

**AGREEMENT**  
**BETWEEN**  
**THE GOVERNMENT OF THE REPUBLIC OF TURKEY**  
**AND**  
**THE GOVERNMENT OF BURKINA FASO**  
**CONCERNING**  
**THE RECIPROCAL PROMOTION AND PROTECTION OF**  
**INVESTMENTS**

The Government of the Republic of Turkey, and the Government of Burkina Faso, hereinafter referred to as “the Contracting Parties”;

Desiring to promote greater economic cooperation between their two States, in particular with respect to investments made by investors of one Contracting Party in the territory of the other Contracting Party;

Recognizing that the conclusion of an agreement which lays down the legal regime for such investments is conducive to stimulating the flow of capital and technology, and the economic development of the Contracting Parties;

Agreeing that fair and equitable treatment of investments is desirable for the creation of an environment conducive to investment, the effective and optimal exploitation of economic resources, and the improvement of the living conditions of their peoples;

Convinced that these objectives can be achieved without relaxing health, safety and environmental standards, as well as internationally recognized labour standards;

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

Have agreed as follows:

## **ARTICLE 1**

### **Definitions**

For the purposes of this Agreement;

1. The term "**investment**" means every kind of asset, connected with business activities, acquired for the purpose of establishing lasting economic relations in the territory of a Contracting Party in conformity with its laws and regulations, and that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of regular gain or profit, the assumption of risk, the contribution to economic development, or a certain period of time, and shall include in particular, but not limited to:

- (a) movable and immovable property, as well as any other rights such 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 these properties are situated;
- (b) reinvested returns;
- (c) claims to money or any other rights having financial value related to an investment;
- (d) shares, stocks, or any other form of participation in companies;
- (e) intellectual and industrial property rights, in particular patents, industrial designs and models, technical processes, trademarks, goodwill, and know-how;
- (f) business concessions conferred by law or by contract, including concessions related to natural resources;

provided that such investments are not in the nature of acquisition of shares or voting power amounting to, or representing of less than ten (10) percent of a company through stock exchanges.

The term investment, excludes any claim arising exclusively from a commercial contract for the sale of goods or services by a national or an enterprise located in the territory of a Contracting Party to an enterprise located in the territory of the other Contracting Party or the extension of credit in connection with a commercial transaction, such as trade financing.

2. The term "**investor**" means:

- (a) any natural person having the nationality of a Contracting Party in accordance with the national law of that Contracting Party;
- (b) companies, corporations, commercial firms, and business partnerships constituted under the law in force of a Contracting Party and having their registered offices together with substantial business activities in the territory of that Contracting Party;

who have made investments in the territory of the other Contracting Party.

3. The term "**returns**" means the amounts yielded by an investment and includes in particular, though not exclusively, profits, interests, capital gains, royalties, fees and dividends.

4. The term "**territory**" means;

- (a) in respect of the Republic of Turkey, the land territory, internal waters, the territorial sea and the airspace above them, as well as the maritime areas over which Turkey has sovereign rights or jurisdiction for the purpose of exploration, exploitation and preservation of natural resources whether living or non-living, pursuant to international law.
- (b) in respect of Burkina Faso, the territory under its sovereignty, including underwater areas and airspace over which this continental part exercises jurisdiction in accordance with international law and sovereign rights.

## **ARTICLE 2**

### **Scope of Application**

This Agreement shall apply to investments 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 3**

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

1. Subject to its laws and regulations, each Contracting Party shall in its territory promote as far as possible investments made by investors of the other Contracting Party.
2. Investments made by investors of each Contracting Party shall at all times be accorded treatment in accordance with the minimum standards of treatment established by international law, including fair and equitable treatment and full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair the management, maintenance, use, operation, enjoyment, sale, liquidation or disposal of such investments by unreasonable or discriminatory measures.



**ARTICLE 4**  
**Treatment of Investments**

1. Each Contracting Party shall admit in its territory investments on a basis no less favourable than that accorded in similar circumstances to investments of investors of any third State, within the framework of its laws and regulations.

2. Each Contracting Party shall accord to these investments, once established, treatment no less favourable than that accorded in similar circumstances to investments of its own investors or to investments of investors of any third State, whichever is the most favourable, as regards the management, maintenance, use, operation, enjoyment, extension, sale, liquidation or disposal of the investment.

3. The Contracting Parties shall within the framework of their national legislation give favourable consideration to applications for visas of entry and residence of nationals of each Contracting Party who wish to enter the territory of the other Contracting Party in connection with the undertaking and carrying through of investment activities.

