

No. 30013

**DENMARK
and
TURKEY**

Agreement concerning the reciprocal promotion and protection of investments. Signed at Copenhagen on 7 February 1990

Authentic texts: Turkish, Danish and English.

Registered by Denmark on 24 May 1993.

**DANEMARK
et
TURQUIE**

Accord relatif à la promotion et à la protection réciproques des investissements. Signé à Copenhague le 7 février 1990

Textes authentiques : turc, danois et anglais.

Enregistré par le Danemark le 24 mai 1993.

AGREEMENT¹ BETWEEN THE REPUBLIC OF TURKEY AND THE KINGDOM OF DENMARK CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

Preamble

The Republic of Turkey and the Kingdom of Denmark, each a Contracting Party;

DESIRING to create favourable conditions for investments in both states and to intensify the co-operation between private enterprises in both states with a view to stimulating the productive use of resources,

RECOGNIZING that a fair and equitable treatment of investments on a reciprocal basis will serve this aim,

HAVE AGREED as follows:

Article 1

Definitions

For the purpose of this Agreement,

- (1) (a): The term "investment" means every kind of asset and in particular, but not exclusively:
 - (i) stocks or any other form of participation in companies,
 - (ii) returns reinvested, claims to money or other rights having a financial value to an investment,
 - (iii) 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 law of the Contracting Party in the territory where the property is situated,
 - (iv) industrial and intellectual property rights, patents, industrial designs, trademarks, goodwill, know-how and any other similar rights,
 - (v) business concessions conferred by law or by contract, including

the concessions related to natural resources.

(b): 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.

The term "investments" covers all investments made in the territory of a Contracting Party by investors of the other Contracting Party before or after the entry into force of this Agreement.

(2) The term "returns" means the amounts yielded by an investment and in particular though not exclusively, includes profit, interest, capital gains, dividends, royalties or fees.

(3) The term "investor" means:

- (a): physical persons deriving their status as nationals of either Contracting Party according to its applicable law,
- (b): corporations, firms or business associations incorporated or constituted under the law in force in any part of either of the Contracting Parties,

(4) The term "territory" also includes the maritime areas adjacent to the coast of the State concerned, to the extent to which that State may exercise sovereign rights or jurisdiction in those areas according to international law.

The present Agreement shall not apply to the Faroe Islands and Greenland.

Article 2

Promotion of Investment

Each Contracting Party shall admit the investment by investors of the other Contracting Party in accordance with its legislation and administrative practice, and promote such investments as far as possible.

¹ Came into force on 1 August 1992, i.e., the first day of the second month following the date on which the Contracting Parties had informed each other (on 24 and 25 June 1992) of the completion of the required constitutional procedures, in accordance with article 11 (1).

Article 3

Protection of Investment

(1) Investments of investors of either 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. Neither Contracting 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 Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

(2) Neither Contracting Party shall in its territory subject investments made by investors of the other Contracting Party and activities of investors of the other Contracting Party concerning an investment and in particular its management, maintenance, use, enjoyment or disposal of such investments to treatment less favourable than that which it accords to its own investors or to investors of any third State, whichever of these treatments is the more favourable from the point of view of the investor.

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

- (a) relating to any existing or future customs union, regional economic organisations or similar international agreements,
- (b) relating wholly, or mainly to taxation.

Article 4

Expropriation and Compensation

Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party except for a public purpose related to the needs of the expropriating Contracting Party, under due process of law, on non-discriminatory basis and against prompt, adequate and effective compensation. Such compensation shall amount to the genuine market value of the investment expropriated at the time the expropriation became public knowledge, or expropriation action was taken, shall be made without

delay, shall include interest until the date of payment, be effectively realisable and be freely transferable. The investor concerned shall have a right to prompt review by the appropriate judicial or administrative authorities of the Contracting Party making the expropriation, for the legality of the measure taken and of the valuation in accordance with the principles set out in this paragraph.

Article 5

Compensation for Losses

(1) Investor 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, revolt, insurrection, riot or similar events in the territory of the latter Contracting Party, shall be accorded by the latter Contracting Party treatment, as regards any measure it adopts, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State (whichever of these standards is the more favourable from the point of view of the investor).

(2) Payments, if any, resulting from this Article shall be made without delay.

