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**AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA  
AND THE GOVERNMENT OF \_\_\_\_\_ FOR THE RECIPROCAL PROMOTION  
AND PROTECTION OF INVESTMENTS\***

**Preamble**

The Government of the Republic of South Africa and the Government of the Government of \_\_\_\_\_, (hereinafter jointly referred to as the "Parties", and separately as a "Party");

**DESIRING** to create favourable conditions for greater investment by investors of either Party in the territory of the other Party; and

**RECOGNISING** that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in the territories of both Parties;

**HEREBY AGREE** as follows:

**ARTICLE 1  
Definitions**

In this Agreement, unless the context indicates otherwise -

"investment" means every kind of asset and in particular, though not exclusively, includes:

- (i) movable and immovable property as well as other rights such as mortgages, liens or pledges;
- (ii) shares in and stock and debentures of a company and any other form of participation in a company;
- (iii) claims to money, or to any performance under contract having an economic value;
- (iv) intellectual property rights, in particular copyrights, patents, utility-model patents, registered designs, trade-marks, trade-names, trade and business secrets, technical processes, know-how, and goodwill;
- (v) rights or permits conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

and any change in the form in which assets are invested does not affect their character as investments.

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\* *Source:* The Government of South Africa, Department of Trade and Industry. [Note added by the editor.]

"investor" means in respect to either Party:

- (i) the "nationals" of a Party, being those natural persons deriving their status as nationals of a Party from the law of that Party; and
- (ii) the "companies" of a Party, being any legal person, corporation, firm or association incorporated or constituted in accordance with the law of that Party;

"returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

"territory" means the territory of a Party, including the territorial sea and any maritime area situated beyond the territorial sea of that Party, which has been or might in the future be designated under the national law of the Party concerned, in accordance with international law, as an area within which the Party may exercise sovereign rights and jurisdiction.

## **ARTICLE 2**

### **Promotion of Investments**

(1) Each Party shall, subject to its general policy in the field of foreign investment, encourage investments in its territory by investors of the other Party, and, subject to its right to exercise powers conferred by the domestic law of its country, shall admit such investments.

(2) Each Party shall grant, in accordance with the domestic law of its country, the necessary permits in connection with such investments and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance.

(3) In order to create favourable conditions for assessing the financial position and results of activities related to investments in the territory of a Party, that Party shall - notwithstanding its own requirements for bookkeeping and auditing - permit the investment to be subject also to bookkeeping and auditing according to standards which the investor is subjected to by his or its national requirements or according to internationally accepted standards (such as International Accountancy Standards (IAS) drawn up by the International Accountancy Standards Committee (IASA) ). The results of such accountancy and audit shall be freely transferable to the investor.

## **ARTICLE 3**

### **Treatment of Investments**

(1) Investments and returns of investors of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Party. Neither Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of investors of the other Party.

(2) Each Party shall in its territory accord to investments and returns of investors of the other Party treatment not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State.

(3) Each Party shall in its territory accord to investors of the other Party treatment not less favourable than that which it accords to its own investors or to investors of any third State.

(4) The provisions to paragraphs (2) and (3) shall not be construed so as to oblige one Party to extend to the investors of the other Party the benefit of any treatment, preference or privilege resulting from:

- (a) any existing or future customs union, free trade area, common market, any similar international agreement or any interim arrangement leading up to such customs union, free trade area, or common market to which either of the Parties is or may become a party, or
- (b) any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.
- (c) any law or other measure the purpose of which is to promote the achievement of equality in its territory, or designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination in its territory.

(5) If a Party accords special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly non-profit activities, that Party shall not be obliged to accord such advantages to development finance institutions or other investors of the other Party.

#### **ARTICLE 4 Compensation for Losses**

(1) Investors of one Party whose investments in the territory of the other Party suffer losses owing to war or other armed conflict, revolution, a state of national emergency, revolt, insurrection or riot in the territory of the latter Party shall be accorded by the latter Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Party accords to its own investors or to investors of any third State.

(2) Without derogating from the provisions of paragraph (1) of this Article, investors of one Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Party resulting from:

- (a) requisitioning of their property by the forces or authorities of the latter Party, or
- (b) destruction of their property by the forces or authorities of the latter Party, which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded restitution or adequate compensation.

