

# **Agreement between the government of the Hashemite Kingdom of Jordan and the government of the Republic of Turkey regarding the promotion and protection of mutual investments**

The Government of the Republic of Turkey and the Government of the Hashemite Kingdom of Jordan are referred to hereinafter as the "Contracting Parties";

Given the desire of the contracting parties to enhance economic cooperation between them, especially with regard to investor investments for either party in the territory of the other contracting party;

Whereas both parties are aware that it is agreed that the treatment granted to such investments will encourage the cash flow, technology and economic development of the contracting parties;

Whereas, both parties agree that fair and equitable treatment of investments is desirable in order to maintain a stable framework for investment and contribute to achieving the greatest possible effective use of economic resources and improving standards of living conditions;

Whereas, both parties are convinced that these objectives can be achieved without diluting the generally applicable health, safety, labor and environment standards of the host party;

Determined to conclude an agreement on the encouragement and protection of mutual investments;

Therefore, the two parties have agreed on the following:

## **Article 1. Definitions**

For the purposes of this agreement,

1. The term "investment" means every kind of asset, connected with business activities, acquired for the purpose of establishing lasting economic relations in the territory of the State of a Contracting Party in conformity with its laws and regulations, and that has the characteristics of an investment (1), including such characteristics as the commitment of capital or other resources, the expectation of regular gain or profit, the assumption of risk, contribution to economic development or a certain duration shall include in particular, but not exclusively:

(a) Movable and immovable property and any other rights such as mortgages, the right to seize the debtor's funds, pledges and any similar rights as defined in accordance with the laws and regulations of the Contracting Party in the territory in which the property is located;

(b) Reinvestment of proceeds, claims, or other rights of monetary value received by the investment;

(c) Stocks, securities, or any other form of corporate participation;

(d) Intellectual and industrial property rights, in particular patents, industrial designs, technical processes, trade names, goodwill and know-how;

(e) Commercial concessions granted by law or contract, and include concessions for exploration, extraction and exploitation of natural resources.

2. The term "investor" means:

(a) Natural persons who have the nationality of the contracting party in accordance with the laws.

(b) Companies, institutions and commercial partnerships that are registered or established in accordance with the laws in force of the contracting party and have registered offices along with effective commercial activities in the territory of that

contracting party, which has implemented an investment in the territory of the other contracting party.

3. The term “returns” means the amounts of an investment’s return and includes, in particular, but not limited to, profits, interest accruals, capital gains, tax revenues, fees and dividends.

4. “Territory” means:

(a) For the Turkish Republic: the land lands, inland waters, territorial waters and airspace above them, and the sea areas over which Turkey has sovereign rights or influence for the purpose of exploitation, exploration and preservation of natural resources, whether alive or not, in accordance with international law.

(b) For the Hashemite Kingdom of Jordan: the land lands of the Hashemite Kingdom of Jordan and the marine areas adjacent to the external borders of the territorial waters, including the seabed and subsurface over which the Hashemite Kingdom of Jordan exercises sovereignty in accordance with international law and the rights of sovereignty and influence.

(1) When an asset loses its investment characteristic, such an asset is not considered an investment, regardless of the form it enjoys.

## **Article 2. Scope of Application**

1. This agreement applies to investments in the territory of the Contracting Party that were concluded according to the national laws and regulations of this party by investors who hold the nationality of the other Contracting Party, whether before or after the entry into force of this agreement.

2. Disputes submitted to arbitration after the date of entry into force of this agreement shall be settled in accordance with the terms of this agreement. However, this Agreement will not apply to any disputes submitted to arbitration prior to the entry into force of this Agreement. Disputes submitted to arbitration prior to the entry into force of this agreement will be settled in accordance with the previous agreement.

## **Article 3. Promotion and Protection of Investments**

1. Subject to the laws and regulations, each of the Contracting Parties shall encourage investment in its territory with the largest possible amount of investor investments from the other contracting party.

2. In order to encourage the flow of mutual investments, each Contracting Party shall endeavor to inform the other contracting party, upon the request of that Contracting Party, of investment opportunities in its territory.

3. Each contracting party, subject to its regulations and laws relating to the entry, residence and work of natural persons, must ascertain in good faith and pay due diligence, regardless of the nationality of the requests of key employees, including members of senior management and technicians who are employed for the purpose of investments in its territory, and allow them entry and residence. Temporarily and work in his territory.

4. Investors' investments from each party are treated, at all times, in accordance with the minimum international law of treatment, including fair and equitable treatment and full protection and security in the territory of the other contracting party. No contracting party may in any way abuse the management, preservation, use, operations, enjoyment in, expansion, sale, liquidation or disposal of such investments by unreasonable or discriminatory measures.

