[TRANSLATION – TRADUCTION]

AGREEMENT BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY CONCERNING THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

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

Desiring to strengthen the economic cooperation between the two States and to create favourable conditions for French investments in Turkey and for Turkish investments in France,

Convinced that the promotion and protection of investments would succeed in stimulating transfers of capital and technology between the two countries, in the interest of their economic development,

Have agreed as follows.

Article 1. Definitions

For the purpose of this Agreement:

1. The term "investment" means any kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation in force in that territory, and in particular though not exclusively:

(a) Movable and immovable property as well as any other right in rem such as mortgages, liens, usufructs, pledges and similar rights;

(b) Shares, issue premiums and other direct or indirect forms of interest in companies;

(c) Reinvested income, monetary claims or other titles the financial value of which relates to an investment, particularly claims resulting from loans relating to the interest in companies mentioned in (b) above;

(d) Intellectual and industrial property rights (such as patents, licences, trademarks and industrial models and mock-ups), technical processes, trade names and goodwill;

(e) Business concessions conferred by law or under contract, including concessions to prospect for, cultivate, extract or exploit natural resources, in the territory of each of the Contracting Parties as defined below.

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

2. The term "investor" means:

(a) Physical persons possessing the nationality of one of the Contracting Parties;

(b) Companies constituted in the territory of one of the Contracting Parties in accordance with its legislation and having its head office or its effective economic activity in the territory of that Contracting Party.

3. A company having its head office in a third State and which is directly or indirectly controlled by investors in one of the Contracting Parties shall enjoy the protection provided for by this Agreement, unless a current agreement on the promotion and protection of investments between that third State and the Contracting Party where the investment is made gives more favourable treatment to investments than that provided by the present Agreement.

4. The term "returns" means all amounts produced by an investment, such as profits, royalties and interest or dividends, during a given period.

5. The term "territory" means, for each of the Contracting Parties, its territory, its territorial waters and the maritime areas over which, in accordance with international law, it exercises jurisdiction or sovereign rights for the purpose of prospection, exploitation and preservation of natural resources.

Article 2. Scope of application

This Agreement shall apply both to investments in existence on the date of its entry into force and to investments made subsequently.

Article 3. Promotion, protection and treatment of investments

1. Each Contracting Party shall encourage in its territory investments made by investors of the other Contracting Party, creating favourable conditions for those investments and, subject to its right to exercise the powers provided in its legislation, shall permit those investments on a basis no less favourable than that granted in comparable situations to investments made by investors of any third State.

2. Each Contracting Party shall extend fair and equitable treatment, in accordance with the principles of international law, to investments, including returns, made in its territory by investors of the other Contracting Party; this treatment shall not be less favourable than that granted to investments made by its own investors or by investors of any third State, if the latter is more favourable.

3. Each Contracting Party shall apply in its territory to the investors of the other Contracting Party, with respect to their investments and activities related to the investments, the treatment granted to its own investors, or the treatment granted to those of any third State, if the latter is more favourable. This principle shall also apply to the nationals of one Contracting Party authorized to work in the territory of the other Contracting Party in the exercise of their activities relating to an investment.

4. This treatment shall not include the privileges granted by one Contracting Party to investors of a third State by virtue of its participation in or association with a free trade zone, customs union, common market or any other form of regional economic organization.

5. The provisions of this Article shall not apply to fiscal matters.

6. The provisions of this Agreement shall not be interpreted in such a way as to prevent either Contracting Party from taking measures to regulate investments by foreign companies and the ways in which such companies conduct their activities in respect of cultural goods, particularly in the field of audiovisual products.

7. The Contracting Parties shall give favourable consideration, within the framework of their domestic legislation, to applications for entry and permits for residence, employment and circulation submitted by nationals of one Contracting Party for purposes of investment in the territory of the other Contracting Party.

Article 4. Expropriation and compensation

1. Investments made by investors of one Contracting Party shall enjoy full and complete protection and safety in the territory of the other Contracting Party.

2. Neither Contracting Party shall take any measures of expropriation or nationalization or any other measures having the effect of dispossession, direct or indirect, of investors of the other Contracting Party of their investments in its territory, except in the public interest, in accordance with legal procedures and provided that these measures are not discriminatory.

Any dispossession measures taken shall give rise to the payment of prompt and adequate compensation the amount of which shall be calculated according to the real value of the investments considered and assessed on the basis of the normal economic situation prevailing immediately before these measures were made public.

The above compensation and its amount and manner of payment shall be determined not later than the date of dispossession. The compensation shall be effectively realizable, paid without delay and freely transferable. It shall yield, up to the date of payment, interest calculated at the appropriate market rate.

3. Investors of one Contracting Party whose investments have sustained losses due to war or any other armed conflict, insurrection, national state of emergency or revolt occurring in the territory of the other Contracting Party shall enjoy treatment from the latter that is not less favourable than that granted to its own investors or to those of the most favoured nation.

Article 5. Repatriation and transfer

1. Each Contracting Party shall ensure that all transfers concerning an investment can take place freely and without delay, both into and from its territory. These transfers relate to:

(a) Income;

(b) Payments of capital and interest resulting from loans which have been regularly contracted in relation to an investment;

(c) Proceeds of the complete or partial liquidation of the investment, including appreciation of the invested capital;

(d) The compensation provided for in Article 4 above;

(e) Payments resulting from a dispute in relation to an investment;

(f) The remuneration of nationals of one Contracting Party who have been authorized to work in the territory of the other Contracting Party in connection with an approved investment.

2. Transfers shall be effected in readily convertible currency at the market rate of exchange applicable on the date of the transfer.

