

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Turkey;

Desiring to create favourable conditions for greater investment by nationals and companies of one State in the territory of the other State;

Recognising that the promotion and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(a) "investment" means every kind of asset and in particular, though not exclusively, includes:

- (i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;
- (ii) Shares in and stock and debentures of a company and any other form of participation in a company;
- (iii) Claims to money or to any performance under contract associated with any investment having a financial value;
- (iv) Industrial and intellectual property rights, technical processes, knowhow and goodwill;
- (v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments and the term "investment" includes all investments, whether made before or after the date of entry into force of this Agreement;

(b) "returns" means the amounts yielded by an investment and includes profit, interest, capital gains, dividends, royalties and fees;

(c) "nationals" means:

- (i) In respect of the Republic of Turkey: physical persons deriving their status as Turkish nationals from the law in force in the Republic of Turkey;
- (ii) In respect of the United Kingdom: physical persons deriving their status as United Kingdom nationals from the law in force in the United Kingdom;

(d) "companies" means:

- (i) In respect of the Republic of Turkey: corporations, firms and business associations incorporated or constituted under the law in force in any part of the Republic of Turkey;
- (ii) In respect of the United Kingdom: corporations, firms and business associations incorporated or constituted under the law in force in any part of the United Kingdom or in any territory to which this Agreement is extended in accordance with

the provisions of Article 12;

(e) "territory" means:

(i) In respect of the Republic of Turkey: the Republic of Turkey and the maritime areas adjacent to the coast of the Republic of Turkey to the extent to which the Republic of Turkey may exercise sovereign rights or jurisdiction in those areas according to international law;

(ii) In respect of the United Kingdom: Great Britain and Northern Ireland and any territory to which this Agreement is extended in accordance with the provisions of Article 12 together with the adjacent maritime areas to the extent to which sovereign rights or jurisdiction in these areas is exercised in accordance with international law.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for investments of nationals or companies of the other Contracting Party in its territory and subject to its right to exercise powers conferred by its laws or regulations, each Contracting Party shall admit investments of nationals or companies of the other Contracting Party.

(2) Admitted investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall, in any way, impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of nationals or companies of the other Contracting Party.

Article 3. National Treatment and Most-favoured-nation Provisions

(1) Neither Contracting Party shall in its territory subject investments or returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own nationals or companies or to investments or returns of nationals or companies of any third State.

(2) Neither Contracting Party shall in its territory subject nationals or companies of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own nationals or companies or to nationals or companies of any third State.

Article 4. Compensation for Losses

Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, revolt, national or local insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards measures it adopts in relation to such losses, including restitution, indemnification and compensation, no less favourable than that which the latter Contracting Party accords to its own nationals or companies or to nationals or companies of any third State, whichever is the more favourable to the investor. Resulting payments shall be freely transferable.

Article 5. Expropriation

(1) Investments of nationals or companies of either Contracting Party shall not be expropriated or nationalised either directly or indirectly or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the internal needs of that Party on a non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall be equivalent to the genuine value of the expropriated investment at the time the expropriatory action was taken or became known, whichever is the earlier, and shall include interest at the normal rate until the date of payment. Compensation shall be made without delay, be effectively realisable and freely transferable. A national or company of either party that asserts that all or part of its investment has been expropriated shall have a right under the law of the Contracting Party making the expropriation to prompt review by the appropriate judicial or independent administrative authorities of the other party to determine whether such expropriation and the valuation of his or its investment therefore conforms to the principles set out in this paragraph.

(2) Each Contracting Party shall ensure that, in cases of expropriation of investments of a company which is incorporated or constituted under the law in force in any part of its own territory and in which an investor of the other Contracting Party owns shares, its law provides either (i) for that company to be compensated in accordance with the provisions of paragraph

(1) of this Article or (ii) for the investor of the other Contracting Party to be compensated directly in accordance with those provisions: provided however that in no event shall this paragraph (2) be construed as to require a Contracting Party's law to provide for both (i) and (ii) above.