## **Article 4. Treatment of Investments**

1. Each contracting party must accept investments in its territory on preferential bases not less than those granted in circumstances similar to investments by investors from any third country within the framework of laws and regulations.

2. Each Contracting Party grants these investments, upon their registration, preferential treatment not less than that granted in similar circumstances to the investments of investors or to the investments of investors from any third country, whichever is more preferable, with regard to the management, maintenance, use, operations, enjoyment, expansion, sale, liquidation and disposal of this investment.

3. (a) The terms of this Article shall not be construed as an obligation for any Contracting party to extend and include investors from the other Contracting Party to benefit from any treatment, preference or privilege that may have been granted by this Contracting Party previously under any international treaty or arrangements related mainly or in whole to taxation.

(b) The conditions of non-discrimination, national treatment and the most favored nation treatment contained in this agreement do not apply to all the benefits granted to citizens or companies owned, effectively and in the future, by any of the Contracting Parties pursuant to their membership in or affiliation with a customs union or an economic union or a monetary union, common market, or free trade area, being one of the member states of such a union, common market, free trade area, or any other third country.

(c) The most favored country referred to in paragraphs 1 and 2 does not include the treatment granted to investors other than the Contracting Parties and their investments under conditions related to the settlement of investment disputes contained in this agreement or in other international agreements concluded between a party and a non-Contracting Party.

(d) The conditions set forth in Articles 3 and 4 of this Agreement do not bind any of the Contracting Parties to grant investments to investors from the other Contracting Party the same treatment granted to the investments of their investors with regard to the ownership of land, real estate and real estate rights for these investments.

## **Article 5. General Exceptions**

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining and enforcing any non-discriminatory legal measures:

(a) Designed and applied to protect human, animal, plant, health or environmental protection.

(b) Related to the preservation of living and non-living, depleted natural resources.

2. Nothing in this agreement shall be construed as:

(a) A request from any contracting party to provide or permit access to any information the disclosure of which is considered contrary to the basic security interests.

(b) Any contracting party is prohibited from taking measures deemed necessary to protect basic security interests:

(i) Related to the trade in arms, ammunition and war equipment, and the deals in goods, materials, services, and other technology that they undertake, directly or indirectly, for the purpose of supplying to a military or security establishment.

(ii): taken in international relations in times of war or other emergency situations, or

(iii): it concerns the implementation of national policies or international treaties respecting the non-proliferation of nuclear weapons or nuclear explosive devices,

(c) Prevents any contracting party from taking measures in accordance with its obligations under The United Nations Charter to maintain international peace and security.

3. The adoption, maintenance and enforcement of such measures are subject to requirements that are not applied in a discriminatory, arbitrary or unfair manner and do not constitute (veiled) restrictions on investor investments for the party.

## **Article 6. Expropriation and Compensation**

1. Investments may not be expropriated, nationalized, or subjected, directly or indirectly, to measures of similar effects (hereinafter referred to as expropriation) except for public purposes in a non-discriminatory manner, and adequate and effective compensation is paid promptly, in accordance with the legal principles and principles of general treatment mentioned in Article 3 of this Agreement.

2. Non-discriminatory legal measures designed and applied to protect legitimate public interest objectives, such as health, safety and the environment, do not constitute indirect acts of expropriation, since a procedure or a series of actions that the Contracting Party may take may have an effect equivalent to direct expropriation without formal transfer of ownership or complete seizure.

3. The amount of compensation is equivalent to the market value of the invested investment before it is expropriated or becomes publicly known. Compensation shall be paid without any delay and shall be freely transferable as stipulated in paragraph 2 of Article 8.

4. Compensation shall be paid in a freely convertible currency. In the event that the compensation payment date is delayed, interest will result in an appropriate rate that is calculated from the date of confiscation until the date of payment.

## **Article 7. Compensation for Losses**

1. Investors from any Contracting Party whose investments incur losses in the territory of the other Contracting Party as a result of acts of war, uprising, civil unrest or similar events, shall be accorded preferential treatment from the other contracting party that is not less favorable than that accorded to its investors or investors from a third country, whichever is more preferable, with respect to any actions taken by it in connection with such losses.

2. Without prejudice to paragraph 1 above, the investors of any of the Contracting Parties, who in any of the cases referred to in the aforementioned paragraph may suffer losses in the territory of the other contracting party resulting from:

(a) Seizing their property by force or through the authorities; or

(b) Destroying their property, by his forces or through his authorities, by actions not resulting from combat operations or unnecessary actions in case of necessity,

It will grant adequate and effective compensation or return his property immediately in any of these cases. The resulting payments must be freely transferable.

