

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

THE REPUBLIC OF AUSTRIA AND THE LEBANESE REPUBLIC hereinafter referred to as the "Contracting Parties",

DESIRING to encourage economic co-operation 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 with regard to either Contracting Party:

- a) Natural persons who, according to the applicable 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,

Making or having made an investment in the territory of the other Contracting Party.

(2) The term "investment" means every kind of asset owned or controlled 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 particularly, but not exclusively:

- a) Movable and immovable, tangible and intangible property as well as any other rights in rem such as mortgages, liens and pledges;
- b) Shares, stocks and debentures and any other form of participation in a company and rights derived therefrom;
- c) Claims to money and claims to performance pursuant to a contract having an economic value;
- d) Intellectual property rights as defined in the multilateral agreements concluded under the auspices of the World Intellectual Property Organization, including copyrights, trademarks, patents, industrial designs, technical processes, know-how, trade secrets, trade names and goodwill;
- e) Any right whether conferred by law or by contract, including turnkey contracts, concessions to search, extract or exploit natural resources, licenses, authorisations or permits to undertake an economic activity.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as an investment, provided that such alteration is in accordance with the laws and regulations of the Contracting Party in whose territory the investment has been made.

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

(4) The term "territory" means the territory of either Contracting Party including its territorial sea, as well as the exclusive economic zone over which either Contracting Party exercises sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the sea bed and of the sea bed and its sub-soil.

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 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, operation, maintenance, use, enjoyment, extension, sale or liquidation of such investments.

Article 3. National Treatment and Most Favoured Nation Treatment

(1) Each Contracting Party shall ensure fair and equitable treatment within its territory to the investments of investors of the other Contracting Party. Each Contracting Party shall accord to investors of the other Contracting Party and to their investments, treatment no less favourable than that it accords to its own investors and their investments or to investors of any third country, with respect to the management, operation, maintenance, use, enjoyment, extension, sale or liquidation of an investment, whichever is more favourable to the investor.

(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:

a) Any existing or future customs or economic union, free trade area or regional economic organization, any multilateral agreement on investments, to which either of the Contracting Parties is or becomes a member; or

b) Any international agreement or arrangement relating wholly or partly to taxation or any domestic legislation relating to taxation.

Article 4. Transparency

(1) Each Contracting Party shall promptly publish, or otherwise make publicly available, its laws, regulations as well as international agreements which may affect the operation of the Agreement.

(2) Each Contracting Party shall promptly respond to specific questions and provide, upon request, information to the other Contracting Party on matters referred to in paragraph (1).paragraph (1).

(3) No Contracting Party shall be required to furnish or allow access to information concerning particular investors or investments the disclosure of which would impede law enforcement or would be contrary to its laws and regulations protecting confidentiality.

Article 5. 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 against investments of investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis, and under due process of law, and accompanied by the payment of prompt, effective and adequate 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, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry interest at a commercial rate established on a market basis for the currency of payment until the actual date of payment. In case of delay any exchange rate loss arising from this delay shall be borne by the host country. The compensation shall be effectively realizable and freely transferable. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by a judicial authority or another competent and independent authority of the latter Contracting Party.

(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.

Article 6. Compensation for Damages or Losses

(1) 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, revolt, or "force majeure", 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.

(2) An investor of a Contracting Party who in any of the events referred to in paragraph (1) suffers loss resulting from: paragraph (1) suffers loss resulting from:

- a) Requisitioning of its investment or part thereof by the forces or authorities of the other Contracting Party, or
- b) Destruction of its investment or part thereof by the forces or authorities of the other Contracting Party, which was not required by the necessity of the situation,

Shall in any case be accorded by the latter Contracting Party restitution or compensation which in either case shall be prompt, adequate and effective and, with respect to compensation, shall be in accordance with Article 5, paragraphs (2) and (3).

