

AGREEMENT BETWEEN THE PORTUGUESE REPUBLIC AND THE REPUBLIC OF TURKEY ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

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

Desiring to intensify the economic co-operation between the two States,

Intending to encourage and create favourable conditions for investments made by investors of one Contracting Party in the territory of the other Contracting Party on the basis of equality and mutual benefit,

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

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

Have agreed as follows:

ARTICLE 1

Definitions

For the purpose of this Agreement,

1. The term "investments", in accordance with the laws and regulations of the host Contracting Party, shall mean every kind of asset invested by investors of one Contracting Party in the territory of the other Contracting Party and includes, in particular, though not exclusively:

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

- b) Shares, stocks or other forms of interest in the equity of companies;
- c) Claims to money or to any performance having an economic value;
- d) Intellectual property rights such as copyrights, patents, industrial designs, trade marks, technical processes, know-how and good will and any other similar rights;
- e) Concessions conferred by law, under a contract or an administrative act of a competent state authority, including concessions for prospecting, research and exploitation of natural resources;

Any alteration of the form in which assets are invested shall not affect their character as investments, provided that such a change does not contradict the laws and regulations of the relevant Contracting Party.

2. The term "returns" shall mean the amounts yielded by investments, over a given period, shall include in particular, though not exclusively, profits, dividends, interests, royalties, technical assistance fees or other forms of income related to the investments.

In cases where the returns of investment, as defined above, are reinvested, the income resulting from the reinvestment shall also be considered as income related to the first investments.

3. The term "investor" means:

- a) natural persons having the nationality of either Contracting Party, in accordance with its laws and
- b) legal persons, including corporations, commercial companies or other companies or associations, which have a main office in the territory of either Contracting Party and are incorporated or constituted in accordance with the law of that Contracting Party.

4. The term "territory" means the land territory, their territorial seas, as well as the maritime areas over which they have jurisdiction for the purposes of exploring, exploiting, conserving and managing natural resources pursuant to international law.

ARTICLE 2

Promotion and Protection of Investments

1. Each Contracting Party shall promote and encourage, as far as possible, within its territory investments made by investors of the other Contracting Party and shall admit such investments into its territory in accordance with its laws and regulations on a basis not less favourable than that accorded in similar situations to investments of investors of any third State. It shall in any case accord such investments fair and equitable treatment.

2. Investments made by investors of either Contracting Party shall enjoy full protection and security in the territory of the other Contracting Party.

Neither Contracting Party shall in any way impair by unreasonable, arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Contracting Party.

ARTICLE 3

Treatment of Investments

1. Investments made by investors of one Contracting Party in the territory of the other Contracting Party, as also the returns therefrom, shall be accorded treatment which is fair and equitable and not less favourable than the latter Contracting Party accords to the investments and returns of its own investors or to investors of any third State.

2. Investors of one Contracting Party shall be accorded by the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than the latter Contracting Party accords its own investors or to investors of any third State.

3. Subject to the laws and regulations of the Contracting Parties relating to the entry, sojourn and employment of aliens, each Contracting Party undertakes to examine in good faith the request of investors of the other Contracting Party concerning the entry and stay in its territory for the purpose of investment and activities related to their investments.

ARTICLE 4

Exceptions

The provisions of Articles 2 and 3 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:

- a) any existing or future free trade area, customs union, common market or other similar international agreements including other forms of regional economic co-operation to which either of the Contracting Parties is or may become a Party, and
- b) any international agreement relating wholly or mainly to taxation.

ARTICLE 5

Expropriation

1. Investments made by investors of either Contracting Party in the territory of the other Contracting Party shall not be expropriated, nationalised or subject to any other measure with effects equivalent to expropriation or nationalisation (hereinafter referred to as expropriation) except in accordance with due process of law, for a public purpose, on a non-discriminatory basis and against prompt, effective and adequate compensation.

2. Such compensation shall amount to the market value of the expropriated investments at the time of the expropriation or immediately before the expropriation became publicly known, whichever is earlier. The compensation shall be paid without delay, shall include interest until the date of payment.

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

ARTICLE 6

Compensation for Losses

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war or armed conflict, a state of national emergency or other similar events, shall be accorded treatment no less favourable by the latter Contracting Party than that Contracting Party accords to the investments of its own investors, or to the investments of investors of any third State, whichever is more favourable, as regards any measure it adopts in relation to such losses.

ARTICLE 7

Transfers

1. Each Contracting Party shall ensure that all payments relating to an investment in its territory of an investor of another Contracting Party may be freely transferred into and out of its territory without delay. These transfers include in particular, though not exclusively:

- a) capital and additional amounts necessary to maintain or increase the investments;
- b) the returns defined in Paragraph 2, Article 1 of this Agreement;

- c) funds in service and repayment of loans in connection with investments;
 - d) the proceeds obtained from the sale or from the total or partial liquidation of the investment;
 - e) any compensation or other payment referred to in Articles 5 and 6 of this Agreement; or
 - f) payments made in accordance with Article 8 of this Agreement;
 - g) salaries, wages and other remuneration received by the nationals of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permit relative to an investment;
 - h) payments arising from an investment dispute.
2. The transfers referred to in this Article shall be made at the exchange rate applicable on the date of the transfer in convertible currency.

