

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

The Government of the Republic of Turkey and the Government of Georgia, hereinafter referred to as "the Contracting Parties",

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

Recognizing that agreement upon the treatment to be accorded to such investment will stimulate the flow of capital and technology from one Contracting Party to the other Contracting Party and will contribute to the economic development of the Contracting Parties;

Agreeing that fair and equitable treatment of investments is desirable in order to maintain a stable framework for investment and to maximize effective utilization of economic resources and improve living standards; and

Convinced that these objectives can be achieved without relaxing health, safety and environmental measures of general application as well as internationally recognized labor rights;

Having resolved to conclude an agreement concerning reciprocal promotion and protection of investments;

Have agreed as follows:

## **Article 1. Definitions**

For purpose of this Agreement:

1. The term "investment" means every kind of asset, invested by the investor of one Contracting Party for the purpose of establishing lasting economic relations in the territory of the other Contracting Party in conformity with its laws and regulations, and shall include in particular:

(a) 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 Contracting Party in whose territory the property is situated;

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

(c) shares, stocks or any other form of participation in companies;

(d) industrial and intellectual property rights, such as patents, industrial designs, technical processes, as well as trademarks, goodwill, and know-how, which are related to an investment;

(e) business concessions conferred by law or by contract, including concessions related to natural resources.

In order to qualify as an investment for the purposes of the present Agreement, an asset must have the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of regular gain or profit, the assumption of risk and a certain duration.

Arbitration awards or any order or judgment rendered with regard to an investment shall not be considered as investment for the purposes of the present Agreement.

2. The term "investor" of a Contracting Party means:

(a) a natural person having the nationality of that Contracting Party according to its legislation;

(b) a legal entity established for profit, including companies, corporations, firms, business partnerships incorporated or constituted under the legislation in force of that Contracting Party and having their registered offices together with substantial business activities in the territory of that Contracting Party,

who have made an investment in the territory of the other Contracting Party.

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

4. The "territory" means:

(a) in respect of the Republic of Turkey: the land territory, internal waters, the territorial sea and airspace above them, as well as the maritime areas over which Turkey has sovereign rights or jurisdiction for the purpose of exploration, exploitation and preservation of natural resources whether living or non-living, pursuant to international law.

(b) in respect of Georgia: territory defined in accordance with Georgian legislation, including lands, subsoil and the air space over them, internal waters and territorial sea, their seabed and subsoil, the air space over them in respect of which Georgia exercises sovereignty, also, contiguous zone of territorial waters, the exclusive economic zone and the continental shelf, over which Georgia may exercise sovereign rights and/or jurisdiction in accordance with the provisions of international law.

## **Article 2. Scope of Application**

This Agreement shall apply to investments in the territory of one Contracting Party, made in accordance with its 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 3. Promotion, Admission and Protection of Investments**

1. Each Contracting Party shall in its territory encourage investments by investors of the other Contracting Party, including through the exchange of information between the Contracting Parties on investment opportunities, and admit such investments in accordance with its laws and regulations.

2. Each Contracting Party shall facilitate, in accordance with its laws and regulations, the issuing of the necessary permits in connection with an investment, including permits for the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance, as well as authorizations required for the activities of consultants and experts.

3. Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and full protection and security in accordance with international law minimum standard of treatment in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair the management, maintenance, use, operation, enjoyment, extension, sale, liquidation or disposal of such investments by unreasonable or discriminatory measures.

## **Article 4. Treatment of Investments**

1. Each Contracting Party shall accord to investments of investors of the other Contracting Party, once established, treatment no less favorable than that accorded in like circumstances to investments of its investors or to investments of investors of any third State, whichever is the most favorable, as regards the management, maintenance, use, operation, enjoyment, extension, sale, liquidation or disposal of the investment.

2. The Contracting Parties shall, within the framework of their national legislation, facilitate the entry and sojourn of nationals of either Contracting Party who wish to enter the territory of the other Contracting Party in connection with the making and carrying through of an investment.

3. (a) 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.

(b) 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 Contracting 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 State.

(c) Most-favored nation treatment referred to in paragraph 1 does not include treatment accorded to investors of a non-

contracting Party and their investments by provisions concerning the settlement of investment disputes provided for in this Agreement or other international agreements concluded between a Contracting Party and a non-contracting Party.

