

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TURKEY AND THE GOVERNMENT OF THE SULTANATE OF OMAN CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Turkey and the Government of the Sultanate of Oman (hereinafter referred to as "the Contracting Parties" and each referred to as the "Contracting Party")

Desiring to expand and strengthen the existing economic cooperation between the two countries to their mutual benefit, and to create conditions conducive to

Increase investments of one Contracting Party in the territory of the

Other Contracting Party;

Recognizing that the promotion and protection of investments will help stimulate business initiatives and the transfer of capital and technology between the two countries in the interest of their economic development;

Have agreed as follows;

## **Article 1. Definitions**

For the purposes of this Agreement;

1. The term "investment", means every kind of assets affected as investments in accordance with the laws and regulations of the Contracting Party which accepts investment in its territory and shall include in particular, though not exclusively:

(a) movable and immovable property, as well as any other rights in rem such as mortgages, pledges and similar rights as defined in conformity with the laws and regulations of the Contracting Party in whose territory the property is situated;

(b) shares, premium on shares and other kinds of interests in companies;

(c) returns, claims to money or any other rights having financial value related to an investment;

(d) industrial and intellectual property rights such as patents, industrial designs, technical processes, as well as trademarks, goodwill, know-how and other similar rights;

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

The said term shall refer to all direct investments made in accordance with the laws and regulations in the territory of the Contracting Party where the investments are made. The term "investment" covers all investments made in the territory of a Contracting Party before or after entry into force of this Agreement.

Any alteration of the form in which assets are invested or reinvested shall not affect their qualification as investments provided that such alteration is not in conflict with the legislation of the Contracting Party on the territory of which the investment is made.

The term "investor" means:

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

(b) corporations, companies, firms or other business associations

Incorporated or constituted under the laws in force of either of the Contracting Parties and having their headquarters in the territory of that Contracting Party, ... " FT.

3. The term "returns" means the amounts produced by an investment or reinvestment including investment in assistance and technical services such as profits, royalties, capital gains, fees and interest.

4. The term "territory" means:

(a) With respect to the Republic 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,

(b) With respect to the Sultanate of Oman; the territory of the Sultanate of Oman and the islands belonging thereto, including territorial waters and any area outside the territorial waters over which the Sultanate of Oman may, in accordance with international law, exercise sovereign rights with respect to the exploration and exploitation of the natural resources of the sea-bed and the sub-soil and the above-lying waters.

## **Article 2. Promotion and Protection of Investments**

1. Each Contracting Party shall admit in its territory investments, and activities associated therewith, on a basis no less favourable than that accorded in similar situations to investments of investors of any third country, within the framework of its laws and regulations.

2. Each Contracting Party shall accord to these investments, once established, treatment no less favourable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favourable, within the framework of its laws and regulations.

3. Each Contracting Party shall in its territory accord to the investors of the other Contracting Party treatment not less favourable than that which it accords to its own investors or to investors of any third country with respect to management, maintenance, operation, enjoyment or disposal of their investments, whichever is more favourable to the investor.

4. Subject to the laws and regulations of the Contracting Parties relating to the entry, sojourn and employment of aliens:

(a) nationals of either Contracting Party shall be permitted to enter and remain in the territory of the other Contracting Party for purposes of establishing, developing, administering or advising on the operation of an investment to which they, or an investor of the first Contracting Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources,

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

5. The Provisions of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.

6. The non-discrimination, national treatment and most-favored nation treatment provisions of this Agreement shall not apply to all actual or future advantages accorded by either party by virtue of its membership of, or association with, a customs, economic or monetary union, a common market or a free trade area; to nationals or companies of its own, of Member States of such union, common market or free trade area, or of any other third country.

## **Article 3. Nationalization and Expropriation**

1. The investments made by nationals or companies of one Contracting Party shall enjoy full and complete protection on the territory of the other Contracting Party.

