No. 48191

Turkey
and
Saudi Arabia

Agreement between the Government of the Republic of Turkey and the Government of the Kingdom of Saudi Arabia concerning the reciprocal promotion and protection of investments. Ankara, 8 August 2006

Entry into force: *5 February 2010 by notification, in accordance with article 12*

Authentic texts: *Arabic, English and Turkish*

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Turquie
et
Arabie saoudite

Accord entre le Gouvernement de la République turque et le Gouvernement du Royaume d'Arabie saoudite concernant la promotion et la protection réciproques des investissements. Ankara, 8 août 2006

Entrée en vigueur : *5 février 2010 par notification, conformément à l'article 12*

Textes authentiques : *arabe, anglais et turc*

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[ENGLISH TEXT – TEXTE ANGLAIS]

AGREEMENT
BETWEEN
THE GOVERNMENT OF THE REPUBLIC OF TURKEY
AND
THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA
CONCERNING
THE RECIPROCAL PROMOTION AND PROTECTION
OF INVESTMENTS

The Government of the Republic of Turkey and the Government of the Kingdom of Saudi Arabia, 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 reciprocal promotion and protection of investments,

Hereby agree as follows:

Article 1
Definitions

For the purposes of this Agreement;

1. The term "investment" means every kind of asset, owned or controlled by an investor of a Contracting Party in the territory of the other Contracting Party according to its laws and regulations and in particular, but not exclusively includes:

    a) movable and immovable property as well as any other rights in rem, such as mortgages, liens and pledges, and similar rights as defined in conformity with the laws and regulations of the Contracting Party in whose territory the property is situated,
    b) shares, stocks and debentures of companies and any other form of participation in companies
    c) returns reinvested, claims to money such as loans or to any performance having an economic value, associated with an investment;
    d) industrial property rights and intellectual property rights such as patents, industrial designs, technical processes, as well as trademarks, trade and business secrets, trade names, goodwill, know-how and other similar rights;
    e) any right conferred by law or under public contract or business concessions issued according to law.

    Any alternation of the form in which assets are invested or reinvested shall not affect their classification as investment, provided that such alteration is not in conflict with the laws and regulations of the Contracting Party in the territory of which the investment is made.

    The said term shall refer to all direct investments made in accordance with the laws and regulations in the territory of the Contracting Party where the investments are made.

2. The term "returns" means the amounts yielded by an investment in particular, but not exclusively, includes profit, dividends, royalties, capital gains or any similar fees or payments;

3. The term "investor" means:

a) natural persons deriving their status as nationals of either Contracting Party according to its applicable law,
b) any entity having legal personality such as corporations, firms, enterprises or business associations incorporated or constituted under the law in force of either of the Contracting Parties and having their headquarters in the territory of that Contracting Party irrespective of whether or not they are of limited liability.
c) Government entities and their financial authorities or institutions incorporated or constituted under the law in force of either of Contracting Parties and having their headquarters in the territory of that Contracting Party.

4. The "territory" means;

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

(b) In respect of the Kingdom of Saudi Arabia: in addition to the zones contained within the land boundaries, the marine and submarine zones over which the Kingdom of Saudi Arabia exercise sovereignty and sovereign or jurisdictional rights under international law.

Article 2
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 and admit such investments in accordance with its laws and regulations. It shall in any case accord such investments fair and equitable treatment.

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 3
Treatment

1. Each Contracting Party shall grant investments once established in the Republic of Turkey and admitted in the Kingdom of Saudi Arabia and investment returns of the investors of the other Contracting Party a treatment not less favorable than that accorded to investments and investment returns of investors of any third state.

2. In accordance with its laws and regulations, each Contracting Party shall grant investments once established in the Republic of Turkey and admitted in the Kingdom of Saudi Arabia and investment returns of the investors of the other Contracting Party a treatment not less favorable than that accorded to investments and investment returns of its investors.

3. Each Contracting Party shall accord the investors of the other Contracting Party in connection with the management, maintenance, use, enjoyment or disposal of investments or with the means to assure their rights to such investments like transfers and indemnification or with any other activity associated with this in its territory, treatment not less favorable than the treatment it accords to its investors or to the investors of a third state, whichever is more favorable.

4. The Provisions of this Article shall not apply to tax matters, and shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.

5. The non-discrimination, national treatment and most-favored nation treatmentprovisions of this Agreement shall not apply to all actual or future advantages accorded by either Contracting Party to nationals or companies of its own, of Member States of such union, common market or free trade area, or nationals or companies of any other third country, by virtue of its membership of, or association with a customs, economic or monetary union, a common market or a free trade area.

Article 4
Expropriation and Compensation

1. Investment by investors of either Contracting Party shall not be expropriated, nationalized or directly or indirectly subjected to any other measure the effects of which would be tantamount to expropriation or nationalization by the other Contracting Party 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.

   Such compensation shall be equivalent to the market value of the expropriated investment immediately before the date on which the actual or threatened expropriation, nationalization or comparable measure has become publicly known.

   The Compensation shall be paid without delay. In case of delay the compensation shall include an additional payment calculated at a rate applicable from the date of expropriation or nationalization until the time of payment. Such payment shall be freely transferable.

