

# **AGREEMENT ON INVESTMENT UNDER THE FRAMEWORK AGREEMENT ESTABLISHING A FREE TRADE AREA BETWEEN THE REPUBLIC OF KOREA AND THE REPUBLIC OF TURKEY**

## **PREAMBLE**

The Republic of Korea and the Republic of Turkey (hereinafter referred to as "the Parties" or "Korea" or "Turkey", where appropriate);

RECALLING the Framework Agreement Establishing a Free Trade Area between the Republic of Korea and the Republic of Turkey (hereinafter referred to as the "Framework Agreement") entered into force on the 1 st day of May 2013;

FURTHER RECALLING Articles 1.4 (Relation with Other Agreements) and 1.5 (Liberalization) of the Framework Agreement, which reflect their commitment to establish the Korea-Turkey Free Trade Area covering investment;

NOTING the objectives of the Framework Agreement to enhance economic cooperation and deepen economic integration between Korea and Turkey through liberalization of investment;

STRIVING TO enhance cooperation in investment between Korea and Turkey in order to improve transparency and predictability; and

RECOGNIZING the need to promote and protect bilateral investments, which will be made with the aim of establishing lasting economic relations, contributing to economic development, and fostering the flow of capital and technology between the Parties, and to increase their economic prosperity;

HAVE AGREED as follows:

## **Section A. Definitions**

### **Article 1.1. DEFINITIONS**

1. For purposes of this Agreement:

Covered investment means, with respect to a Party, an investment, as defined in this Article, in its territory, of an investor of the other Party that is in existence as of the date of entry into force of this Agreement or established, acquired or expanded thereafter;

Disputing parties means a disputing investor and a disputing Party;

Disputing Party means a Party against which a claim is made under Article 1.17 (Investor-State Dispute Settlement);

Framework Agreement means the Framework Agreement Establishing a Free Trade Area between the Republic of Korea and the Republic of Turkey;

Freely usable currency means any currency designated as such by the International Monetary Fund (IMF) under its Articles of Agreement and any amendments thereto;

ICSID Additional Facility Rules means the Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Centre for Settlement of Investment Disputes;

ICSID Convention means the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, done at Washington, March 18, 1965;

Joint Committee means the Joint Committee established under Article 7.1 (Joint Committee) of the Framework Agreement;

Investment means every kind of asset that an investor owns or controls and that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, the assumption of risk, or a certain duration. Forms that an investment may take include:

- (a) an enterprise;
- (b) shares, stock, and other forms of equity participation in an enterprise;
- (c) bonds, debentures, loans, and other debt instruments of an enterprise; (1)
- (d) turnkey, construction, management, production, concession, revenue-sharing, and other similar contracts;
- (e) intellectual property rights;
- (f) licenses, authorizations, permits, and similar rights conferred pursuant to domestic law; (2) (3) and
- (g) other tangible or intangible, movable or immovable property, and related property rights, such as leases, mortgages, liens, and pledges. (4)

For purposes of this Agreement, a claim to payment that arises solely from the commercial sale of goods and services is not an investment, unless it is a loan that has the characteristics of an investment;

Investor of a non-Party means, with respect to a Party, an investor that attempts to make, is making, or has made an investment in the territory of that Party, that is not an investor of either Party;

Investor of a Party means a Party or state enterprise thereof, or a national or an enterprise of a Party, that attempts to make, is making, or has made an investment in the territory of the other Party; provided, however, that a natural person who is a dual national shall be deemed to be exclusively a national of the State of his or her dominant and effective nationality;

Enterprise means any entity constituted or organized under applicable law, whether or not for profit, and whether privately or governmentally owned or controlled, including any corporation, trust, partnership, sole proprietorship, joint venture, association or other similar organization, and a branch (5) of an enterprise;

Enterprise of a Party means an enterprise constituted or organized under the domestic law of each Party, and a branch located in the territory of a Party and carrying out business activities there;

Non-disputing Party means the Party that is not a party to an investment dispute;

Protected information means confidential business information or information that is privileged or otherwise protected from disclosure under the domestic law of each Party; and

UNCITRAL Arbitration Rules means the arbitration rules of the United Nations Commission on International Trade Law approved by the United Nations General Assembly on December 15, 1976, as revised in 2010;

2. The definitions contained in Article 1.3 (General Definitions) of the Framework Agreement shall apply for the purposes of this Agreement.

(1) Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt are less likely to have such characteristics.

