

THE GOVERNMENT OF ROMANIA AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of Romania and the Government of the Republic of Turkey, hereinafter referred to as "the Contracting Parties",

Desiring to develop the relations of economic co-operation existing between the two states,

Determined to encourage and create favourable condition for investments of investors of Romania in the territory of the Republic of Turkey and by investors of the Republic of Turkey in the territory of Romania,

Recognizing that protection of the investments, under this Agreement, stimulates the initiative in this field and increases the economic prosperity of both States,

Have agreed as follow:

Article 1.

For the purposes of this Agreement:

(a) "investor" means:

(i) A natural person who is a national of one Contracting Party under its applicable law;

(ii) A legal person duly incorporated, constituted or otherwise duly organized under the applicable laws and regulations of one Contracting Party.

(b) "investment" means every kind of asset and includes but not exclusively:

(i) Shares or any other terms of participation in a company;

(ii) Movable and immovable property, and property rights such as mortgages, liens and pledges or similar property rights;

(iii) Reinvested returns;

(iv) A claim to money or a claim to performance having financial value and associated with an investment;

(v) Industrial property rights, including rights with respect to patents, trademark, trade names, industrial designs, know-how and goodwill and intellectual property rights;

(vi) Concessions conferred by law or by virtue of a contract, particularly concessions related to prospection, extraction and exploitation of natural resources.

(c) "returns" means amounts yielded by an investment and in particular though not exclusively, includes profit, dividends, interest, royalties, capital gains or fees.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall promote, in its territory, the investments of the investors of the other Contracting Party.

(2) Investments of investors of one Contracting Party admitted and established in accordance with the laws and regulations of the other Contracting Party in the territory of which the investments are made, shall enjoy the protection provided for in this Agreement.

Article 3. Most Favoured Nation Treatment

(1) Each Contracting Party shall accord, in its territory, to the investment of the investors of the other Contracting Party a treatment not less favourable than that which it accords to investments of the investors of any third State.

(2) The provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future custom unions, free trade areas, economic unions or similar institutions and regional economic organizations.

(b) Any international agreement or arrangement relating wholly or mainly to taxation on the basis of reciprocity with a third State.

(3) Each Contracting Party shall observe any other obligation entered into with regard to investments made in its territory by investors of the other Contracting Party.

Article 4. Expropriation and Compensation

(1) The investments made by investors of one Contracting Party in the territory of the other Contracting Party shall not be expropriated or nationalized or subjected to other measures having a similar effect, unless the following conditions are fulfilled:

(a) The measures are adopted for public purpose, under due process of law;

(b) The measures are not discriminatory.

(2) The compensation shall correspond to the fair market value of the investment at the time of the expropriation or at the time it became public knowledge whichever is earlier and shall be effectively realizable, freely transferable and made without delay. In the event that payment of compensation is delayed, the investor shall receive interest for the period of any undue delay in making payment.

(3) Upon the request of the investor, the amount of compensation can be reassessed by a tribunal or other competent body of the Contracting Party where the investment has been made.

Article 5. Compensation for Losses

Investors of one Contracting Party whose investment in the territory of the other Contracting Party suffers losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot, in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards compensation or other settlement, not less favourable than that which the latter Contracting Party accords to investors of any third State. Payments, if any, resulting from this Article shall be freely transferable.

Article 6. Settlement of Investment Disputes

(1) For the purposes of this Article, an investment dispute is defined as a dispute involving:

(a) The interpretation or application of any investment authorization granted by a Contracting Party's foreign investment authority to an investor of the other Contracting Party, or

(b) A breach of any right conferred or created by this Agreement with respect to an investment.

(2) Any dispute between one Contracting Party and an investor of the other Contracting Party, concerning an investment of that investor in the territory of the former Contracting Party shall be settled, as far as possible amicably, by consultations and negotiations between the parties to the dispute.

