

AGREEMENT BETWEEN THE GOVERNMENT OF THE STATE OF ISRAEL AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

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

DESIRING to intensify economic cooperation to the mutual benefit of both countries,

INTENDING to create favorable conditions for greater investments by investors of either Contracting Party in the territory of the other Contracting Party,

AGREEING that fair and equitable treatment of investments is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources,

And,

RECOGNIZING that the reciprocal promotion and protection of investments on the basis of the present Agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of the present Agreement:

1. The term "investments" shall comprise any kind of assets, implemented in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, including but not limited to:

(a) Movable and immovable property, as well as any other rights such as mortgages, liens, pledges and any other similar rights as defined in conformity with the laws and regulations of the Contracting Party in whose territory the property is situated.

(b) Shares, and any other kinds of interests in companies;

(c) Returns reinvested, claims to money, goodwill or other assets or rights having a financial value;

(d) Industrial or intellectual property rights, technical processes, know-how or other similar rights;

(e) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

2. A change in the form in which assets are invested or reinvested, in accordance with the laws and regulations of the Contracting Party in whose territory the investment is made, does not affect their character as investments within the meaning of this Agreement.

3. The term "investor" shall comprise:

With respect to investments made in the State of Israel: (a) Natural persons who are nationals of the Republic of Turkey who are not also nationals or permanent residents of the State of Israel; or

(b) Companies, including corporations, firms or associations incorporated or constituted in accordance with the law of the Republic of Turkey.

With respect to investments made in the Republic of Turkey: (a) Natural persons who are nationals of the State of Israel who

are not also nationals of the Republic of Turkey; or

(b) Companies including corporations, firms or associations incorporated or constituted in accordance with the law of the State of Israel, and having its headquarters in the State of Israel.

4. The term "returns" shall comprise the amount yielded by an investment including, but not limited to: dividends, profits, sums received from the total or partial liquidation of an investment, interest, capital gains, royalties or fees.

Article 2. Promotion and Protection of Investments

1. Each Contracting Party shall, in its territory, encourage and create favorable conditions for investments by investors of the other Contracting Party and, subject to its right to exercise the powers conferred by its laws, shall admit such investments on a basis no less favourable than that accorded in similar situations to investments of investors of any third State.

2. Investments made by investors of each Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

3. Each Contracting Party shall, subject to and in accordance with its laws and regulations and the procedures and practice thereunder, consider favorably questions concerning entry, stay, work and movement in its territory of nationals of the other Contracting Party who carry out activities connected with the investments as defined in this Agreement and of the members of their families forming part of their household.

4. Investors of one Contracting Party may conclude with the other Contracting Party specific agreements, the provisions and effect of which, unless more beneficial to the investor shall not be at variance with this Agreement. Each Contracting Party shall, with regard to investments of investors of the other Contracting Party, observe the provisions of these specific agreements, as well as the provisions of this Agreement.

Article 3. Most Favored Nation and National Treatment

1. Neither Contracting Party shall, in its territory, subject investments or returns of investors of the other Contracting Party to treatment less favorable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

2. Neither Contracting Party shall, in its territory, subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favorable than that which it accords to its own investors or to investors of any third State.

Article 4. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection, riot or other such similar activity in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards any measures it adopts in relation to such losses, no less favorable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

Article 5. Expropriation

1. Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter: "expropriation") in the territory of the other Contracting Party, except for a public purpose, on a non-discriminatory basis, under due process of law and against prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest as provided by law until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The investors affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by the competent judicial authority of that Contracting Party, of his or its case and of the valuation of his or its investment, in accordance with the principles set out in this paragraph.

Article 6. Repatriation of Investments and Returns

1. The State of Israel shall, with respect to investments made in its territory, guarantee to investors of the other Contracting Party, excluding investors as defined in Article 1(3)(b) which are directly or indirectly controlled by Israeli companies, all the rights and benefits regarding the unrestricted transfer of their investments and returns which were in force on the day the current investment was implemented; provided, however, that the investor has complied with all his fiscal obligations and has fulfilled all the requirements of the exchange regulations. Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Unless otherwise agreed by the investor, transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force. The State of Israel guarantees that in the event its exchange regulations are modified, such modifications shall not adversely affect the rights to repatriate investments and returns as were in force at the time the investment was made.

2. The Republic of Turkey shall, with respect to investments made in its territory, permit all transfers related to an investment to be made freely and without unreasonable delay into and out of its territory. Such transfers shall include:

- a. Returns;
- b. Proceeds from the sale or liquidation of all or any part of an investment;
- c. Compensation pursuant to Article 5 of this Agreement;
- d. Reimbursements and interest payments deriving from loans in connection with investments;
- e. Salaries, wages and other remunerations received by the nationals of the State of Israel who have obtained, in the territory of the Republic of Turkey, the corresponding work permits relative to an investment;
- f. Payments arising from an investment dispute.