(2) Whether a particular type of license, authorization, permit, or similar instrument (including a concession, to the extent that it has the nature of such an instrument) has the characteristics of an investment depends on such factors as the nature and extent of the rights that the holder has under the domestic law of each Party. Among the licenses, authorizations, permits, and similar instruments that do not have the characteristics of an investment are those that do not create any rights protected under domestic law. For greater certainty, the foregoing is without prejudice to whether any asset associated with the license, authorization, permit, or similar instrument has the characteristics of an investment.

(3) The term "investment" does not include an order or judgment entered in a judicial or administrative action.

(4) For greater certainty, market share, market access, expected gains, and opportunities for profit-making are not, by themselves, investments.

(5) For greater certainty, a branch of a legal entity of a non-Party shall not be considered as a juridical person of a Party.

## **Section B. Investment**

### **Article 1.2. SCOPE AND COVERAGE**

1. This Agreement shall apply to measures adopted or maintained by a Party relating to:

(a) investors of the other Party;

(b) covered investments; and

(c) with respect to Articles 1.8 (Performance Requirements) and 1.16 (Environmental and Health Measures), all investments in the territory of the Party.

2. This Agreement substitutes and replaces the Agreement between the government of the Republic of Korea and the government of the Republic of Turkey concerning the Reciprocal Promotion and Protection of Investments, signed on May 14, 1991 in Seoul, which will be terminated on the date of entry into force of this Agreement. The disputes submitted to arbitration after the date of the entry into force of this Agreement shall be settled in accordance with the provisions of this Agreement.

3. For greater certainty, this Agreement does not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Agreement. 4 5

4. For purposes of this Agreement, measures adopted or maintained by a Party means measures adopted or maintained by:

(a) central, regional, or local governments and authorities; and

(b) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities.

5. This Agreement does not apply to:

(a) government procurement;

(b) subsidies or grants provided by a Party or to any conditions attached to the receipt or continued receipt of such subsidies or grants except for Articles 1.8 (Performance Requirements) and 1.17 (Investor-State Dispute Settlement),

Whether or not such subsidies or grants are offered exclusively to domestic investors and investments; or

(c) measures adopted or maintained by a Party affecting the supply of services by a service supplier of the other Party through commercial presence (6) in its territory pursuant to the Agreement on Trade in Services regardless of whether or not specific services sectors (7) are scheduled in the Party's Schedule of Specific Commitments in Annex D of the Agreement on Trade in Services.

6. Notwithstanding paragraph 5(c), Articles 1.6 (Minimum Standard of Treatment), 1.7 (Compensation for Losses), 1.11 (Transfers), 1.12 (Expropriation and Compensation), 1.13 (Subrogation), 1.17 (Investor-State Dispute Settlement), (8) and 1.21 (Duration) shall apply, mutatis mutandis, to any measure affecting the supply of service by a service supplier of a Party through commercial presence in the territory of the other Party pursuant to the Agreement on Trade in Services, only to the extent that they relate to a covered investment.

(6) For the purposes of this Agreement, "services" and "commercial presence" shall have the same meaning as in paragraphs 1 (a) and 1(l) of Article 1.2 (Definitions) of the Agreement on Trade in Services.

(7) For the purposes of the relationship between the Agreement on Trade in Services and the Agreement on Investment, the Parties confirm that services encompass any service in any sector including, but not limited to those classified in service sectors, subsectors and activities under the Services Sectoral Classification List of the WTO contained in the document MTN.GNS/W/120, dated July 10, 1991.

(8) For greater certainty, Article 1.17 (Investor-State Dispute Settlement) applies to investment disputes, in relation to such covered investments, between a Party and an investor of the other Party concerning an alleged breach of an obligation solely under the Articles referred to in this paragraph except for Article 1.21 (Duration).

### **Article 1.3. RELATION TO OTHER AGREEMENTS**

1. In the event of any inconsistency between this Agreement and another Agreement under the Framework Agreement, the other Agreement shall prevail to the extent of the inconsistency.
2. A requirement by a Party that a service supplier of the other Party post a bond or other form of financial security as a condition of the cross-border supply of a service does not of itself make this Agreement applicable to measures adopted or maintained by the Party relating to such cross-border supply of the service. This Agreement applies to measures adopted or maintained by the Party relating to the posted bond or financial security, to the extent that such bond or financial security is a covered investment.
3. This Agreement shall not apply to measures adopted or maintained by a Party to the extent that they are covered by Annex C (Financial Services) of the Agreement on Trade in Services.

