

AGREEMENT BETWEEN THE REPUBLIC OF TURKEY AND THE UNITED ARAB EMIRATES CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Turkey and the United Arab Emirates, hereinafter called the Parties,

Desiring to promote greater economic cooperation between them, particularly with respect to investments by investors of one Party in the territory of the other Party,

Recognizing that agreement upon the treatment to be accorded to such investments will stimulate the flow of capital and technology and the economic development of the 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,

Article 1. Definitions

For the purpose of this Agreement;

1. The term "investor" means:

(a) Natural persons deriving their status as nationals of either Party according to its applicable law,

(b) Any legal entity such as corporations, firms or business associations incorporated or constituted under the law in force of either of the Parties and including those wholly or partially owned by the Government of either Party, and having their headquarters in the territory of that Party.

2.

(a) The term "investment" means, foreign direct investment which is invested in accordance with the host country's laws and regulations and shall include every kind of asset in particular, but not exclusively:

i. Shares, stocks or any other form of participation in companies,

ii. Returns reinvested, claims to money or any other rights related to an investment,

iii. Movable and immovable property, as well as any other rights as mortgages, liens, pledges and any other similar rights as defined in conformity with the laws and regulations of the Party in whose territory the property is situated,

iv. Copyrights, industrial and intellectual property rights, patents, industrial designs, trademarks, goodwill, know-how and any other similar rights,

v. Business concessions conferred by law or by contract, including the concessions related to natural resources.

(b) The said term shall refer to investments made in accordance with the laws and regulations in the territory of the Party where the investments are made.

3. The term "returns" means the amounts yielded by an investment and in particular, though not exclusively includes profit, interest, dividends and royalties.

4. The term "freely convertible currency" means currency that is widely used to make payments for international transactions and for which there are ready buyers in the principal international exchange markets.

5. "Associated activities" include the organization, control, operation, maintenance and disposal of juridical persons, branches, agencies, offices, factories or other facilities for the conduct of business; making, performance and enforcement of contracts; the acquisition, use, protection and disposition of property of all kind, including intellectual and industrial property rights; and the borrowing of funds, the purchase and issuance of equity shares and the purchase of foreign exchange for imports.

6. The term territory shall mean;

1. In case of Turkey: the Turkish territory, territorial sea as well as the maritime areas over which the Republic of Turkey has jurisdiction or sovereign rights for the purposes of exploration, exploitation and conservation of natural resources, pursuant to international law.

2. In case of United Arab Emirates: its territory , including Islands, territorial sea, continental shelves and exclusive economic zone over which the United Arab Emirates exercise sovereign rights and jurisdiction in accordance with international law.

Article 2. Promotion and Protection of Investments

1. Each Party shall, in accordance with its laws and regulations, promote and permit in its territory investments and activities associated therewith, on a basis no less favorable than that accorded in similar situations to investments of investors of any third country.

2. Each Party shall accord to these investments referred to in paragraph (1), once established, treatment no less favorable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favorable and these investment shall enjoy full protection and security.

3. Subject to the laws and regulations of the parties relating to the entry and sojourn and employment of aliens;

(a) Nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, administering or advising on the operation of an investment.

(b) Companies which are legally constituted under the applicable laws and regulations of one Party, and which are investments of investors of other Party, shall be permitted to engage managerial and technical personnel of their choice, regardless of nationality.

4. The provisions of this Article shall have no effect in relation to agreements entered into by either of the Parties,

(a) Relating to any existing or future customs unions, regional or sub-regional economic organization or similar international agreements,

(b) Relating wholly or mainly to taxation.

Article 3. Expropriation and Compensation

1. Investments shall not be expropriated, nationalized or frozen , blocked or sequestered or be subjected directly or indirectly, to measures of similar effects that is tantamount to expropriation except for a public purpose, with due process of law, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation.

2. The investor affected shall have a right to access, under the law of the Party making the expropriation, to the judicial authority of that Party, in order to review the amount of compensation and legality of any such expropriation or comparable measures.

3. Compensation shall be equivalent to the real market value of the expropriated investment at the time the expropriated action was taken or became known and the market value shall be determined in accordance with recognised principles of valuation. Compensation shall be paid without delay and be freely transferable. In the event that payment of compensation is delayed, such compensation shall be paid in an amount which would put the investor in a position no less favourable than the position in which he would have been had the compensation been paid immediately after the date of expropriation or nationalization. To achieve this goal the compensation shall include an interest at a rate as agreed upon by both Parties from the date of nationalization or expropriation until the date of payment.

Article 4. Damages and Losses

1. Investors of either Party whose investments suffer losses in the territory of the other Party owing to war, insurrection, civil disturbance or other similar events shall be accorded by such other Party treatment not less favorable than that accorded to

its own investors or to investors of any third country, whichever is the most favorable treatment, as regards any measures it adopts in relation to such losses.

2. Without prejudice to paragraph (1) of this Article, investors of one Party who, in any of the events referred to in that paragraph, suffer damages or losses in the territory of the other Party resulting from:

(a) Requisitioning of their investment or property by its forces or authorities,

(b) Destruction of their investment or property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

Shall be accorded prompt and adequate compensation for the damages or losses sustained during the period of requisitioning or as result of the destruction of the property. Resulting payments shall be made transferable in a freely convertible currency without delay.