#### **ARTICLE 5 Expropriation**

(1) Investments of investors of either Party shall not be nationalised, expropriated or subjected to measures having effects equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Party except for public purposes, under due process of law, on a non-discriminatory basis and against prompt, adequate and effective

compensation. Such compensation shall be at least equal to the market value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, and be effectively realizable.

(2) The investor affected by the expropriation shall have a right, under the domestic law of the country of the Party making the expropriation, to prompt review, by a court of law of other independent and impartial forum of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles referred to in paragraph (1).

## **ARTICLE 6**

### **Transfers of Investments and Returns**

(1) Each Party shall allow investors of the other Party the free transfer of payments relating to their investments and returns, including compensation paid pursuant to articles 4 and 5.

(2) All transfers shall be effected without delay in any convertible currency at the market rate of exchange applicable on the date of transfer. In the absence of a market for foreign exchange, the rate to be used will be the most recent exchange rate applied to inward investments or the most recent exchange rate for conversion of currencies into Special Drawing Rights, whichever is the more favourable to the investor.

(3) Transfers shall be done in accordance with the domestic laws of the country pertaining thereto. Such laws shall not, however, regarding either the requirements or the application thereof, impair or derogate from the free and undelayed transfer allowed in terms of paragraphs (1) and (2).

## **ARTICLE 7**

### **Settlement of Disputes between an Investor and a Party**

(1) Any legal dispute between an investor of one Party and the other Party relating to an investment of the former which has not been amicably settled shall, after a period of six months from written notification of a claim, be submitted to international arbitration if the investor concerned so wishes.

(2) Where the dispute is referred to international arbitration, the investor and the Party concerned in the dispute may agree to refer the dispute either to:

- (a) the International Centre for the 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 DC on 18 March 1965, when each Party has become a party to said Convention.

As long as this requirement is not met, each Party agrees that the dispute may be settled under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of ICSID; or

- (b) an international arbitrator or ad hoc arbitration tribunal to be established by agreement between the parties to the dispute.

(3) If after a period of three months from written notification of the investor's decision to refer the dispute to international arbitration there is no agreement on one of the alternative procedures referred to in paragraph (2), the dispute shall, at the request in writing of the investor concerned, be dealt with in terms of the procedure preferred by the investor.

(4) The decision in resolution of the dispute shall be derived by application of the domestic law, including the rules relating to conflicts of law, of the country of the Party involved in the dispute in whose territory the investment has been made, the provisions of this Agreement, the terms of the specific agreement which may have been entered into regarding the investment as well as the principles of international law.

(5) The award made by the arbitrator concerned in terms of paragraphs (2) or (3) shall be binding on the parties to the dispute. Each Party shall give effect to the award under its domestic law.

## **ARTICLE 8**

### **Disputes between the Parties**

(1) Any dispute between the Parties concerning the interpretation or application of this Agreement should, if possible, be settled through negotiations between the Governments of the two Parties.

(2) If the dispute cannot thus be settled within a period of six months, following the date on which such negotiations were requested by either Party, it shall upon the request of either Party be submitted to an arbitral tribunal.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Party or also is prevented from discharging the said function, the Member of the International Court of Justice next in seniority who is not a national of either Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall decide the dispute according to this Agreement and the principles of international law. The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Parties. Each Party shall bear the cost of its own member of the tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining cost shall be borne in equal parts by the Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Parties. The tribunal shall determine its own procedures, unless the Parties agree otherwise.

**ARTICLE 9**  
**Subrogation**

If a Party or its designated Agency makes a payment to its own investor under a guarantee it has given in respect of an investment in the territory of the other Party, the latter Party shall recognise the assignment, whether by law or by legal transaction, to the former Party of all the rights and claims of the indemnified investor, and shall recognize that the former Party or its designate agency is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the original investor.

**ARTICLE 10**  
**Application of other Rules**

(1) If the provisions of the domestic law of the country of either Party or obligations under international law existing at present or established hereafter between the Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments and returns of investors of the other Party to treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

(2) Each Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Party.

