

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

The Government of the Republic of Turkey and the Government of the Republic of Singapore (each hereinafter referred to as a "Contracting Party"),

DESIRING to promote greater economic co-operation between them, particularly with respect to investments by investors of one Contracting Party in the territory of the other Contracting Party;

RECOGNISING that agreement on the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the Contracting Parties;

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

HAVING RESOLVED to conclude an agreement concerning the encouragement and reciprocal protection of investments,

HEREBY AGREE AS FOLLOWS:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investor" means:

- (a) natural persons deriving their status as nationals of either Contracting Party according to its applicable law;
- (b) corporations, firms or business associations, or bodies incorporated or constituted under the law in force of either of the Contracting Parties.

2. The term "investment" means every kind of asset permitted by each Contracting Party in accordance with its laws and regulations, including, though not exclusively, any;

- (a) movable and immovable property and other property rights such as mortgages, liens or pledges;
- (b) shares and stocks, debentures and similar interests in companies.
- (c) claims to money or to any performance under contract having a financial value;
- (d) industrial and intellectual property rights such as copyright, patents, designs, trademarks, goodwill, know-how and any other similar rights; and
- (e) business concessions conferred by law or under contract, including any concession relating to natural resources.

The said term shall refer to all direct investments made in accordance with the laws and regulations applicable in the territory of the Contracting Party where the investments are made. The term "investment" shall cover all investments existing at the time of entry into force of this Agreement as well as those acquired thereafter.

3. The term "territory", in respect of each Contracting Party, means its land 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.

4. The term "returns" means the amount yielded by an investment including in particular, though not exclusively, any profits, interest, capital gains, dividends, royalties or fees.
5. The term "freely convertible currency" means any currency that is widely used to make payments in international transactions and widely traded in the international principal exchange markets.
6. The term "freely useable currency" means "freely useable currency" as determined by the International Monetary Fund under its Articles of Agreement and any amendments thereto.

## **Article 2. Applicability of Agreement**

This Agreement shall apply to investments made in the territory of one Contracting Party by investors of the other Contracting Party, in accordance with its national laws and regulations or specifically approved in writing by the designated competent authority, whether prior to, or after entry into force of the present Agreement. However this Agreement shall not apply to any disputes concerning an investment which arose, or any claim which was settled, before its entry into force.

## **Article 3. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory.
2. Each Party shall permit in its territory investments on a basis no less favourable than that accorded in similar situations to investments of investors of any third State, within the framework of its laws and regulations.
3. Investments made or approved under Article 2 shall be accorded fair and equitable treatment and protection in accordance with this Agreement.
4. The Contracting Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of natural persons of other Contracting Party who wish to enter their territory in connection with the making and carrying through of an investment; the same shall apply to nationals of either Contracting Party or other personnel of the investor of a Contracting Party, who in connection with an investment wish to enter the territory of the other Contracting Party and sojourn there to take up employment. Applications to take up employment shall also be given sympathetic consideration.

## **Article 4. Treatment of Investments**

1. Each Contracting Party shall accord to investments made or approved in accordance with the provisions of Article 2 or returns of investors, treatment no less favourable than that accorded in similar situations to investments or returns of its investors in accordance with its laws and regulations, or to investments or returns of investors of any third State, whichever is the most favourable.
2. If a Contracting Party applies, pursuant to paragraph 1, treatment less favorable than national treatment to made or approved investments of the other Contracting Party under Article 2, the other Contracting Party reserves the right to apply similar treatment to the investments of investors of the first Contracting Party. In this connection, the affected investors of the first Contracting Party shall have no right to resort to international arbitration as regards the treatment they received.
3. Neither Contracting Party shall, subject to its laws, in any way impair by arbitrary or unjustifiable measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.

## **Article 5. Exceptions**

1. The provisions of this Agreement relating to the grant of treatment not less favourable than that accorded to the investors of any third State shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any existing or future customs union, free trade arrangement (including any agreement designed to lead in future to a free trade area) or similar international agreement to which either of the Contracting Parties may become a party or any provision relating to land expropriation in investment guarantee agreements entered into by the Republic of Singapore prior to 1991.
2. The provisions of this Agreement shall not apply to matters of taxation in the territory of either Contracting Party.

