

Agreement between the Kingdom of Sweden and the Republic of Turkey on the Reciprocal Promotion and Protection of Investments

The Kingdom of Sweden and the Republic of Turkey, hereinafter referred to as the Contracting Parties,

DESIRING to intensify economic co-operation to the mutual benefit of both countries and to maintain fair and equitable treatment of investments by investors of one Contracting Party in the territory of the other Contracting Party.

RECOGNIZING that the promotion and protection of such investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" shall comprise every kind of asset, provided that the investment has been made in accordance with the laws and regulations of the host country, and irrespective of whether the investment was made before or after the entry into force of this Agreement, and more particularly, though not exclusively.

(a) Movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights;

(b) Shares or any other form of participation in companies;

(c) Title to money or any performance having an economic value;

(d) Copyrights, industrial property rights, patent, trade marks, trade names, technical processes, know-how and goodwill;

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

(f) Investment goods that under a leasing agreement, in relation to an investment under this Agreement are placed at the disposal of a leasee in the territory of one Contracting Party in conformity with its laws and regulations.

(2) The term "investor" shall mean

(a) Any natural person who is a national of a Contracting Party in accordance with its laws; and

(b) Any legal person having its seat in the territory of either Contracting Party, or in a third country with a predominant interest of an investor of the other Contracting Party.

(3) The term "returns" shall mean the amounts yielded by an investment including in particular, though not exclusively, capital gains, profits, interests, dividends, royalties, licence fees and other fees.

(4) The term "owned or controlled" shall mean ownership or control that is direct or indirect, including ownership or control exercised through subsidiaries or affiliates, wherever located.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall at all times ensure fair and equitable treatment of the investment by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof by unreasonable measures.

(2) Each Contracting Party shall, subject to its general policy in the field of foreign investment, promote in its territory investments by investors of the other Contracting Party.

(3) Each Contracting Party shall admit investments by investors of the other Contracting Party in accordance with its legislation.

(4) This Agreement shall apply to investments owned or controlled by investors of one Contracting Party in the territory of the other Contracting Party which are established in accordance with the laws and regulations in force in the territory of the latter Contracting Party at the time the investment was made.

An investor of one of the Contracting Parties having its seat in a third country, shall not invoke protection under this Agreement if there is an investment protection and promotion agreement concluded between the third country and the Contracting Party where the investment is made. In the absence of an investment protection and promotion agreement between the third country where the investor has its seat and the Contracting Party concerned, the present Agreement shall apply. (5) The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, enjoy the full protection of this Agreement.

(6) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

Article 3. Treatment of Investments

(1) Each Contracting Party shall apply to investments in its territory by investors of the other Contracting Party, a treatment which is no less favourable than that accorded to investments by investors of third States.

(2) The provisions of this Article shall have no effect in relation to any existing or future customs union, common market, free trade area or similar international agreement to which either of the Contracting Parties is or may become a party.

(3) The provisions of paragraph (1) of this Article 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 international agreement or arrangement relating wholly or mainly to taxation.

Article 4. Expropriation and Compensation

(1) Neither Contracting Party shall take any measures of expropriation or nationalization or any other measure having the same nature or the same effect against investments and returns belonging to investors of the Other Contracting Party or otherwise depriving them, directly or indirectly, of their investments, unless the following conditions are complied with:

(a) The measures are taken in the public interest and under due process of law;

(b) The measures are not discriminatory; and

(c) The measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be equivalent to the fair market value of the expropriated investment at the time the expropriatory action was taken or became known, and shall be freely transferable without delay under normal transaction procedures in a convertible currency, at the Central Bank exchange rate or market exchange rate prevailing on the day the transfer is made, whichever is more favourable.

(2) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, insurrection, a state of national emergency or similar events shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to investors of any third State. Resulting payments shall be freely transferable without undue delay.

Article 5. Transfers

1) Each Contracting Party shall allow without delay, in accordance with the normal commercial transaction procedures, the transfer in a freely convertible currency of:

(a) The returns from any investment by an investor of the other Contracting Party;

(b) Repayment of loans in connection with an investment;

(c) The proceeds from a total or partial liquidation or sale of any investment by an investor of the other Contracting Party; and

(d) The net earnings of individuals, not being its national who are allowed to work in connection with an investment on its territory.

(2) The Contracting Parties undertake to accord to transfers referred to in paragraph (1) of this Article a treatment no less favourable than that accorded to transfers originating from investments made by investors of any third State.

(3) Any transfer referred to in this Agreement, shall be effected at the market exchange rate prevailing on the day the transfer is made, except for the provisions under Article 4 (1) (c).

Article 6. Subrogation

If a Contracting Party or one of its designated agencies makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize the transfer of any right or title of such an investor to the former Contracting Party or its designated agency and the subrogation of the former Contracting Party or its designated agency to any such right or title.

The Contracting Party or its designated agency making the payment shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

Article 7. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations between the Governments of the two Contracting Parties.

(2) If the dispute cannot thus be settled within six months, following the date on which such negotiations were requested by either Contracting Party, it shall, at the request of either Contracting Party, be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be established in each individual case, each Contracting Party appointing one member, and these two members shall then agree upon a national of a third State as their Chairman to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the Chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitral tribunal.

(4) If the time limits referred to in paragraph (3) of this Article have not been complied with, either Contracting Party may, in the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of the Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court not being incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitral tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Party as well as the costs for its representation in the arbitral proceedings; the cost of the Chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitral tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitral tribunal shall be determined by the tribunal itself.

Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) In the event of a dispute between a Contracting Party and an investor of the other Contracting Party, concerning an investment by the latter in the territory of the former, the parties to the dispute shall initially seek to resolve the dispute by consultations or negotiations in good faith.

If the dispute cannot be resolved through the foregoing procedures the investor concerned shall have the right to submit it to the International Centre for the Settlement of Investment Disputes for settlement by arbitration under the Washington

Convention of 18 March 1965 on the Settlement of Investment Disputes between States and Nationals of Other States at any time after six months from the date upon which the dispute arose, provided that, if the investor concerned has brought the dispute before the courts of justice of the Contracting Party that is a party to the dispute, a final award has not been rendered within one year. Each Contracting Party consents to the submission of such disputes to the International Centre for the Settlement of Investment Disputes for settlement by arbitration or conciliation. (2) For the purposes of this Article, any legal person which is constituted in accordance with the legislation of one Contracting Party and in which before a dispute arises the majority of shares are owned by investors of the other Contracting Party shall be treated, in accordance with Article 25(2) (b) of the said Washington Convention, as an investor of the other Contracting Party.

(3) The provisions of this Article shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled, before the entry into force of this Agreement.

Article 9. Application of National and International Law

Nothing in this Agreement shall prejudice any rights or benefits under national or international law accruing to an investor of one Contracting Party on the territory of the other Contracting Party.

Article 10. Entry Into Force, Duration and Termination

(1) The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty days after the date of receipt of the last notification.

(2) This Agreement is concluded for a period of fifteen years. Unless it is denounced in writing at least six months before the expiry of that period, the validity of the Agreement is extended for an indefinite period of time. In that case, either Contracting Party may terminate the Agreement by giving at least six months advance notice in writing.

(3) In respect of investments made prior to the date when the Agreement ceases to be in force, the provisions of Articles 1 to 9 shall remain applicable for a further period of fifteen years from that date.

Done at Stockholm on 11 April 1997 in duplicate in the Swedish, Turkish and English languages, all three texts being equally authentic. In case of divergencies between the texts, the English text shall prevail.