

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SERBIA AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY ON MUTUAL PROMOTION AND INVESTMENT PROTECTION**

The Government of the Republic of Serbia and the Government of the Republic of Turkey (hereinafter: Contracting Parties);

Desiring to promote greater economic cooperation, especially in terms of investments of investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the implementation of this agreement will stimulate the flow of capital, technology and economic development of States Parties;

Affirming that fair and equal treatment is desirable in the goal of maintaining a stable investment framework and will contribute to the increase the effective use of economic resources and improvement of living standards; and

Convinced that these goals can be achieved in accordance with health, safety and environmental protection measures of general application, as well as internationally recognized labour rights;

Deciding to conclude an Agreement on Mutual Encouragement and Protection of Investments;

Have agreed on the following:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. The term "investment" means any type of property connected with a business activity, procured in order to establish lasting economic relations on in the territory of a Contracting State, in accordance with its legislation, and has investment characteristics (1), including features such as the commitment of capital or other resources, the expectation of profit or profit, under the assumption of risk, contribution to economic development, capital flow and technology between parties or a certain duration. Forms of investment can include:

- a) movable and immovable property, as well as other real rights such as mortgages, sureties, pledges and other similar rights defined in accordance with the law of the Contracting State in whose territory it is situated;
- b) reinvested earnings, cash receivables or any other rights that have a financial value related to the investment;
- c) shares, stocks, as well as other types of securities with rights participation in a company;
- d) intellectual property rights, in particular patent, industrial design, technical processes, as well as trademarks, goodwill and know-how;
- e) interest arising from an investment obligation or other related source with economic activities in the territory of a Contracting State, such as:

(1) a contract involving the existence of investor property in the territory States Parties, including a turnkey contract, or construction or concession contract, or

(2) a contract under which the remuneration is materially dependent on production, income or profit of the company;

The term "investment" does not mean:

f) monetary claim arising exclusively from:

(1) a commercial contract for the sale of goods or services between investors with the territory of the State of a Contracting

Party and a legal or natural person with the territories of the other Contracting Party;

(2) loans granted in connection with commercial contracts referred to in paragraph (1) of this letter

2. The term "investor" means:

a) a natural person who is a national of a Contracting State in accordance with its law;

b) a legal person established or organized in accordance with the applicable law of a Contracting Party, and having its registered office and principal place of business in the territory of that Contracting Party, which invests in the territory of the other Contracting Party.

3. The term "territory" means:

a) In relation to the Republic of Serbia: the territory over which the Republic of Serbia exercises sovereign rights and jurisdiction in accordance with its national legislation and international law.

b) In relation to the Republic of Turkey: land, inland waters, territorial sea and airspace above them, as well as coastal areas over which the Republic of Turkey exercises sovereign rights or jurisdiction for the purpose of exploration, exploitation and conservation of natural resources, in accordance with international law.

(1) Assets that do not have the characteristics of an investment are not considered an investment, regardless of their form.

## **Article 2. Implementation of the Agreement**

This Agreement shall apply to investments by investors of a Contracting Party made, before or after the entry into force of this Agreement, in the territory of the other Contracting Party, in accordance with its legislation, from the date of entry into force of this Agreement. This Agreement shall not apply to disputes or claims arising in connection with an investment prior to the entry into force of this Agreement.

## **Article 3. Investment Promotion and Protection**

1. Each Contracting Party shall encourage investments by investors of the other Contracting Party in its territory, in accordance with its applicable law.

2. Investments by investors of each State Party shall, in the territory of the State Party, enjoy fair and equitable treatment and full protection and security in accordance with the principles of international law.

A Contracting Party shall not, by unreasonable or discriminatory measures, interfere with an investor of a State Party in the management, maintenance, use, operation, expansion, enjoyment, sale, liquidation or abandonment of its investment in its territory.

3. Violation of fair and equal treatment within the meaning of this Agreement means:

a) denial of the right to protection in criminal, civil or administrative proceedings; or

b) a material breach of judicial or administrative proceedings; or

c) expression of arbitrariness in the procedure; or

g) discrimination based on sex, race or religion; or

d) coercion, threat or harassment of investors.