## **Article 8. Repatriation and Transfer**

1. Each of the contracting parties shall ensure in good faith that all transfers related to investment are carried out freely and without delay into and out of the territory. Such transfers include:

(a) Initial capital and additional funds to maintain or increase the investment.

(b) Proceeds

(c) Amounts arising from the sale or liquidation of all or any part of the investment.

(d) Compensation in accordance with Articles 6 and 7 of this Agreement.

(e) Compensation and interest payments arising from investment-related loans.

(f) Salaries, wages and other fees received by citizens of one of the contracting parties who have obtained appropriate work permits related to investment.

(g) Payments arising from investment disputes.

2. Transfers are made in the convertible currency in which the investment was executed or in any convertible currency according to the exchange rate prevailing on the date of the transfer unless otherwise agreed between the investor and the host Contracting Party.

3. Notwithstanding the provisions of paragraphs 1 and 2 above, a Contracting Party may prevent a transfer process through a fair, non-discriminatory and in good faith application of its laws and regulations relating to:

(a) Bankruptcy, insolvency, or creditors' rights protection,

(b) Issuing, trading or dealing in securities, forward operations, options, or derivatives,

(c) commission of criminal or penal offenses,

(d) Ensure adherence to judiciary provisions or administrative procedures,

(e) financial reports or record keeping of transfers when necessary to assist law enforcement or financial oversight authorities.

4. In exceptional cases, when payments and financial movements cause or threaten to cause difficulties in the balance of payments, each of the contracting parties may temporarily restrict financial transfer operations, provided that such restriction is imposed on a non-discriminatory basis and in good faith.

## **Article 9. Subrogation**

1. If one of the Contracting Parties grants a general insurance contract or a guarantee system to protect the investments of its investors against non-commercial risks and in the event that one of the investors of the Contracting Parties subscribes to this system, then any replacement operation carried out by the insurance company under the insurance contract between the investor and the insured must be approved by the other Contracting Party.

2. The insurance company (the insurer) is entitled, according to the referral, to exercise the rights and enforce the investor's claims, and to assume the investment-related obligations. The assignment rights or claims must not exceed the original rights or the investor's original claims.
3. Disputes are settled between the Contracting Party and the insuring party according to the terms of Article 10 of this agreement.

## **Article 10. Settlement of Disputes between One of the Contracting Parties and the Investor of the other Contracting Party**

1. This article applies to disputes arising between one of the Contracting Parties and an investor of the other Contracting Party in relation to an allegation of a breach of one of his obligations under this Agreement that caused losses or damages incurred by the investor or his investments.
2. The investor shall notify the Contracting Party receiving the investment in writing, including detailed information on disputes arising between one of the Contracting Parties and an investor of the other Contracting Party in connection with his investments. The investor and the Contracting Party concerned shall assess the intention and if it is possible, to make endeavors to settle these disputes in good consultation and negotiation.
3. In the event that no settlement is reached in this way within six (6) months from the date of this written notification mentioned in paragraph 2 above. Disputes may be submitted, at the choice of the investor, to:
  - (a) The competent court of the Contracting Party in whose territory the investment is to be executed; and
  - (b) The International Center for Settlement of Investment Disputes established under the "Convention on Settlement of Investment Disputes Between States and Nationals of other States", or
  - (c) An ad hoc arbitration tribunal established under the arbitration rules of the United Nations Commission on International Trade Law;
  - (d) Any other arbitration institution or any arbitration rules agreed upon by the disputing parties.
4. When the investor submits the dispute to one of the courts mentioned in Paragraph 3 above, the choice of this court shall be final.
5. Notwithstanding the conditions set forth in Paragraph 3 of this Article, disputes arising directly from investments executed in accordance with the relevant laws and regulations of the host Contracting Party only with foreign capital and which have actually commenced are subject to the jurisdiction of the International Center for Investment Dispute Settlement or any other mechanism for international dispute settlement agreed upon by the Contracting Parties under paragraph 3 of this Article.
6. The arbitral tribunal shall make its decisions in accordance with the terms of this agreement and the laws and regulations of the Contracting Party concerned with the dispute in whose territory the investments are made (including the rules related to the conflict of laws) and the relevant principles of international law as agreed upon by the contracting parties.
7. Each Contracting Party shall implement these decisions in accordance with its national law.

## **Article 11. Denial of Benefits**

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is a company of such other Contracting Party and to investments of such investor if the company has no effective business activities in the territory of the Contracting Party under whose law it is constituted or organized and investors of a non-Contracting Party, or investors of the denying Contracting Party, own or control the company.
2. The denying Contracting Party shall, to the extent practicable, notify the other Contracting Party before denying the benefits.

