AGREEMENT ON PROMOTION AND PROTECTION OF INVESTMENTS AMONG ECO MEMBER STATES

Preamble

The Member States of the Economic Cooperation Organization (ECO) signatory to this Agreement,

In keeping with the objectives of the Economic Cooperation Organization as stipulated in the Treaty of Izmir,

In implementation of the relevant provisions of the said Treaty for Economic, Technical and Commercial Cooperation among the Member States of the Economic Cooperation Organization,

Endeavoring to avail of the economic resources and potentialities available therein and to mobilize and utilize them in the best possible manner, within the framework of close cooperation among Member States,

Convinced that relations among the Member States in the field of investment are one of the major areas of economic cooperation among these States through which economic and social development therein can be fostered on the basis of common interest and mutual benefit,

Anxious to provide and develop a favourable climate for investments, in which the economic resources of the Member States could circulate between them so that optimum utilization could be made of these resources in a way that will serve their development and raise the standard of living of their peoples,

Have signed this Agreement,

And have agreed to consider the provisions contained therein as the minimum in dealing with the capital and investments (coming in from) the Member States,

And have expressed their complete readiness to put the Agreement into effect, in letter and in spirit and, of their sincere wish to extend every effort towards realizing its aims and objectives.

Article 1
Definitions

For the purpose of this Agreement:

1. "The Agreement" means:

   The Agreement on the Promotion and Protection of Investments among ECO Member States.

2. "Contracting Parties" means:

   The Member States of the Economic Cooperation Organization (ECO) who have signed and ratified the present Agreement as stipulated in Article 12 hereunder.

3. Host State means:

   Every Contracting Member State in the territory of which investment has been made by the investors of the other Contracting Parties.

4. The term "investment " refers to every kind of property or asset, invested by the investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the other Contracting party (hereinafter referred to as the host Contracting Party) and particularly , but not exclusively:

   (a) shares, stocks or any other form of participation in companies,

   (b) returns reinvested, title to money or to any rights having financial value related to an investment,

   (c) movable and immovable property ,as well as rights related thereto such as mortgages, liens, pledges and other similar rights as defined in conformity with the laws and the regulations of the Contracting Party in whose territory the property is situated ,

   (d) Industrial and intellectual property rights such as patents, industrial designs, technical processes , as well as trademarks, goodwill, know how and other similar rights,

   (e) business concessions conferred by law of the host state or by contract awarded by the host state, including concessions related to natural resources.

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 "investment" covers all investments made in the territory of a Contracting Party after entry into force of this Agreement.

5. The term " investor " with regard to either Contracting Party refers to the following persons who invest in the territory of the other Contracting Party :

(a) natural persons who, according to the laws of that Contracting Party, are considered to be its nationals;

(b) corporations, firms, or business associations incorporated or constituted under the law in force of either of the Contracting Parties and having their headquarters, or their real economic activities in the territory of that Contracting Party.

Any contractor that does not bring investment as defined in Article 1, sub paragraph 4 of this Agreement, shall not be treated as an investor.

6. The term "return" means the amounts yielded by an investment and includes in particular, though not exclusively, profit, interest, capital gains, royalties, fees and dividends.

7. The Secretariat means:
The Secretariat of the Economic Cooperation Organization (ECO).

8. The Secretary General means:
The Secretary General of the Economic Cooperation Organization (ECO).

9. The Organization means:
The Economic Cooperation Organization (ECO).

Article 2
Promotion and Protection of Investments

1. The Contracting Parties shall encourage and create favourable conditions for their investors to invest in the territories of the other Contracting Parties.

2. The Contracting Parties shall encourage and create favourable conditions for investors of the other Contracting Parties to invest in their territories.

3. Investments of investors of the Contracting Parties shall at all times be accorded fair and equitable treatment and shall enjoy full protection in the territories of the other Contracting Parties. Neither Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, or disposal of such investments.

Article 3
Admission of Investments

1. The Contracting Parties, in accordance with their laws and regulations, admit investors of the other Contracting Parties to make investments in their territories.

2. The Contracting Parties after the admission of an investment shall grant all permits, which are necessary in accordance with their laws and regulations for the proper realization of the said investment.

3. The Contracting Parties shall within the framework of their national legislations give sympathetic consideration to applications for the entry and sojourn of persons of other Contracting Parties who wish to enter the territories of the other Contracting Parties in connection with the making and carrying through of an investment; the same shall apply to nationals of the Contracting Parties who in connection with an investment wish to enter the territory of the other Contracting Parties and sojourn there to take up employment. Application for work permits shall also be given sympathetic consideration.

