# Agreement Between the Republic of Thrkey and the Rebuplic of Slovenia On the Promotion and Protection of Investments

The Republic of Turkey and the Republic of Slovenia, hereinafter referred to as the Contracting Parties,

Desiring to intensify economic co-operation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other "Contracting Party",

Recognizing that the promotion and protection of investments on the basis of this Agreement will stimulate business initiatives,

Have agreed as follows:

## Article 1. Definitions

For the purpose of this Agreement:

1. The term "Investor" shall mean:

a) Natural persons having the nationality of either Contracting Party, in accordance with its laws,

b) Legal persons, namely corporations, firms or business associations, which are organized with business purposes, have their seat in the territory of one Contracting Party and are incorporated or constituted under the law of that Contracting Party.

2. The term "Investment" shall mean 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 including, in particular, though not exclusively:

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

b) Shares, stocks, and any other form of equity participation in a company;

c) Returns reinvested, claims to money or to any performance having an economic value;

d) Rights in the field of intellectual property; and

e) Business concessions conferred by law, by administrative act or under a contract, by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

Any alteration in the form in which assets are invested or reinvested shall not affect their character as investments. 3. The term "Returns" shall mean the amounts yielded by investments and in particular, though not exclusively, shall include profits, dividends, interests, royalties, capital gains or other forms of income related to the investments.

4. The term "Territory" shall mean,

a) With respect to the Republic of Turkey, its territory, territorial sea as well as the maritime areas over which it has jurisdiction or sovereign rights for the purpose of exploration, exploitation and conservation of natural resources, pursuant to international law.

b) With respect to the Republic of Slovenia, the territory under its sovereignty, including maritime areas, over which the Contracting Party concerned exercises its sovereignty or jurisdiction, in accordance with international law.

## Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory 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 State.

2. Each Contracting Party shall accord to investments in its territory of investors of the other Contracting Party fair and equitable treatment and full and constant protection.

3. Contracting Parties shall not impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

4. Subject to the laws and regulations of the Contracting Parties relating to the entry, sojourn and employment of aliens, each Contracting Party shall give sympathetic consideration to applications of:

a) Nationals of either Contracting Party to enter and remain temporarily in the territory of the other Contracting Party for purposes of establishing, developing, administering or advising on the operation of an investment to which they, or an investor of the first Contracting Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources,

b) Companies which are legally constituted under the applicable laws and regulations of one Contracting Party, and which are investments of investors of the other Contracting Party, to engage top managerial and technical personnel of their choice, regardless of nationality.

## Article 3. National and Most Favoured Nation Treatment

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, or returns related thereto, shall be accorded treatment which is not less favourable than the Contracting Party accords to the investments and returns made by its own investors or by investors of any third State, whichever is more favourable.

2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is not less favourable than the Contracting Party accords its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of this Article and Article 2 shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party, or to their investments, the benefit of any treatment, preference or privilege by virtue of:

a) Any existing or future free trade area, customs union or common market to which either of the Contracting Parties is or may become a Party,

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

## Article 4. Expropriation

1. Investments made by investors of a Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalized or subject to any other measure having effect equivalent to expropriation or nationalisation (hereinafter referred to as "expropriation") except for a public purpose, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation.

2. Such compensation shall amount to the real value of the expropriated investment at the time immediately before the expropriatory action was taken or became known.

3. Compensation shall be paid without delay. In case of delay, compensation shall also include interest, prescribed by law, from the date of expropriation until the date of actual payment.

4. The investor whose investments are expropriated, shall have the right to the review by a judicial or other competent authority of that Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

## Article 5. Compensation for Losses

Investors of one Contracting Party whose investments have suffered losses owing to war or other armed conflict, revolution, national uprising, state of emergency or any similar event in the territory of the host Party shall be accorded by this Contracting Party treatment in relation to such losses, including compensation, indemnification or restitution, no less

favourable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever is more favourable to the investor. Any payment made under this Article shall be immediately realisable and freely transferable.