## **Article 12. Settlement of Disputes between Contracting Parties**

1. The Contracting Parties shall seek, in good faith and in a spirit of cooperation, to find a prompt and fair solution to any dispute between them regarding the interpretation or application of this agreement. In this regard, the Contracting Parties agree to enter into direct and constructive negotiations to reach solutions. In the event that the Contracting Parties fail to

reach an agreement within six (6) months from the beginning of the dispute between them through the aforementioned methods, then the dispute may be submitted, upon the request of either party, to an arbitration panel consisting of three members.

2. Each of the Contracting Parties shall, within two months of receiving the request, appoint an arbitrator. The two arbitrators appoint a third arbitrator as their presiding judge, and he shall be of the nationality of a third party. In the event that either of the Contracting Parties fails to appoint an arbitrator within the specified period, the other Contracting Party may request the President of the International Court of Justice to appoint an arbitrator.

3. In the event that the arbitrators do not reach an agreement regarding the selection of the third arbitrator within two months after the appointment, the president shall be appointed upon the request of any of the contracting parties through the President of the International Court of Justice.

4. In the cases specified in paragraphs 2 and 3 of this article, and if the President of the International Court of Justice is prevented from carrying out this task or if he holds the nationality of any of the contracting parties, the appointment shall be made by the Vice President of the International Court of Justice. In the event that the vice president is unable to carry out such a task or if he is a subject of one of the two contracting parties, the appointment is made by the highest member of the court who does not have the nationality of either of the contracting parties.

5. The arbitration panel is given a period of three months from the date of selecting the president and agreeing on the rules of procedures consistent with the terms of this agreement. In the event that the arbitral tribunal does not agree on the rules of procedure, the arbitral tribunal shall request the President of the International Court of Justice to specify the rules of procedure, taking into account the recognized international arbitration rules.

6. Unless otherwise agreed, all deliveries must be submitted and all pleadings must be completed within eight (8) months from the date of choosing the president, and the arbitration panel must make its decision within two months (2 months) after the date of submission of the last deliveries or the date of closing the case, i.e. The two dates are further away. The arbitral tribunal must reach its decision, which will be final and binding, by the majority of votes. And the arbitration panel must reach its decision on the basis of this agreement and in accordance with the applicable international law between the contracting parties.

7. The two Contracting Parties shall bear equally the expenses of the president and the other arbitrators and the costs arising from the procedures. The arbitration panel may, at its own discretion, decide a higher percentage to be paid by one of the Contracting Parties.

8. A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article, if a dispute on the same matter has been brought before another international arbitral tribunal under the provisions of Article 10 and is still before the tribunal. This will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

## **Article 13. Service of Documents**

Notifications and other documents related to the dispute under Articles 10 and 12 of the Republic of Turkey shall be submitted by handing over to:

Cabinet, Legal Services Department, Cabinet Building, Vikalitler Street, District B No. 573, Prime Ministerial Office, Ankara / Turkey.

Notifications and other documents related to the dispute under Articles 10 and 12 in the Hashemite Kingdom of Jordan will also be submitted to:

Prime Minister's Office The Prime Minister - Fourth Circle Amman, Jordan

## **Article 14. Entry Into Force**

1. This Agreement shall enter into force from the date of receiving the last notification from the Contracting Parties in writing and through diplomatic channels and the completion of the relevant internal legal procedures necessary for this purpose.

2. This Agreement replaces the agreement concluded between the Republic of Turkey and the Hashemite Kingdom of Jordan on the promotion and protection of mutual investment signed on the second of August 1993 in Istanbul (the previous agreement) and which ends on the date of entry into force of this agreement. Disputes submitted after the

effective date of this agreement shall be settled in accordance with the terms of this agreement.

3. This Agreement shall remain in effect for a period of ten (10) years and shall continue in effect unless terminated in accordance with Paragraph 5 of this Article.

4. This Agreement may be amended in writing and with the mutual consent of the Contracting parties at any time. These amendments shall enter into force in accordance with the same legal procedures specified under the first paragraph of this Article.

5. Either party may, by means of a prior written notification sent to the other party, terminate this agreement at the end of the first ten years period or at any time thereafter.

6. With regard to the investments made or acquired before the date of termination of this agreement and those investments to which this agreement applies otherwise, the conditions of all other clauses of this agreement shall continue after that in effect for another ten years from the date of termination

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

This agreement was made in three identical copies in Oman. On 3/27/2016 in Arabic, Turkish and English. All texts are equally authentic.

In the case of differences in interpretation, the text in the English language prevails.

For the Government of the Turkish Republic

Mustafa Elitash

Minister of Economy

For the Government of the Hashemite Kingdom of Jordan

Constant Allor

Chairman of the Investment Authority