3. In the event of balance of payments problems, external financial difficulties or the threat thereof, each Contracting Party may temporarily place restrictions on transfers, provided that:

(a) The other Contracting Party is promptly informed of the restrictions;

(b) The restrictions comply with the Statutes of the International Monetary Fund;

(c) The duration of the restrictions does not exceed six months under any circumstances;

(d) The restrictions are applied equitably, without discrimination and in good faith.

Article 6. Subrogation

If, pursuant to a non-commercial risks guarantee given for an investment effected by investors of one Contracting Party in the territory of the other Contracting Party, an insurer in one Contracting Party makes payments to those investors, that insurer shall thereby be subrogated in respect of the those investors' rights and claims.

Such payments shall not affect the rights of the beneficiaries of the guarantee to have recourse to the International Centre for Settlement of Investment Disputes (ICSID) in respect of that part of the investment not covered by the insurance.

Disputes between a Contracting Party and an insurer shall be settled in accordance with Article 8 of this Agreement.

Article 7. More favourable provisions

This Agreement shall not prejudice:

(a) Any laws or regulations, administrative practices or procedures, or administrative or judicial decisions of either of the Contracting Parties,

(b) Any obligations under international law, or

(c) Any obligations undertaken by either of the Contracting Parties, including those resulting from an agreement on investments or an investment authorization,

which grant to investments or related activities a treatment more favourable than that provided for by this Agreement in similar situations.

Article 8. Settlement of disputes between one Contracting Party and the investors of the other Contracting Party

1. Any dispute between one Contracting Party and an investor of the other Contracting Party relating to an investment made by the latter in the territory of the first Contracting Party in the framework of this Agreement shall be settled amicably between the two Parties.

2. If a dispute has not been settled within six months of the date on which it was raised by either of the Parties, it shall be submitted, at the request of the investor, either to the national courts of the Contracting Party concerned, or for arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington, D.C., on 18 March 1965. When the investor has submitted or agreed to submit the dispute to the courts or to arbitration, the choice of the procedure shall be final.

Article 9. Settlement of disputes between the Contracting Parties

1. Disputes concerning the interpretation or application of this Agreement shall be settled through direct and substantive negotiations.

2. Any dispute which has not been settled within six months after the date on which it is raised by either Contracting Party may be submitted, at the request of either Contracting Party, to an arbitral tribunal.

3. The tribunal shall be constituted, in each case, as follows:

Each Contracting Party shall designate one arbitrator, and the two arbitrators shall, by mutual agreement, designate a national of a third State who shall be appointed Chairman of the tribunal by the two Contracting Parties. All the arbitrators shall be appointed within two months of the date on which one of the Contracting Parties notifies the other Contracting Party of its intention to submit the dispute to arbitration.

4. If the time limits established in paragraph 3 above are not observed, either Contracting Party may, unless otherwise agreed, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if, for any other reason, he is prevented from performing that function, the most senior Under-Secretary-General shall make the necessary appointments.

5. The tribunal shall take its decisions by majority vote. Such decisions shall be final and fully binding on the Contracting Parties.

The tribunal shall adopt its own rules of procedure. It shall interpret its decisions at the request of either Contracting Party. Unless the tribunal decides otherwise, taking special circumstances into consideration, the cost of the arbitral proceedings, including the arbitrators' fees, shall be shared equally between the two Contracting Parties.

6. This procedure shall not be applicable in respect of matters relating to the territorial status of either Contracting Party.

7. No dispute may be submitted to an international arbitral tribunal pursuant to the provisions of this Article if the same dispute has been submitted to another international arbitral tribunal pursuant to the provisions of Article 8. These provisions shall not prevent the Contracting Parties from entering into direct and substantive negotiations.

Article 10. Entry into force

Each Contracting Party shall notify the other of the completion of the constitutional procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last such notification.

The Agreement is concluded for an initial period of 10 years. It shall remain in force thereafter unless one year's notification of denunciation is given by one of the Contracting Parties through the diplomatic channel.

In case of termination of this Agreement, investments made while it was in force shall continue to enjoy the protection of its provisions for an additional period of 15 years.

DONE at Ankara, on 15 June 2006, in duplicate in the Turkish and French languages, both texts being equally authentic.

For the Government of the Republic of Turkey:

ALI BABACAN
Minister of State

For the Government of the French Republic:

CHRISTINE LAGARDE
Minister for External Trade

PROTOCOL

Upon the signature at today's date of the Agreement between the Government of the French Republic and the Government of the Republic of Turkey concerning the promotion and reciprocal protection of investments, the Contracting Parties have also agreed to the following provisions which are an integral part of the Agreement:

Regarding Article 5:

The provisions of the previous paragraphs of this Article shall not prevent the exercise in good faith, by either Contracting Party, of its international obligations or of its rights and obligations arising out of its participation or association in a free trade zone, customs union, common market or any other form of regional economic organization.

Regarding Article 8:

Pursuant to the declaration submitted by the Republic of Turkey to the International Centre for Settlement of Investment Disputes (ICSID) on 3 March 1989, concerning Article 25 (4) of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States:

(a) Disputes arising out of direct investment activities which have effectively begun and which, where necessary, have received the necessary permission in accordance with the legislation of the Republic of Turkey on foreign capital, shall be submitted to the Centre (ICSID).

(b) Disputes relating to property rights and real rights over immovable property shall be subject solely to Turkish courts and shall therefore not be submitted to the Centre (ICSID) or any other international dispute settlement mechanism.

DONE at Ankara, on 15 June 2006, in duplicate in the Turkish and French languages, both texts being equally authentic.

For the Government of the Republic of Turkey:

ALI BABACAN
Minister of State

For the Government of the French Republic:

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