

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF TURKEY AND THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN ON THE RECIPROCAL PROTECTION AND PROMOTION OF INVESTMENTS**

The Government of the Republic of Turkey and the Government of the Republic of Azerbaijan, hereinafter referred to as the Contracting Parties.

Desiring to promote greater economic cooperation between the Contracting Parties 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 such investment will stimulate the flow of capital and technology and 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 will contribute to maximizing 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 the encouragement and reciprocal protection of investments;

Have agreed as follows:

## **Article 1. Definitions**

For the purpose of this Agreement;

1. The term "investment" means every kind of asset, connected with business activities, established or acquired directly by an investor of one Contracting Party for the purpose of establishing lasting economic relations in the territory of the other Contracting Party in conformity with the national legislation of the latter Contracting Party, and shall include in particular, but not exclusively:

a) movable and immovable property, as well as any other rights as mortgages, liens, leases, usufruct, pledges and any other similar real rights as defined in conformity with the national legislation 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) Intellectual property rights such as copyrights, patents, industrial designs, knowhow, goodwill and other similar rights according to national legislation of the Contracting Parties;

e) business concessions conferred by law or under a contract by a competent authority, including concessions to search for, develop, extract or exploit natural resources.

However; investments which are in the nature of acquisition of shares or voting power through stock exchanges amounting to, or representing of less than ten (10) percent of a company shall not be covered by this Agreement.

Any alteration of the form in which assets are invested or reinvested does not affect their character as investments.

2. The term "investor" means:

a) natural persons having their status as nationals of a Contracting Party according to its laws;

b) corporations, firms, business partnerships incorporated or constituted under the law in force of a Contracting Party, having their registered offices and conducting substantial business activities in the territory of that Contracting Party;

Who have made an investment in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party. If the investor is owned or controlled by persons having the nationality of a third state that has no diplomatic relations with the Contracting Party in whose territory the investment is made, this investor will not benefit from this Agreement.

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;

Respectively, the territory of the Republic of Turkey and the territory the Republic of Azerbaijan.

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

1. Subject to its legislation, each Contracting Party shall in its territory promote as far as possible investments by investors of the other Contracting Party.

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

## **Article 3. Treatment of Investments**

1. Each Contracting Party shall admit in its territory investments on a basis no less favourable than that accorded in like circumstances to investments of investors of any third State, 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 like circumstances to investments of its own investors or to investments of investors of any third State, whichever is the most favourable, as regards the management, maintenance, use, enjoyment, extension, or disposal of the investment.

3. Each Contracting Party shall accord investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment no less favourable than the latter Contracting Party accords its own investors or to investors of any third State, in like circumstances, whichever is the most favourable to the investor.

4. Each Contracting Party shall, within the framework of its legislation, consider in good faith all applications for engaging executives, managers, specialists and technical personnel of the investors choice in connection with their investments in its territory.

5. 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 partially to taxation or any multilateral convention or treaty relating to investments, to which one of the Contracting Parties is or may become a party.

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) Paragraphs (1) and (2) of this Article shall not apply in respect of dispute settlement provisions between an investor and the hosting Contracting Party laid down simultaneously by this Agreement and by another similar international agreement to which one of the Contracting Parties is signatory.

d) The provisions of Article 2 and 3 of this Agreement shall not oblige either Contracting Party to accord investors or investments of investors of the other Contracting Party the same treatment that it accords to its own investors or investments of its own investors with regard to acquisition of land and real estates, and real rights upon them.

## **Article 4. Access to Investor Information and Transparency**

The Contracting Party may seek information concerning the potential investor of the other Contracting Party, including its corporate governance history and its investment practices. The Contracting Party has to protect confidential business information received. The Contracting Party may make the information provided available to the public in the community where the investment will be located, subject to the protection of confidential business information and to other applicable domestic legislation.

## **Article 5. General Exceptions**

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.

2. 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 to 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.

## **Article 6. Expropriation**

1. Investments shall not be expropriated, nationalized or subject, directly or indirectly, to measures of similar effects (hereinafter referred 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 and the general principles of treatment provided for in Article 3 of this Agreement.

2. Non-discriminatory legal measures designed and applied to protect legitimate public welfare objectives, such as health, safety and environment, do not constitute indirect expropriation.

3. Compensation shall be equivalent to the market value of the expropriated investment before the expropriation was taken or became public knowledge whichever is earlier. Compensation shall be paid without delay and be freely transferable as described in Article 8.

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

a) with respect to Azerbaijani investments in the territory of the Republic of Turkey the highest interest rate on public claims;

b) with respect to Turkish investments in the territory of the Republic of Azerbaijan a commercial rate established on a market basis for the currency in question from the date of expropriation until the date of actual payment.

5. The investor whose investments are expropriated shall have the right to prompt review by a judicial or other competent authority of the host Contracting Party of its case and of valuation of its investments in accordance with the principles set out in this Article.

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

1. Investors 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 emergency, revolt or an insurrection in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement no less favourable than that which the latter Contracting Party accords to its own investors or investors of any third State, whichever is the most favourable to the investor. These payments shall be effectively realizable, freely convertible and immediately transferable.

2. Without prejudice to paragraph 1 of this Article, an investor of one Contracting Party who, in any of the situations referred to in that paragraph, suffers losses in the territory of the other Contracting Party resulting from:

- a. requisitioning of its investment or a part thereof by the latter's armed forces or authorities, or
- b. destruction of its investment or a part thereof by the latter's armed forces or authorities, which was not required by the necessity of situation

Shall be accorded adequate compensation in the light of the particular circumstances.

