

No. 31557

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**JAPAN
and
TURKEY**

Agreement concerning the reciprocal promotion and protection of investment (with protocol). Signed at Ankara on 12 February 1992

Authentic text: English.

Registered by Japan on 27 January 1995.

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**JAPON
et
TURQUIE**

Accord relatif à l'encouragement des investissements et à leur protection réciproque (avec protocole). Signé à Ankara le 12 février 1992

Texte authentique : anglais.

Enregistré par le Japon le 27 janvier 1995.

AGREEMENT¹ BETWEEN JAPAN AND THE REPUBLIC OF TURKEY CONCERNING THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENT

Japan and the Republic of Turkey,

Desirous of strengthening economic cooperation between the two countries,

Intending to create favourable conditions for investment by nationals and companies of each country within the territory of the other country, by means of the favourable treatment for investment and business activities in connection therewith and the protection of investments, and

Recognizing that the promotion and protection of investment will stimulate the flow of capital and technology for the benefit of the economies of the two countries,

Have agreed as follows:

Article 1

For the purposes of the present Agreement:

- (1) The term "investments" comprises every kind of asset including:
- (a) shares and other types of holding of companies;
 - (b) claims to money or to any performance under contract having a financial value which are associated with investment;
 - (c) rights with respect to movable and immovable property;

¹ Came into force on 12 March 1993, i.e., the thirtieth day following the date of the exchange of the instruments of ratification, which took place at Tokyo on 10 February 1993, in accordance with article 16 (2).

- (d) patents of invention, rights with respect to trade marks, trade names, trade labels and any other industrial property, and rights with respect to know-how; and
- (e) concession rights including those for the exploration and exploitation of natural resources.

(2) The term "returns" means the amounts yielded by an investment, in particular, profit, interest, capital gains, dividends, royalties and fees.

(3) The term "nationals" means, in relation to one Contracting Party, physical persons possessing the nationality of that Contracting Party.

(4) The term "companies" means corporations, partnerships, companies and other entities whether or not with limited liability and whether or not for pecuniary profit. Companies constituted under the applicable laws and regulations of one Contracting Party and having their seat within its territory shall be deemed companies of that Contracting Party.

Article 2

1. Each Contracting Party shall, subject to its rights to exercise powers in accordance with the applicable laws and regulations, encourage and create favourable conditions for nationals and companies of the other Contracting Party to make investment in its territory, and, subject to the same rights, shall admit such investment.

2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of any

third country in respect of the matters relating to the admission of investment.

Article 3

1. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of any third country in respect of investments, returns and business activities in connection with the investment.

2. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party in respect of investments, returns and business activities in connection with the investment.

3. The term "business activities in connection with the investment" referred to in the provisions of paragraphs 1 and 2 of the present Article includes:

- (a) the maintenance of branches, agencies, offices, factories and other establishments appropriate to the conduct of business activities;
- (b) the control and management of companies which they have established or acquired;
- (c) the employment of accountants and other technical experts, executive personnel, attorneys, agents and other specialists; and
- (d) the making and performance of contracts.

4. The provisions of paragraphs 1 and 2 of the present Article shall not be construed so as to oblige either Contracting Party to extend to nationals and companies of the other

Contracting Party special tax advantages accorded on the basis of reciprocity with a third country or by virtue of agreements for the avoidance of double taxation or for the prevention of fiscal evasion.

5. Notwithstanding the provisions of paragraph 2 of the present Article, either Contracting Party may prescribe special formalities in connection with the activities of foreign nationals and companies within its territory, provided that such formalities may not impair the substance of the rights set forth in the provisions of paragraph 2 of the present Article.

Article 4

Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country with respect to access to the courts of justice and administrative tribunals and agencies in all degrees of jurisdiction both in pursuit and in defence of their rights.

Article 5

1. Investments and returns of nationals and companies of either Contracting Party shall receive the most constant protection and security within the territory of the other Contracting Party.

2. Investments and returns of nationals and companies of either Contracting Party shall not be subjected to expropriation, nationalization or any other measure the effect of which would be tantamount to expropriation or nationalization, within the territory of the other Contracting Party

unless such measure is taken for a public purpose and under due process of law, is not discriminatory, and, is taken against prompt, adequate and effective compensation.

3. The compensation referred to in the provisions of paragraph 2 of the present Article shall represent the equivalent of the normal market value of the investments and returns affected at the time when expropriation, nationalization or any other measure the effect of which would be tantamount to expropriation or nationalization was publicly announced or when such measure was taken, whichever is the earlier, without reduction in that value due to the prospect of the very seizure which ultimately occurs. Such compensation shall be paid without delay and shall carry an appropriate interest taking into account the length of time until the time of payment. It shall be effectively realizable and freely transferable and shall be paid in a manner which would place nationals and companies in a position no less favourable than the position in which such nationals and companies would have been if the compensation had been paid immediately on the date of expropriation, nationalization or any other measure the effect of which would be tantamount to expropriation or nationalization.