Article 7. Free Transfer

(1) Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall guarantee to those investors the free transfer of all payments into and out of its territory relating to these investments, particularly but not exclusively the following:

- a) Investment returns according to Article 1, paragraph (3) of this Agreement; paragraph (3) of this Agreement;
- b) Payments made under a contract, including a loan agreement;
- c) Proceeds accruing from the total or partial sale, alienation or liquidation of an investment;
- d) The earnings and other compensations of foreign personnel who are allowed to work in connection with an investment in the territory of the other Contracting Party;
- e) Initial capital and additional amounts to maintain or increase the investment;
- f) Payments of compensation under Articles 5 and 6 of this Agreement; and Articles 5 and 6 of this Agreement; and
- g) Payments arising out of the settlement of a dispute under Chapter Two of this Agreement. Chapter Two of this Agreement.

(2) Each Contracting Party shall further guarantee that such transfers may be made in a freely convertible currency accepted by the claimants at the market rate of exchange prevailing on the date of transfer in the territory of the Contracting Party from which the transfer is made.

(3) In the absence of a market for foreign exchange, the rate to be used shall be the most recent exchange rate for conversion of currencies into Special Drawing Rights.

Article 8. Principle of Subrogation

If either Contracting Party or its designated agency makes a payment to one of its investors under a guarantee or a contract of insurance it has granted in regard of an investment in the territory of the other Contracting Party, the latter shall 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. However, in case the dispute is submitted to ICSID, the investor or a designated agency organized under private law may initiate and pursue the case against the latter 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 is 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 may have entered into with regard to investments in its territory by investors of the other Contracting Party.

Article 10. Denial of Benefits

A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party and to its investments, if investors of a Non-Contracting Party own or control the first mentioned investment and the first mentioned investor has no substantial business activity in the territory of the Contracting Party under whose law it is constituted or organized.

Chapter Two : Dispute Settlement

Part One : Settlement of Disputes between a Contracting Party and an Investor of the Other Contracting Party

Article 11. Scope and Standing

This Part applies to disputes between a Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation of the former under this Agreement which causes loss or damage to the investor or his investment.

Article 12. Means of Settlement, Time Periods

Such a dispute should, if possible, be settled by negotiation or consultation. If it is not so settled within 60 days, the investor may choose to submit it for resolution:

- a) To the competent tribunals of the Contracting Party, party to the dispute, or
- b) In accordance with any applicable previously agreed dispute settlement procedure, or
- c) In accordance with this Article to:
 - i) The International Centre for Settlement of Investment Disputes ("the Centre"), established pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States ("the ICSID Convention"), if the Contracting Party of the investor and the Contracting Party, party to the dispute, are both parties to the ICSID Convention;
 - ii) Rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Centre, if the Contracting Party of the investor or the Contracting Party, party to the dispute, but not both, is a party to the ICSID Convention;
 - iii) A sole arbitrator or an ad hoc arbitration tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law ("UNCITRAL");
 - iv) The International Chamber of Commerce, by a sole arbitrator or an ad hoc tribunal under its rules of arbitration.

Article 13. Contracting Party Consent

(1) Each Contracting Party hereby gives its unconditional consent to the submission of a dispute to international arbitration in accordance with Part One of Chapter Two of this Agreement. However, a dispute may not be submitted to international arbitration if a local court of the Contracting Party where the investment has been made has rendered its decision on the dispute.

(2) The consent referred to in paragraph (1) implies the renunciation of the requirement that the internal administrative or juridical remedies should be exhausted.

Article 14. Place of Arbitration

Any arbitration under this Part shall, at the request of any party to the dispute, be held in a state that is party of the New

York Convention. Claims submitted to arbitration under this Part shall be considered to arise out of a commercial relationship or transaction for purposes of Article 1 of the New York Convention.

Article 15. Indemnification

A Contracting Party shall not assert as a defence, counter-claim, right of set-off or for any other reason, that indemnification or other compensation for all or part of the alleged damages has been received or will be received pursuant to a guarantee or insurance contract.

Article 16. Applicable Law

(1) A tribunal established under this Part shall decide the dispute in accordance with this Agreement and applicable rules and principles of international law.

(2) Issues in dispute under Article 9 shall be decided, absent other agreement, in accordance with the law of the Contracting Party, party to the dispute, this Agreement and such rules of international law as may be applicable.