ARTICLE 8

Subrogation

1. If either Contracting Party or its designated agency makes any payment to one of its investors as a result of a guarantee covering non-commercial risks in respect of an investment made in the territory of the other Contracting Party, the former Contracting Party shall be subrogated to the rights of this investor, and may exercise them according to the same terms and conditions as the original holder.
2. Disputes between a Contracting Party and an insure shall be settled in accordance with the provisions of Article 10 of this Agreement.

ARTICLE 9

Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled by negotiations through diplomatic channels.

2. If the Contracting Parties fail to reach such settlement within six (6) months after the beginning of negotiations, the dispute shall, upon the request of either Contracting Party, be submitted to an arbitral tribunal, established in accordance with the provisions of this Article.

3. The Arbitral Tribunal shall be constituted ad hoc, as follows: Each of the Contracting Parties shall appoint one member and these two members shall propose a national of a third State, with which both Contracting Parties have diplomatic relations, as chairman to be appointed by the two Contracting Parties. The members shall be appointed within two (2) months and the chairman shall be appointed within three (3) months from the date on which either Contracting Party notifies the other that it wishes to submit the dispute to an arbitral tribunal.

4. If the deadlines specified in paragraph 3 of this Article are not complied with, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is prevented from doing so, or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments.

If the Vice-President is also a national of either Contracting Party or if he is prevented from making the appointments for any other reason, the appointments shall be made by the member of the Court who is next in seniority and who is not a national of either Contracting Party.

5. The tribunal shall have three 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 months of the date of selection of the third arbitrator, and the tribunal shall render its decision within two months after the date of the final submissions or the date of the closing of the hearings, whichever is later.

7. The Arbitral Tribunal shall rule according to majority vote. The decisions of the tribunal shall be final and binding on both Contracting Parties. Each Contracting Party shall be responsible for the costs of its own member and of its representatives at the arbitral proceedings. Both Contracting Parties shall assume an equal share of the expenses incurred by the chairman, as well as any other expenses. The tribunal may make a different decision regarding costs.

ARTICLE 10

Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute which may arise between one Contracting Party and an investor of the other Contracting Party concerning an investment of that investor in the territory of the former Contracting Party shall be notified in writing by the investor to the recipient Contracting Party of the investment and shall, as far as possible, be settled amicably through negotiations.

2. If such dispute cannot be settled within a period of six (6) months from the date of request for settlement, the investor concerned may submit the dispute to:

a) the competent court of the Contracting Party for decision; or

b) the International Centre for the Settlement of Investment Disputes (ICSID) through conciliation or arbitration, established under the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington D.C., on March 18, 1965;

c) an ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law, provided that, if the investor concerned has brought the dispute before the courts of justice of the Contracting Party that is a Party to the dispute and a final award has not been rendered within one year.

3. Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration or refer the same matter to the dispute settlement procedure as defined in Article 9, until the proceedings have terminated or a Contracting Party has failed to abide by or to comply with the award.

4. The arbitration shall be based on:

a) the provisions of this Agreement;

b) the national laws and regulations of the Contracting Party in whose territory the investment was made, including the rules relative to conflicts of law.

5. The award shall be enforceable in accordance with the domestic law of the Contracting Party in whose territory the investment in question is situated.

ARTICLE 11

Application of other rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement contain a regulation, whether general or specific, entitling investments made by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such provisions shall, to the extent that they are more favourable, prevail over this Agreement.

ARTICLE 12

Application of the Agreement

This Agreement shall apply to all investments, made by investors from one of the Contracting Parties in the territory of the other Contracting Party in accordance with the respective legal provisions, prior to as well as after its entry into force.

ARTICLE 13

Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and a time to be agreed upon through diplomatic channels.

ARTICLE 14

Entry into force and duration

1. This Agreement shall enter into force thirty (30) days after the Contracting Parties notify each other in writing that their respective internal constitutional procedures have been fulfilled.
2. This Agreement shall remain in force for a period of ten (10) years, and continue in force thereafter unless, twelve (12) months before its expiration, either Contracting Party notifies the other in writing of its intention to terminate the Agreement.
3. In respect of investment made prior to the date of termination of this Agreement the provisions of Articles 1 to 13 shall remain in force for a further period of ten (10) years from the date of termination of this Agreement.

IN WITNESS WHEREOF, the undersigned representatives, duly authorised thereto, have signed the present Agreement.

Done in duplicate at this in Lisbon 17th day of February, 2001 in the Turkish, Portuguese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE REPUBLIC OF TURKEY

FOR THE PORTUGUESE REPUBLIC

PROTOCOL

On the occasion of the signing of the Agreement between the Republic of Turkey and the Portuguese Republic on the Reciprocal Promotion and Protection of Investments, the undersigned duly authorised to this effect, have agreed also on the following provisions, which constitute an integral part of the said Agreement:

1. With reference to Article 2 of this Agreement:

The provisions of Article 2 of this Agreement should be applicable when investors of one of the Contracting Parties are already established in the territory of the other Contracting Party and wish to extend their activities or to carry out activities in other sectors.

Such investments shall be considered as new ones and, to that extent, shall be made in accordance with the rules on the admission of investments, according to Article 2 of this Agreement.

2. With reference to Article 3 of this Agreement:

The Contracting Parties consider that provisions of Article 3 of this Agreement shall be without prejudice to the right of either Contracting Party to apply the relevant provisions of their tax law which distinguish between tax-payers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested.

Done in Lisbon this 19th day of February 2001 in the Turkish, Portuguese and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.