4. For the sake of precision, "full protection and security" refers to the obligation of a Party to provide physical protection to the investor and his investment.

## **Article 4. Investment Treatment**

1. Each Contracting Party shall recognize investments in the territory of its State in accordance with its legislation and this Agreement.

2. Each Contracting Party shall provide to investments of the State of the other Contracting Party, in respect of the

management, maintenance, use, operation, expansion, enjoyment, sale, liquidation or abandonment, of treatment as favourable as that accorded to investments of its own investors or those of third parties. state, whichever is more favourable.

3. Each Contracting Party shall, within the framework of its national legislation, provide special attention to the application for entry and stay of nationals wishing to enter the territory of the State of the other Contracting Party, in connection with the investment and its maintenance.

4. The provisions of this Article shall not be construed as obliging a Contracting Party to grant to investors of the other Contracting Party any advantage in treatment, preferences or privileges granted by the first Contracting Party to investors from a third State within the framework of:

a) any agreement on membership of an economic union, a customs union, a free trade area, a monetary union or a similar international agreement establishing such unions or other forms of regional cooperation, or

b) any international agreement or arrangement relating in whole or in part to taxation.

5. Paragraph 2 of this Article shall not apply to the provisions of this Agreement governing the settlement of disputes between investors and the host country or any other international agreement to which a Contracting Party is a party.

6. The provisions of Art. 3 and 4 of this Agreement shall not oblige a Contracting Party to grant the same treatment to investors of the State of the other Contracting Party with regard to the acquisition of land, real estate and real rights thereto.

## **Article 5. General Exceptions**

1. This Agreement shall not prevent a Contracting Party from adopting, applying or enforcing non-discriminatory measures:

a) prescribed and applied for the protection of health and life of humans and animals or the preservation of plants and the protection of the environment;

b) relating to the conservation of living or non-living limited natural resources;

c) maintaining the security, solvency, integrity or financial responsibility of financial institutions and ensuring the integrity and stability of the financial system of a Contracting Party.

2. This Agreement:

a) does not oblige a Party to provide or allow access to information if it considers that its disclosure would be contrary to its essential security interests;

b) does not prevent a Contracting Party from taking such action as it deems necessary to protect essential security interests;

(1) in connection with trade in arms, ammunition and war equipment, trade and transactions in other goods, materials, services and technologies undertaken, directly or indirectly, for the purpose of supplying a military or other security institution,

(2) in time of war or other emergency in international relations, or

(3) regarding the implementation of national policies or international agreements regarding the non-proliferation of nuclear weapons or other nuclear explosive devices; or

c) does not prevent a Contracting Party from fulfilling its obligations under the Charter of the United Nations in order to preserve international peace and security.

## **Article 6. Expropriation and Compensation**

1. Investments shall not be expropriated, nationalized, directly or indirectly subject to other measures having equivalent effect (hereinafter referred to as expropriation), except where the public interest is established by law or by the law of a Contracting State, on a non-discriminatory basis, with adequate compensation to be made without delay and in compliance with the law and general principles regarding treatment contained in Article 3 of this Agreement.

2. A non-discriminatory legal measure prescribed and applied by a Contracting Party to protect legitimate social objectives, such as health, safety and the environment, shall not constitute indirect expropriation.

3. The compensation referred to in paragraph 1 of this Article shall correspond to the market value of the expropriated

investment as it was immediately before the expropriation or before the expropriation became a generally known fact, whichever was earlier, and shall include appropriate commercial interest calculated up to the date of payment. The fee shall be paid without delay in convertible currency, in accordance with Article 8, paragraph 2 of this Agreement.

4. The aggrieved investor shall have the right, in accordance with the regulations of the Contracting Party expropriating, to have his case settled expeditiously by a judicial or other independent authority of that Contracting Party and to have his investment evaluated in accordance with the principles set out in this Agreement.

5. For the sake of precision, examples of an indirect measure having an effect expropriating include, inter alia, measures or series of measures by a Contracting Party depriving an investor of the basic characteristics of the property, including the right to use, enjoy and dispose of his investment without formal transfer or permanent seizure.

