

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TURKEY AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA CONCERNING THE PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Turkey and the Government of the Republic of Indonesia, hereinafter called the Parties;

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

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;

Intending to create favourable conditions for investments by investors of one Party in the territory of the other Party on the basis of sovereign equality and mutual benefit;

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

Have agreed as follows:

## **Article I. Definitions**

For the purpose of this Agreement;

1. The term "investment", in conformity with the hosting Party's laws and regulations, shall mean any kind of asset invested by investor of one Party in the territory of the other Party, including but not exclusively:

- (a) Movable and immovable property, as well as any other rights in rem such as mortgages, liens, pledges and any other similar rights,
- (b) Shares, stocks or any other form of participation in companies,
- (c) Returns reinvested, claims to money or any other rights to legitimate performance having financial value related to an investment,
- (d) Copyrights, industrial and intellectual property rights such as patents, licenses, 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 to search for, cultivate, extract or exploit natural resources.

2. The term "investor" means:

- (a) Natural persons deriving their status as nationals of either Party according to its applicable law,
- (b) Corporations, firms or business associations incorporated or constituted under the law in force of either of the Parties and having their headquarters and economic activities in the territory of that Party.

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:

- (a) In respect of the Republic of Turkey:

The Turkish territory, territorial sea, as well as maritime areas over which it has jurisdiction or sovereign rights for the

purpose of exploring, exploiting, conserving and managing natural resources, pursuant to international law;

(b) In respect of the Republic of Indonesia:

The territory of the Republic of Indonesia, and the adjacent areas over which the Republic of Indonesia has sovereignty, sovereign rights or jurisdiction in accordance with international law.

## **Article II. Promotion and Protection of Investments**

1. Each Party shall encourage and create favourable conditions for investors of the other Party to invest in its territory, shall permit in its territory investments, and activities associated therewith, on a basis no less favourable 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, in conformity with its laws and regulations, accord to these investments, once established, treatment no less favourable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favourable.

3. Subject to the laws and regulations of the Parties relating to the entry, sojourn and employment of aliens;

(a) Investors of either Party shall be permitted to enter and remain in the territory of the other Party for purposes of establishing, developing, administering or advising on the operation of an investment to which they, or an investor of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources,

(b) Companies which are legally constituted under the applicable laws and regulations of one Party, and which are investments of investors of other Party, shall be permitted to engage managerial and technical personnel of their choice, regardless of nationality.

4. 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, regional economic organization or similar international agreements,

(b) Relating wholly or mainly to taxation.

## **Article III. Expropriation**

Parties shall not take measures of expropriation, nationalisation or measures having directly or indirectly similar effects against the investments of investors of the other Party, except;

(a) For a public purpose,

(b) In a non-discriminatory way,

(c) Against payment of prompt, effective and adequate compensation, and

(d) With due process of law and the general principles of treatment provided for in Article II of this Agreement.

## **Article IV. Compensation for Expropriation and Losses**

1. Compensation for expropriation shall amount to the fair market value of the expropriated investment before the expropriatory action was taken or became public knowledge. Such compensation shall be paid without delay and be freely transferable as described in paragraph 1 Article V.

2. Investors of one Party, whose investments in this territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Party, shall be accorded by the latter Party treatment not less favourable than that accorded to its investors or to investors of any third country, whichever is the most favourable treatment, as regards any measures it adopts in relation to such losses.

## **Article V. Transfers**

1. Either Party shall permit, within the scope of its laws and regulations in respect to - investments by investors of the other Party, all transfers related to an investment to be made freely and without unreasonable delay into and out of its territory. Such transfers include though not exclusively:

- (a) Returns,
  - (b) Proceeds from the sale or liquidation of all or any part of an investment,
  - (c) Compensation pursuant to Article IV,
  - (d) Payments made under loan agreements in connection with investments,
  - (e) Salaries, wages and other remunerations 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. Such transfers shall be made in a freely convertible currency at the prevailing rate of exchange on the date of transfer.

## **Article VI. 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 VIII of this Agreement.

## **Article VII. Derogation**

This Agreement shall not derogate from:

- (a) Laws and regulations, administrative practices or procedures or administrative or adjudicatory decisions of either Party,
- (b) International legal obligations, or
- (c) Obligations assumed by either Party, including those contained in an investment agreement or an investment authorization,

That entitle investments or associated activities to treatment more favourable than that accorded by this Agreement in like situations.

## **Article VIII. 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 investment, 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 endeavour to settle these disputes by consultations and negotiations in an amicable way.
2. If the disputes cannot be settled in this way within six months following the date of a written notification, the dispute can be submitted as the investor may choose:
  - a. Either to a competent court of the Party in whose territory the investment was made; or
  - b. For arbitration to:
    - i) The International Centre for Settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes between States and Nationals of other States", opened for signature at Washington, D.C. on March 18th 1965; or
    - ii) An ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL).

In case that the investor concerned has brought the dispute before the national court of the Party that is a party to the dispute and a final award has not been rendered within one year, such as dispute might as well be submitted to international arbitration as defined in (b.i) or (b.ii) of this article.

3. The arbitration awards shall be final and binding for all Parties in dispute. Each Party commits itself to execute the award according to its national law.

## **Article IX. Settlement of Disputes between the Parties**

1. Disputes between the Parties concerning the interpretation or application of this Agreement should, if possible, be settled through diplomatic channels.

2. If a dispute between the Parties cannot thus be settled after a period of six months the date of beginning of negotiations, it shall upon the request of either Party be submitted to an arbitral tribunal, as agreed upon by the Parties.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way. Within three months of the receipt of the request for arbitration, each Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who, on approval by the two Parties shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this Article one of the Parties fails to appoint an arbitrator or a Chairman cannot be selected, either Party may invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Party or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the necessary appointments. If the Vice President is a national of either Party or if he is too prevented from discharging the said function, the members of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the necessary appointments.

5. The arbitral tribunal shall base its decisions on the provisions of this Agreement and the rules and principles of the international law, and shall reach its decisions by a majority of votes. Such decision shall be final and binding for both Parties.

6. The arbitral tribunal shall determine its own rules of proceedings.

7. Each Party shall bear the cost of its own member of the tribunal and of its representation the arbitral proceeding; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Parties.

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

## **Article X. Applicability of this Agreement**

1. This Agreement shall apply to investments by investors of the Republic of Turkey in the territory of the Republic of Indonesia which have been previously granted admission in accordance with the Law No. 1 of 1967 concerning Foreign Investment and any law amending or replacing it, and to investments by investors of the Republic of Indonesia in the territory of the Republic of Turkey.

2. This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agreement, but the provisions of this Agreement shall not apply to any dispute, claim or difference which arose before its entry into force.

## **Article XI. Consultation and Amendment**

1. Either Party may request that consultations be held on any matter concerning this, Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.

2. 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 entry into force of such amendment.

## **Article XII. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the date of the latest notification by any Party of the accomplishment of its internal procedures of ratification. 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.

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. 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 years from such date of termination.

IN WITNESS WHEREOF, the undersigned duly authorized thereto have signed this Agreement.

DONE in duplicate at \_\_\_\_\_ on the day of \_\_\_\_\_ in the Turkish, Indonesian 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 INDONESIA