### **Article 1.4. NATIONAL TREATMENT**

1. Each Party shall accord to investors of the other Party, and to covered investments of investors of the other Party, treatment no less favorable than that it accords, in like

6 For the purposes of this Agreement, "services" and "commercial presence" shall have the same meaning as in paragraphs 1 (a) and 1(l) of Article 1.2 (Definitions) of the Agreement on Trade in Services.

7 For the purposes of the relationship between the Agreement on Trade in Services and the Agreement on Investment, the Parties confirm that services encompass any service in any sector including, but not limited to those classified in service sectors, subsectors and activities under the Services Sectoral Classification List of the WTO contained in the document MTN.GNS/W/120, dated July 10, 1991.

8 For greater certainty, Article 1.17 (Investor-State Dispute Settlement) applies to investment disputes, in relation to such covered investments, between a Party and an investor of the other Party concerning an alleged breach of an obligation solely under the Articles referred to in this paragraph except for Article 1.21 (Duration).

Circumstances, to its own investors and investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. The treatment to be accorded by a Party under paragraph 1 means, with respect to a regional level of government, treatment no less favorable than the most favorable treatment accorded, in like circumstances, by that regional level of government to investors, and to investments of investors, of the Party of which it forms a part.

### **Article 1.5. MOST-FAVORED-NATION TREATMENT (9)**

1. Each Party shall accord to investors of the other Party treatment no less favorable than that it accords, in like circumstances, to investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments in its territory.

2. Each Party shall accord to covered investments treatment no less favorable than that it accords, in like circumstances, to investments in its territory of investors of any non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of investments.

(9) For greater certainty, Article 1.5 (Most-Favored-Nation Treatment) shall not apply to investor-state dispute settlement mechanisms such as those set out in Section C (Settlement of Disputes between an Investor and the Disputing Party).

### **Article 1.6. Minimum Standard of Treatment (10)**

1. Each Party shall accord to covered investments treatment in accordance with customary international law, including fair and equitable treatment and full protection and security.

2. For greater certainty, paragraph 1 prescribes the customary international law minimum standard of treatment of aliens as the minimum standard of treatment to be afforded to covered investments. The concepts of "fair and equitable treatment" and "full protection and security" do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights. The obligation in paragraph 1 to provide:

(a) "fair and equitable treatment" includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process embodied in the principal legal systems of the world; and

(b) "full protection and security" requires each Party to provide the level of police protection required under customary international law.

3. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.

(10) Article 1.6 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex A (Customary International Law).

## **Article 1.7. Compensation for Losses**

A Party shall accord to investors of the other Party whose covered investment suffered losses due to war or other armed conflict, state of national emergency, civil strife or other similar events in its territory, treatment no less favorable than that accorded, in like circumstances, to its own investors or investors of a non-Party whichever is more favorable, relating to restitution, indemnification, compensation or any other forms of settlement.

## **Article 1.8. Performance Requirements**

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, impose or enforce any requirement or enforce any commitment or undertaking: (11)

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(d) to restrict sales of goods in its territory that such investment produces by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(e) to export a given level or percentage of goods;

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or

(g) to supply to a specific regional market or to the world market exclusively from its territory, one or more of the goods that such investment produces.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party, on compliance with any requirement:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods in its territory that such investment produces by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do

not constitute a disguised restriction on international trade or investment, paragraphs 1(a), (b), and (f), and 2(a) and (b), shall not be construed to prevent a Party from adopting or maintaining measures, including environmental measures:

- (a) necessary to secure compliance with laws and regulations that are not inconsistent with this Agreement;
- (b) necessary to protect human, animal, or plant life or health; or
- (c) related to the conservation of living or non-living exhaustible natural resources.

(11) For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in paragraph 2 does not constitute a "commitment or undertaking" for purposes of paragraph 1.

## **Article 1.9. Senior Management and Boards of Directors**

1. A Party shall not require an enterprise of that Party that is a covered investment to appoint to senior management positions natural persons of any particular nationality.
2. A Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.

## **Article 1.10. Non-conforming Measures**

1. Articles 1.4 (National Treatment), (12) 1.5 (Most-Favored-Nation Treatment), 1.8 (Performance Requirements), and 1.9 (Senior Management and Boards of Directors) shall not apply to:
  - (a) any existing non-conforming measure that is maintained by a Party in its Schedule to Annex I;
  - (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or
  - (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed at the date of the entry into force of this Agreement, with Articles 1.4 (National Treatment), 1.5 (Most-Favored-Nation Treatment), 1.8 (Performance Requirements), and 1.9 (Senior Management and Boards of Directors).
2. Articles 1.4 (National Treatment), 1.5 (Most-Favored-Nation Treatment), 1.8 (Performance Requirements), and 1.9 (Senior Management and Boards of Directors) shall not apply to any measures that a Party adopts or maintains with respect to sectors, sub-sectors or activities, as set out in its Schedule to Annex II.
3. Neither Party may, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Nothing in this Agreement shall be construed so as to derogate from rights and obligations under international agreements in respect of protection of intellectual property rights to which the Parties are party, including the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and other treaties concluded under the auspices of the World Intellectual Property Organization (WIPO).

(12) For greater certainty, measures relating to qualification requirements and procedures, technical standards and licensing requirements which do not constitute a national treatment limitation within the meaning of Article 1.4 (National Treatment) shall not be listed in Schedule to Annex I.

## **Article 1.11. Transfers (13)**

1. Each Party shall permit all transfers relating to a covered investment to be made freely and without delay into and out of its territory. Such transfers shall include:
  - (a) the initial capital and additional amounts to maintain or increase an investment;
  - (b) profits, dividends, interest, capital gains, royalty payments, license fees, technical assistance fees, management fees and

other current income accruing from any covered investment;

(c) proceeds from the total or partial sale or liquidation of all or any part of the covered investment;

(d) payments made under a contract, including a loan agreement;

(e) payments made pursuant to Articles 1.7 (Compensation for Losses) and 1.12 (Expropriation and Compensation); and

(f) payments arising out of the settlement of a dispute.

2. Each Party shall permit transfers relating to a covered investment to be made in a freely usable currency at the market rate of exchange prevailing at the time of transfer.

3. Each Party shall permit returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and a covered investment or an investor of the other Party.

4. Notwithstanding paragraphs 1 and 2, a Party may prevent a transfer through the equitable, non-discriminatory, and good faith application of its laws and regulations relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, options, or derivatives;

(c) criminal or penal offences;

(d) ensuring compliance with the judgments in judicial or administrative proceedings; or

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

(13) For greater certainty, Annex C (Temporary Safeguard Measures) applies to this Article.

## **Article 1.12. Expropriation and Compensation (14)**

1. A Party shall not nationalize or expropriate a covered investment either directly or indirectly through measures equivalent to expropriation or nationalization (hereinafter referred to as "expropriation"), except:

(a) for a public purpose;

(b) in accordance with due process of law and Article 1.6 (Minimum Standard of Treatment);

(c) on a non-discriminatory basis; and

(d) on payment of prompt, adequate and effective compensation.

2. For the purpose of paragraph 1(d), the compensation shall:

(a) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (the date of expropriation);

(b) not reflect any change in value occurring because the intended expropriation had become known earlier;

(c) be paid without delay; and

(d) be fully realizable and freely transferable.

3. If the fair market value is denominated in a freely usable currency, the compensation referred to in paragraph 1(d) shall be no less than the fair market value on the date of expropriation, plus interest at an appropriate and reasonable rate for that currency, accrued from the date of expropriation until the date of payment.

4. If the fair market value is denominated in a currency that is not freely usable, the compensation referred to in paragraph 1(d) - converted into the currency of payment at the market rate of exchange prevailing on the date of payment - shall be no less than:

(a) the fair market value on the date of expropriation, converted into a freely usable currency at the market rate of exchange prevailing on that date, plus

(b) interest, at an appropriate and reasonable rate for that freely usable currency, accrued from the date of expropriation until the date of payment.

5. This Article does not apply to the issuance of compulsory licenses granted in relation to intellectual property rights under the TRIPS Agreement, or to the revocation, limitation, or creation of intellectual property rights, to the extent that such issuance, revocation, limitation, or creation is consistent with Chapter 2 of the Framework Agreement (Intellectual Property Rights).

(14) This Article shall be interpreted in accordance with Annex A (Customary International Law) and Annex B (Expropriation).

### **Article 1.13. Subrogation**

1. If a Party or its designated agency makes a payment to any of its investors under a guarantee, contract of insurance or other form of indemnity it has granted in respect of an investment of an investor of that Party, against non-commercial risks, the other Party shall recognize the subrogation or transfer of any right or claim in respect of such investment. The Party or its designated Agency is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or the agency authorized by the Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorized to act on behalf of the Party or the agency authorized by the Party making the payment, (15) pursue those rights and claims against the other Party.

(15) For greater certainty, Articles 1.7 (Compensation for Losses), 1.11 (Transfers), and 1.12 (Expropriation and Compensation) shall apply *mutatis mutandis* as regards payment to be made to the Party or the agency prescribed in paragraphs 1 and 2 by virtue of such recognition of rights and claims, and the transfer of such payment.

### **Article 1.14. Special Formalities and Treatment of Information**

1. Nothing in Article 1.4 (National Treatment) shall be construed to prevent a Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as a requirement that covered investments be legally constituted under its laws or regulations, provided that such formalities do not materially impair the protections afforded by the Party to investors of the other Party and covered investments pursuant to this Agreement.

2. Notwithstanding Articles 1.4 (National Treatment) and 1.5 (Most-Favored-Nation Treatment), a Party may require an investor of the other Party or its covered investment to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect any confidential business information from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this paragraph shall be construed to prevent a Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its law.

### **Article 1.15. Denial of Benefits**

1. A Party may deny the benefits of this Agreement to an investor of the other Party that is an enterprise of such other Party and to investments of such investor if the enterprise has no substantial business activities in the territory of the such other Party under whose law it is constituted or organized, and investors of a non-Party or the investors of the denying Party, own or control the enterprise.

2. The denying Party shall, to the extent practicable, notify the other Party before denying the benefits. If the denying Party provides such notice, it shall consult with the other Party at the request of the other Party.

### **Article 1.16. Environmental and Health Measures**

1. Each Party recognizes that it is inappropriate to encourage investments by investors of the other Party by relaxing its environmental measures. To this effect each Party should not waive or otherwise derogate from such environmental measures as an encouragement for establishment, acquisition or expansion of investments in its area.

2. Nothing in this Agreement shall be construed to prevent a Party from adopting, maintaining, or enforcing any non-



discriminatory legal measures otherwise consistent with this Agreement that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental or health concerns.

## **Section C. Settlement of Disputes between an Investor and the Disputing Party**

### **Article 1.17. Investor-state Dispute Settlement**

1. This Article applies to investment disputes between a Party and an investor of the other Party concerning an alleged breach of Articles 1.4 (National Treatment), 1.5 (Most-Favored-Nation Treatment), 1.6 (Minimum Standard of Treatment), 1.7 (Compensation for Losses), paragraphs 1 and 2(d) of 1.8 (Performance Requirements), 1.9 (Senior Management and Boards of Directors), 1.11 (Transfers), 1.12 (Expropriation and Compensation), 1.13 (Subrogation), and 1.14 (Special Formalities and Treatment of Information), which causes loss or damage by reason of, or arising out of, that breach to:

(a) the investor in relation to its covered investments; or

(b) the covered investment that has been made by that investor, relating to the management, conduct, operation or sale or other disposition of a covered investment.

2. A natural person possessing the nationality or citizenship of a Party shall not pursue a claim against that Party under this Agreement.

3. An investment may not make a claim under this Article.

4. In the event of an investment dispute arising under this Article, the disputing parties shall as far as possible resolve the dispute through consultation and negotiation, a request of which shall be made in writing, with a view towards reaching an amicable settlement.

5. Any such dispute which has not been resolved within a period of six months from the date of written request for consultations may be submitted to any competent courts or administrative tribunals of the disputing Party provided that such courts or tribunals have jurisdictions over such claims or to arbitration. In the latter event, the investor has the choice among any of the following:

(a) the ICSID Convention and the ICSID Rules of Procedure for Arbitration Proceedings, provided that both the disputing Party and the non-disputing Party are parties to the ICSID Convention;

(b) the ICSID Additional Facility Rules, provided that either the disputing Party or the non-disputing Party, but not both, is a party to the ICSID Convention;

(c) the UNCITRAL Arbitration Rules; or

(d) any other arbitration institution or any other arbitration rules, if the disputing parties so agree.

6. Once the investor has submitted the dispute to either the courts or administrative tribunals of the disputing Party or any of the arbitration mechanisms provided for in paragraph 5, the choice of forum shall be final.

7. Each Party hereby consents to the submission of a dispute to international arbitration under paragraph 5 in accordance with this Article, conditional upon:

(a) the submission of the dispute to such arbitration taking place within three years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation under this Agreement and of the loss or damage incurred by the disputing investor in relation to its covered investment or by the covered investment;

(b) the disputing investor providing written notice, which shall be delivered at least 90 days before the claim to arbitration is submitted, to the disputing Party of its intent to submit the dispute to such arbitration and which:

(i) states the name and address of the disputing investor and the covered investment;

(ii) selects one of the fora in paragraph 5 as the forum for dispute settlement;

(iii) waives its right to initiate any proceedings, excluding proceedings for interim injunctive relief referred to in paragraph 8, before any of the other dispute settlement fora referred to in paragraph 5 in relation to the matter under dispute; and

(iv) briefly summarizes the alleged breach of the disputing Party under this Agreement (including the articles alleged to have

been breached) and the loss or damage allegedly caused to the investor in relation to its covered investment or caused to the covered investment; and

(c) In deciding whether an investment dispute is within the jurisdiction of ICSID and competence of the tribunal, the arbitral tribunal established under paragraph 5(a) or 5(b) shall comply with the notification submitted by the Republic of Turkey on March 3, 1989 to ICSID in accordance with Article 25 (4) of ICSID Convention, concerning classes of disputes considered suitable or unsuitable for submission to the jurisdiction of ICSID, as an integral part of this Agreement.

8. Notwithstanding paragraph 6, the disputing investor may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages or resolution of the substance of the matter in dispute before a court or administrative tribunals of the disputing Party, provided that the action is brought for the sole purpose of preserving the disputing investor's rights and interests during the pendency of the arbitration.

9. A Party shall not give diplomatic protection, or bring an international claim, in respect of a dispute which one of its investors and the other Party shall have consented to submit or have submitted to arbitration under this Article, unless such other Party has failed to abide by and comply with the award rendered in such dispute. Diplomatic protection, for the purposes of this paragraph, shall not include informal diplomatic exchanges for the sole purpose of facilitating a settlement of the dispute.

10. The arbitral tribunal established under paragraph 5 shall decide the issues in dispute in accordance with this Agreement and applicable rules of international law.

11. The arbitral tribunal established under this Section may take into account domestic law of the disputing Party where it is relevant to the factual basis of the claim. (16)

12. The arbitral tribunal shall decide as a preliminary question any objection by the disputing Party that a dispute is not within the tribunal's competence or jurisdiction, or that, as a matter of law, a claim submitted is not a claim for which an award in favor of the disputing investor may be made under paragraph 19.

13. Unless the disputing parties otherwise agree, the arbitral tribunal shall comprise three arbitrators, one arbitrator appointed by each of the disputing parties and the third, who shall be the presiding arbitrator, appointed by agreement of the disputing parties.

14. The disputing parties may agree on the legal place of any arbitration under the arbitral rules applicable under paragraph 5 of this Article. If the disputing parties fail to reach an agreement, the tribunal shall determine the place in accordance with the applicable arbitral rules, provided that the place shall be in the territory of a State that is a party to the New York Convention.

15. The non-disputing Party may make oral or written submissions to the arbitral tribunal on a question of interpretation of this Agreement. On the request of a disputing party, the non-disputing Party should resubmit its oral submission in writing.

16. An interpretation jointly formulated and agreed upon by the Parties with regard to any provision of this Agreement shall be binding on any tribunal established there under this Section.

17. The tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to ensure that the tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the tribunal's jurisdiction. The tribunal may not order attachment or enjoin the application of a measure alleged to constitute a breach referred to in paragraph 1. For purposes of this paragraph, an order includes a recommendation.

18. The disputing Party may not assert as a defense, counter-claim, right of set-off or for any other reason, that the disputing investor has received or will receive indemnification or other compensation for all or part of the alleged damages pursuant to an insurance or guarantee contract, except with respect to any subrogation as provided for in Article 1.13 (Subrogation).

19. The award rendered by the arbitral tribunal shall include:

(a) a judgment whether or not there has been a breach by the disputing Party of any obligation under the provisions referred to in paragraph 1.17.1 with respect to the disputing investor and its investments; and

(b) a remedy if there has been such breach. The remedy shall be limited to one or both of the following:

(i) payment of monetary damages and applicable interest; and

(ii) restitution of property, in which case the award shall provide that the disputing Party may pay monetary damages and any applicable interest in lieu of restitution.

Costs may also be awarded in accordance with the applicable arbitration rules.

20. An award made by a tribunal shall be final and binding upon the disputing parties. An award shall have no binding force except between the disputing parties and in respect of the particular case. Each Party shall, in its territory, make provision for the effective enforcement of the awards and shall carry out without delay the provision of the award in accordance with its relevant laws and regulations.

