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

The Government of the Republic of Turkey and the Government of the Democratic Republic of the Congo, hereinafter referred to as "the Contracting Parties";

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

Recognizing that the conclusion of an agreement upon the treatment to be accorded to such investments 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 reciprocal promotion and protection of investments;

Have agreed as follows:

ARTICLE 1
Definitions

For the purposes of this Agreement;

1. The term ***"investment"*** means every kind of asset, connected with business activities, acquired for the purpose of establishing lasting economic relations in the territory of a Contracting Party in conformity with its laws and regulations, and shall include in particular, but not exclusively:

(a) movable and immovable property, as well as any other rights such as mortgages, leases, 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, in particular patents, industrial designs and models, technical processes, as well as trademarks, goodwill, and know-how;

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

2. The term "***investor***" means:

(a) natural persons having the nationality of a Contracting Party according to its laws;

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

who have made investments 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, profits, interest, capital gains, royalties, fees and dividends.

4. The term "***territory***" means:

(a) in respect of the Republic of Turkey; the land territory, internal waters, territorial sea and airspace above them, as well as 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 the Democratic Republic of the Congo; the territory, including territorial sea, airspace, and any maritime area beyond the territorial sea, that has been or may in the future be designated in accordance with its national legislation and international standards and international law as an area in which it may exercise its sovereignty.

ARTICLE 2
Scope of Application

This Agreement shall apply to investments in the territory of a 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 3
Promotion and Protection of Investments

1. Subject to its laws and regulations, 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, exploitation, enjoyment, extension, sale, liquidation or disposal of such investments by unreasonable or discriminatory measures.

ARTICLE 4
Treatment of Investments

1. Each Contracting Party shall admit in its territory investments on a basis no less favorable 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 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, exploitation, enjoyment, extension, sale, liquidation or disposal of the investment.

3. The Contracting Parties shall within the framework of their national legislation grant a favorable consideration to applications for 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.

4. (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, or 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 with respect to the dispute settlement provisions between an investor and the host Contracting Party, which are simultaneously defined by this Agreement and by another international agreement to which one of the Contracting Parties is party.

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

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 provide 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 trafficking in arms, ammunition and implements of war equipment and to such trafficking and transactions in other goods, articles, 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 in accordance with the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) to prevent any Contracting Party from taking measures in fulfillment of its obligations under the UN Charter for the maintenance of international peace and security.

3. The adoption, maintenance or enforcement of such measures shall be subject to the condition 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 subjected, 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 and the general principles of treatment set out 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, shall not constitute indirect expropriation.

3. Compensation shall be equivalent to the market value of the expropriated investment before the expropriation measures are taken or become public knowledge. The compensation shall be paid without delay and be freely transferable as described in Paragraph 2 of Article 8 of this Agreement.

4. The compensation shall be payable in a freely convertible currency and in case of late payment of compensation, it shall include an appropriate interest rate from the date of expropriation until the date of payment.

ARTICLE 7
Compensation for Losses

1. Investors of either Contracting Party whose investments have suffered 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 the provisions of paragraph 1 of this Article, investors of one Contracting Party who, in one of the cases referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

(a) the requisition of their property by its forces or authorities; or

(b) the 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 prompt, adequate and effective. Resulting payments shall be freely convertible.

ARTICLE 8
Repatriation and Transfers

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

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

(b) the returns;

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

(d) the compensation pursuant to the provisions of Article 6 and 7;

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

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

(g) the 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 basis and in good faith.

ARTICLE 9
Subrogation

1. If one of the Contracting Parties has a public insurance or guarantee scheme to protect the 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 10 of this Agreement.

ARTICLE 10
Settlement of Disputes between One Contracting Party and the Investors of the Other Contracting Party

1. This Article shall apply to disputes 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. Dispute between one of the Contracting Parties and an investor of the other Contracting Party, in connection with its investment, shall be notified in writing, including all relevant information, by the investor to the recipient Contracting Party of the investment. As far as possible, the investor and the Contracting Party concerned shall endeavor to settle these disputes through consultations and negotiations in good faith.