4. Nationals and companies of either Contracting Party shall within the territory of the other Contracting Party be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country with respect to the matters set forth in the provisions of paragraphs 1 to 3 of the present Article.

Article 6

Nationals and companies of either Contracting Party who suffer within the territory of the other Contracting Party damages in relation to their investments, returns, or activities in connection with their investment, owing to the outbreak of hostilities or a state of national emergency, shall, in case any measure is taken by such other Contracting Party in relation to the outbreak of such hostilities or a state of such national emergency, be accorded treatment no less favourable than that accorded to nationals and companies of such other Contracting Party or to nationals and companies of any third country. In case payments are made under the present Article, the payments shall be effectively realizable and freely transferable.

Article 7

If a guarantor of either Contracting Party makes payment to any of nationals or companies of that Contracting Party under guarantee assumed in accordance with the applicable laws and regulations of that Contracting Party in respect of investments and returns in the territory of the other Contracting Party, such other Contracting Party shall recognize the transfer to the guarantor of the former Contracting Party of any right or claim of such national or company in such investments and returns on account of which such payment is made and the subrogation of the guarantor of the former Contracting Party to any claim or cause of action of such national or company arising in connection therewith. As regards the transfer of payment to be made to that guarantor of the former Contracting Party by virtue of such transfer of right or claim, the provisions of paragraphs 2 to 4 of Article 5, Article 6 and Article 8 shall apply *mutatis mutandis*.

Article 8

1. Nationals and companies of either Contracting Party shall be guaranteed by the other Contracting Party free transfers in connection with investment made by such nationals and companies out of and into the territory of such other Contracting Party, including the transfer of;

- (1) returns
- (2) repayment of loans
- (3) proceeds from sales
- (4) value of total or partial liquidation of an investment
- (5) compensation paid in accordance with the provisions of Article 5
- (6) payments made in accordance with the provisions of Article 6.

2. Notwithstanding the provisions of paragraph 1 of the present Article, either Contracting Party may, in exceptional financial or economic circumstances, impose exchange restrictions in accordance with its laws and regulations and in conformity with the Articles of Agreement of the International Monetary Fund so long as such Contracting Party is a party to the said Articles of Agreement.

Article 9

The present Agreement shall also apply to investments and returns of nationals and companies of either Contracting Party acquired within the territory of the other Contracting Party in accordance with the applicable laws and regulations of such other Contracting Party prior to the entering into force of the present Agreement.

Article 10

The provisions of the present Agreement shall apply irrespective of the existence of diplomatic or consular relations between the Contracting Parties.

Article 11

1. Any dispute between either Contracting Party and a national or company of the other Contracting Party with respect to investment within the territory of the former Contracting Party shall, as far as possible, be settled amicably through consultation between the parties to the dispute. This shall not be construed so as to prevent nationals and companies of either Contracting Party from seeking administrative or judicial settlement within the territory of the other Contracting Party. If any legal dispute that may arise out of investment made by a national or company of such other Contracting Party cannot be settled through such consultation, such former Contracting Party shall consent to submit the dispute to conciliation or arbitration at the request of such national or company in accordance with the provisions of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on March 18, 1965,¹ so long as both Contracting Parties are parties to the said Convention. Each party to the dispute submitted to conciliation or arbitration in accordance with the Convention shall bear the cost of such conciliation or arbitration proceedings in accordance with the provisions of Article 61 of the Convention.

2. In the event that a national or company of either Contracting Party has resorted to administrative or judicial settlement within the territory of the other Contracting Party

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

concerning a legal dispute that may arise out of investment made by such national or company, such dispute shall not be submitted to arbitration referred to in the provisions of paragraph 1 of the present Article.

3. In case a legal dispute arises out of investment made by a company of either Contracting Party and such company is controlled by nationals or companies of the other Contracting Party on the date on which such company makes a request to the former Contracting Party to submit the dispute to conciliation or arbitration, such company of the former Contracting Party shall be treated for the purposes of the provisions of the present Article as a company of such other Contracting Party.