Transfers shall be made in the convertible currency in which the investment has been made or in any convertible currency so agreed by the investor and at the rate of exchange in force at the date of transfer. Notwithstanding the above, the Republic of Turkey may maintain laws and regulations: a. Prescribing procedures to be followed concerning transfers permitted by this Article, provided that such procedures are completed without delay by the Republic of Turkey and do not impair the substance of the rights set forth in this Article;

- b. Requiring reports of currency transfer;
- c. Imposing income taxes by such means as a withholding tax applicable to dividends or other transfers.

Article 7. Exceptions

The provisions of this Agreement relative to the grant of treatment not less favorable than that accorded to the investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from:

- (a) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation;
- (b) Any existing or future customs union, Free Trade Area Agreement or similar international Agreements to which either Contracting Party is or may become a Party;
- (c) The definition of "investment" (Article 1, paragraph 1) and the reference to "reinvestment" (Article 1, paragraph 2 and the provisions of Article 6 contained in Agreements entered into prior to January 1, 1992.

Article 8. Reference to International Centre for Settlement of Investment Disputes

1. Subject to the provisions of paragraphs 2 and 3 of this Article, each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter: the "Centre") for settlement by conciliation or arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965 any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former.

2. Disputes between one of the Contracting Parties and an investor of the other Contracting Party, in connection with his investment shall be notified in writing, including detailed information, by the investor to the Contracting Party concerned. As far as possible, the investor and the Contracting Party concerned shall endeavor to settle these disputes by consultations

and negotiations in good faith.

3. If these disputes cannot be settled in this way within three (3) months following the date of the written notification mentioned above, the dispute may be submitted, as the investor may choose, either to:

- a. The competent court of law or justice of the Contracting Party concerned; or
- b. The Centre, provided that, if the investor has brought the dispute before the competent courts of law or justice of the Contracting Party concerned, a final judgement has not been rendered by the court of first instance within eight months.

The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the investor which is the other party to the dispute has received, in pursuance of an insurance contract, an indemnity in respect of some or all of his or its losses.

4. Neither Contracting Party shall pursue, through the diplomatic channel, any dispute referred to the Centre, unless:

(a) The Secretary-General of the Centre or a conciliation commission or an arbitral tribunal constituted by it decides that the dispute is not within the jurisdiction of the Centre; or

(b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

5. The arbitration awards shall be final and binding on all the parties to the dispute. Each Contracting Party commits itself to execute the award according to its national law.

Article 9. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through the diplomatic channel, which may include, if both Contracting Parties so desire, referral to a Bilateral Commission composed of representatives of both Contracting Parties.

2. If a dispute between the Contracting Parties cannot thus be settled within six (6) months from notification of the dispute, it shall, upon 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 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 two 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 Secretary General of the permanent Court of Arbitration at the Hague (hereinafter the "PCA") to make any necessary appointments.

5. If the Secretary General of the PCA is prevented from carrying out the said function, or if he is a national of either Contracting Party, then the appointment shall be made by the Deputy Secretary General of the PCA, and if the Deputy Secretary General is prevented from carrying out the said function, or if he is a national of either Contracting Party, then the appointment shall be made by the most senior member of the Court who is not a national of either Contracting Party.

6. 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 Secretary General of the PCA to designate rules of procedure taking into account generally recognized rules of international arbitral procedure.

7. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal 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.

Article 10. Subrogation

1. If the investment of an investor of one Contracting Party is insured against non-commercial risks under a system established by law, any subrogation of the insurer which stems from the terms of the insurance agreement shall be recognized by the other Contracting Party.

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

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

Article 11. 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 the present Agreement contain rules, whether general or specific, entitling investments by investors of other Contracting Party to a treatment more favorable than is provided for by the present Agreement, such rules shall, to the extent that they are more favorable, prevail over the present Agreement.

Article 12. Application to Investments

The provisions of this Agreement shall apply to the rights and obligations of both Contracting Parties with respect to investments made on or before the entry into force of this Agreement.

Article 13. Entry Into Force

Each Contracting Party shall notify the other Contracting Party of the completion of the ratification procedures required for bringing this Agreement into force. This Agreement shall enter into force on the date of the latter notification.

Article 14. Duration and Termination

This Agreement shall remain in force for a period of ten (10) years. Either Contracting Party may, by giving twelve months' written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten (10) year period or at any time thereafter. This Agreement may be amended by written agreement between the Contracting Parties. Any amendment shall enter into force after each Contracting Party has notified the other that it has completed all its internal requirements for the entry into force of such amendment. In respect of investments made while this Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of 10 years after the date of termination.

Done in duplicate in the Turkish, Hebrew and English languages at Jerusalem, this 14 day of March, 1996, which corresponds to the 23 day of Adar, 5756.

In case of differences in interpretation, the English text shall prevail.

For the Government of the State of Israel

For the Government of the Republic of Turkey