Article 6

Repatriation and Transfer of Capital and Returns

(1) Each Contracting Party shall allow without delay to the extent permitted by and in conformity with its relevant laws and regulations, the transfer of:

- (a) the proceeds of total or partial sale or liquidation of the investment;
- (b) the returns realized;
- (c) the payments made for the principal and interest payments of the credits for the investment;
- (d) the net earnings of the nationals of one Contracting Party deriving from their work in connection with an investment made in the territory of the other Contracting Party.
- (e) any payments pursuant to Articles 4 and 5.

(2) Transfers shall be made in the convertible currency in which the investment has been made or in any convertible currency if so agreed by the investor, and at the rate of exchange in force at the date of transfer.

Article 7 *Subrogation*

If the investments of an investor of the one Contracting Party are insured against non-commercial risks under a system established by law, 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.

The insurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

Disputes between a Contracting Party and an insurer shall be settled in accordance with the provisions of Article 8 of this agreement.

Article 8 *Settlement of Investment Disputes*

(1) For the purposes of this Article, the term "investment dispute" means a dispute involving:

- (a) the interpretation or application of any investment authorization granted by a Contracting Party's foreign investment authority to an investor of the other Contracting Party;
- (b) a breach of any right conferred or created by this Agreement with respect to an investment.

(2) In the event of an investment dispute between a Contracting Party and an investor of the other Contracting Party, the Parties to the dispute shall initially seek to resolve the dispute by consultations and negotiations in good faith. If such consultations or negotiations are unsuccessful, the dispute may be settled through the use of non-binding, third party procedures upon which such investor and the Contracting Party mutually agree. If the dispute cannot be resolved through the foregoing procedures the investor concerned may choose to submit the dispute to the International Centre for the Settlement of Investment Disputes ("Centre") for settlement by arbitration, at any time after one year from the date upon which the dispute arose provided that, if the investor concerned has brought the dispute before the courts of justice of the Contracting Country that is a party to the dispute, there has not been rendered a final award.

- (3) (a) Each Contracting Party hereby consents to the submission of an investment dispute to the Centre for settlement by arbitration.
- (b) Arbitration of such disputes shall be done in accordance with the provisions of the Convention of the Settlement of Investment Disputes Between States and Nationals of other States¹ and the "Arbitration Rules" of the Centre.

Article 9 *Disputes between the Contracting Parties*

(1) Disputes between the Contracting Parties concerning the interpretation and application of this Agreement should, as far as possible, be settled through direct and meaningful negotiations between the Contracting Parties. If such a dispute cannot be settled within three months from the beginning of negotiation, it shall upon the request of either Contracting Party, be submitted to an arbitral tribunal.

(2) Such an arbitral tribunal shall be constituted for each individual case in the following way:

Within three months of the receipt of the request for arbitration, each Contracting 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 Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within three months from the date of appointment of the other two members. If within any of the periods specified 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 any necessary appointments. If the President is a national of either Contracting Party or if he 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 Contracting Party or if he, too, 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 Contracting Party shall be invited to make the necessary appointments.

¹ United Nations, *Treaty Series*, vol. 575, p. 159.

(3) The arbitral tribunal shall apply the provisions of this Agreement, other Agreements concluded between the Contracting Parties, and the procedural standards called for by international law. It shall reach its decision by a majority of votes. Such decision shall be final and binding on both Contracting Parties.

(4) Each Contracting 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 costs shall be borne in equal parts by the Contracting Parties.

(5) The arbitral tribunal determines its own procedure.

(6) This article shall not be applicable to a dispute, which has been submitted to and is still before the "Centre" pursuant to Article 8 of this agreement.

Article 10

National or International Law

Nothing in this Agreement shall prejudice any rights or benefits under national or international law accruing to an investor or of one Contracting Party in the territory of the other Contracting Party.

Article 11

Entry into Force, Duration and Termination

(1) This Agreement shall enter into force on the first day of the second month following the date

on which the Contracting Parties have informed each other in writing that the procedures constitutionally required therefore in their respective countries have been complied with.

(2) This Agreement shall remain in force for a period of ten years and shall continue in force thereafter unless, after the expiry of the initial period of ten years, either Contracting Party notifies in writing the other Contracting Party of its intention to terminate this Agreement. The notice of termination shall become effective one year after it has been received by the other Contracting Party.

(3) In respect of investment made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of Articles 1 to 10 shall remain in force for a further period of ten years from that date.

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

DONE in duplicate at Copenhagen on 7 February, 1990 in the Turkish, Danish 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 TIGREL

For the Government
of the Kingdom of Denmark:

UFFE ELLEMANN-JENSEN