6. Expropriation resulting from a measure or series of measures of a Contracting Party without the formal transfer of property rights or permanent seizure (hereinafter: indirect expropriation) shall have the same effect as direct expropriation. The determination of whether a measure or series of measures of a Contracting Party constitutes indirect expropriation shall be made on a case-by-case basis, on a fact-based investigation, which shall include, inter alia:

- a) the economic impact of those measures, where the mere fact that a measure or series of measures has the opposite effect on the economic value of the investment does not mean that indirect expropriation has taken place,
- b) the extent to which they affect different, reasonable expectations in relation to the investments being supported, and
- c) the nature of those measures.

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

1. An investor from a Contracting Party whose investment in the territory of the other Contracting Party has suffered damage as a result of war, insurrection, civil war or another armed conflict shall be accorded, by the other Contracting Party, treatment as equal as that accorded to that Contracting Party gives to its own investors or to investors of any third country, in respect of restitution, indemnification, compensation or other means of settlement.

2. Notwithstanding the provisions of paragraph 1 of this article, investors of a State Party which, in any of the situations referred to in that paragraph, suffer damage in the territory of the State Party as a result of:

- a) the seizure of property belonging to them by the authorities of the State of the other Contracting Party, or
- b) The destruction of their property by the competent authorities of the other Contracting State, which is not the result of an armed conflict and was not necessary as a result of the situation, shall be provided without delay with fair and appropriate restitution or compensation. The amount of compensation shall be determined in accordance with the provisions of Article 6, paragraph 3 of this Agreement, from the date of seizure or destruction of the property until the date of payment. The fee is paid in a freely convertible currency.

## **Article 8. Repatriation and Transfer**

1. Each Contracting Party shall guarantee to investors of the State of the other Contracting Party the free transfer of monetary amounts, relating to their covered investments, to and from the territory of its State, upon settlement of the fiscal obligations of investors. These transfers include:

- a) invested capital and additional funds for maintenance or increase of invested funds;
- b) profit, dividends, interest, capital gains, royalties and other fees and amounts arising from that investment;
- c) revenues;
- d) proceeds from the total or partial sale or liquidation of investments;
- e) amounts of fees paid on the basis of Art. 6 and 7 of this Agreement;
- f) fees and interest payments arising from investment loans;
- g) salaries, wages and other remuneration of employed nationals of a Contracting Party and earned in the territory of the other Contracting Party, in accordance with approved investment work permits;
- h) payments arising from dispute resolution.

2. Transfers referred to in paragraph 1 of this Article shall be made in the convertible currency in which the capital was originally invested or in any other convertible currency at the official exchange rate on the day of the transfer unless otherwise agreed between the investor and the Contracting Party.

3. Irrespective of para. 1 and 2 of this article, a Contracting Party may, in accordance with its domestic law, in good faith and in a fair and non-discriminatory manner, prevent transfers in respect of:

a) liquidation, bankruptcy or protection of creditors' rights;

b) issuing, trading or trading in securities;

c) criminal or misdemeanor penalties;

g) financial reporting or record keeping of transfers, when necessary to assist in law enforcement or assistance to financial institutions, or

d) ensuring the execution of orders or judgments in judicial or administrative proceedings.

4. In special circumstances, where the payment or movement of capital may cause serious balance of payments difficulties, the Contracting Party may temporarily, on a non-discriminatory basis and in good faith, prohibit the transfer.

## **Article 9. Subrogation of Rights**

1. If one Contracting Party has a public insurance plan or guarantee to protect its investors from non-commercial risks and the investor has applied for insurance or guarantee, any transfer of rights under the insurance contract between the investor and the insurer shall be recognized by the other Contracting Party.

2. The insurer has, on the basis of subrogation, the right to realize and realize claims to the same extent as the indemnified investor, as well as to assume obligations on the basis of investments. The transferred rights or claims may not be greater than the original rights and claims of the investor.

3. Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article 12 of this Agreement.