Article 17. Awards and Enforcement

(1) Arbitration awards shall be final and binding upon the parties to the dispute and may provide the following forms of relief separately or in combination:

a) Pecuniary compensation, which shall include interest from the time the loss or damage has incurred until time of payment;

b) Restitution in kind in appropriate cases, provided that the Contracting Party may pay pecuniary compensation in lieu thereof where restitution is not practicable; and

c) With the agreement of the parties to the dispute, any other form of relief.

A tribunal may also award costs in accordance with the applicable arbitration rules.

(2) Each Contracting Party shall make provision for the effective enforcement of awards made pursuant to this Article and shall carry out without delay any such award issued in a proceeding to which it is party.

Part Two : Settlement of Disputes between the Contracting Parties

Article 18. Scope, Consultations, Mediation and Conciliation

Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled amicably or through consultations, mediation or conciliation.

Article 19. Initiation of Proceedings

(1) At the request of either Contracting Party a dispute concerning the interpretation or application of this Agreement may be submitted to an arbitral tribunal for decision not earlier than three months after such request has been notified in written to the other Contracting Party.

(2) A Contracting Party may not initiate proceedings under this Part of Chapter Two, for a dispute regarding the infringement of rights of an investor which that investor has submitted to arbitration under Part One of Chapter Two of this Agreement, unless the other Contracting Party has failed to abide by and comply with the award rendered in that dispute or those proceedings have terminated without resolution by an arbitral tribunal of the investor's claim.

Article 20. Formation of the Tribunal

(1) Such an arbitral tribunal shall consist 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.

(2) 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.

(3) 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.

(4) If, in the cases specified under paragraphs 2 and 3 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.

Article 21. Applicable Law, Default Rules

(1) The arbitral tribunal will decide disputes in accordance with this Agreement and the applicable rules and principles of international law.

(2) In all other respects, the tribunal shall define its own rules of procedure, unless the Contracting Parties decide otherwise.

Article 22. Awards

(1) The tribunal, in its award, shall set out its findings of law and fact, together with the reasons therefore, and may, at the request of a Contracting Party, award the following forms of relief, separately or in combination:

- a) A recommendation that a Contracting Party brings its actions into conformity with its obligations under this Agreement;
- b) Pecuniary compensation for any loss or damage to the requesting Contracting Party's investor or its investment or
- c) Any other form of relief to which the Contracting Party against whom the award is made consents, including restitution in kind to an investor.

(2) The arbitration award shall be final and binding upon the parties to the dispute.

Article 23. Costs

Each Contracting Party shall pay the cost of its representation in the proceedings. The cost of the tribunal shall be paid for equally by the Contracting Parties unless the tribunal directs that they be shared differently.

Article 24. Enforcement

Pecuniary awards which have not been complied with within one year from the date of the award may be enforced in the courts of either Contracting Party with jurisdiction over assets of the defaulting Contracting Party.

Chapter Three : Final Provisions

Article 25. Application of the Agreement

The present Agreement shall 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 as well as after the entry into force of this Agreement. The Agreement shall not apply to claims which have been settled or procedures which have been initiated prior to its entry into force.

Article 26. Relations between Governments

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

Article 27. Final Provisions

(1) The Contracting Parties shall notify each other when the conditions required by the national legislation for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force sixty days after the date of the latter notification.

(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 Articles 1 to 26 shall continue to be effective for a further period of ten years for investments made before official notice was given. Articles 1 to 26 shall continue to be effective for a further period of ten years for investments made before official notice was given.

DONE at Beirut, on the 26 of May 2001, in two originals in the English language.

For the Republic of Austria:

Dr. Helmut Freudenschuss

For the Lebanese Republic:

Fouad Siniora

PROTOCOL

On signing the Agreement between the Lebanese Republic and the Republic of Austria on the Reciprocal Promotion and Protection of Investments the Contracting Parties also agreed on the following clauses, which shall be deemed to form an integral part of the 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 real estate rights by non-Lebanese investors. Applications made by investors of the Republic of Austria under the provisions of Decree No 11614 as amended shall be considered favourably by the competent authorities of the Lebanese Republic.

DONE at Beirut, on the of May 2001, in two originals in the English language.

FOR THE LEBANESE REPUBLIC:

FOR THE REPUBLIC OF AUSTRIA: