

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TURKEY AND THE GOVERNMENT OF THE REPUBLIC OF GHANA FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

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

Desiring to create favorable conditions for greater investment by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the promotion and reciprocal protection of investment under this Agreement will be conducive to the stimulation of business initiatives and will contribute to long term sustainable economic growth and development in both Contracting Parties;

Recognizing the importance of 'transfer of technology and human resource development arising from such investments; -

Agreeing that fair and equitable treatment of investments is desirable in order to maintain a stable framework for investment and will contribute to maximizing effective utilization of economic resources and improve living standards;

Recognizing the importance of providing effective means of asserting claims and enforcing rights with respect to investment under national law as well as through international arbitration; :

Convinced that these objectives can be achieved without relaxing health, safety and environmental measures of general application as well as internationally recognized labor rights; and :

Having resolved to conclude an Agreement concerning the reciprocal promotion and protection of investments;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement:

1. The term "investment" means every kind of asset, connected with business activities, made or acquired for the purpose of establishing long term economic relations in the territory of a Contracting Party in conformity with its laws and regulations, and shall include in particular, but not exclusively:

(a) movable and immovable property, and any other property rights such as mortgages, liens or pledges as defined under the laws and regulations of the Contracting Party in whose territory the property is situated;

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

(c) shares, stocks, debentures of companies, and any other form of participation in companies;

(d) intellectual property rights, in particular patents, industrial designs and technical processes as well as trademarks, goodwill and know-how;

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

but "investment" does not mean:

(f) acquisition of shares or voting power amounting to, or representing less than ten (10) percent of a company acquired through stock exchanges,

(g) claims to money that arise solely from: (i) commercial contracts for the sale of goods or services, or (ii) credits in connection with a commercial transaction,

(h) any other claims to money arising from:

(i) operations of external credit undertaken in accordance with the laws and regulations of the Contracting Party (undertaking it),

(ii) operations of public debt,

(i) real estate or other property, tangible or intangible, other than acquired in connection with an investment or used for the purpose of economic benefit of other business purposes.

A change in the form in which assets are invested does not affect their character as investments, provided such change is not contrary to the laws of the Contracting Party in whose territory the investment has been made.

2. The term "investor" means:

(a) natural persons having the nationality of a Contracting Party according to its laws in force,

(b) companies, corporations, firms or business partnerships incorporated or constituted under the laws in force of a Contracting Party and having their registered offices together with substantial business activities in the territory of that Contracting Party,

who have made an investment in the territory of the other Contracting Party.

3. The term "returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profits, interest, capital gains, royalties, fees' and dividends.

4. The term "territory" means:

(a) in respect of the Republic of Turkey; the land territory, internal waters, the territorial sea and the airspace above them, as well as the maritime areas over which Turkey has sovereign rights or jurisdiction for the purpose of exploration, exploitation and preservation of natural resources whether living or non-living, pursuant to international law.

(b) in respect of the Republic of Ghana; the present territory of the Republic of Ghana including, the airspace, the territorial sea and any maritime area situated beyond the territorial sea of Ghana which has been or might in the future be designated under the national law of Ghana in accordance with international law as an area within which Ghana may exercise rights with regard to the sea-bed and subsoil and the natural resources.

## **Article 2. Scope of Application**

1. This Agreement shall apply to investments in the territory of one Contracting Party, made in accordance with its national laws and regulations, by investors of the other Contracting Party, whether prior to, or after the entry into force of the present Agreement. However, this Agreement shall not apply to any disputes that have arisen before its entry into force or to claims which have been settled prior to its entry into force.

2. The provisions of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party. Such matters shall be governed by the domestic laws of each Contracting Party and the terms of an agreement relating to taxation concluded between the Contracting Parties.

3. Nothing in paragraph (2) of this Article shall be interpreted as permitting indirect expropriation through arbitrary or discriminatory taxation.

## **Article 3. Admission of Investments**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory and shall admit such investments in accordance with its laws, regulations and policies.

2. Each Contracting Party shall admit in its territory investments on a basis no less favourable than that accorded in like circumstances to investments of investors of any third State.

3. The Contracting Parties shall within the framework of their laws and regulations relating to the entry of foreign nationals give favorable consideration to applications for the entry and sojourn of investors and their key personnel employed in-

connection with an investment.

## **Article 4. Protection of Investments**

1. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and full protection and security in the territory of the other Contracting Party.
2. Neither Contracting Party shall in any way impair the management, maintenance, use, enjoyment, expansion, or disposal of such investments by unreasonable or discriminatory measures.
3. It is understood that the concepts of "fair and equitable treatment" and "full protection and security" means treatment that meets the minimum standard required by international law and does not require treatment in addition to, or beyond such a standard.