4. (a) The provisions of this Article shall not be construed so as to oblige one Contracting Party to grant investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be granted by the former Contracting Party by virtue of any international agreement or arrangement relating wholly or mainly to taxation.

(b) The non-discrimination, national treatment and most-favoured nation treatment provisions of this Agreement shall not apply to all actual or future advantages granted by either Contracting Party by virtue of its membership of, or association with a customs, economic or monetary union, a common market or a free trade area; to nationals or companies of its own, or of Member States of that union, common market or free trade area, or of any other third State.

(c) For greater certainty, the most favoured nation treatment referred to in paragraphs 1 and 2 of this Article does not include investor-to-state dispute settlement procedures or mechanisms, such as those included under Article 10, that are provided for in other international treaties.

(d) The provisions of Article 3 and 4 of this Agreement shall not oblige either Contracting Party to accord investments of investors of the other Contracting Party the same treatment that it accords to investments of its own investors with regard to the acquisition of land, real estates, and real rights thereof.

**ARTICLE 5**  
**General Exceptions**

1. Nothing in this Agreement shall be construed to prevent a Contracting Party from adopting, maintaining or applying non-discriminatory legal measures:

- (a) designed and applied for the protection of human, animal or plant life or health, or the environment;
- (b) related to the conservation of living or non-living exhaustible natural resources.

2. Nothing in this Agreement shall be construed as permitting a Contracting Party:

- (a) to require the other Contracting Party to provide or allow access to information, the disclosure of which is considered by it to be contrary to its essential security interests;
- (b) to prevent any Contracting Party from taking measures which it considers necessary for the protection of its essential security interests;
  - (i) measures relating to the trafficking of weapons, ammunition and war equipment and to trafficking and transactions of other articles, materials, services and technology conducted directly or indirectly for the purpose of supplying military organizations or other security institutions;
  - (ii) measures taken in time of war or other emergency in the field of international relations, or
  - (iii) measures relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or
- (c) to prevent any Contracting Party from taking measures in fulfilment of its obligations under the United Nations Charter for the maintenance of international peace and security.

3. The adoption, maintenance, or enforcement of such measures shall be subject to the condition that they are not applied in an arbitrary or unjustifiable manner or they do not constitute a disguised restriction on investments by investors of the other Contracting Party.

4. This Agreement shall not imply in any way an obligation for the Contracting Parties to relax their laws and regulations regarding health, safety or environment in order to encourage investment. Neither Contracting Party is under any obligation to waive or otherwise derogate, or to offer to waive or otherwise derogate from such measures for the purpose of encouraging the establishment, acquisition, expansion or the maintenance of an investment in its territory by an investor of the other Contracting Party.



**ARTICLE 6**  
**Expropriation and Compensation**

1. Investments shall not be expropriated, nationalized or subjected, directly or indirectly, to measures of similar effects (hereinafter referred to as "expropriation"), except for the 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 set out in Article 3 of this Agreement.
2. Non-discriminatory legal measures taken and applied to protect legitimate objectives of public welfare, such as health, safety and environment, shall not constitute indirect expropriation.
3. Compensation shall be equivalent to the market value of the expropriated investment, estimated before the expropriation measures are taken or they become public knowledge. The compensation shall be paid without delay and be freely transferable as described in paragraph 2 of Article 8 of this Agreement.
4. The compensation shall be payable in a freely convertible currency and in case the payment of compensation is performed late, it shall include an appropriate interest rate from the date of expropriation until the date of payment.

**ARTICLE 7**  
**Compensation for Losses**

1. Investors of either Contracting Party whose investments have suffered losses in the territory of the other Contracting Party because of war or other armed conflict, insurrection, disturbance of public order or other similar events shall receive from that other Contracting Party treatment no less favorable than that accorded to its own investors or to investors of a third State, according to the most favorable treatment, with regard to the measures it adopts in relation to such losses.
2. Without prejudice to the provisions of paragraph 1 of this Article, investors of a Contracting Party who, in one of the cases referred to in that paragraph, suffer losses in the territory of the other Contracting Party resulting from the requisition of their property by its forces or authorities, or from the destruction of their property by its forces or authorities, which was neither caused by a state of war nor required by the necessity of the situation, shall benefit from a restitution or a compensation which, in either case, shall take place in a prompt, adequate and effective way. The related payments shall be freely convertible.

**ARTICLE 8**  
**Repatriation and Transfers**

1. Each Contracting Party shall guarantee, in good faith, all transfers related to an investment to be made freely and without delay into and out of its territory.

