

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

The Federal Republic of Germany and the Lebanese Republic,

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

(i) In respect of the Federal Republic of Germany are Germans within the meaning of its Basic Law, and

(ii) In respect of the Lebanese Republic are those who are considered nationals within the meaning of its applicable laws;

(b) Legal entities, including companies, corporations, business associations and other organizations, with or without legal personality, 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 registered 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) Claims to money which has been used to create an economic value or claims to any performance having an economic value;

(d) Intellectual property rights, such as copyrights, patents, utility-model patents, industrial designs or models, trade or service marks, trade names, trade and business secrets, 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 for, 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, interests, capital gain, 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, in accordance with national law, 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 international law, sovereignty, sovereign rights and jurisdiction.

Article 2. Promotion, Admission

(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. It shall in any case accord such investments fair and equitable treatment.

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

Article 3. Protection, Treatment

(1) Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party.

(2) The treatment by a Contracting Party of investments and investors of the other Contracting Party, as regards their activity in connection with investments, shall not be less favourable than that granted by each Contracting Party to the investments made within its territory by its own investors, or that granted by each Contracting Party to the investments made within its territory by investors of any third State.

(3) 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. 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.

Article 4. Free Transfer

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

(a) The principal and additional amounts to maintain or increase the investment;

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

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

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

(e) The compensation provided for in Article 5. Article 5.

(2) Transfers shall be made without delay at the prevailing market rate of exchange applicable on the date of transfer.

(3) If a market rate is not available, the applicable rate of exchange shall correspond to the cross rate obtained from those rates which would be applied by the International Monetary Fund on the date of payment for conversions of the currencies concerned into Special Drawing Rights.

(4) A transfer shall be deemed to have been made "without delay" if effected within such period as is normally required for the completion of transfer formalities. The said period shall commence on the day on which the relevant request has been submitted and should not exceed two months.

Article 5. Dispossession, 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 benefit, on a non-discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. 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. 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) 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 no less favourable by such other Contracting Party than that which the latter Contracting Party accords to its own investors as regards restitution, indemnification, compensation or other valuable consideration. Such payments shall be freely transferable.

(4) Investors of either Contracting Party shall enjoy mostfavourednation treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 6. 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 7. 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 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.

Article 8. 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 10, recognize, by virtue of the principle of subrogation, the assignment of any right of title of that investor to the first Contracting Party or its designated agency.

Article 9. 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, the parties to the dispute will try to solve the case, as far as possible, amicably.

(2) If these efforts 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 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 the event of both Contracting Parties having become Contracting States of this aforementioned Convention; 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) Unless the parties in dispute have agreed otherwise, the provisions of Article 10, paragraphs 2 to 9 shall be applied mutatis mutandis on condition that the appointment of members of the arbitration tribunal in accordance with Article 10,

paragraph 2 is effected by the parties in dispute and that, insofar as the periods specified in Article 10, paragraphs 3 and 4 are not observed, either party in dispute may, in the absence of other arrangements, invite the President of the Court of International Arbitration of the International Chamber of Commerce in Paris to make the required appointments. Article 10, paragraphs 2 to 9 shall be applied mutatis mutandis on condition that the appointment of members of the arbitration tribunal in accordance with Article 10, paragraph 2 is effected by the parties in dispute and that, insofar as the periods specified in Article 10, paragraphs 3 and 4 are not observed, either party in dispute may, in the absence of other arrangements, invite the President of the Court of International Arbitration of the International Chamber of Commerce in Paris to make the required appointments.

(4) 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.

(5) 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 10. 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 by the Governments of the two Contracting Parties.

(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 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 a citizen of either Contracting Party.

(6) The tribunal shall render its decision by a majority of votes on the basis of the rules contained in this Agreement and of the universally accepted principles of international law.

(7) Subject to other provisions agreed upon by the Contracting Parties, the tribunal 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 regulation concerning costs.

(9) The decisions of the tribunal are final and binding for each Contracting Party.

(10) If both Contracting Parties are Contracting States of the Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States, the arbitration tribunal provided for above may in consideration of the provisions of Article 27, paragraph 1 of the said Convention not be appealed to insofar as agreement has been reached between investors of one Contracting Party and the other Contracting Party under Article 25 of the Convention. This shall not affect the possibility of appealing to such arbitration tribunal in the event that a decision of the Arbitration Tribunal established under the said Convention is not complied with (Article 27) or in the case of an assignment under a law or pursuant to a legal transaction as provided for in Article 8 of this Agreement. Article 8 of this Agreement.

Article 11. Relations between the Contracting Parties

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 be ratified; the instruments of ratification shall be exchanged as soon as possible in Beirut.

(2) This Agreement shall enter into force 30 days after the date of exchange of the instruments of ratification. 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. After the expiry of the period of ten years, this Agreement may be denounced at any time by either Contracting Party giving twelve months' notice.

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

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

For the Federal Republic of Germany

Von Ploetz

For the Lebanese Republic

Fuad Siniora

On signing the Agreement between the Lebanese Republic and the Federal Republic of Germany on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement:

(1) Ad Article 1

Returns from the investment and, in the event of their re-investment, the returns therefrom shall enjoy the same protection as the investment.

(2) Ad Article 2

The Contracting Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with an investment; the same shall apply to employed persons of either Contracting Party who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications for work permits shall also be given sympathetic consideration.

(3) Ad Article 3

(a) Investments made in accordance with the legislation of either Contracting Party within the area of application of the law of the Contracting Party by investors of the other Contracting Party shall enjoy the full protection of the Agreement.

(b) Measures applied by the Lebanese Republic to promote individual investment projects from Arab countries for development purposes are considered compatible with Article 3, paragraph 2 provided they do not substantially impair the investments and activities of German investors in connection with any investment. The same applies to investments by Arab investors in real estate.

(c) The following shall, in particular, be deemed "treatment less favorable" within the meaning of Article 3: unequal treatment in the case of restrictions on the purchase of raw or auxiliary materials, of energy or fuel or of means of production or operation of any kind, unequal treatment in the case of impeding the marketing of products inside or outside the country, as well as any other measures having similar effects. Measures that have to be taken for reasons of public security and order, public health or morality shall not be deemed "treatment less favorable" within the meaning of Article 3.

(d) The provisions of Article 3 do not oblige a Contracting Party to extend to investors resident in the territory of the other

Contracting Party tax privileges, tax exemptions and tax reductions which according to its tax law are granted only to investors resident in its territory.

(4) Ad Article 5

A claim to compensation shall also exist when, as a result of State intervention in the company in which the investment is made, its economic substance is severely impaired.

(5) Whenever goods or persons connected with an investment are to be transported, each Contracting Party shall neither exclude nor hinder transport enterprises of the other Contracting Party and shall issue permits, in accordance with its laws, as required to carry out such transport. This shall include the transport of:

(a) Goods directly intended for an investment within the meaning of the Agreement or acquired in the territory of either Contracting Party or of any third State by or on behalf of an enterprise in which assets within the meaning of the Agreement are invested;

(b) Persons traveling in connection with an investment.

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

For the Federal Republic of Germany

Von Ploetz

For the Lebanese Republic

Fuad Siniora