

No. 46855

**Turkey
and
Australia**

Agreement between the Republic of Turkey and Australia on the reciprocal promotion and protection of investments. Canberra, 16 June 2005

Entry into force: *29 June 2009 by notification, in accordance with article 14*

Authentic texts: *English and Turkish*

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**Turquie
et
Australie**

Accord entre la République turque et l'Australie relatif à la promotion et à la protection réciproques des investissements. Canberra, 16 juin 2005

Entrée en vigueur : *29 juin 2009 par notification, conformément à l'article 14*

Textes authentiques : *anglais et turc*

Enregistrement auprès du Secrétariat des Nations Unies : *Turquie, 24 novembre 2009*

[ENGLISH TEXT – TEXTE ANGLAIS]

**AGREEMENT
BETWEEN
THE REPUBLIC OF TURKEY
AND
AUSTRALIA
ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

The Republic of Turkey and Australia ("the Parties"),

RECOGNISING the importance of promoting the flow of capital for economic activity and development and aware of its role in expanding economic relations and technical co-operation between them, particularly with respect to investment by investors of one Party in the territory of the other Party;

AGREEING that fair and equitable treatment of investment is desirable in order to maintain a stable framework for investment and maximum effective utilisation of economic resources;

ACKNOWLEDGING that investments of investors of one Party in the territory of the other Party would be made within the framework of the laws of that other Party; and

RECOGNISING that pursuit of these objectives would be facilitated by a clear statement of principles relating to the protection of investments, combined with rules designed to render more effective application of these principles within the territories of the Parties,

HAVE AGREED as follows:

ARTICLE 1

DEFINITIONS

1. For the purposes of this Agreement:

(a) "investment" means every kind of asset invested by investors of one Party and admitted by the other Party subject to its law and investment policies applicable from time to time and includes:

- (i) tangible and intangible property, including rights such as mortgages, liens and other pledges,
- (ii) any form of participation in a legal person such as, but not limited to, shares and stocks,
- (iii) a claim to money or a claim to performance having economic value,
- (iv) intellectual property rights, including rights with respect to copyright, patents, trademarks, trade names, industrial designs, trade secrets, know-how and goodwill,
- (v) business concessions and any other rights required to conduct economic activity and having economic value conferred by law or under a contract, including rights to engage in agriculture, forestry, fisheries and animal husbandry, to search for, extract or exploit natural resources and to manufacture, use and sell products, and
- (vi) activities associated with investments, such as the organisation and operation of business facilities, the acquisition, exercise and disposition of property rights including intellectual property rights, the raising of funds and the purchase and sale of foreign exchange;

(b) "return" means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalty payments, management or technical assistance fees, payments in connection with intellectual property rights, and all other lawful income;

(c) "investor" means:

- (i) a legal person; or
 - (ii) a natural person who is a citizen of the Republic of Turkey; or
 - (iii) a natural person who is a citizen or permanent resident of Australia;
- (d) "legal person" means any corporation, association, partnership, or other legally recognised entity that is duly incorporated, constituted, set up, or otherwise duly organised:
- (i) under the law of a Party; or

(ii) under the law of a third country and is owned or controlled by an entity described in paragraph 1(d)(i) of this Article or by a natural person described in paragraph 1(c)(ii) or 1(c)(iii);

regardless of whether or not the entity is organised for pecuniary gain, privately or otherwise owned, or organised with limited or unlimited liability;

(e) "permanent resident" means a natural person whose residence in Australia is not limited as to time under Australian law;

(f) "freely convertible currency" means a convertible currency as classified as freely usable by the International Monetary Fund or any currency that is widely traded in international foreign exchange markets;

(g) "territory" means land 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.

2. For the purposes of paragraph 1(a) of this Article, returns that are invested shall be treated as investments and any alteration of the form in which assets are invested or reinvested shall not affect their character as investments.

3. The question of ownership or control with respect to paragraph 1(d)(ii) shall depend on the factual circumstances of the particular case. The following facts, inter alia, shall be accepted as evidence of such ownership or control:

(a) a substantial direct or indirect participation in the capital of the legal person which allows for effective control, such as, in particular, a direct or indirect participation of more than 50% of the capital or a majority shareholding; or

(b) direct or indirect control of voting rights allowing for:

(i) the exercise of a decisive power over management and operations; or

(ii) the exercise of a decisive power over the composition of the board of directors or of any other managing body.

ARTICLE 2

APPLICATION OF AGREEMENT

1. This Agreement shall apply to investments whenever made. It shall not apply to disputes which arose prior to its entry into force.
2. Where a legal person of a Party is owned or controlled by a citizen or a legal person of any third country, the Parties may decide jointly in consultation, subject to their national law, not to extend the rights and benefits of this Agreement to such legal person.
3. This Agreement shall not apply to a legal person organised under the law of a third country within the meaning of paragraph 1(d)(ii) of Article 1 where the provisions of an investment protection agreement with that country have already been invoked in respect of the same matter.
4. This Agreement shall not apply to a natural person who is a permanent resident but not a citizen of Australia where:
 - (a) the provisions of an investment protection agreement between the Republic of Turkey and the country of which the person is a citizen have already been invoked in respect of the same matter; or
 - (b) the person is a citizen of the Republic of Turkey.