## **Article 10. Health, Safety and Environmental Protection Measures**

The Contracting Parties agree that mutual investments shall not be encouraged by reducing measures relating to health, safety or environmental protection. Accordingly, a Contracting Party shall not renounce or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as to encourage the establishment, acquisition, expansion or retention of investments in the territory of its State.

## **Article 11. Social Responsibility**

Each Contracting Party shall encourage companies, operating in the territory of its State or under its jurisdiction, to voluntarily incorporate, within the framework of their operations and domestic policies, internationally recognized standards of corporate social responsibility approved or supported by the Contracting Parties, environment, human rights, social relations and the fight against corruption.

## **Article 12. Settlement of Disputes between the Investor and the Host Party**

1. This Article shall apply to disputes between one Contracting Party and an investor of the State of the other Contracting Party concerning a breach of obligations under this Agreement which causes loss or damage to the investor or his investment.

2. Notice of the initiation of an investment dispute, with detailed information, shall be provided by the investor, in writing, to the Contracting Parties in the territory of whose country the investment was made. Whenever possible, efforts will be made to resolve the dispute through consultations and negotiations, in good faith.

3. If the disputes referred to in paragraph 1 of this Article cannot be resolved through negotiations within six months from the date of receipt of the notification referred to in paragraph 2 of this Article, the dispute may be submitted, at the choice of the investor:

a) the competent court of the Contracting State in whose territory the investment is made; or

b) except in the cases provided for in paragraph 5, item a) and b) of this Article:

(1) The International Center for the Settlement of Investment Disputes (ICSID) established by the "Convention on the Settlement of Investment Disputes between States and Nationals of Other States", or

(2) an ad hoc arbitral tribunal, established in accordance with the Arbitration Rules of the United Nations Commission on Commercial Law (UNCITRAL).

4. The selection of investors referred to in paragraph 3 of this Article is final.

5. Notwithstanding the provisions of paragraph 3 of this Article;

a) Disputes arising directly from licensed investments, if the license is required in accordance with the relevant legislation of the State Party on foreign capital, shall be subject to the jurisdiction of the International Center for the Settlement of Investment Disputes (ICSID) or any other international dispute settlement mechanism agreed between the Contracting Parties;

b) Disputes concerning property and rights in rem in immovable property situated in the territory of a Contracting State fall within the exclusive jurisdiction of national courts and the jurisdiction of the International Center for the Settlement of Investment Disputes (ICSID) or any other international dispute settlement mechanism cannot be established.

6. The arbitral tribunal shall render its decision in accordance with the provisions of this Agreement, the laws and regulations of the State Party involved in the dispute and in whose territory the investment was made (including conflict of law rules) and relevant principles of international law accepted by the Parties.

7. The arbitral award shall be final and binding on both parties to the dispute. Each Contracting Party shall ensure its execution in accordance with its legislation.

### **Article 13. Denial of Benefits**

1. Each Contracting Party may deny the advantages afforded by this Agreement to an investor referred to in Article 1, paragraph 2, subparagraph (b), of the State of the other Contracting Party and to his investment if:

a) an investor of a State other than a Contracting Party or a State denied benefits, owns or controls a legal person; and

b) the investor does not have a predominant business activity in the territory of the Contracting Party under whose law it is established and organized; or

c) A denying Party shall adopt or apply measures prohibiting transactions with such an investor.

2. To the extent practicable, a Party shall notify the other Party before denying the benefits of this Agreement.

### **Article 14. Settlement of Disputes between the Parties**

1. The Parties shall endeavour, in good faith and in a spirit of a good co-operation, to settle in a timely and equitable manner the dispute concerning the interpretation or application of this Agreement. In this regard, the Contracting Parties agree to participate in direct negotiations in order to reach a solution. If the Contracting Parties are unable to reach an agreement within six months, the dispute may, at the request of either Contracting Party, be submitted to an arbitral tribunal composed of three members.

2. Each Contracting Party shall, within two months from the date of receipt of the request for initiation of the dispute referred to in paragraph 1 of this Article, appoint one member of the arbitral tribunal. The appointed members of the court shall elect a third member, a third-country national.