2. Investments of investors of either Contracting Party shall not be nationalized, expropriated, or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose, on a non-discriminatory basis and in accordance with applicable law and the general principles of treatment provided for in Article 2 of this Agreement.

3. Any measures of expropriation which might be taken shall give rise to prompt, adequate and effective compensation, the amount of which shall be calculated on the basis of the fair market value of the investment was announced or became

publicly known. Where the market value cannot be readily ascertained, the compensation shall be determined in accordance with the generally recognized principles of valuation and on equitable principles taking into account, inter alia, the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors.

a. with respect to the Turkish investments in the territory of the Sultanate of Oman: The compensation shall include interest at the current LIBOR rate of interest applicable to the currency in which the investment was originally undertaken, from the date of expropriation until the date of payment.

b. with respect to the Omani investments in the territory of the Republic of Turkey: In the event that payment of compensation is delayed, it shall carry an interest at a prevailing rate as agreed upon by both parties unless such rate is prescribed by law from the date of expropriation until the date of payment.

The said compensation shall be effectively realizable, shall be paid without delay and shall be freely transferable.

## **Article 4. Compensation for Losses**

1. Investors of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, revolution, national state of emergency or revolt occurring on the territory of the other Contracting Party, shall enjoy treatment from the latter Contracting Party that is not less favourable than that granted to its own nationals or companies or those of any third State, whichever is the more favourable to the investor concerned.

2. The Provisions of paragraph 1 of this Article shall apply to investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) requisitioning of their property by the forces or authorities of the latter Contracting Party, or

(b) destruction of their property, by the forces or authorities of the latter Contracting Party, which was not caused in combat action or was not required by the necessity of the situation.

## **Article 5. Transfers**

1. Each Contracting Party, on the territory of which the investment have been made by the investors of the other Contracting Party, shall ensure to these investors after the payment of financial obligations, the free transfer of:

(a) returns,

(b) repayments of loans in connection with investments which have regularly contracted,

(c) value of partial or total liquidation or expropriation of investment including capital gains on the capital invested.

(d) compensation for expropriation or loss described in Articles 3 4 above,

(e) earnings of the investors of either Contracting Party who have been

Authorized to work on the territory of the other Contracting Party, as a result of an approved investment,.

(f) capital and any other additional amounts used to maintain, increase, or expand existing investments,

(g) payments arising from the settlement of an investment dispute.

(h) wages, remunerations and accruals of nationals of the other Contracting Party and nationals of any third state who are allowed to work in connection with an investment.

2. Transfers shall be made in the convertible currency in which the investment has been made or in any convertible currency at the rate of exchange in force at the date of transfer.

## **Article 6. Subrogation**

1. If the investment of an investor of one Contracting Party is insured against non-commercial 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 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. Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article 9 of this Agreement.

## **Article 7. Special Commitment**

Investments having formed the subject of a special commitment of one Contracting Party, with respect to the investors of the other Contracting Party, shall be governed, without prejudice to the provisions of this Agreement, by the terms of the said commitment if the latter includes provisions more favorable than those of this Agreement.

## **Article 8. Application of other Rules**

If the laws of either Contracting Party or their existing obligations under International Law at present or established hereafter between the Contracting Parties, in addition to the present Agreement, contain rules whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favorable than that is provided for by the present Agreement, such rules to the extent that they are more favorable, shall prevail over the present Agreement.

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

1. Disputes between one of the Contracting Parties and an investor of the other Contracting Party, in connection with his investment, shall be notified in writing, including detailed information, by the investor to the recipient Contracting Party of the investment.. As far as possible, the investor and the concerned Contracting Party shall endeavor 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) the competent court of the Contracting Party in whose territory the investment has been made; or

(b) International arbitration under:

(i) the International Center for Settlement of Investment Disputes (ICSID) set up by the " Convention on Settlement of Investment Disputes Between States and Nationals of other States", in case both Parties become signatories of this Convention,

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

(iii) arbitration court of Paris International Chamber of Commerce (ICC) or any other form of dispute settlement as agreed upon by the parties to the dispute.