**ARTICLE 11**  
**Scope of the Agreement**

This Agreement shall apply to all investment, whether made before or after the date of entry into force of this Agreement, but shall not apply to any dispute which arose before entry into force of this Agreement.

**ARTICLE 12**  
**Final Clauses**

(1) The Parties shall notify each other when their respective constitutional requirements for entry into force of this Agreement have been fulfilled. The Agreement shall enter into force on the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Party shall have given written notice of termination to the other.

(3) In respect of investments made prior to the date when the notice of termination becomes effective, the provisions of articles 1 to 11 remain in force with respect to such investments for a further period of twenty years from that date.

(4) The terms of this agreement may be amended by negotiated agreement between the Parties. The Parties shall notify each other when their respective constitutional requirements for entry into force of such amendment have been fulfilled. Such amendment shall enter into force on the date of receipt of the last notification.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective governments, have signed and sealed this Agreement in two originals in the English language, [all/both] texts being equally authentic.

### **Alternative Signing Procedures**

1. Where the Signatories sign at different times and in different venues:

Done at \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

For the Government of the Republic of South Africa

Done at \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

For \_\_\_\_\_.

2. Where both signatories sign together at the same place at the same time:

Done at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

## **PROTOCOL**

### **TO THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA AND THE \_\_\_\_\_ FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

On the signing of the Agreement between the Government of the Republic of South Africa and the Government of \_\_\_\_\_ for the Reciprocal Promotion and Protection of Investments, the undersigned representatives have, in addition, agreed on the following provisions, which shall constitute an integral part of the Agreement:

#### **Ad Article 6**

1. Foreign nationals who have resided in the Republic of South Africa for more than five years and who have completed the required exchange control formalities connected with immigration to South Africa, are, in terms of South African exchange control rules, deemed to

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have become permanently resident in the Republic of South Africa and the provisions for transfers of investments and returns as contemplated in Article 6 shall not apply in their favour.

2. The exemptions to Article 6 as contemplated in paragraph 1 of this Protocol shall terminate automatically in respect of each restriction, upon removal of the relevant restriction as part of the domestic law of South Africa.

3. The Republic of South Africa shall make every effort to remove the said restrictions from their domestic law as soon as possible.

4. Paragraph 1 of this Protocol shall not apply to or restrict the transfer of compensation payments made pursuant to Articles 4 and 5 of this Agreement.

5. This Protocol shall enter into force at the same time as the Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective governments, have signed and sealed this Protocol in two originals in the English language, [all/both] texts being equally authentic.

**Alternative signing procedures:**

1. Where the signatories sign at different times and in different venues:

Done at \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

For the Government of the Republic of South Africa

Done at \_\_\_\_\_, on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

For \_\_\_\_\_.

2. Where both signatories sign together at the same place at the same time:

Done at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

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**AGREEMENT BETWEEN THE REPUBLIC OF TURKEY AND \_\_\_\_\_**  
**CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF**  
**INVESTMENTS<sup>\*</sup>**

The Republic of Turkey and \_\_\_\_\_, hereinafter called the Parties.

*Desiring* to promote greater economic cooperation between them, particularly with respect to investment by investors of one Party in the territory of the other 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 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 1**  
**Definitions**

For the purpose of this Agreement;

1. The term "investor" means:
  - (a) natural persons deriving their status as nationals of either Party according to its applicable law,
  - (b) corporations, firms or business associations incorporated or constituted under the law in force of either of the Parties and having their headquarters in the territory of that Party.
  
2. The term "investment", in conformity with the hosting Party's laws and regulations, shall include every kind of asset in particular, but not exclusively:
  - (a) shares, stocks or any other form of participation in companies,
  - (b) returns reinvested, claims to money or any other rights having financial value related to an investment.

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<sup>\*</sup> *Source:* The Government of Turkey, Ministry of Foreign Affairs. [Note added by the editor.]

- (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 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 in the territory of the Party where the investments are made. The term “investment” covers all investments made in the territory of a Party before or after enter 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, royalties, fees and dividends.

4. The “territory” means; territory, territorial sea, as well as the maritime areas over which each Party has jurisdiction or sovereign rights for the purposes of exploration, exploitation and conservation of natural resources, pursuant to international law.

