

Agreement Between The People's Republic of China and the Republic of Turkey Concerning the Reciprocal Promotion and Protection of Investments

The People's Republic of china [sic] and the Republic of Turkey (each a “Contracting Party”)

Desiring to promote greater economic cooperation between them, particularly with respect to investment by nationals and companies of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit.

Recognizing that agreement upon the treatment to be accorded such investment will stimulate the flow of capital and technology and the economic developments of the Contracting Parties.

Agreeing that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilization of economic resources, and

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

Have agreed as follows:

Article 1 Definitions

1. For the purpose of this Agreement.

(a) “company” means any kind of juridical entity, including any corporation, company, business association or other organization, that is duly incorporated, constituted, or otherwise duly organized under the applicable laws and regulations of one Contracting Party.

(b) “nationals” means natural persons who have nationality of one Contracting Party under the laws of that Contracting Party.

(c) “investment” means every kind of assets made as investments in accordance with the laws and regulations of the Contracting Party accepting the investment; including equity, claims, service and rights from investment contracts and also includes the followings;

(i) tangible and intangible property including rights, such as mortgages, liens and pledges;

(ii) a company or shares of stock or other interests in a company or interests in the assets there of;

(iii) a claim to money or a claim to performance having economic value and associated with an investment;

(iv) industrial property rights, including rights with respect to copyrights, patents, trademark, trade names, industrial designs, trade secrets and know-how, and goodwill;

(v) rights conferred by law or contract, and any licences and permits pursuant to law and concessions to search for, extract or exploit natural resources;

(vi) re-investment of returns, and of principal and interest payments arising under loan agreements related to investments.

(d) "return" means an amount derived from or associated with an investment, including profit; dividend, capital gain, royalty payment, management, technical assistance or other fee, and payment in kind.

2. Any alteration in the form in which assets are invested or reinvested shall not affect their character as investment.

Article 2 Treatment of Investment

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

2. Each Contracting Party shall accord to these investments, once established, treatment no less favourable than that accorded in like situations to investments of nationals and companies of any third country.

3. Companies which are legally constituted under the applicable laws and regulations of one Contracting Party, and which are investments of nationals or companies of other Contracting Party, shall be permitted to engage managerial and technical personnel of their choice, regardless of nationality.

4. Each Contracting Party shall make public all laws, regulations and rules that pertain to or affect investments.

5. Treatment and protection referred to in Paragraphs 1 and 2 of this Article shall not be construed so as to oblige one Contracting Party to extend to the nationals or companies of the other Contracting Party the benefit of any privilege accorded to nationals or companies of any third State and resulting from its membership in an association with a custom union, a common market or a free trade area.

Article 3 Expropriation

1. The investments made by nationals or companies of one Contracting Party in the territory of the other Contracting Party shall not be expropriated or nationalized or subjected to other measures having a similar effect, unless the following conditions are fulfilled:

(a) the measures are adopted for public purpose, within the framework of its laws and regulations.

(b) the measures are not discriminatory.

2. The Compensation shall correspond to the reasonable market value of the investment at the time of the expropriation or at the time it became public knowledge which ever is earlier and shall be effectively realizable, freely transferable and made without delay. In the event that payment of compensation is delayed, the national or company shall receive interest for the period of any undue delay in making payment.

3. Upon the request of the national or company the amount of compensation can be reassessed by a tribunal or other competent body of the Contracting Party where the investment has been made.

4. Nationals or companies of one Contracting Party whose investment in the territory of the other Contracting Party suffers losses owing to war or other armed conflict, a state of national emergency, revolt, insurrection or riot, in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards compensation or other settlement, not less favourable than that which the latter Contracting Party accords to nationals or companies of any third State.

Article 4 Repatriation

1. Each Contracting Party shall permit all the transfers of the following proceeds related to an investment to be made in and out of its territory within the framework of its laws and regulations:

(a) returns;

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

(c) all other proceeds in respect of investment specified in Article 1 (c).

2. The transfers specified in Paragraph 1 of this Article shall be made without delay in the convertible currency in which the investments has been made or in any convertible currency if so agreed by the national or company and at the rate of exchange at the date of transfer.