3. If the dispute is submitted in accordance with paragraph (2) to the competent Court of the Contracting Party, the investor cannot at the same time seek the international arbitration. If the dispute is filed for arbitration the award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said convention. The award shall be enforced in accordance with domestic law.

4. Notwithstanding the provisions of paragraph 2 of this Article;

(a) only the disputes arising directly out of investment activities which have been legally admitted in conformity with the relevant legislation of the Republic of Turkey and the Sultanate of Oman, and that effectively started shall be subject to the jurisdiction of the International Center for Settlement of Investment Disputes (ICSID) or any other international dispute settlement mechanism as agreed by the Contracting Parties;

(b) the disputes, related to the property and real rights upon the real estates shall be totally subject to the jurisdiction of the Contracting Party in whose territory the investment is made and therefore shall not be submitted to jurisdiction of the International Center for Settlement of Investment Disputes (ICSID) or any other international dispute settlement mechanism; and

(c) With regard to the Article 64 of the "Convention on the Settlement of Investment Disputes between States and Nationals of other States":

Any dispute arising between the Contracting Parties concerning the interpretation or application of "Convention on the

Settlement of Investment Disputes between States and Nationals of other States", which is not settled by negotiation, can only be submitted to the International Court of Justice with the consent of both Contracting Parties.

5. A Contracting Party which is a party to a dispute shall not at any stage of arbitration proceeding or enforcement of an arbitration award, raise the objection that the investor who is the other party to the dispute has received an indemnity to cover all or part of its losses by virtue of guarantee, or insurance contract.

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

## **Article 10. Settlement of Disputes between the Contracting Parties**

1. The Contracting 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 Contracting Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If the Contracting Parties cannot reach an agreement within six months after the beginning of disputes between themselves through the foregoing procedure, the disputes may be submitted, upon the request of either Contracting Party,, to an arbitral tribunal of three members.

2. Within two months of receipt of a request, each Contracting Party shall appoint an arbitrator. The two arbitrators shall select a third arbitrator as Chairman, who is a national of a third State. In the event either Contracting Party fails to appoint an arbitrator within the specified time, the other Contracting 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 shall be appointed upon the request of either Contracting 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 Contracting 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 Contracting Party, the appointment shall be made by the most senior member of the Court who is not a national of either Contracting 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 Chairman, 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 Contracting Parties. The tribunal may, however, at its discretion, decide that a higher proportion of the costs be paid by one of the Contracting 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 is still before the court. This will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

## **Article 11. Scope of Application**

This Agreement shall apply to direct investments in the territory of one Contracting Party, made in accordance with its national laws and regulations, by investors of the other Contracting Party, whether prior to, or after the entry into force of the present Agreement, However, this Agreement shall not apply to any disputes that have arisen before its entry into force.

## **Article 12. Entry Into Force and Duration**

1 This Agreement shall enter into force on the latter date on which either Contracting Party notifies the other through diplomatic channels that its legal requirements for the entry into force of this Agreement have been fulfilled.

2. This Agreement shall remain in force for 10 years and shall continue in force thereafter for another similar period or periods unless terminated in writing by either Contracting Party at least one year before its expiration.

3. This Agreement may 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 legal requirements for entry into force of such amendment.

4. With respect to investments made prior to the date of termination of the Agreement, the provisions of Article 1 to 12 Agreement shall continue to be effective for a further period of 15 years of the date of termination of the Agreement.

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

DONE in Duplicate at Muscat on this day of February 4, 2007

Corresponding to..... H, in the Turkish, Arabic and English

Languages, all texts being equally authentic. In case of any divergence, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

Bejir Atalay

Minister of State

FOR THE GOVERNMENT OF THE SULTANATE OF OMAN

Mohammed Nasser Al Khasibi

Secretary' General Ministry' of National Economy