(16) For greater certainty, domestic law of the disputing Party should be considered as facts.

## **Section D. Exceptions**

### **Article 1.18. Taxation**

Nothing in this Agreement shall affect the rights and obligations of any Party under any tax agreement to which the Party is a party. In the event of any inconsistency between this Agreement and any such agreement, that agreement shall prevail to the extent of the inconsistency.

### **Article 1.19. SECURITY EXCEPTIONS**

Article 8.3 (Security Exceptions) of the Framework Agreement is incorporated into and made a part of this Agreement, *mutatis mutandis*.

## **Section E. Final Provisions**

### **Article 1.20. Entry Into Force**

1. This Agreement shall be approved by the Parties in accordance with their own procedures.
2. This Agreement shall enter into force on the first day of the second month, following the date of the exchange of the written notifications through diplomatic channels, by which the Parties inform each other that all necessary requirements foreseen by their domestic legislation for the entry into force of this Agreement have been fulfilled, or on such other date as the Parties may agree.

### **Article 1.21. Duration**

1. This Agreement shall be valid indefinitely.
2. Either Party may notify in writing the other Party of its intention to terminate this Agreement.
3. The termination shall take effect six months after the notification under paragraph 2.
4. In the event that this Agreement, or the Framework Agreement, or the Agreement on Trade in Services is terminated, the provisions of this Agreement, except national treatment provisions under Articles 1.4 (National Treatment) and 1.10 (Non-Conforming Measures) of this Agreement with regard to establishment, acquisition or expansion of investments, and the provisions of aforesaid Agreements other than this Agreement to the extent that they are necessary for or consequential to the application of this Agreement after the date of termination, shall continue to be in effect with respect to investments made or acquired before the date of termination of such Agreement, for a further period of 10 years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

### **Article 1.22. Amendments**

The Parties may agree, in writing, to amend this Agreement. An amendment shall enter into force after the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures, or on such other date as the Parties may agree.

### **Article 1.23. Annexes**

The Annexes to this Agreement shall form an integral part thereof.

## Article 1.24. Authentic Texts

This Agreement is drawn up in duplicate in the Korean, Turkish and English languages, each of these texts being equally authentic. In case of divergence, the English text shall prevail.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorized thereto, have signed this Agreement on Investment under the Framework Agreement.

DONE at Seoul, Republic of Korea, in duplicate, this twenty sixth day of February two thousand and fifteen.

For the Government of the Republic of Korea

For the Government of the Republic of Turkey

## Annex A. Customary International Law

The Parties confirm their shared understanding that "customary international law" generally and as specifically referenced in Article 1.6 (Minimum Standard of Treatment) and Annex B (Expropriation) results from a general and consistent practice of States that they follow from a sense of legal obligation. With regard to Article 1.6 (Minimum Standard of Treatment), the customary international law minimum standard of treatment of aliens refers to all customary international law principles that protect the economic rights and interests of aliens.

## Annex B. Expropriation (17)

The Parties confirm their shared understanding that:

(a) An action or a series of actions by a Party cannot constitute an expropriation unless it interferes with a tangible or intangible property right in an investment.

(b) Article 1.12.1 (Expropriation and Compensation) addresses two situations. The first is direct expropriation, where an investment is nationalized or otherwise directly expropriated through formal transfer of title or outright seizure.

(c) The second situation addressed by Article 1.12.1 (Expropriation and Compensation) is indirect expropriation, where an action or series of actions by a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure.

(i) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation requires a case-by-case, fact-based inquiry that considers, among other factors:

(A) the economic impact of the government action, although the fact that an action or series of actions by a Party has an adverse effect on the economic value of an investment, standing alone, does not establish that an indirect expropriation has occurred;

(B) the extent to which the government action interferes with distinct, reasonable investment-backed expectations; (18) and

(C) the character of the government action, including its objectives and context. Relevant considerations could include whether the investor bears a disproportionate burden, such as a special sacrifice, that exceeds what the investor or investment should be expected to endure for the public interest.

(ii) Except in rare circumstances, such as, for example, when a measure or series of measures have an extremely severe or disproportionate effect in light of its purpose, non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health, safety, the environment, and real estate price stabilization (through, for example, measures to improve the housing conditions for low-income households), do not constitute indirect expropriations. (19)

(17) For the purposes of Article 1.12 (Expropriation and Compensation) and this Annex, Article 8.1 (Taxation) of the Framework Agreement shall not apply.