## **Article 6. Expropriation**

1. Neither Contracting Party shall take any measure of expropriation, nationalization or other measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") against the investment of investors of the other Contracting Party unless the measures are taken for any purpose authorized by law, on a non-discriminatory basis, in accordance with its laws and against compensation which shall be effectively realizable and shall be made without unreasonable delay. Such compensation, shall, subject to the laws of each Contracting Party, be the market value immediately before the expropriation. Any resulting compensation shall be freely convertible and transferable.

2. Any measure of expropriation or valuation may, at the request of the investor affected, be reviewed by a judicial or other independent authority of the Contracting Party taking the measure in the manner prescribed by its laws.

3. Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the laws in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph 1 of this Article are applied to the extent necessary to guarantee compensation as specified therein to such investors of the other Contracting Party who are owners of those shares.

## **Article 7. Compensation for Losses**

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, insurrection, civil disturbance or other similar events shall be accorded by such other Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, if any, not less favourable than that which it accords to its own investors or to investors of any third State, whichever is the most favourable treatment. Any resulting compensation shall be in accordance with laws and regulations of the host Contracting Party and be applied in the same manner to foreign and domestic investors. The compensation shall be freely convertible and transferable.

## **Article 8. Repatriation and Transfers**

1. Each Contracting Party shall permit the investors all transfers, on a non-discriminatory basis, of their capital and the returns from any investments. The transfers shall be made in a freely useable currency, without any restriction or delay at the prevailing market rate on the date of transfer. Such transfers shall include in particular, though not exclusively:

- (a) profits, capital gains, dividends, royalties, interest and other current income accruing from an investment;
- (b) the proceeds of the total or partial liquidation of an investment;
- (c) repayments made pursuant to a loan agreement in connection with an investment;
- (d) license or other fees in relation to intellectual property rights, know-how or goodwill in relation to the matters in Article 1(2)(d);
- (e) payments in respect of technical assistance, technical service and management fees;
- (f) payments in connection with contracting projects;
- (g) earnings of nationals of the other Contracting Party who work in connection with an investment in the territory of the former Contracting Party.

2. Nothing in paragraph 1 of this Article shall affect the free transfer of compensation paid under Articles 6 and 7 of this Agreement.

3. Notwithstanding paragraph 1 and 2 of this Article, a Party may delay or prevent a transfer through the equitable, non-discriminatory and good faith application of its laws if the investors have not complied with all their legal obligations.

## **Article 9. Laws**

For the avoidance of any doubt, it is declared that all investments shall, subject to this Agreement, be governed by the laws in force in the territory of the Contracting Party in which such investments are made.

## **Article 10. Subrogation**

1. In the event that either Contracting Party or any agency, institution, statutory body or corporation designated by it (hereinafter referred to as "the Insurer") as a result of an indemnity it has given in respect of an investment or any part thereof makes payment to investors in respect of any of their claims under this Agreement, the other Contracting Party

acknowledges that the Insurer is entitled by virtue of subrogation to exercise the rights and assert the claims of investors against non-commercial risks. The subrogated rights or claims shall not be greater than the original rights or claims of the said investor.

2. Any payment made by the Insurer to investors shall not affect the right of such investors to make any claims for the part of the investment not covered by the indemnity provided for in paragraph 1 of this Article, against the other Contracting Party in accordance with Article 11.

## **Article 11. Investment Disputes**

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in connection with an investment in the territory of the other Contracting Party shall, as far as possible, be settled amicably through negotiations between the parties to the dispute. The party intending to resolve such dispute through negotiations shall give written notice to the other of its intention.

2. If the dispute cannot be thus resolved as provided in paragraph 1 of this Article, within 6 months from the date of the notice given hereunder by either party to the dispute, then, unless the parties have otherwise agreed, it may be submitted either to:

(a) a competent court of the Contracting Party in whose territory the investment was made;

(b) conciliation or arbitration by the International Centre for Settlement of Investment Disputes (called "the Centre" in this Agreement) established by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States" opened for signature at Washington on 18 March 1965 (called "the Convention" in this Agreement). Subject to paragraph 4 (a) of this Article, each Contracting Party hereby irrevocably consents in advance under Article 25 of the Convention to submit any dispute to the Centre, except the disputes referred to in paragraph 4 (b) of this Article, or

(c) conciliation in accordance with the United Nations Commission on International Trade Law Rules of Conciliation 1980 or to arbitration in accordance with the United Nations Commission on International Trade Law' Rules on Arbitration, 1976.

