

Agreement Between the Republic of Turkey and the Republic of Cuba Concerning the Reciprocal Promotion and Protection of Investments

The Republic of Turkey and the Republic of Cuba (hereinafter called the Parties);

Desiring to promote greater economic cooperation between them, particularly with respect to investment by investors of one Party in the territory of the other Party;

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of capital and technology and the economic development of the Parties;

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

Having resolved to conclude an agreement concerning the encouragement and reciprocal protection of investments,

Hereby agree as follows:

Article I. Definitions

For the purpose of this Agreement:

1. The term "investor" means:

(a) (1) With respect to the Republic of Turkey, the natural person having the Turkish nationality in accordance with its applicable law.

(2) With respect to the Republic of Cuba, the natural person having the Cuban citizenship in accordance with the Constitution of the Republic of Cuba.

(b) Corporations, firms or business associations incorporated or constituted under the law in force of either of the Parties and having their headquarters in the territory of that Party.

2. The term "investment", in conformity with the hosting Party's laws and regulations, shall include every kind of asset and in particular, but not exclusively:

(a) Shares, stocks or any other form of participation in companies,

(b) Returns reinvested, claims to money or any other rights having financial value related to an investment,

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

(d) Industrial and intellectual property rights such as patents, industrial designs, technical processes, as well as trademarks, goodwill, know-how and other similar rights,

(e) Business concessions conferred by law or by contract, including concessions related to natural resources.

The said term shall refer to all direct investments made in accordance with the laws and regulations in the territory of the Party where the investments are made. The term "investment" covers all investments made in the territory of a Party before or after the entry into force of this Agreement. 3. The term "returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest and dividends.

4. The term "territory" means the territory, territorial sea, as well as the maritime areas over which the concerned Party has jurisdiction or sovereign rights for the purposes of exploration, exploitation and conservation of natural resources, pursuant to international law.

Article II. Promotion and Protection of Investments

1. Each Party shall permit in its territory investments and activities associated therewith, on a basis no less favorable than that accorded in similar situations to investments of investors of any third country, within the framework of its laws and regulations.
2. Each Party shall accord to these investments, once established, treatment no less favorable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favorable.
3. For the avoidance of doubt, both Parties confirm that the treatment provided for by paragraphs (1) and (2) must apply to the provisions of Articles I to VII of this Agreement, taking into consideration their respective national laws concerning foreign investments.
4. When a Party has admitted investments in its territory, it shall grant, in conformity with its laws and regulations, the necessary permits relating to these investments, including the authorizations for the hiring by the investors of the highly qualified managerial and technical personnel of his choice, regardless of his nationality.
5. The provisions of this Article shall have no effect in relation to following agreements entered into by either of the Parties:
 - (a) Relating to any existing or future customs unions, economic organizations or other international agreements,
 - (b) Relating wholly or mainly to taxation.

Article III. Expropriation and Compensation

1. Investments shall not be expropriated, nationalized or subject, directly or indirectly, to measures of similar effects except for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the general principles of treatment provided for in Article II of this Agreement.
2. Compensation shall be equivalent to the real value of the expropriated investment before the expropriatory action was taken or became known. Compensation shall be paid without delay and be freely transferable as described in paragraph 2 Article IV.
3. Investors of either Party whose investments suffer losses in the territory of the other Party owing to war, insurrection, civil disturbance or other similar events shall be accorded by such other Party treatment no less favorable than that accorded to its own investors or to investors of any third country, whichever is the most favorable treatment as regards any measures it adopts in relation to such losses.