## **ARTICLE II**

### **Promotion and Protection of Investments**

1. Each Party shall in its territory promote as far as possible investments by investors of the other Party.

2. Investments of investors of each Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territory of the other Party. Neither 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 Party shall permit in its territory investments, and activities associated therewith, on a basis no less favourable than that accorded in similar situations to investments of investors of any third country, within the framework of its laws and regulations.

2. Each Party shall accord to these investments, once established, treatment no less favourable than that accorded in similar situations to investments of its investors or to investments of investors of any third country, whichever is the most favourable.

3. The Parties shall within the framework of their national legislation give sympathetic consideration to applications for the entry and sojourn of persons of either Party who wish to enter the territory of the other Party in connection with the making and carrying through of an investment; the same shall apply to nationals of either Party who in connection with an

investment wish to enter the territory of the other Party and sojourn there to take up employment. Application for work permits shall also be given sympathetic consideration.

4. The provisions of this Article shall have no effect in relation to following agreements entered into by either of the 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 and Compensation**

1. Investments shall not be expropriated, nationalized or subject, directly or indirectly, to measures of similar effects 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 provided for in Article III of this Agreement.

2. Compensation shall be equivalent to the market value of the expropriated investment before the expropriatory action was taken or became known. Compensation shall be paid without delay and be freely transferable as described in paragraph 2 Article V.

3. Investors of either Party whose investments suffer losses in the territory of the other Party owing to war, insurrection, civil disturbance or other similar events shall be accorded by such other Party treatment no 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 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 of one Party who have obtained in the territory of the other Party the corresponding work permits relative to an investment,
- (f) 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 Party.

## **ARTICLE VI**

### **Subrogation**

1. If the investment of an investor of one Party is insured against non-commercial risks under a system established by law, any subrogation of the insurer which stems from the terms of the insurance agreement shall be recognized by the other 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 Party and an insurer shall be settled in accordance with the provisions of Article VIII of this Agreement.

## **ARTICLE VII**

### **Settlement of Disputes Between One Party and Investors of the Other Party**

1. Disputes between one of the Parties and an investor of the other Party, in connection with his investment, shall be notified in writing, including a detailed information, by the investor to the recipient Party of the investment. As far as possible, the investor and the concerned Party shall endeavour 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 can be submitted, as the investor may choose, to:

- (a) 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 Parties become signatories of this Convention,
- (b) 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 awards shall be final and binding for all parties in dispute. Each Party commits itself to execute the award according to its national law.

## **ARTICLE VIII**

### **Settlement of Disputes Between the Parties**

1. The 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 Parties agree to engage in direct and meaningful negotiations to arrive at such solutions. If the Parties cannot reach an agreement within six months after the beginning of disputes between themselves through the foregoing procedure, the disputes may be submitted, upon the request of either Party, to an arbitral tribunal of three members.

2. Within two months of receipt of a request, each 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 Party fails to appoint an arbitrator within the specified time, the other Party may request the President of the International Court of Justice to make the appointment.

3. If 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 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 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 Party, the appointment shall be made by the most senior member of the Court who is not a national of either 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 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 a 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 Parties. The tribunal may, however, at its discretion, decide that a higher proportion of the costs be paid by one of the Parties.

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

#### **ARTICLE IX**

#### **Entry into Force**

1. Each Party shall notify the other in writing of the completion of the constitutional formalities required in its territory 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 and shall continue in force 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. Either Party may, by giving one year's written notice to the other 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 Parties. Any amendment shall enter into force when each 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 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 years from such date of termination.

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

DONE at \_\_\_\_\_ on the day of \_\_\_\_\_ in the \_\_\_\_\_ Turkish and English languages all of which are equally authentic.

