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

The Government of the Lebanese Republic and the Government of the Republic of Korea (hereinafter 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 and public business initiative and to increase the prosperity of both States,

Have agreed as follows:

## Article 1. Definitions

For the purposes of this Agreement:

1. "investment" means every kind of asset established or acquired by an investor of one Contracting Party in the territory of the other Contracting Party and shall include particularly, but not exclusively:

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

b) Shares in, stock and debentures of, and any other form of participation in a company or any business enterprises and rights or interest derived therefrom;

c) Claims to money or to any performance under contract 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; and

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.

Any alteration of the form in which assets are invested or reinvested shall not affect their character as investment. 2. "investor" means with respect to either Contracting Party:

a) Any natural person who, according to the law of that Contracting Party, is considered to be its national;

b) Any legal person including public companies, public institutions, authorities, foundations, partnerships, firms, establishments, organizations, corporations, or associations, incorporated or constituted in accordance with the laws and regulations of that Contracting Party;

Who invest in the territory of the other Contracting Party. 3. "returns" means amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interest, capital gains, royalties, or other fees, irrespective of the form in which the return is paid.

4. "territory" means the territory of the Contracting Parties, including the territorial sea as well as the maritime areas including the exclusive economic zone, its seabed and subsoil adjacent to the outer limit of the territorial sea over which the State concerned exercises, in accordance with national and international law, jurisdiction and sovereign rights.

## Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory, and shall admit such investment in accordance with its laws and regulations.

2. Neither Contracting Party shall in any way, impair by unreasonable or discriminatory measures the operation, management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

3. 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.

## 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, whichever is more favorable.

2. Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State whichever is more favorable.

3. Provisions of this Article shall not be construed so as to oblige a Contracting Party to extend to the investors and investments of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

a) Any existing or future customs or economic union, a free trade area or regional economic organization or similar international agreement, to which either Contracting Parties is or becomes a party; or

b) 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.

4. Notwithstanding the provisions of this Article, each Contracting Party may apply its laws and regulations concerning the acquisition of the real estate rights in its territory by the other Contracting Party's investors.

## Article 4. Compensation for Losses

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, 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 favorable. Resulting payments shall be freely transferable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other contracting party resulting from:

a) Requisitioning of their property by its forces or authorities; or

b) Destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded restitution or adequate compensation no less favourable than that which would be accorded under the same circumstances to investor of the other Contracting Party or to an investor of any third State. Resulting payments shall be freely transferable without undue delay.

## Article 5. Expropriation

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

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 prompt, effective and adequate compensation, according to the enforced national law without any kind of discrimination. 2. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate from the date of expropriation until the date of payment, shall be made without delay, be effectively realizable and be freely transferable.

3. 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.

4. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, debentures or other forms of participation, it shall ensure that the provisions of paragraphs 1, 2 and 3 of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such nationals of companies of the other Contracting Party who are owners of those shares debentures or other forms of participation.

5. In both expropriation and compensation, treatment no less favourable than that which the Contracting Party accords to its own investors or to investors of any third State shall be accorded.

## Article 6. 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 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;

c) Proceeds accruing from the total or partial sale, transfer, liquidation or alienation 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) Capital and additional amounts to maintain or increase the investment; and

f) Payment of compensation under Articles 4 and 5 of this Agreement; and

g) Payments arising out of settlement of a dispute according to Articles 8 and 9.

2. The host Contracting Party of the investment shall allow the investors of the other Contracting Party to the foreign exchange market in a non-discriminatory manner and to purchase the freely convertible currency to make transfers pursuant to this Article without undue delay, at the prevailing market rate of exchange applicable on the date of transfer.

3. The Contracting Parties undertake to facilitate the procedures needed to make such 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 not exceeding 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 investors of any third state.

## Article 7. Principle of Subrogation

1. If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under any insurance policy or financial guarantee against non-commercial risks given in respect of an investment in the territory of other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognize:

a) The assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of party indemnified; and

b) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified; without prejudice to the rights of the first Contracting Party under Article 8 of this Agreement.

2. The first Contracting Party shall be entitled in all circumstances to the same treatment in respect of:

a) The rights and claims acquired by it by virtue of the assignment, and

b) Any payments received in pursuance of those rights and claims,

As the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns. 3. Any payments received in non-convertible currency by the first Contracting Party in pursuance of the rights and claims acquired shall be freely available to the first Contracting Party for the purpose of meeting any expenditure incurred in the territory of the second Contracting Party.

## Article 8. 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

The International Center for Settlement of Investment Disputes under the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the Center (Additional Facility of Rules), if one of the Contracting Parties is not a Contracting State of the ICSID Convention; or

c) The court of Arbitration of the International Chamber of Commerce; or

d) An international arbitrator or ad hoc arbitration tribunal to be appointed by a special agreement or established under the Arbitration Rules of the United Nations Commission on International Trade Law.

The choice made as per subparagraphs a), b), c) and d) 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.

## Article 9. Settlement of Disputes between Contracting Parties

1. Disputes between Contracting Parties regarding the interpretation or application 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 national of a third State who shall be appointed Chairman of the tribunal.

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 decide the dispute on the basis of the provisions of this Agreement, and the principles of international law. It shall determine its procedure.

8. 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 decision concerning costs.

9. The decisions of the tribunal, including decision on cost, are final and binding for each Contracting Party.

## Article 10. Other Obligations

1. If the provisions of law 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 rules, 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 rules shall, to the extent that they are 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 11. Application of the Agreement

This 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 12. Final Provisions

1. This Agreement shall enter into force on the thirtieth day after the date on which the Contracting Parties have notified each other in writing that their respective legal 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 and shall continue in force thereafter indefinitely unless either Contracting Party notifies the other Contracting Party in writing one year in advance of its intention to terminate this Agreement.

3. Provided that in respect of investments made whilst the Agreement is in force, the provisions of Articles 1 to 11 shall continue to be effective with respect to such investments for a further period twenty years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

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

Done in duplicate at Beirut, on May 5, 2006 in the Arabic, Korean and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.