3. If the members of the tribunal cannot agree on the election of a third member, within two months from the date of their appointment, the third member shall be appointed by the President of the International Court of Justice at the request of either Contracting Party.

4. If the President of the International Court of Justice is a national of either Contracting Party, or is otherwise prevented from performing this function, the Vice-President of the International Court of Justice shall be required to make the necessary appointments. If the Vice-President of the International Court of Justice is a national of either Contracting Party, or if he is prevented from performing this function, either Contracting Party may request that the next senior member of the

International Court of Justice who is not a national of either Contracting Party, make the necessary appointments.

5. The arbitral tribunal shall, within three months from the date of the election of the third member, agree on the rules of procedure which are in conformity with the provisions of this Agreement. In the absence of agreement, the arbitral tribunal shall require the President of the International Court of Justice to determine the rules of procedure, taking into account the generally accepted rules of international arbitration.

6. Unless otherwise agreed, all submissions and all hearings shall be concluded within eight months from the date of the election of the third member, and the arbitral tribunal shall render its decision within two months from the date of the last submission or the end of the hearing. The arbitral tribunal shall render its final and binding decision by a majority of votes. The arbitral tribunal shall render its decision in accordance with this Agreement and in accordance with the applicable international law between the Contracting Parties.

7. The costs of the President and other members of the tribunal, as well as the remaining costs of the proceedings, shall be borne equally by both Parties. The arbitral tribunal may, by its decision, order that a Contracting Party bears the greater part of the costs.

8. A dispute shall not be submitted to an international arbitral tribunal, in accordance with the provisions of this Article, if the same matter is brought before another international arbitral tribunal, in accordance with the provisions of Article 12 of this Agreement, which does not preclude direct negotiations to resolve the dispute.

## **Article 15. Delivery of Documents**

Notices and other documents in disputes referred to in Art. 12 and 14 of this Agreement, shall be delivered for the Republic of Turkey to the following addresses:

Başbakanlık Hukuk Hizmetleri Başkanlığı

(Prime Minister, Legal Services Sector)

Başbakanlık Merkez Bina

Vending machine Caddesi B-Block 06573

Bakanlıklar / Ankara

Turkey

Notices and other documents in disputes referred to in Art. 12 and 14 of this Agreement, shall be delivered for the Republic of Serbia to the following addresses:

The Prime Minister

Government of Republic of Serbia

Nemanjina 11, 11000 Belgrade

Republic of Serbia

State Attorney's Office

Nemanjina 22-26, 11000 Belgrade

Republic of Serbia

## **Article 16. Entry Into Force**

1. This Agreement shall enter into force on the date of receipt of the last notification by which the Contracting Parties notify each other through diplomatic channels of the fulfilment of the internal legal requirements for the entry into force of this Agreement.

2. After the entry into force of this Agreement, the Agreement between the Federal Government of the Federal Republic of Yugoslavia and the Government of the Republic of Turkey on Mutual Encouragement and Protection of Investments, signed on March 2, 2001, is terminated and replaced by this Agreement.

3. This Agreement shall remain in force for a period of 10 years and shall automatically continue in force, unless terminated, in accordance with paragraph 5 of this Article.

4. This Agreement may be amended at any time by mutual consent of the Contracting Parties. Amendments to this Agreement shall enter into force in the manner provided for in paragraph 1 of this Article.

5. Either Contracting Party may terminate this Agreement, with prior written notice to the other Contracting Party of its intention to terminate this Agreement, at least one year before the expiry of the initial period of 10 years or at any time thereafter.

6. In respect of investments made before the date of termination of the Agreement, the provisions of this Agreement shall remain in force for a period of five years.

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

Signed in Ankara, on January 30, 2018, in two originals, each in the Serbian, Turkish and English languages, all texts being equally authentic.

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

FOR THE GOVERNMENT OF THE REPUBLIC OF SERBIA

Rasim Ljajic

Deputy Prime Minister and Minister of Trade, Tourism and Telecommunications

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

Nihat ZEYBEKCI

Minister of Economy