These transfers shall include:

- (a) the initial capital and any additional amounts intended to maintain or increase investment;
- (b) returns;
- (c) proceeds from the sale or liquidation of all or any part of an investment;
- (d) compensation pursuant to the provisions of Article 6 and 7;
- (e) reimbursements and interest payments deriving from loans in connection with the investments;
- (f) salaries, wages and other remunerations received by the nationals of one Contracting Party who have obtained corresponding work permits related to an investment in the territory of the other Contracting Party;
- (g) payments arising from an investment dispute.

2. Transfers shall be made in a freely convertible currency in which the investment has been made or in any convertible currency at the rate of exchange on the date of transfer, unless otherwise agreed by the investor and the hosting Contracting Party.

3. When, in exceptional circumstances, payments and capital movements cause or threaten to cause serious balance of payments difficulties, each Contracting Party may temporarily limit transfers, provided that such restrictions are imposed on a non-discriminatory and in good faith basis.



**ARTICLE 9**  
**Subrogation**

1. If one of the Contracting Parties has a public insurance or guarantee scheme to protect the investments of its own investors against non-commercial risks, and if an investor of this Contracting Party has subscribed to it, any subrogation of the insurer under a contract between this investor and insurer shall be recognized by the other Contracting Party.
2. The insurer is entitled, by virtue of subrogation, to exercise the rights and enforce the claims of this investor and shall assume the obligations related to the investment. The subrogated rights or claims shall not exceed the original rights or claims of the investor.
3. Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article 10 of this Agreement.

**ARTICLE 10**  
**Settlement of Disputes between One Contracting Party and the Investors of the Other Contracting Party**

1. This Article shall apply to disputes between a Contracting Party and an investor of the other Contracting Party concerning an alleged breach by that Contracting Party of one of its obligations under this Agreement, which results in loss or damage to the investor or to its investments.
2. Dispute between one of the Contracting Parties and an investor of the other Contracting Party, in connection with its investment, shall be notified in writing, including all relevant information, by the investor to the Contracting Party receiving the investment. As far as possible, the investor and the Contracting Party concerned shall endeavor to settle these disputes through consultations and negotiations in good faith.
3. If after a period of six (6) months from the date of the written notification referred to in paragraph 2, the consultations and negotiations have not made it possible to settle such disputes, they may be submitted, as the investor may choose, to:
  - (a) to the competent court of the Contracting Party in whose territory the investment was made;
  - (b) or, subject to the condition set out in paragraph 5 of this Article, to
    - (i) 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" in the event that both Contracting Parties are Parties to this Convention;
    - (ii) an Ad Hoc Arbitral Tribunal established under the Rules of Arbitration Procedure of the United Nations Commission on International Trade Law (UNCITRAL), approved by the United Nations General Assembly on 15 December 1976, as revised in 2010;
    - (iii) the Istanbul Arbitration Centre;
    - (iv) the Ouagadougou Arbitration, Mediation and Conciliation Centre (CAMCO);
    - (v) any other arbitral institution or arbitration rule, if the parties in the dispute agree.



4. Once the investor submits the dispute to one or other of the dispute settlement forums referred to in paragraph 3 of this Article, the choice of one of these forums shall be final.
5. In order to decide whether an investment dispute falls within the jurisdiction of ICSID and the jurisdiction of the court, the arbitral tribunal established under paragraph 3 (b) shall comply with the notification submitted by the Republic of Turkey to ICSID on 3 March 1989, as an integral part of this Agreement.
6. The arbitral tribunal shall render its decisions in accordance with the provisions of this Agreement, the laws and regulations of the Contracting Party concerned in the dispute in whose territory the investment is made (including its rules of conflicts of laws) and the relevant principles of international law as accepted by the two Contracting Parties.
7. The arbitral awards shall be final and binding on all parties in the dispute. Each Contracting Party undertakes to enforce the arbitral award in accordance with its national legislation on the matter.

**ARTICLE 11**  
**Denial of Benefits**

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is a company of such other Contracting Party and to investments of such investor if the company does not have substantial economic activities in the territory of the Contracting Party under whose law it has been constituted or organized, and investors of a non-Contracting Party, or investors of the denying Contracting Party, own or control the company.
2. The Contracting Party denying the benefits shall, as far as possible, inform the other Contracting Party before executing its decision.

