Party, as well as legal entities established in the territory of a third Country but effectively controlled by nationals or legal entities of one of the Contracting Parties .

2- The term "investment" means every kind of asset owned or controlled, invested directly or indirectly 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 in particular, but not exclusively:

- a) Movable and immovable property as well as any other rights in rem, such as mortgages, liens, and pledges;
- b) Shares in companies and other kinds of interest in companies;
- c) Claims to money 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 Party concerned; and
- e) Business concessions under law, including concessions to search, extract or exploit natural resources as well as all other rights given by law, by contract or by administrative decision in accordance with the law;
- f) Goods, that under a leasing agreement are placed at the disposal of a lessee in the territory of one Contracting Party by a lessor being an investor of the other Contracting Party.

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 shall include in particular, but 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 the territory of the Contracting Parties, including the territorial sea and the economic exclusive zone as well as the continental shelf that extends outside the limits of the territorial waters over which the State concerned exercises, in accordance with internal and international law, sovereign rights or jurisdiction.

## **Article 2. Promotion and Protection of Investments**

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

2- A Contracting Party shall, in accordance with its laws and regulations, grant the necessary permits in connection with an investment made in its territory by an investor of the other Contracting Party, including authorizations for the entry, sojourn and work of top managerial, technical personnel and other individuals of their choice, regardless of their nationality, engaged by the investor for the purpose of carrying out activities associated with such an investment. This shall also apply to the members of their household.

3- Each Contracting Party shall ensure fair and equitable treatment within its territory of investors of the other Contracting Party and their investments. 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.

4- In no case, a Contracting Party shall award treatment of investors and their investments less favourable than that required by international law. It shall observe any other obligation it has assumed with regard to investments in its territory by investors of the other Contracting Party.

## **Article 3. National Treatment and Most Favored Nation Treatment**

1- Each Contracting Party shall apply to investments made in its territory by investors of the other Contracting Party a treatment not less favourable than that granted by each Contracting Party to investments by its own investors, or than that granted by each Contracting Party to investments made 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, to which either of the Contracting Parties is or becomes a member.

3- The provisions of paragraph 1 of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation regarding wholly or mainly to taxation.

## **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, measures of expropriation, nationalization or any other measures having the same nature or the same effect ( hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party, unless the measures are taken in the public interest as established by law, on a non-discriminatory basis, and under due process of law, and provided that provisions will be made for the payment of prompt, adequate and effective compensation. Such compensation shall be equivalent to the fair market value of the expropriated investment immediately before the date on which the actual or impending expropriation became known in such a way as to affect the value of investment.

The compensation shall be paid without delay and shall carry the commercial rate interest established on a market basis from the date of expropriation until the date of payment; it shall be effectively realizable and freely transferable in a freely convertible currency. Provisions shall have been made in an appropriate manner at or prior to the time of expropriation for the determination and payment of such compensation. The legality of any such expropriation, and the amount of compensation shall be subject to review by due process of law. 3- 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.

4- Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, a state of national emergency, or revolt, shall be accorded treatment, as regards restitution, indemnification, compensation or other valuable consideration, no less favourable than that which 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 in a convertible currency.

## **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, in particular but not exclusively the following:

- a) Returns;
- 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 individuals not being its nationals 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; and
- f) Payment of compensation under Article 4 of this Agreement.

2- Each Contracting Party shall allow the transfer, without delay, in a freely convertible currency of payments in connection with an investment at the market rate of exchange existing on the day of transfer with respect to spot transactions in the currency to be transferred.

## **Article 6. Subrogation**

If a Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall, without prejudice to the rights of the former Contracting Party under Article 8 of this Agreement, recognize the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise by virtue of subrogation any such right or title to the same extent as its predecessor in title.

## **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 any such dispute cannot be settled within six months following the date on which the dispute has been raised by the investor through written notification to the Contracting Party, each Contracting Party hereby consents to the submission of the dispute, at the investor's choice, for resolution by international arbitration to one of the following fora:

- a) 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 other States opened for signature at Washington, on March 18, 1965, in case both Contracting Parties have become parties of this Convention.

As long as this requirement is not met, each Contracting Party agrees that the dispute shall be submitted to arbitration pursuant to the Rules of the Additional Facility of the ICSID; or

- b) 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 appointing authority under the said rules shall be the Secretary-General of ICSID.

The choice made as per subparagraphs a and b herein above shall be final. 3- For the purpose of this Article and Article 25 (2) (b) of the said Washington Convention, any legal person which is constituted in accordance with the legislation of one

Contracting Party and which, before a dispute arises, was effectively controlled by an investor of the other Contracting Party shall be treated as a legal person of the other Contracting Party.

4- Any arbitration under this Article shall at the request of any party to the dispute be held in a State that is a party to the United Nations Convention on the Recognition and Enforcement of Foreign arbitral awards, done at New York, June 10, 1958.

5- The consent given by each Contracting Party in paragraph 2 and the submission of the dispute by an investor under the said paragraph shall constitute the written consent and written agreement of the parties to the dispute to its submission for settlement for the purposes of Chapter II of the Washington Convention (Jurisdiction of the Centre), Article 1 of the UNCITRAL Arbitration Rules and Article II of the United Nations convention on the Recognition and and Enforcement of Foreign arbitral awards, done at New York, June 10, 1958.

6- The arbitral tribunal shall decide the dispute in accordance with the provisions of this Agreement, the applicable rules and principles of International law and the national law of the host Contracting Party. 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 shall provide in its territory for the enforcement of such award.

7- 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, but the Contracting Party may require evidence that the compensating party agrees to that the investor exercises the right to claim compensation.

## **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, if possible, be settled through diplomatic channels.

2- If the Contracting Parties cannot reach an agreement within six months from the date on which negotiations were requested by either Contracting Party, 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 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 shall be final and binding for each Contracting Party.

## **Article 9. Other Obligations**

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 is provided for by this Agreement, such a provision shall, to the extent that it is more favourable, prevail over this Agreement.

## **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 on which the Governments of 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 fifteen 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 fifteen years from the date the official notice becomes effective for investments made before that date.

IN WITNESS WHEREOF the Undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done in Beirut on June 15, 2001 in two originals in the Arabic, Swedish and English languages, all texts being equally authentic. In case of divergence the English text shall prevail

On the signing of the Agreement between the Government of the Lebanese Republic and the Government of the Kingdom of Sweden, the undersigned have, in addition, agreed on the following provision which should be regarded as an integral part of this Agreement:

With reference to Article 3:

The provisions of this Article shall not prevent the Lebanese Government from applying Decree No 11614 dated 4 January, 1969 as amended concerning the acquisition in Lebanon of the real estate rights by non-Lebanese investors.

Done in Beirut on June 15, 2001 in two originals in the Arabic, Swedish and English languages, all texts being equally authentic. In case of divergence the English text shall prevail.