

Agreement Between the Government of the People's Republic of China and the Government of the Lebanese Republic Concerning the Encouragement and Reciprocal Protection of Investments

The Government of the People's Republic of China and the Government of the Lebanese Republic (hereinafter referred to as the Contracting Parties),

Intending to create favourable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the reciprocal encouragement, promotion and protection of such investments will be conducive to stimulating business initiative of the investors and will increase prosperity in both States,

Desiring to intensify the economic cooperation of both States on the basis of equality and mutual benefits,

Have agreed as follows:

Article 1 Definitions

For the purpose of this Agreement:

1. The term "investment" means every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the latter, and in particular, though not exclusively, Includes:

a) movable, immovable property, and may other rights in rem, such as mortgages and pledges;

b) shares, stocks and any other kind of interest in companies;

c) claims to money or to any other performance having an economic value;

d) intellectual property rights, such as copyrights, patents, industrial designs or utility 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 Party; 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,

2. 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 have their seat in the territory of that same Contracting Party.

3. The term “returns” means amounts yielded by an investment and in particular, though not exclusively, includes profits, dividends, interest, 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 party, including the territorial sea as well as the economic exclusive zone and 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 and Protection of Investments

1. Each Contracting Party shall encourage investors of the other Contracting Party to make investments in its territory and admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall grant assistance in, and provide facilities for obtaining visa to, and working permit to top managerial and technical personnel who are nationals of the other Contracting Party in, the territory of the former, in connection with activities associated with such investments.

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

Article 3 Most Favored Nation Treatment

1. Investments and activities associated with investments of investors of either Contracting Party shall be accorded fair and equitable treatment and shall enjoy protection in the territory of the other Contracting Party.

2. The treatment and protection referred to in paragraph 1 of this Article shall not be less favorable than that accorded to investments and activities associated with such investment of investors of a 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 of 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, or agreements for facilitating frontier trade.

Article 4 Expropriation

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

2. Neither Contracting Party shall expropriate, nationalize or take similar measures (hereinafter referred to as "expropriation") against investments of investors of the other Contracting Party in its territory, unless the following conditions are met:

- a) for the public interest;
- b) under domestic legal procedure;
- c) without discrimination;
- d) against compensation.

3. Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the expropriation has become publicly known. The compensation shall be paid without delay and shall carry the usual bank interest until 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 for the determination and payment of such compensation. The legality of any such expropriation and the amount of compensation shall be subject to review under the domestic legal procedures.

4. The provisions of paragraph 3 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 5 Compensation for Losses

1. Investors of one Contracting Party who suffer losses in respect of their investment in the territory of the other Contracting Party owing to war, a state of national emergency, insurrection, revolution, riot or other armed conflict, shall be accorded by the latter Contracting Party, if it takes relevant measures such as restitution, indemnification, compensation or other valuable consideration, treatment no less favourable than that accorded to investors of a third State.

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 reasonable compensation. Resulting payments shall be freely transferable.

Article 6 Free Transfer

1. Each Contracting Party shall, subject to its laws and regulations, guarantee investors of the other Contracting Party the free transfer of their investments and returns held in the territory of the other Contracting Party, including:

- a) profits, dividends, interests and other legitimate income;
- b) proceeds, including capital gains, accruing from the total or partial sale, alienation or liquidation of an investment;
- c) Payments made pursuant to a loan agreement in connection with investment;
- d) royalties in paragraph 1 (d) of Article 1;
- e) payments of technical assistance or technical service fees and management fees;
- f) Payments in connection with projects on contract;
- g) earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the other Contracting Party;
- h) Payment of compensation under Article 4 and 5 of this Agreement.

2. The transfer mentioned above shall be made at the prevailing market exchange rate of the Contracting Party accepting the investment on the date of transfer.

3. The Contracting Parties undertake to facilitate the procedures needed to make these transfers without delay. 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 reasonable period of time. 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 7 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 9 of this Agreement, recognize the assignment, whether under a law or pursuant to a legal transaction, of any right or claim of that investor to the former 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 8 Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicable through negotiations between the parties to the dispute.

2. If the dispute cannot be settled through negotiations within six months, either party to the dispute shall be entitled to submit the dispute to the competent court of the Contracting Party accepting the investment.

3. If a dispute involving the amount of compensation cannot be settled within six months after resort to negotiations as specified in paragraph 1 of this Article, it may be submitted at the request of either party to international arbitration. The provisions of this paragraph shall not apply if the investor concerned has resorted to the procedure specified in paragraph 2 of this Article.

4. The arbitration shall be carried by 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).

5. The arbitral tribunal shall decide the dispute in accordance with the provisions of this Agreement, the law of the Contracting Party to the dispute accepting the investment including its rules on the conflict of laws, as well as the generally recognized principles of international law.

6. The awards of the arbitral tribunal 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.

7. 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.

8. Unless otherwise decided by the arbitral tribunal, each party to the dispute shall bear the cost of its appointed member of the tribunal and of its representation in the proceedings. The cost of the appointed Chairman and the remaining costs shall be borne in equal part by the parties to the dispute.

Article 9 Settlement of Dispute 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, which has diplomatic relations with both Contracting Parties.

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 general principles of law, the provisions of this Agreement, as well as the generally 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 its arbitrator 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 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 favorable, 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 also apply to investments in the territory of a Contracting Party made in accordance with its 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 Relations between Governments

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

Article 13 Final Provisions

1. This Agreement shall enter into force on the thirtieth day after the day on which the Governments of the Contracting Parties have notified each other that their internal 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. 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 Article 1 to 12 shall continue to be effective for a further period of ten years for investments made before official notice was given.

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

Done at Beijing, on 13 June, 1996 in two originals, in Chinese, Arabic and English languages, each text being equally authentic. In case of difference of interpretation, the English text shall prevail.

For the Government of the People's Republic of China

For the Government of the Lebanese Republic

Protocol

On signing the Agreement between the Government of the People's Republic of China and the Government of the Lebanese Republic concerning the Encouragement 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 3

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

(2) Ad Article 6

The reasonable period of time mentioned in Article 6, paragraph 3, means a period of time which is normally required for the completion of transfer formalities according to the international financial practice.

Done at Beijing, on 13 June, 1996 in two originals, in Chinese, Arabic and English languages, each text being equally authentic. In case of difference of interpretation, the English text shall prevail.

For the Government of the People's Republic of China

For the Government of the Lebanese Republic