Article IV. Repatriation and Transfer

1. Each Party shall in good faith allow all transfers related to an investment to be made freely and without delay, after compliance with the relevant tax obligations into and out of its territory. Such transfers include:
 - (a) Returns,
 - (b) Proceeds from the sale or liquidation of all or any part of an investment,
 - (c) Compensation pursuant to Article III,
 - (d) Reimbursements and interest payments deriving from loans in connection with investments,
 - (e) Salaries, wages and other remuneration received by the nationals of one Party who have obtained in the territory of the other Party the corresponding work permits relative to an investment,
 - (f) Payments arising from an investment dispute.
2. Transfers shall be made in the convertible currency in which the investment has been made or in any other convertible currency agreed upon by the Parties at the rate of exchange in force at the date of transfer, unless otherwise agreed by the investor and the hosting Party.

Article V. Subrogation

1. If the investment of an investor of one 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 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 Party and an insurer shall be settled in accordance with the provisions of Article VI of this Agreement.

Article VI. Settlement of Disputes between One Party and Investors of the other Party

1. Disputes between one of the Parties and an investor of the other Party, in connection with his investments, shall be notified in writing, including a detailed information, by the investor to the recipient Party of the investment. As far as possible, the investor and the concerned Party shall endeavor to settle these disputes by consultations and negotiations in good faith.
2. If these disputes cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose, to:
 - (a) An ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL),
 - (b) The Court of Arbitration of the Paris International Chamber of Commerce,provided that the investor concerned has brought the dispute before the courts of justice of the Party that is a party to the dispute and a final award has not been rendered within one year. 3. The arbitration awards shall be final and binding on all parties in dispute. Each Party commits itself to executing the award according to its national law.

Article VII. Settlement of Disputes between the Parties

1. The Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this Agreement. In this regard, the Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If the Parties cannot reach an agreement within six months after the beginning of disputes between themselves through the foregoing procedure, the disputes may be submitted, upon the request of either Party, to an arbitral tribunal of three members.
2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. In the event either Party fails to appoint an arbitrator within the specified time, the other Party may request the President of the International Court of Justice to make the appointment.
3. If both arbitrators cannot reach an agreement about the choice of the Chairman within two months after their appointment, the Chairman shall be appointed upon the request of either Party by the President of the International Court of Justice.
4. If in the cases specified under paragraphs (2) and (3) 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 Party, the appointment shall be made by the Vice-President, and if the Vice-President is prevented from carrying out the said function or if he is a national of either Party, the appointment shall be made by the most senior member of the Court who is not a national of either Party.
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. Each Party shall bear the costs of its own arbitrator and of its representation in the proceedings. The costs of the Chairman and other costs shall be borne in equal parts by the two Parties. The arbitral tribunal may, however, in its decision direct that a higher proportion of the costs be borne by one of the Parties.

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

Article VIII. Entering Into Force

1. This Agreement shall enter into force on the date on which the exchange of instruments of ratification has been completed. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with paragraph 2 of this Article. This Agreement shall be applicable to the investments which are operating legally on the date of its entry into force as well as to investments made or acquired thereafter.

2. Either Party may, by giving one year's written notice to the other Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter.

3. This Agreement may be amended by written agreement between the Parties. Any amendment shall enter into force when each Party has notified the other that it has completed all internal requirements for the entry into force of such amendment.

4. With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

DONE in the City of Havana on the twenty-second day of December in the Turkish, Spanish and English languages, all of which are equally authentic.

In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA

With the signing of the Agreement between the Government of the Republic of Turkey and the Government of the Republic of Cuba concerning the Promotion and Reciprocal Protection of Investments, the Parties agree that the following provision forms an integral part of the said Agreement.

Regarding Article VI, paragraph 2.

In case both Parties become signatories of the "Convention on Settlement of Investment Disputes Between States and Nationals of Other States," signed in Washington on 18 March 1965, the disputes referred to in Article VI shall be submitted, at the request of the investor, to the "International Center for Settlement of Investment Disputes" (ICSID), created by virtue of the aforementioned Convention.

Done in Havana on the twenty-second day of the month of December of 1997, in the Turkish, Spanish and English languages, all texts being equally authentic.

In case of divergence of interpretation, the English text shall prevail

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

FOR THE GOVERNMENT OF THE REPUBLIC OF CUBA