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

The Government of the Lebanese Republic and the Government of the Republic of Cuba 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" refers with regard to either Contracting Party to:

a) Natural persons who, according to the law of that Contracting Party, are considered to be its citizens;

b) Legal entities, including companies, corporations, business associations and other organizations, 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.

The provisions of this sub-paragraph apply to holding or offshore Companies constituted in any of the Contracting Parties.

2- The term "investments" shall include every kind of assets and particularly, 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) 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;

d) 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.

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 in particular, though not exclusively, includes 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, sovereignty, sovereign rights and jurisdiction.

Article 2. Promotion - Protection

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- When a Contracting Party shall have admitted an investment on its territory, it shall, in accordance with its laws and regulations, grant the necessary permits in connection with such an investment, including authorizations for engaging top managerial and technical personnel of their choice, regardless of nationality.

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 authorizations mentioned in paragraph 2 of this Article.

Article 3. Most Favored Nation Treatment

1- Investments and returns of investors of each Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party and shall at all times be accorded fair and equitable treatment. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension or disposal of such investments.

2- Each Contracting Party shall in its territory accord investments or returns of investors of the other Contracting Party treatment not less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State, whichever is more favourable to the investor concerned. However, in case of Lebanon this sub-paragraph does not apply to treatment granted to investors of countries members of the Arab League.

3- If a Contracting Party accords special advantages to investors of any third State by virtue of an agreement establishing a free trade area, a customs union, a common market or a similar regional organisation or by virtue of an agreement on the avoidance of double taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

4- With respect to the national treatment principle provided for by paragraph 2 of this Article it is understood that the treatment of Cuban State companies or other Cuban national entities may only be used as a comparative basis to the extent such entities operate as investors, i.e. as defined by the law at present applicable, as a party to a joint venture or an international economic association.

Article 4. Expropriation - 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 as established by law, on a non-discriminatory 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 value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known. The compensation shall be paid without delay and shall carry the usual bank interest 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.

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, 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.

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, particularly but not exclusively the following:

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

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

c) Proceeds accruing form 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 compensation under Article 4 of this Agreement.

2- The host Contracting Party of the investment shall allow the investors of the other Contracting Party to repatriate what is referred to in paragraph 1 herein above in a freely convertible currency.

3- 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 three months. 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 regard 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 of 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- For the purpose of solving disputes with respect to 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) 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)

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 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 citizen 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 citizen 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 citizen of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not citizen 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, of the rules contained in this agreement over other Agreements in force between the Contracting Parties, and 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 regulation, 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 legislation 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.

Article 10. Pre Agreement Investments

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 Treaty 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 30 days after the date on which the Contracting Parties shall have notified each other that their legal requirements for the entry into force of this Agreement have been fulfilled. It shall remain in force for a period of ten years and shall be extended thereafter for an unlimited period unless denounced in writing by either

Contracting Party twelve months before its expiration.

2- In case of official notice as to the denunciation of the present Agreement, the provisions of Article 1 to 10 shall continue to be effective for a further period of ten years for investments made before official notice was given.

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

Done at Beirut, on December 14, 1995 in two originals, in Arabic, Spanish, 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

Fuad Siniora

FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA

Pedro Miret Prieto