(d) For greater certainty, treatment referred to in paragraph 1 shall not encompass any commitments concerning the contractual obligations of the host State which are provided in other international investment agreements concluded by the Contracting Party concerned.

(e) The provisions of Article 3 and 4 of this Agreement shall not oblige the host Contracting Party to accord investments of investors of the other Contracting Party the same treatment that it accords to investments of its own investors with regard to acquisition of land and real estates, and real rights thereof.

## **Article 5. General Exceptions and Right to Regulate**

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or enforcing any non-discriminatory legal measures:

(a) designed and applied for the protection of human, animal or plant life or health, or the environment;

(b) related to the conservation of living or non-living exhaustible natural resources. Nothing in this Agreement shall be construed:

(a) to require any Contracting Party to furnish or allow access to any information the disclosure of which it determines to be contrary to its essential security interests;

(b) to prevent any Contracting Party from taking any actions that it considers necessary for the protection of its essential security interests;

(i) relating to the traffic in arms, ammunition and implements of war and such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

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

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent any Contracting Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

The adoption, maintenance or enforcement of such measures is subject to the requirement that they are not applied in an arbitrary or unjustifiable manner or do not constitute a disguised restriction on investments of investors of the other Contracting Party,

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

1. Investments shall not be expropriated, nationalized or subject, directly or indirectly, to measures of similar effects (hereinafter referred to as "expropriation") except for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law.

2. Compensation shall be equivalent to the market value of the expropriated investment before the expropriation occurred or the intended expropriation became public knowledge. Compensation shall be paid without delay and be freely transferable as described in Article 8.

3. Compensation shall be payable in a freely convertible currency and in the event that payment of compensation is delayed, it shall include interest at an appropriate rate.

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

1. Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, insurrection, civil disturbance or other similar events shall be accorded by such other Contracting Party treatment no less favorable than that accorded to its own investors or to investors of any third State, 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 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 its forces or authorities; or

(b) destruction of their 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 restitution or compensation, which in either case shall be adequate, effective and paid within a reasonable time. Resulting payments shall be freely convertible.

## **Article 8. Repatriation and Transier**

1. Each Contracting Party shall guarantee in good faith all transfers related to an investment made by the investors of the other Contracting Party to be made freely and without delay into and out of its territory. Such transfers include:

(a) the initial capital and additional amounts to maintain or increase investment;

(b) returns;

(c) proceeds from the sale or liquidation of all or any part of an investment;

(d) compensation pursuant to Article 6 and 7;

(e) reimbursements and interest payments deriving from loans in connection with investments;

(f) salaries, wages and other remunerations received by the nationals of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits related to an investment; and

(g) 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 at the rate of exchange in force at the date of transfer, unless otherwise agreed by the investor and the hosting Contracting Party.

3. Where, in exceptional circumstances, payments and capital movements cause or threaten to cause serious balance of payments difficulties, each Contracting Party may temporarily restrict transfers, provided that such restrictions are imposed on a non-discriminatory and in good faith basis.

4. Notwithstanding paragraphs 1 and 2 of the present Article, a Contracting Party may delay and/or prevent a transfer through the equitable, non-discriminatory, and good faith application of legal measures relating to taxation, protection of rights of creditors, ensuring compliance with judicial or administrative judgments or decisions or insuring compliance with other laws and regulations.

## **Article 9. Subrogation**

1. If a Contracting Party has a public insurance or a guarantee scheme established by its legislation to protect investments of its own investors against non-commercial risks, and if an investor of this Contracting Party has subscribed to it, any subrogation of the insurer under the insurance contract between this investors and the insurer, shall be recognized by the other Contracting Party.

2. The insurer is entitled by virtue of subrogation to exercise the rights and enforce the claims of that investor and shall assume the obligations related to the investment. The subrogated rights or claims shall not exceed the original rights or claims of the investor.

3. Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article 10 of this Agreement.

## **Article 10. Settlements of Disputes between One Contracting Party and Investors of the other Contracting Party**

1. This Article shall apply to disputes that have arisen after the entry into force of this Agreement between one Contracting Party and an investor of the other Contracting Party concerning an alleged breach of an obligation of the former under this

Agreement, which causes loss or damage to the investor or its investments.