(18) For greater certainty, whether an investor's investment-backed expectations are reasonable depends in part on the nature and extent of governmental regulation in the relevant sector. For example, an investor's expectations that regulations will not change are less likely to be reasonable in a heavily regulated sector than in a less heavily regulated sector.

(19) For greater certainty, the list of "legitimate public welfare objectives" in subparagraph (c)(ii) is not exhaustive.

## **Annex C. Temporary Safeguard Measures**

1. Nothing in this Agreement, the Agreement on Trade in Services and Annex C (Financial Services) of the Agreement on Trade in Services shall be construed to prevent a Party from adopting or maintaining temporary safeguard measures with regard to payment and capital movements:

(a) in the event of serious balance of payments and external financial difficulties or under threat thereof; or

(b) in cases where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious difficulties for the operation of monetary or exchange rate policies in the Party concerned.

2. The measures referred to in paragraph 1:

(a) are in effect for a period not to exceed one year; however if extremely exceptional circumstances arise such that the Party seeks to extend such measures, such Party will coordinate in advance with the other Party concerning the implementation of any proposed extension;

(b) are not confiscatory;

(c) do not constitute a dual or multiple exchange rate of practice;

(d) do not otherwise interfere with investor's ability to earn a market rate of return in the territory of the Party on any restricted assets; (20)

(e) shall be consistent with the Articles of Agreement of the IMF, as may be amended;

(f) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;

(g) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

(h) are temporary and phased out progressively as the situation specified in paragraph 1 improves;

(i) are applied in a manner consistent with Articles 1.4 (National Treatment) and 1.5 (Most-Favored-Nation Treatment) of the Agreement on Investment and Articles 1.5 (National Treatment), 1.7 (MFN and Future liberalization) of the Agreement on the Trade in Services subject to Schedule set out in Annex I, Annex II, and

(j) shall be promptly notified to the other Party.

3. Nothing in this Agreement, the Agreement on Trade in Services, or Annex C (Financial Services) of the Agreement on Trade in Services shall be regarded as altering the rights enjoyed and obligation undertaken by a Party as a party to the Articles of Agreement of the International Monetary Fund.

(20) For greater certainty, for Korea, the term "restricted assets" in subparagraph (d) refers only to assets invested in the territory of Korea by an investor of Turkey that are restricted from being transferred out of the territory of Korea.

## **Annex I. Explanatory Notes**

1. The Schedule of a Party to this Annex sets out, pursuant to Article 1.10 (NonConforming Measures), that Party's existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 1.4 (National Treatment);

(b) Article 1.5 (Most-Favored-Nation Treatment);

(c) Article 1.8 (Performance Requirements); or

(d) Article 1.9 (Senior Management and Boards of Directors).

2. Each Schedule entry sets out the following elements:

(a) Sector refers to the sector for which the entry is made;

(b) Obligations Concerned specifies the article(s) referred to in paragraph 1 that, pursuant to Article 1.10.1(a), do not apply to the non-conforming aspects of the law, regulation, or other measure, as set out in paragraph 3;

(c) Measures 21 identifies the laws, regulations, or other measures for which the entry is made. A measure cited in the Measures element:

(i) means the measure as amended, continued, or renewed as of the date of entry into force of this Agreement; and

(ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

(d) Description sets out commitments, if any, for liberalization on the date of entry into force of this Agreement, and the remaining non-conforming aspects of the measure for which the entry is made.

3. In the interpretation of a Schedule entry, all elements of the entry shall be considered. An entry shall be interpreted in light of the relevant articles of this Agreement against which the entry is made. To the extent that:

(a) the Measures element is qualified by a liberalization commitment from the Description element, the Measures element as so qualified shall prevail over all other elements; and

(b) the Measures element is not so qualified, the Measures element shall prevail over all other elements, unless any discrepancy between the Measures element and the other elements considered in their totality is so substantial and material that it would be unreasonable to conclude that the Measures element (21)

Should prevail, in which case the other elements shall prevail to the extent of that discrepancy.

4. In accordance with Article 1.10.1(a), and subject to Article 1.10.1(c), the articles of this Agreement specified in the obligations Concerned element of an entry do not apply to the non-conforming aspects of the law, regulation, or other measure identified in the Measures element of that entry.

5. For each Party, foreign person means a foreign national or an enterprise organized under the domestic law of the other Party or any other non-Party.

(21) For greater certainty, a change in the level of government at which a measure is administered or enforced does not, by itself, decrease the conformity of the measure with the obligations referred to in Article 1.10.1.