**ARTICLE 12**  
**Settlement of Disputes between the Contracting Parties**

1. The Contracting Parties shall seek in good faith and in a spirit of cooperation a fair 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 serious negotiations in order to arrive at such a solution.
2. Each Contracting Party may propose to the other Contracting Party consultations on any matter concerning the interpretation or application of this Agreement. The Contracting Party which receives such a proposal shall consider it sympathetically and take all appropriate measures to permit the holding of such consultations.
3. If the Contracting Parties cannot reach an agreement within six (6) months from the date of negotiation of the disputes between them through the foregoing procedure, the disputes may be submitted, upon the request of either Contracting Party, to an arbitral tribunal of three members.
4. Within two (2) months of the date of receipt of the 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 country. In the event that 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 an appointment.
5. If both arbitrators are unable to reach an agreement about the choice of the Chairman within two (2) 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.
6. If, in the cases specified in 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 he is prevented from carrying out the said function or if he is a national of either Contracting Parties, the appointment shall be made by the most senior member of the Court who is not the a national of either of the Contracting Parties.
7. The tribunal shall have three (3) months from the date of the appointment of the Chairman to agree on rules of procedure consistent with the other provisions of this Agreement. In the absence of such an agreement, the court shall request the President of the International Court of Justice to designate rules of procedure, taking into account generally accepted rules of international arbitral procedure.
8. Unless otherwise agreed by the Contracting Parties, all submissions shall be made and all hearings shall be completed within eight (8) months from the date of appointment of the Chairman, and the tribunal shall render its decision within two (2) months from the date of the final statements, or the date of the conclusion of the hearings, whichever is later. The arbitral tribunal shall make its decisions, which shall be final and binding, by a majority of votes. Arbitral Tribunal shall take its decision on the basis of this Agreement and in accordance with the applicable international law between the Contracting Parties.
9. The costs incurred by the Chairman, the other arbitrators, and other procedural costs shall be paid for equally by the Contracting Parties. The tribunal may, however, for objective reasons, decide that a greater part of the costs shall be paid by one of the Contracting Parties.



10. A dispute shall not be submitted to an international arbitral tribunal under the provisions of this Article, if a dispute on the same matter is already submitted to another international arbitral tribunal under the provisions of Article 10 and is still pending there. This will not compromise direct and serious negotiations between two Contracting Parties.

**ARTICLE 13**  
**Service of Documents**

Notices and other documents regarding the settlement of disputes under Articles 10 and 12 shall be served on the Republic of Turkey by delivery to:

Cumhurbaşkanlığı Hukuk ve Mevzuat Genel Müdürlüğü  
Cumhurbaşkanlığı Külliyesi  
06560 Beştepe - Ankara  
Türkiye

(Presidency of General Directorate of Law and Legislation  
Presidential Complex  
06560 Beştepe - Ankara  
Turkey)

Notices and other documents regarding the settlement of disputes under Articles 10 and 12 shall be served on Burkina Faso by delivery to:

Ministère des Affaires Etrangères et de la Coopération  
Boîte postal : 03 BP 7038 Ouagadougou 03  
Avenue du Burkina  
Ouagadougou  
Burkina Faso  
Téléphone : (226) 25 32 47 33 / 25 32 47 36  
Fax : (226) 25 30 87 92

**ARTICLE 14**  
**Entry into Force**

1. This Agreement shall enter into force on the date of the receipt of the last notification by the Contracting Parties, in writing and through diplomatic channels, of the completion of the respective internal legal procedures necessary to that effect.
2. This Agreement shall remain in force for a period of ten (10) years and shall continue in force unless terminated in accordance with paragraph 4 of this Article.
3. This Agreement may be amended by mutual written consent of the Contracting Parties at any time. The amendments shall enter into force in accordance with the same legal procedure prescribed under the first paragraph of the present Article.
4. Either Contracting Party may, by giving one year's written notice to the other Contracting Party, terminate this Agreement at the end of the first ten-year period or at any time after the expiry of that period.
5. With respect to investments made or acquired prior to the date of expiry or termination of this Agreement and to which this Agreement applies, the provisions of all other Articles of this Agreement shall thereafter continue to be effective for a further period of ten (10) years from such expiry or termination date.

**IN WITNESS WHEREOF**, the undersigned representatives, duly authorized by their respective Governments, have signed this Agreement.

DONE in duplicate at Ankara, on April 11, 2019, in the Turkish, French and English languages, all texts being equally authentic.

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

**FOR THE GOVERNMENT OF THE  
REPUBLIC OF TURKEY**



**Mustafa VARANK**

**Minister of Industry and Technology**

**FOR THE GOVERNMENT OF  
BURKINA FASO**



**Harouna KABORE**

**Minister of Trade  
Industry and Handicrafts**