3. The choice of the investor shall prevail in the event of a difference in the selection of the mode of settlement.

4. Notwithstanding the provisions of paragraph 2 of this Article;

(a) only the disputes arising in connection with an investment made in conformity with the relevant legislation or approved, under Article 2, and which has actually started may be submitted to the International Center for Settlement of Investment Disputes or any other international dispute settlement mechanism as may be agreed upon by the Contracting Parties;

(b) disputes relating to the immovable property and rights related to such property are under the exclusive jurisdiction of the competent courts of the relevant Contracting Party and therefore shall not be submitted to jurisdiction of the International Center for Settlement of Investment Disputes or any other international dispute settlement mechanism; and

(c) with regard to the Article 64 of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, the Contracting Parties separately declare as follows:

i) The Republic of Turkey shall not accept the referral of any disputes arising between the Republic of Turkey and the Republic of Singapore concerning the interpretation or application of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, which is not settled by negotiation, to the International Court of Justice,

ii) The Republic of Singapore agrees to the referral of any disputes arising between the Republic of Singapore and the Republic of Turkey concerning the interpretation or application of the Convention on the Settlement of Investment Disputes between States and Nationals of other States, which is not settled by negotiation, to the International Court of Justice, only if it is done with the consent of both Contracting Parties.

5. Any court judgement, arbitration award or settlement reached pursuant to conciliation, shall be final and binding between the parties to the dispute. Each party commits itself to execute the judgement, award or settlement under its national law.

## **Article 12. Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, as far as possible, be settled through negotiation.

2. If any dispute cannot be thus settled, it shall upon the request of either Contracting Party be submitted to arbitration. The arbitral tribunal (hereinafter called "the tribunal") shall consist of three arbitrators, one appointed by each Contracting Party and the third, who shall be Chairman of the tribunal, appointed by agreement of the Contracting Parties.
3. Within two months of receipt of the request for arbitration, each Contracting Party shall appoint one arbitrator, and within two months of such appointment of the two arbitrators, the Contracting Parties shall appoint the third arbitrator.
4. If the tribunal shall not have been constituted within four months of receipt of the request for arbitration, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to appoint the arbitrator or arbitrators not yet appointed. If the President is a national of either Contracting Party or if he is unable to do so, the Vice-President may be invited to do so. If the Vice-President is a national of either Contracting Party or if he is unable to do so, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party may be invited to make the necessary appointments, and so on.
5. The tribunal shall reach its decision by a majority of votes.
6. The tribunal's decision shall be final and the Contracting Parties shall abide by and comply with the terms of its award.
7. Each Contracting Party shall bear the costs of its own member of the tribunal and of its representation in the arbitration proceedings and half the costs of the Chairman and the remaining costs. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties.
8. Apart from the above the tribunal shall establish its own rules of procedure.

## **Article 13. Other Obligations**

If the legislation of either Contracting Party or international obligations existing at present or established hereafter between the Contracting Parties in addition to this Agreement, result in a position entitling investments by nationals of the other Contracting Party to treatment more favourable than is provided for by this Agreement, such position shall not be affected by this Agreement. Each Contracting Party shall observe any commitment in accordance with its laws additional to those specified in this Agreement entered into by the Contracting Party, with investors of the other Contracting Party as regards their investments.

## **Article 14. Entry Into Force, Duration and Termination**

1. Each Contracting Party shall notify the other Contracting Party of the fulfillment of its internal legal procedures required for the bringing into force of this Agreement. This Agreement shall enter into force on the thirtieth day from the date of notification of the later Contracting Party.
2. This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of nine years, either Contracting Party notifies in writing to the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.
3. In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 13 shall remain in force for a further period of ten years from that date.

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

Done at Singapore on 19 February 2008, in the Turkish and English language.

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

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

Binali Yildirim

Minister of Transport and Communications

FOR THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

Lim Hng Kiang

Minister for Trade and Industry