3. If these disputes cannot be settled amicably in this way within six (6) months from the date of the written notification mentioned in Paragraph 2, the disputes may be submitted, as the investor may choose, to:

(a) the competent court of the Contracting Party in whose territory the investment was made; or

(b) except as provided in paragraph (5) to;

(i) the International Center for Settlement of Investment Disputes (ICSID) established by the "Convention on Settlement of Investment Disputes Between States and Nationals of other States";

(ii) ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

4. Once the investor submits 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.

5. Notwithstanding the provisions of Paragraph (3) of this Article; only the disputes arising directly out of investment activities which have obtained the necessary permission, if there is any permission required, in conformity with the relevant legislation of the Contracting Parties 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.

6. 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 whose territory the investment is made (including its rules on the conflict of laws), and the relevant principles of international law applicable between the Contracting Parties.

7. The arbitral awards shall be final and binding for all parties in the 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 company of such other Contracting Party and to investments of such investor if the company has no substantial economic activities in the territory of the Contracting Party under whose law it has been constituted or organized, and investors of a non-Contracting Party, or investors of the denying Contracting Party, own or control the company.

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 from the beginning of disputes between them 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 (2) months of the date of receipt of the 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 that 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 such appointment.

3. If both arbitrators are unable to 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 in 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 appointment 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 accepted rules of international arbitral procedure.

6. Unless otherwise agreed by the Contracting Parties, all submissions shall be made and all hearings shall be completed within eight (8) months of the date of appointment of the Chairman, and the tribunal shall render its decision within two (2) months from the date of the final submissions or the date of the closing of the hearings, whichever is later. The arbitral tribunal shall make its decisions, which shall be final and binding, by a majority of votes. Arbitral Tribunal shall take its decision on the basis of this Agreement and in accordance with the international law applicable between the Contracting Parties.

7. The 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 shall be paid by one of the Contracting Parties.

8. A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article if a dispute on the same matter has been brought before another international arbitral tribunal under the provisions of Article 10 and is still before the tribunal. This will not impair the engagement in direct and meaningful negotiations between the Contracting Parties.

ARTICLE 13
Service of Documents

Notices and other documents in disputes under Articles 10 and 12 shall be served on the Republic of Turkey by delivery to:

Cumhurbaşkanlığı Hukuk ve Mevzuat Genel Müdürlüğü
Cumhurbaşkanlığı Külliyesi
06560 Beştepe - Ankara
Türkiye

(General Directorate of Law and Legislation of Presidency
Presidential Complex
06560 Beştepe - Ankara
Turkey)

Notices and other documents in disputes under Articles 10 and 12 shall be served on Democratic Republic of the Congo by delivery to:

Ministry of Foreign Affairs
1, Place de L'indépendance
Avenue des Héros Nationaux
Gombe-Kinshasa
DR Congo

ARTICLE 14
Entry into Force

1. This Agreement shall enter into force on the date of the receipt of the last notification by the Contracting Parties of the completion of the respective internal legal procedures necessary to that effect. This Agreement shall remain in force for a period of ten (10) years and shall continue to be in force unless terminated in accordance with Paragraph (3) of this Article.

2. This Agreement may be amended by mutual written consent of the Contracting Parties at any time. The amendments shall enter into force in accordance with the same legal procedure prescribed under the first paragraph of the present Article.

3. Either Contracting Party may, by giving one year's 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.

4. 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.

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

DONE at Ankara, in duplicate at 7/9/2021 in the Turkish, French and English languages, all texts being equally authentic.

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

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

Mustafa VARANK
Minister of Industry and Technology

FOR THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF THE CONGO

Christophe LUTUNDULA APALA Pen' APALA
Vice-Prime Minister, Minister of Foreign Affairs