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

FOR THE GOVERNMENT OF \_\_\_\_\_

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

\*

**AGREEMENT BETWEEN THE GOVERNMENT OF THE HELLENIC REPUBLIC AND THE  
GOVERNMENT OF \_\_\_\_\_ ON THE PROMOTION AND RECIPROCAL  
PROTECTION OF INVESTMENTS\***

The Government of the Hellenic Republic and the Government of \_\_\_\_\_ Hereinafter referred to as the "Contracting Parties",

**DESIRING** to intensify their economic cooperation to the mutual benefit of both States on a long term basis,

**HAVING** as their objective to create favourable conditions for investments by investors of either Contracting Party in the territory of the other Contracting Party,

**RECOGNIZING** that the promotion and protection of investments, on the basis of this Agreement, will stimulate the initiative in this field,

**HAVE AGREED AS FOLLOWS:**

**ARTICLE 1  
Definitions**

For the purposes of this Agreement:

1. "Investment" means every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter Contracting Party, and in particular, though not exclusively, includes:

- a) movable and immovable property and any rights in rem such as servitudes, usufructus, mortgages, liens or pledges;
- b) shares in and stock and debentures of a company and any other form of participation in a company;
- c) claims to money or to any performance under contract having an economic value, as well as loans connected to an investment;
- d) intellectual property rights;
- e) concessions under public law, including concessions to search for, cultivate, extract or exploit natural resources as well as other rights conferred by law, by contract or by decision of the authority, in accordance with the law;

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\* *Source:* The Government of the Hellenic Republic, Ministry of National Economy. [Note added by the editor.]

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A possible change in the form in which the investments have been made does not affect their character as investments.

2. "Returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees.

3. "Investor" means with regard to either Contracting Party:

- a) natural persons having the nationality of that Contracting Party in accordance with its law;
- b) legal persons or other entities, including companies, corporations, business associations and partnerships, which are constituted or otherwise duly organised under the laws of that Contracting Party and have their effective economic activities in the territory of that same Contracting Party.

4. "Territory" means in respect of either Contracting Party, the territory under its sovereignty including the territorial sea, as well as maritime areas over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

## **ARTICLE 2**

### **Scope of Application**

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

## **ARTICLE 3**

### **Promotion and Protection of Investments**

1. Each Contracting Party promotes in its territory investments by investors of the other Contracting Party and admits such investments in accordance with its legislation.

2. Investments and returns of investors of a Contracting Party shall, at all times, be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. In no case shall a Contracting Party accord treatment less favourable than that required by international law.

Each Contracting Party shall ensure that the management, maintenance, use, enjoyment or disposal, in its territory, of investments by investors of the other Contracting Party, is not in any way impaired by unjustifiable or discriminatory measures.

## **ARTICLE 4**

### **Treatment of Investments**

1. Each Contracting Party shall accord to investments, including returns, made in its territory by investors of the other Contracting Party, treatment not less favourable than that which it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable.

2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments in its territory, treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable.

3. The provisions of paragraphs 1 and 2 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 resulting from:

- a) its participation in any existing or future customs union, economic union, regional economic integration agreement or similar international agreement, or
- b) any international agreement or arrangement relating wholly or mainly to taxation.

## **ARTICLE 5 Expropriation**

1. Investments and returns of investors of either Contracting Party in the territory of the other Contracting Party, shall not be expropriated, nationalized or subjected to any other measure the effects of which would be tantamount to expropriation or nationalization (hereinafter referred to as "expropriation"), except in the public interest, under due process of law, on a non discriminatory basis and against payment of prompt, adequate and effective compensation. Such compensation shall amount to the market value of the investment affected immediately before the actual measure was taken or became public knowledge, whichever is the earlier, it shall include interest from the date of expropriation until the date of payment at a normal commercial rate and shall be freely transferable in a freely convertible currency.

2. The provisions of paragraph 1 of this Article shall also apply where a Contracting Party expropriates the assets of a company which is constituted under the laws in force in any part of its own territory and in which investors of the other Contracting Party own shares.

## **ARTICLE 6 Compensation for Losses**

1. Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, a state of national emergency, civil disturbance or other similar events in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable.

2. Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

- a) requisitioning of their investment or part thereof by the latter's forces or authorities, or

- b) destruction of their investment or part thereof by the latter's forces or authorities, which 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.

## **ARTICLE 7**

### **Transfers**

1. Each Contracting Party shall permit, in respect of investments of investors of the other Contracting Party, the unrestricted transfer of all payments relating to an investment.

The transfers shall be effected without delay, in a freely convertible currency, at the market rate of exchange applicable on the date of transfer.

