

**AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF TURKEY
AND**

**THE UNITED NATIONS INTERIM ADMINISTRATION MISSION IN KOSOVO
(UNMIK)**

**ACTING FOR
THE PROVISIONAL INSTITUTIONS OF SELF-GOVERNMENT IN KOSOVO
CONCERNING
THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Government of the Republic of Turkey and the United Nations Interim Administration Mission in Kosovo (UNMIK), acting for the Provisional Institutions of Self-Government in Kosovo, hereinafter called the Contracting Parties,

Desiring to promote greater economic cooperation between them, 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 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 encouragement and reciprocal protection of investments,

Hereby agree as follows:

**Article I
Definitions**

For the purpose of this Agreement:

1. The term "investor" means:

(a) a natural person who, according to the law of the relevant Contracting Party, is a national of the Republic of Turkey or a habitual resident of Kosovo,

(b) enterprises, including companies, partnerships, corporations, firms or business associations incorporated or constituted or otherwise duly organized under the laws or regulations of one Contracting Party, and having their headquarters in the territory of that Contracting Party.

2. The term "investment", in conformity with the hosting Contracting Party's laws and regulations, shall include every kind of assets connected with economic activities acquired for the purpose of establishing lasting economic interest or relations between an investor of one Contracting Party and an enterprise of the other Contracting Party, such as monies or equivalents that an investor owns for profit purposes and in particular, but not exclusively:

(a) shares, stocks or any other form of participation in companies or corporations;

- (b) returns invested, claims to money or any other rights having financial value related to an investment;
- (c) movable and immovable property, as well as any other rights as mortgages, 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;
- (d) industrial and intellectual property rights such as patents, industrial designs, technical processes, as well as trademarks, goodwill, know-how and other similar rights;
- (e) business concessions conferred by law or by contract, including concessions related to natural resources.

The said term shall refer to all direct investments made in accordance with the laws and regulations applicable in the territory of the Contracting Party where the investments are made. The term "investment" covers all investments made in the territory of a Contracting Party before or after entry into force of this Agreement.

3. The term "returns" means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gains, fees and dividends:

4. The term "territory" means: (a) in respect of the Republic of Turkey, the territory, the territorial sea, as well as the maritime areas over which, pursuant to international law, it has jurisdiction or sovereign rights for the purposes of exploration, exploitation and conservation of natural resources.

(b) in respect of Kosovo, the territory under the interim administration of UNMIK as defined by United Nations Security Council Resolution 1244 (1999) of 10 June 1999.

Article II Promotion and Protection of Investments

1. 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 fair and equitable treatment and shall enjoy full protection in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.

Article III Treatment of Investments

1. Each Contracting Party shall admit in its territory investments, and activities associated therewith, on a basis not less favorable than that accorded in similar situations to investments of investors of any third Contracting Party, within the framework of its laws and regulations.

2. Each Contracting Party shall accord to these investments, once established, treatment not less favourable than that accorded in similar situations to investments of its investors or to investments of any third country, whichever is the most favourable.

3. The provisions of this Article shall have no effect in relation to following agreements entered into by either of the Contracting Parties:

(a) relating to any existing or future customs unions, regional economic organization or similar international agreements,

(b) relating wholly or mainly to taxation.

Article IV
Expropriation/ Takings and Compensation

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be subject to expropriation or takings, whichever term applies to a Contracting Party (hereinafter "taking"), or subjected to measures having equivalent effect to expropriations except for public interest, pursuant to the laws of the other Contracting Party, on a non-discriminatory basis, which shall be accompanied by the payment of prompt, adequate and effective compensation.

2. The investor affected shall have the right, under the law and regulations of the Contracting Party, which is making the taking, for a prompt review of its case by a judicial or other competent and independent authority of that Contracting Party, to determine whether such taking is valid and the valuation of its investment conform to the principles set out in this Article.

3. Compensation shall amount to the market value of the investment subject to a taking immediately before the taking measure was taken or, if the investor so selects, the market value before the impeding taking became public knowledge. Compensation shall include interest to compensate adequately for any delay in payment that may occur from the date of the taking until the day of the payment.

4. Investors of either Contracting Party whose investments suffer 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 not less favourable than that accorded to its own investors or to investors of any third country, whichever is the most favourable treatment, as regards any measures it adopts in relation to such losses.

Article V
Repatriation and Transfer

1. Each Contracting Party shall permit 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:

- (a) returns,
- (b) proceeds from the sale or liquidation of all or any part of an investment,
- (c) compensation pursuant to Article IV,
- (d) reimbursements and interest payments deriving from loans in connection with investments,
- (e) salaries, wages and other remunerations received by the nationals or, respectively the residents of one of the Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits related to an investment,
- (f) payments arising from investment dispute.

2. Transfer 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.

Article VI Subrogation

1. If the investment of an investor of one Contracting Party is insured against non-commercial risks under system established by law, any subrogation of the insurer, which stems from the terms of the insurance agreement, shall be recognized by the other Contracting Party.
2. The insurer shall not be entitled to exercise any rights other than the rights, which the investor would have been entitled to exercise.
3. Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article VII of this Agreement.

Article VII 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 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.
2. If these disputes, cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute may be submitted, as the investor may chose, to:
 - (a) a competent court of the Contracting Party in whose territory the investment was made;
 - (b) 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;
 - (c) an ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL).
3. The arbitration award shall be a final and binding adjudication of the dispute. Each Contracting Party commits itself to execute the award according to its applicable laws and regulations.

Article VIII Settlement of Disputes Between the Contracting Parties

1. The Contracting Parties shall seek in good faith and 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 solution. If the Contracting Parties cannot reach an agreement within six months after the beginning of a dispute between themselves through the foregoing procedure, the dispute may be submitted, upon the request of either Contracting Party, to an arbitral tribunal consisting of three arbitrators .
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 shall not be a national of the Republic of Turkey or a habitual resident of Kosovo. 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 such appointment.

3. If the both arbitrators cannot reach an agreement about the choice of the Chairman within two 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 (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 or a resident, respectively, of either Contracting Party, the appointment shall be made by the most senior member of the International Court of Justice who is not a national of the Republic of Turkey or a habitual resident of Kosovo .

5. The tribunal shall have three months from the date of the selection of the Chairman to agree upon its 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 Chairman, 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. The arbitral tribunal shall reach its decisions, which shall be final and binding, by majority of votes.

7. 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 be paid by one of the Contracting Parties.

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

Article IX Entry into Force

1. Each Contracting Party shall notify the other Contracting Party in writing of the completion of its respective domestic procedures and formalities required for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the two notifications. It shall remain in force for a period of ten years unless terminated in accordance with paragraph 2 of this Article. It shall apply to investments existing at the time of entry into force as well as to investments made or acquired thereafter.

2. At the end of the initial ten-year period or at any time thereafter, either Contracting Party may terminate this Agreement by giving twelve months written notice in advance to the other Contracting Party.

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 its respective domestic procedures and formalities required for the 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 this Agreement shall continue to apply for a further period of ten years from the date of such termination.

IN WITNESS WHEREOF, the respective plenipotentiaries have signed this Agreement.

Done at Ankara on the day of April 7, 2006 in Turkish and English languages all of which are equally authentic.

In a case of any conflict of interpretation the English text shall prevail.

**For the Government of
The Republic of Turkey**

**For the United Nations Interim
Administration Mission in Kosovo
Acting for the Provisional Institutions of Self-
Government in Kosovo**

.....
Cavit Dağdaş

Deputy Undersecretary of Treasury

.....
Joachim Rucker

Deputy Special Representative of the
Secretary-General