## **Article 5. Treatment of Investments**

1. Neither Contracting Party shall in its territory subject investments, once established, or returns of investors of the other Contracting Party to treatment less favourable than that which it accords, in like circumstances, 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, expansion, use, enjoyment or disposal of their investments, to treatment less favourable than that which is accorded, in like circumstances, to its own investors or to investors of any third State.

## **Article 6. Exceptions to Non-discrimination, Most Favoured Nation Treatment and National Treatment**

1. The Most Favoured Nation treatment referred to in paragraphs (1) and (2) of Article 5 shall not extend to provisions on the settlement of Investor-State disputes.
2. The provisions of Article 4 and 5 of this Agreement shall not oblige either Contracting Party to accord investments of investors of the other Contracting Party the same treatment that it accords to investments of its own investors with regard to acquisition of land, real estates, and real rights upon them.
3. The provisions of this Agreement 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 which may be extended by the former Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.
4. The non-discrimination, national treatment and Most-Favored Nation Treatment provisions of this Agreement shall not apply to existing or future advantages accorded by either Contracting Party by virtue of its membership of, or association with an existing or future customs, economic or monetary union, a common market, a free trade area or regional economic organization, to investors of its own, of Member States of such union, common market or free trade area, regional economic organization or of any other third State.
5. The provisions of this Agreement relative to the grant of treatment 'not less favourable than that accorded to the investors of either Contracting Party 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 any special policies or measures intended to address the specific internal needs of identified disadvantaged groups, peoples or regions in the territory of either Contracting Party.

## **Article 7. General Exceptions**

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining, or enforcing any non-discriminatory legal measures:
  - (a) designed and applied for the protection of human, animal or plant life or health, or the environment;
  - (b) related to the conservation of living or non-living exhaustible natural resources.
2. Nothing in this Agreement shall be construed:
  - (a) to require any Contracting Party to furnish or allow access to any information the disclosure of which it determines to be

contrary to its essential security interests;

(b) to prevent any Contracting Party from taking any actions in good faith and on non-discriminatory basis that it considers necessary for the protection of its essential security interests or the protection of its own essential public order interests including but not exclusively:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment;

(ii) taken in time of war or other emergency in international relations; or

(iii) relating to the implementation of national policies or international agreements

respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent any Contracting Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

## **Article 8. Transfers**

1. Each Contracting Party shall permit in good faith all transfers related to an investment to be made freely and without delay into and out of its territory upon fulfilment of all tax obligations. Such transfers shall include:

(a) the initial capital and additional amounts to maintain or increase investment,

(b) returns,

(c) proceeds from the sale or liquidation of all or any part of an investment,

(d) compensation pursuant to Articles 9 and 10,

(e) reimbursements and interest payments deriving from loans in connection with investments,

(f) salaries, wages and other remunerations received by the nationals of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits related to an investment,

(g) payments arising from an investment dispute,

2. Subject to the exchange regulations in force, transfers shall be made in the convertible currency in which the investment has been made or in any freely convertible currency at the rate of exchange in force at the date of transfer,

3. Where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious balance of payments difficulties, each Contracting Party may temporarily restrict transfers, provided that such restrictions are imposed on a non-discriminatory and in good faith basis.

## **Article 9. Expropriation and Compensation**

1. Investments shall not be expropriated, nationalized or subjected, directly or indirectly, to measures of similar effects (hereinafter referred to as "expropriation") except for a public purpose, and in a non-discriminatory manner, and upon payment of adequate and effective compensation in reasonable time, and in accordance with due process of law and the general principles of treatment provided for in Articles 4, and 5 of this Agreement.

2. The expropriation or the measures having effect equivalent to expropriation shall be, accompanied by the payment of compensation amounting to the fair market value of the investment immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier.

3. The compensation shall be paid without undue delay and in a freely convertible currency. In the event that payment of compensation is delayed, it shall carry an interest at a prevailing market rate in business transactions or at a rate prescribed by law, whichever is applicable in the territory of the host Contracting Party, from the date of expropriation until the date of payment. The compensation shall be freely transferable as described in paragraph (2) of Article 8.

4. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or her case and of the valuation of his or her investment in accordance with the principles set out in paragraph (1), (2) and (3) of this Article.

5. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which the investors of the other Contracting Party own shares, the provisions of paragraphs (1) to (4) of this Article shall apply.

6. Non-discriminatory legal measures designed and applied to protect legitimate public welfare objectives, such as public health, safety and environment, do not constitute indirect expropriation.