2. Such transfers shall include in particular, though not exclusively:
- a) capital and additional amounts to maintain or increase the investment;
  - b) returns;
  - c) funds in repayment of loans;
  - d) proceeds of sale or liquidation of the whole or any part of the investment;
  - e) compensation under Articles 5 and 6;
  - f) payments arising out of the settlement of a dispute.

## **ARTICLE 8**

### **Subrogation**

1. If the investments of an investor of one Contracting Party in the territory of the other Contracting Party are insured against non-commercial risks under a legal system of guarantee, any subrogation of the insurer into the rights of the said investor pursuant to the terms of such insurance shall be recognized by the other Contracting Party, without prejudice to the rights of the investor under Article 10 of this Agreement.

2. Disputes between a Contracting Party and an insurer shall be tried to be remedied in accordance with the provisions of Article 10 of this Agreement.

## **ARTICLE 9**

### **Settlement of Disputes between the Contracting Parties**

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations, through diplomatic channels.

2. If the dispute cannot thus be settled within six months from the beginning of the negotiations, it shall, upon request of either Contracting Party be submitted to an arbitration tribunal.

3. The arbitration tribunal shall be constituted ad hoc as follows: Each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as chairman. The arbitrators shall be appointed within three months, the chairman within five months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

4. If within the periods specified in paragraph 3 of this Article the necessary appointments have not been made, 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 of the Court is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President or if he too is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the Court next in seniority, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

5. The arbitration tribunal shall decide on the basis of respect of the law, including particularly this Agreement and other relevant agreements between the Contracting Parties, as well as the generally acknowledged rules and principles of international law.

6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties.

7. Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the chairman as well as the other costs will be born in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be born by one of the two Contracting Parties and this award shall be binding on both Contracting Parties.

## **ARTICLE 10**

### **Settlement of Disputes between an Investor and a Contracting Party**

1. Disputes between an investor of a Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement, in relation to an investment of the former, shall, if possible, be settled by the disputing parties in an amicable way.

2. If such disputes cannot be settled within six months from the date either party requested amicable settlement, the investor concerned may submit the dispute for resolution, either:

- a) to the competent courts of the Contracting Party in the territory of which the investment has been made, or
- b) in accordance with any applicable previously agreed dispute settlement procedure, or
- c) to international arbitration.

3. Where the dispute is referred to international arbitration the investor concerned may submit the dispute to:

- a) the International Centre for the Settlement of Investment Disputes, established under 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, for arbitration or conciliation, or
- b) an ad hoc arbitral tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.).

Each Contracting Party hereby consents to the submission of such dispute to international arbitration.

4. The arbitral tribunal shall decide the dispute in accordance with the provisions of this Agreement and the applicable rules and principles of international law. The awards of arbitration shall be final and binding on both parties to the dispute. Each Contracting Party shall carry out without delay any such award and shall provide in its territory for the enforcement of such award.

5. During arbitration proceedings or the enforcement of the award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

#### **ARTICLE 11** **Application of other Rules**

1. 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 by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall, to the extent that it is more favourable, prevail over this Agreement.

2. Each Contracting Party shall observe any other obligation it may have entered into with regard to a specific investment of an investor of the other Contracting Party.

#### **ARTICLE 12** **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 at a time to be agreed upon through diplomatic channels.

**ARTICLE 13**  
**Entry into Force - Duration - Termination**

1. This Agreement shall enter into force thirty days after the date on which the Contracting Parties have exchanged written notifications informing each other that the procedures required by their respective laws to this end have been completed. It shall remain in force for a period of ten years from that date.

2. Unless notice of termination has been given by either Contracting Party at least one year before the date of expiry of its validity, this Agreement shall thereafter be extended tacitly for periods of ten years, each Contracting Party reserving the right to terminate the Agreement upon notice of at least one year before the date of expiry of its current period of validity.

3. In respect of investments made prior to the date of termination of this Agreement, the foregoing Articles shall continue to be effective for a further period of ten years from that date.

Done in duplicate at.....on.....in the Greek,..... and English languages, all texts being equally authentic.

In case of divergence the English text shall prevail.

**FOR THE GOVERNMENT OF  
THE HELLENIC REPUBLIC**

**FOR THE GOVERNMENT OF**  
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