Article 6. Repatriation of Investment and Returns

(1) Each Contracting Party shall in respect of investments guarantee to nationals or companies of the other Contracting Party the unrestricted transfer of their investments and returns, subject to the right of each Contracting Party in exceptional balance of payments difficulties and for a limited period to exercise equitably and in good faith powers conferred by its laws. Such powers shall not however be used to impede the transfer of profit, interest, dividends, royalties or fees; as regards investments and any other form of return, transfer may be spread over as few years as possible but not more than three years.

(2) Transfers of currency shall be made without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. Exceptions

The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to the nationals of companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future customs union Or similar international agreement to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 8. Reference to International Centre for Settlement of Investment Disputes

(1) For the purposes of this Article, a legal dispute is defined as a dispute involving:

(a) The interpretation or application of any investment authorisation granted by a Contracting Party's foreign investment authority to a national or company of the other Contracting Party; or

(b) The interpretation or application of any investment agreement between a Contracting Party's foreign investment authority and such a national or company: or

(c) An alleged breach of any right conferred or created by this Agreement with respect to an investment.

(2) Each Contracting Party hereby consents to submit to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States¹, opened for signature at Washington on 18 March 1965 any legal dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the former. A company which is incorporated or constituted under the law in force in the territory of one Contracting Party and in which before such a dispute arises, the majority of shares are owned by nationals or companies of the other Contracting Party shall in accordance with Article 25(2)(b) of the Convention be treated for the purposes of the Convention as a company of the other Contracting Party. If any such dispute should arise and agreement cannot be reached within one year between the Parties to this dispute through the pursuit of local remedies or otherwise, then, if the national or company affected who consents in writing to submit the dispute to the Centre for settlement by arbitration under the Convention, either party may institute proceedings by addressing a request to that effect to the Secretary-General of the Centre as provided in Articles 28 and 36 of the Convention. The Contracting Party which is a party to the dispute shall not raise as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received in pursuance of an insurance contract an indemnity in respect of some or all of his or its losses.

(3) Neither Contracting Party shall pursue through the diplomatic channel any dispute referred to the Centre unless:

(a) The Secretary-General of the Centre, or an arbitral tribunal constituted by it, decides that the dispute is not within the jurisdiction of the Centre, or

(b) The other Contracting Party should fail to abide by or to comply with any award rendered by an arbitral tribunal.

Article 9. Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement should, if possible, be settled through direct and meaningful diplomatic negotiations.

(2) If a dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Contracting 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 Contracting Parties shall be appointed Chairman of the tribunal. The Chairman 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 the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting 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 Contracting Party or if he too is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. 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. The tribunal shall determine its own procedure.

Article 10. Subrogation

(1) Where an investment in the territory of one Contracting Party of a national or company of the other Contracting Party is insured against non-commercial risks under a system established by law and a payment is made by an insurer under an indemnity given in respect of that investment, the former Contracting Party shall recognise the assignment to the insurer by law or by legal transaction of all the rights and claims of the national or company indemnified.

(2) The insurer shall be entitled to exercise all such rights and enforce all such claims by virtue of subrogation to the same extent as the national or company indemnified and shall be entitled also in all circumstances to receive the same treatment in respect of those rights and claims and any payments received under them as the national or company indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received by an insurer in pursuance of the rights and claims acquired shall be freely available to that insurer for the purpose of meeting any expenditure incurred in the territory of the Contracting Party on whose territory the investment is.

Article 11. National or 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 in the territory of the other Contracting Party.

Article 12. Territorial Extension

At the time of ratification of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 13. Entry Into Force

This Agreement¹ shall be ratified and shall enter into force on the exchange of Instruments of ratification.

Article 14. Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made whilst the agreement is in force, its provisions shall continue in effect with respect to such investments for a period of fifteen years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorised, thereto by their respective Governments, have signed this Agreement.

Done in duplicate at London this 15th day of March 1991 in the English and Turkish languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

CAITHNESS

For the Government of the Republic of Turkey:

TIGREL