Article 12

1. Companies of any third country in which nationals and companies of either Contracting Party have a substantial interest shall within the territory of the other Contracting Party be accorded, unless international agreement between such other Contracting Party and such third country concerning investment and protection of investments is applicable to the companies of such third country;

(1) treatment no less favourable than that accorded to companies of any third country in which nationals and companies of any other third country have a substantial interest with respect to the matters set forth in the provisions of paragraph 2 of Article 2; and

(2) treatment no less favourable than that accorded to companies of any third country in which nationals and companies of such other Contracting Party or nationals and companies of any other third country have a substantial interest with respect to the matters set forth in the provisions of

Article 3, paragraphs 1 to 3 of Article 5, Article 6 and Article 9.

2. The term "substantial interest" referred to in the provisions of paragraph 1 of the present Article means such extent of interest as to permit the exercise of control or decisive influence on the company. Whether an interest held by nationals or companies of either Contracting Party amounts to a substantial interest shall be decided in each case through consultations between the Contracting Parties.

Article 13

1. Each Contracting Party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, such representations as the other Contracting Party may make with respect to any matter affecting the operation of the present Agreement.

2. Any dispute between the Contracting Parties as to the interpretation or application of the present Agreement, not satisfactorily adjusted by diplomacy, shall be referred for decision to an arbitration board. Such arbitration board shall be composed of three arbitrators, with each Contracting Party appointing one arbitrator within a period of thirty days from the date of receipt by either Contracting Party from the other Contracting Party of a note requesting arbitration of the dispute, and the third arbitrator to be agreed upon as Chairman by the two arbitrators so chosen within a further period of thirty days, provided that the third arbitrator shall not be a national of either Contracting Party.

3. If the third arbitrator is not agreed upon between the arbitrators appointed by each Contracting Party within the period referred to in the provisions of paragraph 2 of the present Article, the Contracting Parties shall

request the President of the International Court of Justice to appoint the third arbitrator who shall not be a national of either Contracting Party.

4. The arbitration board shall within a reasonable period of time reach its decisions by a majority of votes. Such decisions shall be final and binding.

5. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings. The cost of the Chairman of the arbitration board in discharging his duties and the remaining costs of the arbitration board shall be borne equally by both Contracting Parties.

Article 14

Either Contracting Party shall in accordance with its applicable laws and regulations give sympathetic consideration to applications for the entry, sojourn and residence of nationals of the other Contracting Party who wish to enter the territory of the former Contracting Party and remain therein for the purpose of making investment and carrying on business activities in connection therewith.

Article 15

1. Nothing in the present Agreement shall be construed so as to grant any right or impose any obligation in respect of copyright.

2. Nothing in the present Agreement shall be construed so as to derogate from the obligations undertaken by either Contracting Party towards the other Contracting Party by virtue of the provisions of the Paris Convention for the Protection of Industrial Property of March 20, 1883,¹ or of any subsequent revision thereof, so long as

¹ *British and Foreign Papers*, vol. 74, p. 44.

such provisions are in force between the Contracting Parties.

Article 16

1. The present Agreement shall be ratified, and the instruments of ratification thereof shall be exchanged at Tokyo as soon as possible.
2. The present Agreement shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification. It shall remain in force for a period of ten years and shall continue in force until terminated as provided in paragraph 3 of the present Article.
3. Either Contracting Party may, by giving one year's advance notice in writing to the other Contracting Party, terminate the present Agreement at the end of the initial ten-year period or at any time thereafter.
4. In respect of investments and returns acquired prior to the date of termination of the present Agreement, the provisions of Articles 1 to 15 shall continue to be effective for a further period of fifteen years from the date of termination of the present Agreement.

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

DONE in duplicate, in the English language, at Ankara, this twelfth day of February, 1992.

For Japan:

YOICHI YAMAGUCHI

For the Republic
of Turkey:

KEMAL KABATAS

PROTOCOL

At the time of signing the Agreement between Japan and the Republic of Turkey concerning the Reciprocal Promotion and Protection of Investment (hereinafter referred to as "the Agreement"), the undersigned have agreed upon the following provisions which shall form an integral part of the Agreement:

Notwithstanding the provisions of paragraph 2 of Article 3 of the Agreement, the treatment accorded by either Contracting Party to nationals and companies of the other Contracting Party may be limited to the treatment no less favourable than that accorded to nationals and companies of any third country in connection with:

- a) the conditions of registration of aircraft in the national register of either Contracting Party and matters arising from such registration, and matters related to or arising from the nationality of ship, and the acquisition of ship or of any interest in ship;
- b) all matters related to the acquisition of immovable property; and
- c) all matters related to the establishment of additional branches of already established banks.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed the present Protocol.

DONE in duplicate, in the English language, at Ankara, this twelfth day of February, 1992.

For Japan:

YOICHI YAMAGUCHI

For the Republic
of Turkey:

KEMAL KABATAS