(3) If the dispute cannot be settled by consultations and negotiations within three months from the date of request for settlement then the dispute shall be submitted for settlement in accordance with the specific dispute settlement procedures upon which a Contracting Party and an investor of the other Contracting Party have mutually agreed.

(4) In the event that the investment dispute cannot be resolved through the foregoing procedures, the investor concerned is entitled to submit the dispute, for conciliation or arbitration, to the International Center for the Settlement of Investment

Disputes, at any time after the exhaustion of domestic remedies or after the expiry of one year from the date when the dispute has been submitted by the concerned investor to the tribunals of the Contracting Party which is a party to the dispute and there has not been rendered a final award.

(5) The submission of the investment disputes to the International Center for the Settlement of Investment Disputes will be done in accordance with the procedure provided for in the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature at Washington on 18 March 1965.

Article 7. Transfer

(1) Each Contracting Party shall permit to the extent permitted by and in conformity with its relevant laws and regulations in respect of the investments the transfer of:

(a) Returns,

(b) Proceeds of the total or partial sale or liquidation of the investment,

(c) The payments made for the reimbursement of the credits for investments and interest due;

(d) Management and technical assistance fees

(e) The net earnings of the nationals who are allowed to work in the investment made in the territory of the other Contracting Party.

(2) Transfers shall be made without delay in the convertible currency in which the investment has been made or in any convertible currency if so agreed by the investors, and at the rate of exchange at the date of transfer.

Article 8. Subrogation

If the investments of an investor of the one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer into the rights, claims and actions of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party. However, by subrogating its rights to insurer the investor will not be relieved from its obligations concerning the investments.

If one of the Contracting Parties, by virtue of a guarantee given against non-commercial risks for an investment made in the territory at the other Contracting Party, makes payments to its own investors, it is subrogated in the rights, claims and actions of the said investor as well as in the obligations in connection with such rights, pursuant to the terms of such guarantee.

The insurer or guarantor shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

Disputes between a Contracting Party and an insurer or guarantor shall be settled in accordance with the provisions of Article 6 or 10 of this Agreement, whichever is appropriate.

Article 9. Existing Investments

Investments made by investors of one Contracting Party in the territory of the other Contracting Party before this Agreement enters into force shall be also subjected to the provisions of this Agreement.

Article 10. 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 direct and meaningful negotiations between the two Parties. If such a dispute cannot be settled within six months after the commencement of negotiations, then, upon the request of either Contracting Parties, the dispute shall be submitted to an arbitral tribunal.

(2) Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three months from 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 Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three months from the date of appointment

of the other two members. If within any of the periods specified 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 if he is otherwise prevented from discharging the said function, the Vice-President shall be invited to make necessary appointments. If the Vice-President is a national of either Contracting Party or if he, too, is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the necessary appointments.

(3) The arbitral tribunal shall issue its decisions on the basis of the provisions of this Agreement and of other agreements concluded and effective between the Contracting Parties, as well as on the general principles and rules of international law. The arbitral tribunal shall reach its decisions by a majority of votes and its decision shall be final, and binding.

(4) Each Contracting Party shall bear the costs of its arbitrator and of its representations in the arbitral proceedings. The costs of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties.

(5) The tribunal shall determine its own procedure.

Article 11. Entry Into Force, Duration and Termination

(1) The present Agreement shall be ratified according to the constitutional procedures of each Contracting Party and the Agreement shall enter into force thirty days after the exchange of instruments of ratification.

(2) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of ten years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The Notice of termination shall become effective one year after it has been received by the other Contracting Party.

(3) In respect of investments made until the date of expiry of the validity of the Agreement, the provisions of this Agreement shall continue in effect for a period of ten years, beginning with the date of its termination.

Signed at Ankara on 24th of Jan 1991 in two original copies, each in the Romanian, Turkish and English languages, all text being equally authentic. In case of differences of interpretation, the text in the English language shall prevail.

THE GOVERNMENT OF ROMANIA

THE GOVERNMENT OF THE REPUBLIC OF TURKEY