Article 5. Repatriation and Transfer

1. Each Party shall permit all transfers related to an investment to be made freely and without unreasonable delay into and out of its territory. Such transfers include:

(a) Returns,

(b) Proceeds from the sale or liquidation of all or any part of an investment.

(c) Compensation pursuant to Article 3,

(d) Salaries, wages and other remuneration received by the nationals of one Party who have obtained in the territory of the other Party the corresponding work permits relative to an investment.

(e) Reimbursement and interest payments deriving from loans in connection with investments,

(f) Payments arising from an investment dispute,

2. Transfers shall be made in the convertible currency in which the investment has been made or in any convertible currency if so agreed by the investor and at the rate of exchange in force at the date of transfer.

Article 6. Subrogation

1. If the investment of an investor of one Party is insured against noncommercial risks under a system established by law, any subrogation of the insurer which stems from the terms of the insurance agreement shall be recognized by the other 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. Disputes between a Party and an insurer shall be settled in accordance with the provisions of Article 9 of this Agreement.

4. Subrogation shall be applied only to those investments which are approved by the hosting party at the entry stage.

Article 7. Application of other Rules

1. If the provisions of law of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to this Agreement, contain a regulation, whether general or specific, entitling investments by investors of the other Party to a treatment more favourable than is provided for by this Agreement, such regulation shall, to the extent that it is more favourable, prevail over this Agreement.

2. Each Party shall observe any other obligation or commitment it may have entered into with regard to a specific investment of an investor of the other Party.

Article 8. Consultations

The Parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Agreement or to discuss any matter relating to the interpretation or application of the Agreement.

Article 9. Settlement of Disputes between One Party and Investors of the other Party

1. Disputes between one of the Parties and an investor of the other Party in connection with an investment shall be notified in writing, including a detailed information, by the investor to the recipient Party of the investment. As far as possible, the investor and the concerned Party shall endeavour to settle these disputes by consultations and negotiations in good faith.

2. If these disputes cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose to

a) Local competent courts,

b) The International Center for Settlement of Investment Dispute (ICSID) set up by the " Convention on Settlement of Investment Disputes Between States and Nationals of other States", pursuant to Article 25 (1) of the ICSID Convention,

c) An ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL).

3. The arbitration awards shall be final and binding for all parties in dispute. Each Party commits itself to execute the award according to its national law.

Article 10. Settlement of Disputes between the Parties

1. The Parties shall seek in good faith and a spirit of cooperation a rapid and equitable solution to any dispute between them concerning the interpretation or application of this Agreement. In this regard, the Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If the Parties cannot reach an agreement within six months after the beginning of dispute between themselves through the foregoing procedure, the dispute may be submitted, upon the request of either Party, to an arbitral tribunal of three members.

2. Within two months of receipt of a request, each Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman. In the event either Party fails to appoint an arbitrator within the specified time, the other Party may request the President of the International Court of Justice to make the appointment.

3. If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the chairman, who shall be a national of a third State with which both countries have diplomatic relations, shall be appointed upon the request of either Party by the President of the International Court of Justice.

4. If, in the cases specified under paragraphs (2) and (3) 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 Party, the appointment shall be made by the Vice-president, and if the Vice-President is prevented from carrying out the said function or if he is a national of either Party, the appointment shall be made by the most senior member of the Court who is not a national of either Party .

5. The tribunal shall have three months from the date of the selection of the chairman to agree upon rules of procedure consistent with the other provisions of this Agreement. In the absence of such agreement, the tribunal shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally recognized rules of international arbitral procedure.

6. Unless otherwise agreed, all submissions shall be made and all hearings shall be completed within eight months of the date of selection of the third arbitrator, and the tribunal shall render its decision within two months after the date of the final submissions or the date of the closing of the hearings, whichever is later. The arbitral tribunal shall reach its decisions, which shall be final and binding, by a majority of votes.

7. Expenses incurred by the Chairman, the other arbitrators, and other costs of the proceedings shall be paid for equally by the Parties. The tribunal may, however, at its discretion, decide that a higher proportion of the costs be paid by one of the Parties.

8. A dispute shall not be submitted to an international arbitration court under the provisions of this Article, if the same dispute has been brought before another international arbitration court under the provisions of Article 9 and still before the court. This will not impair the engagement in direct and meaningful negotiations between both Parties.

Article 11. Entry Into Force

Each Party shall notify the other in writing of the completion of the constitutional formalities required in its territory for the

entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications. It shall remain in force for a period of ten years and shall remain in force unless terminated in accordance with Article 12. It shall apply to all investments existing at the time of entry into force as well as to investments made or acquired thereafter.

Article 12. Termination

1. Either Party may by giving one year's written notice to the other party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.
2. This Agreement may be amended at any time through the consultations between the Parties. Any amendment shall enter into force when each Party has notified the other that it has completed all internal requirements for entry into force of such amendment.
3. With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

DONE at on //2005- // 1426 H - in the Turkish, Arabic and English languages all of which are equally authentic.

In case of divergence of interpretation the English text shall prevail

FOR THE GOVERNMENT OF THE UNITED ARAB EMIRATES

FOR THE GOVERNMENT OG THE REPUBLIC OF TURKEY