

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

The Lebanese Republic and the Republic of Turkey 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" 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 having their headquarters in the territory of that Party;

Who have made an investment in the territory of the other Contracting Party. 2- The term "investment" means every kind of asset established or acquired 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 property as well as any other rights in rem, such as mortgages, liens, and pledges;
- b) Shares and stocks in companies and other kinds of participation in companies;
- c) Claims to money or any other rights having financial value related to an investment;
- 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 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. The said term shall refer to all direct investments made in accordance with the laws and regulations in the territory of the Party where the investments are made. 3- The term "direct investment" means obtaining a lasting interest by the investor of one Contracting Party in an enterprise established or incorporated in the territory of the other Contracting Party, by having an ownership of an equity capital stake of 10% or more of the ordinary shares or voting power.

4- 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.

5- The term "territory" means the territory of each Contracting Party including its territorial sea, as well as the exclusive

economic zone over which the Contracting Party exercises in accordance with international law, sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or nonliving, 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 on a basis not less favourable than that accorded in similar situations to investments of investors of any third country.

2- When a Contracting Party shall have admitted an investment on its territory, it shall, in accordance with its laws and regulations, issue 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- Investments by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party. 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.

Article 3. Treatment of Investments

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, 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:

a) 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; or

b) Any international agreement or arrangement relating wholly or mainly to taxation.

3- The provisions of paragraph 1 of this Article shall not be construed so as to oblige either Contracting Parties to extend to the investors and investments of the other Contracting Party the treatment granted to its own investor regarding ownership of real estate and other real rights. Furthermore, Contracting Parties shall apply paragraph 1 of this Article on a reciprocal basis as regard ownership of real estate and other real rights.

Article 4. Expropriation and Compensation

1- 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 the provisions of Article 3 of this Agreement, provided that provisions be made for effective and adequate compensation.

2- Such compensation shall be equivalent to the 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 at the date of expropriation. In case of delay it shall carry an interest rate equivalent to the highest interest paid on the public debt for equivalent maturity until the date of payment; it 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 due process of law.

Article 5. Compensation for Damages or Losses

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.

Article 6. Free Transfer

1- Either Contracting Party shall ensure that payments relating to investments made by investors of the other Contracting Party, may be freely transferred without delay into and out of its territory. Such transfers include in particular though not exclusively:

- a) Initial capital, and 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 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;
- f) Payment of compensation under Articles 4 and 5 of this Agreement; and
- g) Payments arising out of settlement of an investment dispute.

2- Transfers shall be made in any convertible currency at the market rate of exchange in force at the date of transfer, unless otherwise agreed by the investor and the hosting Contracting Party.

Article 7. Principle of Subrogation

1- If an investor of one Contracting Party receives a payment according to an insurance contract against non-commercial risks under a system established by law, he has entered into in respect of an investment, the other Contracting Party shall recognize the validity of the subrogation in favor of the insurer to any right or title held by the investor.

2- The other Contracting Party shall also recognize the subrogation of the insurer to any such right or title which that insurer shall be entitled to assert to the same extent as the investor.

3- Disputes between a contracting Party and an insurer shall be settled in accordance with the provisions of Article 8 of this Agreement.

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; or
- c) 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 choice made as per subparagraphs a, b, and c herein above is final.

4- 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 when applicable. 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 9. 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 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 national law, the provisions of this Agreement, 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.
- 11- A dispute shall not be submitted to an international arbitration court under the provisions of this Article, if the same dispute has been brought before another international arbitration court under the provisions of Article 8 and is still before the court. This will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

Article 10. 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 has assumed with regard to investments in its territory by investors of the other Contracting Party.

Article 11. 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 as well as after to 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 12. Final Provisions

- 1- Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the last letter of

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- This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force on the date of the last letter of notification of the completion of the constitutional formalities required in the territory of each Contracting Party.

4- With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

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

Done at Ankara, on the of May, 2004 in two originals in the English language, each one being equally authentic.