## **Article 10. Compensation for Losses**

1. Investors of either Contracting Party whose investments suffer losses in the territory, of the other Contracting Party owing to war or other armed conflict, revolt, riot, insurrection or civil disturbance shall be accorded by such other Contracting Party treatment no less favourable than that accorded to its own investors or to investors of any third State, whichever is the most favourable treatment, as regards any measures it adopts in relation to such losses such as restitution, indemnification and compensation.

2. Without prejudice to paragraph (1) of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their property by its forces or authorities; or

(b) destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation;

shall be accorded restitution or reasonable compensation. Resulting payments shall be freely convertible.

## **Article 11. Subrogation**

1. If one Contracting Party or its designated agency makes a payment under an indemnity against non-commercial risks given in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the assignment to the former Contracting Party or its designated agency by law or any legal transaction of all the rights and claims of the party indemnified and that former Contracting Party or its designated agency is entitled to exercise such rights and enforce such claims by virtue of its subrogation, to the same extent as the party indemnified.

2. The former Contracting Party or its designated Agency shall be entitled in all circumstances to the same treatment in respect of the rights and claims acquired by it by virtue of the assignment and any payments received in pursuance of those rights and claims as the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

3. Disputes between a Contracting Party and a designated agency shall be settled in accordance with the provisions of Article 14 of this Agreement.

## **Article 12. Denial of Benefits**

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

2. A Contracting Party may deny the benefits of this Agreement to an investor and their investments if investors of a third party substantially owns or controls the investment and the denying Contracting Party adopts or maintains measures with respect to the third party that prohibit or restrict transactions with investors of this third party.

## **Article 13. Responsibilities of Nationals and Companies of a Contracting Party In the Territory of the other Contracting Party**

1. Investors of one Contracting Party in the territory of the other Contracting Party shall be bound by the laws and regulations in force in the host State, including its laws and regulations on labour, health and the environment.

2. Each Contracting Party shall encourage their investors in the territory of the other Contracting Party to promote human capital formation, local capacity building through close cooperation with the local community, create employment opportunities and facilitate training opportunities for employees, and the transfer of technology.

3. Each Contracting Party shall encourage their investors in the territory of the other Contracting Party to act in accordance with relevant guidelines applicable to foreign investors.

## **Article 14. Settlement of Disputes between One Contracting Party and Investors of the other Contracting Party**

### 1. Consultation, negotiation or mediation

Disputes between one Contracting Party and an investor of the other Contracting Party arising from the application and interpretation of this Agreement shall be to the extent possible settled through consultation, negotiation or mediation upon written request submitted by either party.

### 2. Administrative review

In order to submit a claim for settlement under paragraph (5) of this Article, internal administrative remedies of the Contracting Party in whose territory the investment has been made shall be exhausted if required by and in accordance with applicable laws and regulations. Such procedure shall in no case exceed six (6) months from the date of its initiation by the investor. During the administrative review of the dispute, the investor is not precluded from initiating the process of consultation, negotiation or mediation as provided under paragraph 1 of this Article.

### 3. Scope of the claim

(a) In the event that a dispute arising from the application and interpretation of this Agreement cannot be settled by consultation, negotiation or mediation within six (6) months from the written request as provided under paragraph (1) or cannot be settled by Administrative Review as provided under paragraph (2) of this Article, the investor may submit a claim by a written notice to the host Contracting Party that the latter has breached an obligation under this Agreement and that the investor has incurred loss or damage by reason of, or arising out of, that breach;

(b) No claim may be submitted to international arbitration if more than six years have elapsed from the date on which the investor acquired, or should have first acquired knowledge of the breach and knowledge of the loss or damage arising from that breach.

### 4. Written notice

The written notice shall specify the name and address of the investor, evidence establishing that it is an investor of the other Contracting Party, the provisions of this Agreement alleged to have been breached, the issues and factual basis for the claim and the approximate amount of damages claimed.

### 5. Submission of a claim

1. If the dispute cannot be settled through consultation, negotiation or mediation within six months from the date of the written request for consultation, the disputing party may submit a claim either to:

(a) the national courts or administrative tribunals of the Contracting Party in whose territory the investment has been made;

(b) an ad-hoc tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);

(c) the International Center for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes Between States and Nationals of other States";

(d) the Ghana Arbitration Centre;

(e) any other national or international arbitration institution subject to agreement by the disputing parties.

2. Once the disputing party has submitted the dispute to the competent national courts of the Contracting Party in whose territory the investment has been made, or to national or international arbitration, that election is final.

