

Agreement between the Swiss Confederation and the Republic of Turkey on the Reciprocal Promotion and Protection of Investments

The Swiss Confederation and the Republic of Turkey, each a Contracting Party,

Desiring to strengthen the economic cooperation between them on the basis of international law and mutual trust,

Recognizing the important complementary role of foreign investment in the economic development process and the right of either Contracting Party to determine this role and to define the conditions under which foreign investment would participate in this process,

Recognizing that the key to achieving and maintaining an adequate flow of capital lies in the maintenance of an appropriate mutually created investment climate and in the respect by foreign investors of the sovereignty and the laws of the host country having jurisdiction on them and in their acting consistently with the declared policies and the priorities of the host

countries and in their endeavouring to substantially contribute to the development of the country,

Intending to create favourable conditions for capital investments in the territory of each Contracting Party,

Desiring to intensify the cooperation between nationals and companies, private as well as public, of both Contracting Parties

in the field of technology, industrialization and productivity,

Recognizing the need to protect investments by nationals and companies of both Contracting Parties with the aim to foster the economic prosperity of both Contracting Parties,

Have agreed as follows:

Article 1.

For the purposes of this Agreement:

(a) The term "investor" refers to

i) natural persons who, according to the law of one or the other Contracting Party, are considered to be its nationals:

ii) companies, including corporations, business associations or other organisations, which are incorporated, constituted or otherwise duly organised under the law of either Contracting Party and in which nationals of one or the other Contracting Party have, directly or indirectly, a prevailing interest.

b) The term "investments" shall include every kind of assets and particularly:

i) movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges:

ii) shares, certificates or other kinds of participation in companies:

iii) money claims and any entitlements of economic value associated with an investment:

iv) industrial property rights (such as patents for inventions, utility models, industrial designs or models, trademarks, trade names, indications of source or origin), copyrights, know-how and goodwill:

v) rights conferred by law, including concessions to search for, extract or exploit natural resources as well as all other rights given by contract or by decision of the authority in accordance with the law.

Article 2.

(1) Each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) Once an investment is admitted on its territory, each Contracting Party shall examine, in accordance with its legislation, all requests for permits, authorisations and licenses needed for the operation, maintenance and development of the investment, with favourable attitude.

Article 3.

(1) Each Contracting Party shall protect within its territory investments made in accordance with its legislation by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and liquidation of such investments.

(2) Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party.

This treatment shall not be less favourable than that granted by the Contracting Party to investments made within its territory by its own investors, or than that granted by the Contracting Party to the investments made within its territory by investors of the most favoured nation, if this latter treatment is more favourable.

(3) The treatment of the most favoured nation shall not apply to privileges which either Contracting Party accords to investors of a third State because of its membership in, or association with a free trade area, a customs union or a common market.

Article 4.

Each Contracting Party in whose territory investments have been made by investors of the other Contracting Party shall grant those investors the free transfer into and out of its territory of the payments relating to these investments, particularly:

- (a) of profits, dividends and other current returns;
- (b) of principal and interest payments arising under loan agreements;
- (c) of royalty payments;
- (d) of management, technical assistance or other fees;
- (e) of the proceeds of the sale or of the partial or total liquidation of the investment.

Article 5.

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or any other measure having the same nature or the same effect against investments belonging to investors of the other Contracting Party, unless the measures are taken in the public interest, on a non-discriminatory basis, and under due process of law, and provided that provisions be made for effective and adequate compensation. The amount of compensation shall be paid to the investor entitled thereto without delay and made freely transferable.

(2) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, civil disturbance, state of emergency or rebellion, which took place on the territory of the other Contracting Party shall benefit from a treatment in accordance with Article 3, paragraph (2) of this Agreement.

Article 6.

The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its legislation by investors of the other Contracting Party prior to the entry into force of this Agreement.

Article 7.

(1) If the investments of an investor of one Contracting Party are insured against non-commercial risks under a system established by law, subrogation of the insurer into the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting 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) For the purposes of this article, disputes between a Contracting Party and an investor shall be settled in accordance with the provisions of article 8 of this Agreement.

Article 8.

(1) For the purposes of this article an investment dispute is defined as a dispute involving an alleged breach of any rights and obligations conferred or created by this Agreement.

(2) With a view to solve an investment dispute between a Contracting Party and an investor of the other Contracting Party, consultations will take place between the parties concerned.

(3) If these consultations do not result in a solution within twelve months and if the investor concerned gives a written consent, the dispute shall be submitted to the arbitration of the International Centre for Settlement of Investment Disputes, instituted by the Convention of Washington of March 18, 1965, for the settlement of disputes regarding investments between States and nationals of other States, provided that in case the investor concerned has brought the dispute before the courts of justice of the Contracting Party that is a party to the dispute and there has not been rendered a final award.

Each party may start the procedure by addressing a request to that effect to the Secretary General of the Centre as foreseen by article 36 of the above-mentioned Convention. The Contracting Party which is party to the dispute can, at no time whatever during the settlement procedure or the execution of the sentence, allege the fact that the other party to the dispute, national or company has received, by virtue of an insurance contract pursuant to Article 7 of this Agreement, a compensation covering the whole or part of the incurred damage.

A company which has been incorporated or constituted according to the laws in force on the territory of the Contracting Party and which, prior to the origin of the dispute, was under the control of nationals or companies of the other Contracting Party, is considered, in the sense of the Convention of Washington and according to its Article 25 (2) (b), as a company of the latter.

(5) Arbitration of investment disputes shall be done in accordance with the provisions of the Convention on the Settlement of Investment Disputes Between States and Nationals of other States and the "Arbitration Rules" of the Centre.

Article 9.

(1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled between them through direct and meaningful negotiations.

(2) If both Contracting Parties cannot reach an agreement within twelve months after the beginning of the dispute between themselves, the dispute shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall nominate a chairman who shall be a national of a third State.

(3) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

(4) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the chairman shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the Vice-President is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

(6) Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure.

(7) The decisions of the tribunal are final and binding for each Contracting Party.

Article 10.

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the investors of the other Contracting Party.

Article 11.

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

Article 12.

(1) This Agreement shall enter into force thirty days after the day when both Governments have notified each other that they have complied with the constitutional requirements for the conclusion and entry into force of international agreements, and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for periods of two years, until terminated.

(2) In case of official notice as to the termination of the present Agreement, the provisions of Articles I to 11 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done at Ankara on March 03, 1988, in six originals, two in French, two in Turkish and two in English language, each text being equally authentic. In case of divergence of interpretation the English text shall prevail.