2. Investors of either Contracting Party who suffer losses in the territory of the other Contracting Party owing to war or other armed conflict, revolution, or revolt, or other similar events shall be accorded by such other Contracting Party treatment not less favorable than that accorded to its own investors or to investors of any third country, whichever is the most favorable treatment, as regards to restitution, indemnification, compensation or other valuable consideration if accepted by the investor. Such payments shall be freely transferable. The legality of any such expropriation, nationalization or comparable measure and the amount of compensation shall be subject to review by due process of law.

3. Investors of either Contracting Party shall enjoy most favored-nation treatment and national treatment in the territory of the other Contracting Party in respect of the matters provided for in this Article.

Article 5
Subrogation

1. If a Contracting Party or any of its related agency makes a payment to an investor under an insurance policy against non-commercial risks in respect of an investment made by that investor in the territory of the other Contracting Party, the latter Contracting Party shall recognize the transfer of any rights or claim from the investor or any of its affiliates to the former Contracting Party or any of its related agency.

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 10 of this Agreement.

Article 6
Repatriation and Transfer

1. Each Contracting Party shall ensure all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include particularly, though not exclusively:

a) principal and additional amounts to maintain or increase the investment,
b) returns,
c) proceeds from the sale or liquidation of all or any part of an investment,
d) compensation pursuant to Article 4,
e) reimbursements and repayment of loans in connection with investments,
f) salaries, wages and other remunerations received by the nationals of one Contracting Party who have obtained in the territory of the other Contracting Party the corresponding work permits relative to an investment,
g) 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.

3. This rate of exchange shall, in the absence of a market rate of exchange, correspond to the cross rate – obtained from those rates which would be applied by the International Monetary Fund for conversions of the currencies concerned into Special Drawing Rights.

Article 7
More Favorable Provisions

If the laws and regulations 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 favorable than is provided for by this Agreement, such regulation shall to the extent that it is more favorable prevail over this Agreement in this context.

Article 8
Scope of Application

This Agreement shall apply to all investments as defined in Article 1 in the territory of one Contracting Party, made in accordance with its national laws and regulations, by investors of the other Contracting Party, whether prior to, or after the entry into force of the present Agreement. However, this Agreement shall not apply to any disputes that have arisen before its entry into force.

Article 9
Settlement of Disputes Between The Contracting Parties

1. Disputes between the two Contracting Parties concerning the interpretation or application of the Agreement should as far as possible be settled amicably through diplomatic channels.

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

3. Such arbitration tribunal shall be constituted ad hoc as follows:
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. Such Chairman shall be appointed within three 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 both arbitrators cannot reach an agreement about the choice of the Chairman within one month after their appointment, the Chairman shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

5. If, in the cases specified under paragraphs (3) and (4) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the Vice-President is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the most senior member of the Court who is not a national of either Contracting Party.

6. The arbitration tribunal shall reach its decisions by a majority of votes. Such decisions shall be final and binding. Each Contracting Party shall bear the cost of its own member and the cost of counseling in the arbitration proceedings. The cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. The arbitration tribunal may make a different regulation concerning costs. In all other respects, the arbitration tribunal shall determine its own procedure.

7. 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 10 and is still in the court. This will not impair the engagement in direct and meaningful negotiations between both Contracting Parties.

Article 10
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 as prescribed in paragraph (1) of this Article within six months following the date of the request for the settlement has been submitted, the dispute can be submitted, as the investor may choose, to:

a) the competent court of law of the Contracting Party in whose territory 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 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. Notwithstanding the provisions of paragraph 2 of this Article;

both Contracting Parties agrees that the Notifications, submitted respectively by the Republic of Turkey on March 3, 1989 and the Kingdom of Saudi Arabia on May 8, 1980 to the International Centre for the Settlement of Investment Disputes (ICSID) concerning classes of disputes considered suitable or unsuitable for submission to ICSID, will constitute an integral part of this Agreement and the classes of disputes considered unsuitable for submission to ICSID in the aforementioned Notifications shall not be submitted to ICSID or any international dispute settlement mechanism, unless otherwise agreed by the host Contracting Party.

4. If the dispute is submitted in accordance with paragraph (2) to the competent Court of Law of the Contracting Party, the investor cannot at the same time seek the international arbitration. If the dispute is filed for arbitration the award shall be binding and shall not be subject to any appeal or remedy other than those provided for in the said convention. The award shall be enforced in accordance with domestic law.

Article 11
Amendment

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.

Article 12
Entry into Force

1. Each Contracting 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.

2. 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 3 of this Article.

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

4. With respect to investments made or acquired prior to the date of termination of this Agreement and to which this Agreement otherwise applies, the provisions of the Articles from 1 to 11 Articles of this Agreement shall thereafter continue to be effective for a further period of ten years from such date of termination.

DONE at Ankara on the day of 14.7.1427 AH, corresponds to August 8th 2006 in duplicate in the Arabic, Turkish and English languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF TURKEY

Ali Babacan
Minister of State

FOR THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA

Dr. Ibrahim Bin Abdulaziz Al-Assaf
Minister of Finance