### 6. Notwithstanding the provisions of paragraph (5) of this Article:

(a) only the disputes arising directly out of investment activities which have obtained necessary permission, if there is any permission required, in conformity with the relevant legislation of the host Contracting Party on foreign capital, and that have effectively started shall be subject to the jurisdiction of the International Center for Settlement of Investment Disputes (ICSID) or any other international dispute settlement mechanism as agreed upon by the Contracting Parties;

(b) the disputes related to the property and real rights upon the real estates within the territory of the host Contracting Party are totally under the jurisdiction of the courts of that Contracting Party and therefore shall not be submitted to jurisdiction of the International Center for Settlement of Investment Disputes (ICSID) or any other international dispute settlement mechanism.

#### 7. Selection of arbitrators / Constitution of the arbitral tribunal

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.

#### 8. Interim measures of protection

An arbitral tribunal may order an interim measure of protection to preserve the rights of a disputing party, or to facilitate the conduct of arbitral proceedings, including an order to preserve evidence in the possession or control of a disputing party.

#### 9. State contracts

In the case where the investor and the Contracting Party in whose territory the investment is made have signed a State contract or an investment agreement, the procedure relating to the settlement of disputes foreseen in that contract or investment agreement shall apply. to the settlement of disputes arising from the breach or violation of that contract or investment agreement.

#### 10. Governing law

The arbitral tribunal shall reach its decision on the basis of:

- (a) the provisions of this Agreement,
- (b) national laws and regulations of the Contracting Party which is a party to the dispute,
- (c) applicable rules of international law, and
- (d) any joint decision of the Contracting Parties declaring their interpretation of the provisions of this Agreement.

#### 11. Final award

Where the tribunal makes a final award against a party, the tribunal may award, separately or in combination, only:

- (a) monetary damages and any applicable interest; and
- (b) restitution of property, in which case the award shall provide that the party may pay monetary damages and any applicable interest in lieu of restitution.

The tribunal may also award costs. and attorneys' fees in accordance with this Agreement and the applicable arbitration rules. The tribunal may not award punitive damages.

#### 12. Finality and enforcement of an award

- (a) An award made by a tribunal shall be final and binding on the disputing parties in respect of the particular case.
- (b) Subject to the applicable revision, annulment or set aside procedures, a disputing party shall abide by and comply with an award without delay.
- (c) Each Contracting Party shall provide for the enforcement of an award in its territory in accordance with its national law and regulations.

### **Article 15. Settlement of Disputes between the Contracting Parties**

1. The Contracting 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 Contracting Parties agree to engage in direct and meaningful negotiations through diplomatic channels to arrive at such solutions. If the Contracting Parties cannot reach an agreement within six (6) months after the beginning of disputes between themselves through the foregoing procedure, the disputes may be submitted, upon the request of either Contracting Party, to an arbitral tribunal of three members.

2. Within two (2) months of receipt of a request, each Contracting 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 Contracting Party fails to appoint an arbitrator within the specified time, the other Contracting 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 (2) months after their appointment, the Chairman shall be appointed upon the request of either Contracting 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/she is a national of either Contracting 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/she is a national of either Contracting Party, the appointment shall be made by the most senior member of the Court who is not a national of either Contracting Party.
5. The tribunal shall have three (3) 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 (8) months of the date of selection of the Chairman, and the tribunal shall render its decision within two (2) 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. Arbitral Tribunal shall reach its decision on the basis of this Agreement and in accordance with international law applicable between the Contracting Parties.
7. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Contracting Parties.
8. A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article, if a dispute on the same matter has been brought before another international arbitral tribunal under the provisions of Article 14 and is still before the tribunal. This will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

## **Article 16. Amendments**

This Agreement may be amended by mutual written consent of the Contracting Parties at any time through diplomatic channels or negotiations. The amendments shall enter into force in accordance with the same legal procedure prescribed under the first paragraph of Article 17.

## **Article 17. Entry Into Force**

1. This Agreement shall enter into force on the date of the receipt of the last notification by the Contracting Parties, in writing and through diplomatic channels, of the completion of the respective internal legal procedures necessary to that effect. It shall remain in force for a period of ten (10) years and shall continue in force unless terminated in accordance with paragraph (2) of this Article.
2. Either Contracting Party may, by giving one year's prior written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter.
3. 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 of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten (10) years from such date of termination.

IN WITNESS WHEREOF, the undersigned representatives, duly authorized thereto by their respective Governments, have signed this Agreement.

DONE in duplicate at Accra on March 1, 2016 in the Turkish and English languages, both texts being equally authentic.

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

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

Mustafa ELITAS

Minister of Economy

FOR THE GOVERNMENT OF THE REPUBLIC OF GHANA

Hannah TETTEH

Minister of Foreign Affairs and Regional Integration