Article 5 Subrogation

If the investments of a national or company of one Contracting Party are insured against non-commercial risks under a system established by law, any subrogation of the insurer into the rights of the said national or company pursuant to the terms of such insurance shall be recognized by the other Contracting Party.

The insurer shall not be entitled to exercise any rights other than the rights which the national or company would have been entitled to exercise.

Disputes between one Contracting Party and an insurer shall be settled in accordance with the provisions of Article 7 of this Agreement.

Article 6 consultations

The Contracting parties agree to consult promptly, on the request of either, to resolve any disputes in connection with the Agreement or to discuss any matter relating to the interpretation or application of the Agreement.

Article 7 Investment Disputes

Any dispute between a national or company of one Contracting Party and the other Contracting Party in connection with an investments in the territory of the other Contracting Party shall be settled as follows:

(a) The parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations in good faith. If such consultations or negotiations are unsuccessful, the dispute may be settled through the use of non-binding, third party procedures upon which such national or company and the Contracting Party mutually agree. If the dispute cannot be resolved through the foregoing procedures the national or company concerned may bring the dispute before the competent court of that Contracting Party.

(b) If a dispute involving the amount of compensation resulting from an expropriation or nationalization referred to in Article 3 cannot be settled within one year from the date upon which the dispute arose, it may be submitted to an ad-hoc arbitral tribunal for settlement in accordance with the Arbitration Rules of UNCITRAL by each party subject to the dispute. Other disputes between a national or company of one Contracting Party and the other Contracting Party can be submitted to an international arbitral tribunal as stated above in accordance with the laws and regulations of the Contracting Party that is a party to the dispute. The provisions of this Paragraph shall not apply if the national or company concerned has resorted to the courts specified in Paragraph (a) of this Article.

(c) In the event that both Contracting Parties become party to the 1965 Convention on the Settlement of Disputes Between States and Nationals of Other States, a dispute can be submitted to the International Centre for the Settlement of Investment Disputes for resolution in accordance with the terms on which the Contracting Party admitted the investment is a party to the Convention.

Article 8 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 such negotiations are unsuccessful, the dispute may be submitted, upon the request of either Contracting Party, to an arbitral tribunal for binding decision in accordance with the applicable rules of international law accepted by each Contracting Party.

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. The tribunal shall have three months from the date of the selection of the Chairman in which 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.

4. Upon a determination that the Contracting Party requesting arbitration has attempted to resolve the dispute through direct and meaningful negotiation, the tribunal shall proceed to arbitrate the merits of this dispute.

5. The tribunal shall reach its decision by a majority of votes within two months following the close of hearings. The decision shall be final and binding.

6. 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, direct that a higher proportion of the costs be paid by one of the Contracting Parties.

Article 9 Preclusion

This Agreement shall not preclude either Contracting Party from prescribing special formalities in connection with the establishment of investments, but such formalities shall not impair the substance of any of the rights set forth in this Agreement.

Article 10 Taxation

With respect to its tax policies, each Contracting Party should strive to accord fairness and equity in the agreement of investment of nationals and companies of the other Contracting Party.

Article 11 Entry into Force, Duration and Termination

1. This Agreement shall enter into force thirty days after the date on which both Contracting Parties have received the written notice of fulfillment of their respective internal legal procedures. It shall remain in force for a period of ten years and shall continue in force unless terminated in accordance with Paragraph 2 of this Article. It shall apply to investments made after 1971.

2. Either Contracting Party may, by giving one year's written notice to the other Contracting party, terminate this Agreement at the end of the initial ten year period or at any time thereafter.

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 requirements for entry into force of such amendment.

4. With respect to investments made or acquired prior to the date of termination of this Agreement, the provisions of all of the other Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

IN WITNESS WHEREOF the respective plenipotentiaries have signed this Agreement.

DONE in duplicate at Beijing on the day of 13 November 1990 in the Chinese, Turkish and English languages, all texts being equally authentic.

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

For the Government of

For the Government of the Republic of Turkey

the People's Republic of China