2. Disputes between one Contracting Party and an investor of the other Contracting Party, in connection with its 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.

3. If these disputes, cannot be settled in this way within six (6) months following the date of the written notification mentioned in paragraph 2, the disputes 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) subject to the requirements of paragraph 6 of this Article, to:

(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", or

(ii) an ad hoc arbitral tribunal established under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL), as revised in 2010.

4. Once the investor has submitted the dispute to one of the dispute settlement forums mentioned in paragraph 3 of this Article, the choice of one of these forums shall be final. Such choice shall be applied by the parties to the dispute to the exclusion of the other two forums as regards the disputes with the same or identical subject-matter.

5. No investment dispute may be submitted for resolution by arbitration under paragraph 3 of the present Article if more than five years have elapsed from the date on which the investor first acquired, or should have first acquired, knowledge of the alleged breach and the loss or damage that the latter has allegedly incurred.

6. Only the disputes arising directly out of investment made in conformity with the relevant laws and regulations of the host Contracting Party on foreign capital, 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 upon by the Contracting Parties under paragraph 3 of this Article.

7. The arbitral tribunal shall take its decisions in accordance with the provisions of this Agreement, the laws and regulations of the Contracting Party involved in the dispute on the territory of which the investment is made (including its rules on the conflict of laws) and the relevant principles of international law as accepted by both Contracting Parties.

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

## **Article 11. Denial of Benefits.**

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is a legal entity of such other Contracting Party and to investments of such investor if that legal entity has no substantial business activities in the territory of the Contracting Party under whose legislation it is constituted or organized, and natural persons or legal entities of a non-Contracting Party or that of the denying Contracting Party own or control this legal entity.

2. The denying Contracting Party shall, to the extent practicable, notify the other Contracting Party before denying the benefits.

## **Article 12. 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 (6) months after the beginning of disputes between themselves through the forgoing procedure, the disputes may be submitted, upon the request of either Contracting Party, to an arbitral tribunal of three members.

2. Within two (2) 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 arbitrators appointed under Paragraph 2 cannot reach an agreement about the choice of the Chairman within two (2) 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 (3) 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 (8) months of the date of selection of the Chairman, and the tribunal shall render its decision within two (2) 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. Arbitral Tribunal shall reach its decision on the basis of this Agreement and in accordance with the international law.
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. This Article shall not be applicable to a dispute, which has been submitted to and still before any arbitral tribunal pursuant to Article 16. This will not impair the engagement in direct and meaningful negotiations between the both Contracting Parties.

## **Article 13. Entry Into Force**

1. This Agreement shall enter into force on the date of the receipt of the last notification by the Contracting Parties, in writing and through diplomatic channels, of the completion of the respective internal legal procedures necessary to that effect.
2. This Agreement shall remain in force for a period of ten (10) years and shall remain in force for successive periods of two (2) years, unless terminated in accordance with paragraph 4 of this Article.
3. Amendments and additions may be introduced to the Agreement upon mutual consent of the Contracting Parties, which shall be formed as a separate document and enter into force in accordance with the Paragraph 1 of this Article. The document formed thereby shall constitute an integral part of this Agreement.
4. Either Contracting Party may, by giving six (6) months prior written notice to the other Contracting Party, terminate this Agreement at the end of the initial ten-year period or at any time thereafter.
5. 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 (10) years from such date of termination,
6. This Agreement substitutes and replaces the Agreement between the Republic of Turkey and the Republic of Georgia Concerning the Reciprocal Promotion and Protection of Investments, signed on July 30, 1992 in Tbilisi (hereinafter referred to as "the previous Agreement"), which shall be terminated on the date of entry into force of this Agreement. The disputes submitted to arbitration before the date of the entry into force of this Agreement shall be settled in accordance with the provisions of the previous Agreement.

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

DONE in duplicate at Ankara on July 19, 2016 in the Turkish, Georgian and English languages, all texts being equally authentic.

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

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

Nihat Zeybekci

Minister of Economy

FOR THE GOVERNMENT OF GEORGIA

Dimitry Kumsishvili

Minister of Economy and Sustainable Development