## Article 6. Transfer of Payments

1. Each Contracting Party shall permit investors of the other Contracting Party the free transfer of funds related to their investments and in particular, though not exclusively:

a) Initial capital and additional contributions for the maintenance or development of the investments;

b) Returns;

c) Funds in repayment of loans related to an investment;

d) Proceeds from the sale or liquidation of all or part of an investment;

e) Any compensation or other payment referred to in Articles 4 and 5 of this Agreement;

f) Payments arising out of the settlement of a dispute;

g) Earnings and other remuneration of nationals engaged from abroad in connection with the investment.

2. Each Contracting Party shall further permit that transfers shall be made at the market rate of exchange existing on the date of transfer in the currency to be transferred.

## Article 7. Subrogation

If one Contracting Party or its designated agency, or a legal entity under its supervision (hereinafter referred to as "the Insurer") make payment to its own investor under a guarantee it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

a) The assignment, whether under the law or pursuant to a contract in the country of the insurer of any right or claim by the investor to the Insurer, as well as

b) That the Insurer is entitled by virtue of subrogation to exercise to the same extent as the investor the rights and enforce the claims of that investor.

## Article 8. Settlement of Disputes between an Investor and a Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party shall be settled amicably.

2. If such a dispute cannot be settled within a period of three (3) months from the date of a written request for settlement, the investor concerned may submit the dispute either to:

a) The competent court of the Contracting Party; or

b) Conciliation or arbitration through the International Centre for the Settlement of Investments Disputes (ICSID), established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D.C., on March 18, 1965; or

c) An ad-hoc 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. Each Contracting Party hereby consents unconditionally to the submission of an investment dispute to international conciliation or arbitration.

4. The award shall be final and binding on both parties to the dispute and shall be recognized and enforced in accordance with national law.

## Article 9. Settlement of Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through negotiations.

2. If the dispute cannot thus be settled within six (6) months, following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party be submitted to an Arbitral Tribunal.

3. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who on approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. The Chairman shall be appointed within three (3) months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party or is otherwise prevented from discharging the said function, shall be invited to make the necessary appointments.

5. The Tribunal shall have three months from the date of the selection of the Chairman to agree upon rules of procedure consistent with the other provisions of this Agreement. In the absence of such agreement, the Tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

6. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within eight months of the date of selection of the Chairman, and the Tribunal shall render its decision within two months after the date of the final submissions or the date of the closing of the hearings, whichever is later. The arbitral tribunal shall reach its decisions, which shall be final and binding, by a majority of votes.

7. A dispute shall not be submitted to international arbitration under the provisions of this Article, if the same dispute has been brought before another international arbitration under the provisions of Article 8 and is still in process. This will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

8. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Contracting Parties. The tribunal may, however, at its discretion, decide that a higher proportion of the costs be paid by one of the Contracting Parties.

## Article 10. Application of other Rules

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 a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

## Article 11. Application of the Agreement

This Agreement shall apply to all existing and future direct investments, but shall not apply to any dispute concerning an investment, which arose, or any claim concerning an investment, which was settled, before its entry into force.

## Article 12. Entry Info Force, Duration and Termination

1. The Contracting Parties shall notify each other when the constitutional requirements for the entry info force of this Agreement have been fulfilled. The Agreement shall enter info force on the thirtieth (30) day after the date of receipt of the last written notification.

2. This Agreement shall remain in force initially for a period of fifteen (15) years and shall be considered as renewed on the same terms for a period of fifteen (15) years and so forth, unless at least twelve (12) months before its expiration either Contracting Party notifies the other in writing of its intention to terminate the Agreement.

3. This Agreement may be amended by written agreement between the Contracting Parties. With respect to entering into force of such amendments, the same procedure as for the entering into force of this Agreement shall apply.

4. In respect of investments made prior to the date of termination of this Agreement the provisions of Articles 1 to 11 shall remain in force for a further period of fifteen (15) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto, have signed the present Agreement.

Done in duplicate in Ankara on 23.03.2004 in the Turkish, Slovene and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF TURKEY

FOR THE REPUBLIC OF SLOVENIA