## **Article 8. Free Transfer**

1. Each Contracting Party shall ensure in good faith all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include, but not exclusively:

- a) principal and additional amounts to maintain, develop or increase the investment,
- b) returns,
- c) proceeds from the sale or liquidation of all or any part of an investment,
- d) compensation pursuant to Articles 6 and 7,
- e) payments in respect of management fees,
- f) reimbursements and interest payments deriving from loans in connection with investments,
- g) the amounts required for payment of expenses which arise from the operation of the investment, such as payment of royalties and license fees or other similar expenses,
- h) 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,
- i) payments arising from an investment dispute.

2. Unless otherwise agreed between the investor and host Contracting Party, transfers shall be made in the convertible currency in which the investment has been made or in any convertible currency at the applicable market rate of exchange in force at the date of transfer. If a market rate is unavailable, the applicable rate of exchange shall be the most recent rate of exchange for conversion of currencies into Special Drawing Rights.

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 this Article, a Contracting Party may restrict a transfer through the equitable, non-discriminatory and good faith application of measures ensuring investors compliance with the host Contracting Party's laws and regulations relating to

- a) the payment of taxes and dues;
- b) bankruptcy or insolvency proceedings, or the protection of the rights of creditors;
- c) criminal or penal offences; and
- d) ensuring compliance with orders or judgments of the courts or tribunals of the host Contracting Party.

## **Article 9. Subrogation**

1. If one of the Contracting Parties has a public insurance or guarantee scheme 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 investor 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 11 of this Agreement.

## **Article 10. Consultations**

The Contracting Parties agree to consult promptly, on the request of either, to resolve any dispute arising between them in connection with this Agreement, or to review any matter relating to the implementation or application of this Agreement or to study any other issue that may arise from this Agreement. Such consultations shall be held between the competent authorities of the Contracting Parties at a place and at a time agreed upon by the Contracting Parties through diplomatic channels.

## **Article 11. 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 or her 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. The place of the negotiations shall be the capital city of the Contracting Party to the dispute unless the disputing parties otherwise agree. An Investor's right to submit a dispute to dispute settlement procedures set out in subparagraph 2 of this Article, shall not be frustrated or denied merely by the refusal of the Contracting Party to the dispute to participate in negotiations.

2. If these disputes, cannot be settled in this way within six (6) months following the date of the written notification mentioned in paragraph 1, 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) except as provided under paragraph 4 (a) and (b) 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", in case both Contracting Parties become signatories of this Convention,

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

3. Once the investor has submitted the dispute to one or the other of the dispute settlement procedures mentioned in paragraph 2 of this Article, the choice of one of these procedures is final.

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

(a) only the disputes arising directly out of investment activities which have obtained necessary permission, if there is any permission required, in conformity with the relevant legislation 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;

(b) the disputes, related to the property and real rights upon the real estates in the territory of the host Contracting Party are totally under the jurisdiction of the courts of such host Contracting Party 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;

5. At any stage of the arbitration proceedings or of the execution of an arbitral award, none of the Contracting Parties involved in a dispute shall be entitled to raise as an objection the fact that the investor who is the opposing party in the dispute has received compensation totally or partly covering his losses pursuant to an insurance policy or to the guarantee provided for in Article 9 of this Agreement. A dispute shall, however, not be submitted to international arbitration by the insurer under the provisions of this Article, if the same dispute has been brought before international arbitration by the

investor.

6. The arbitration 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 which territory the investment is made (including its rules on the conflict of law) and the relevant principles of international law as accepted by both Contracting Parties.

7. 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 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 foregoing procedure, the disputes may be submitted, upon the request of either Contracting Party, to an arbitral tribunal of three members.

2. Such an Arbitral Tribunal shall be constituted for each individual case in the following way. Within two (2) 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 both Contracting Parties shall be appointed as the Chairman of the Tribunal. The Chairman shall be appointed within four (4) months from the date of appointment of the other two members.

3. If both arbitrators cannot reach an agreement about the choice of the Chairman within four (4) 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 (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.

7. The Arbitral Tribunal shall reach its decision on the basis of this Agreement and in accordance with international law applicable between the Contracting Parties.

8. Each Contracting Party shall bear the costs of the member appointed by that Contracting Party and of its representation at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the cost of the Chairman, as well as other common costs.

9. A dispute shall not be submitted to an international arbitration tribunal under the provisions of this Article, if a dispute on the same matter has been brought before another international arbitration tribunal under the provisions of Article 11 and is still before the tribunal. However, this will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

## **Article 13. Scope of Application**

This Agreement shall apply to investments in the territory of one Contracting Party, made in accordance with its national legislation, 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 or any claim, which was settled before its entry into force.

## **Article 14. Additions and Amendments**

Any additions and amendments may be made to this Agreement by mutual consent of the Contracting Parties. Such additions and amendments shall be made in a form of separate protocols being an integral part of this Agreement and shall enter into force in accordance with the provision of Article 15 of this Agreement.

## **Article 15. Entry Into Force, Duration and Termination**

1. This Agreement shall enter into force on the date 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 thereafter remain in force unless either Contracting Party terminates this Agreement at the end of the initial ten-year period or at any time thereafter by giving one year prior written notification to the other Contracting Party.
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 (10) years from such date of termination.
4. From the date of entry into force of this Agreement, the previous Agreement between the Republic of Turkey and the Republic of Azerbaijan on Reciprocal Promotion and Protection of Investments signed on February 9, 1994 shall be terminated.

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

DONE in duplicate at Izmir on October 25, 2011 in the Turkish, Azerbaijani and English languages, all texts being equally authentic.

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

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

Zafer Caglayan

Minister of Economy

FOR THE GOVERNMENT OF THE REPUBLIC OF AZERBAIJAN

Sahin Mustafayev Minister of Economic Development