4. Where there is a requirement for the approval of the investments in accordance with relevant law of the host state, such requirement shall be met by the investors of the other Contracting Parties.

Article 4
Treatment of Investments

1. The Contracting Parties shall accord to the investments of the investors of the other Contracting Parties once established, treatment no less favourable than that accorded in similar situations to investments of their investors or to investments of investors of any third country, whichever is the most favourable.

2. The provisions of this Article shall have no effect in relation to the following agreements entered into by either of the Contracting Parties;

   (a) relating to any existing or future customs unions, regional economic organization or similar international agreements,

   (b) relating wholly or mainly to taxation, and

   (c) the dispute settlement provisions of bilateral or multilateral investment agreements signed with any third state, in force or signed prior to the date of entry into force of this Agreement.

   (d) concessions given by a Contracting Party to the investors of any third state under a contract before the date of entry into force of this Agreement.

Article 5
Expropriation and Compensation

1. Investment shall not be expropriated, nationalized or subjected, directly or indirectly, to measures of similar effects 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 and the general principles of treatment provided for in Article 4 of this Agreement.

2. Compensation shall be equivalent to the market value of the expropriated investment before the expropriatory action was taken or became known. Compensation shall be paid without delay and be freely transferable as described in paragraph 2 Article 7.

Article 6
Losses

Investors of either Contracting Party whose investments suffer losses in the territory of the other Contracting Party owing to war, insurrection, civil disturbance or other similar events shall be accorded by the other Contracting Party treatment no less favourable than that accorded to its own investors or to investors of any third country, whichever is the most favourable treatment, as regards any measures it adopts in relation to such losses.

Article 7
Repatriation and Transfers

1. Each Party shall permit in good faith all transfers related to an investment to be made freely and without delay into and out of its territory. Such transfers include:

   (a) returns;

   (b) proceeds from the sale or liquidation of all or any part of an investment,

   (c) compensation pursuant to Article 5&6,

   (d) reimbursements and interest payments deriving from loans in connection with investments,

   (e) salaries, wages and other remunerations received by the nationals of one of the Contracting Parties who have obtained in the territory of the other Contracting Parties the corresponding work permits related to an investment,

   (f) payments arising from an investment dispute.

2. Transfer 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, unless otherwise agreed by the investor and the host state.

Article 8
Subrogation

If a Contracting Party or its designated agency subrogates an investor pursuant to a payment made under an insurance or guarantee agreement against non- commercial risks:

(a) such subrogation shall be recognized by the other Contracting Party ;

(b) the subrogee shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise;

(c) disputes between the subrogee and the host Contracting Party shall be settled in accordance with the provisions of Article 9 of this Agreement.

Article 9
Dispute Settlement Between a Contracting Party and Investors of the other Contracting Party

1. In the event of occurrence of a dispute between a Contracting Party in whose territory an investment is made and one or more investors of the one of the other Contracting Parties with respect to an investment, the Contracting Party in whose territory the investment is made and the investor(s) shall primarily endeavour to settle the dispute in an amicable manner through negotiation and consultation.

2. In the event that the Contracting Party in whose territory an investment is made and the investor(s) are unable to agree within six months from the notification of the claim by one party to the other , the dispute can upon the request of the investor, be referred to:

    a. the competent courts of the Contracting Party in whose territory the investment is made, or

    b. an ad –hoc arbitral tribunal of three members established in the following manner:

The Party to the dispute that desires to refer the dispute to the arbitration shall appoint an arbitrator through a written notice sent to the other Party. The other party shall appoint an arbitrator within sixty days from the date of receipt of the said notice and the appointed arbitrators shall within sixty days from the date of the last appointment, appoint the umpire. In the event that each of the parties fails to appoint its arbitrator within the mentioned period or that the appointed arbitrators fail to agree on the umpire, each of the parties may request the President of the International Arbitral Tribunal of the International Chamber of Commerce to appoint the failing party's arbitrator or the umpire, as the case may be. In any event the umpire shall be appointed amongst nationals of a country having diplomatic relations with the Parties to the dispute.

3. The arbitration shall be conducted according to the arbitration rules of the United Nations Commission on International Trade law (UNCITRAL),

4. A dispute primarily referred to the competent courts of the Contracting Party in whose territory the investment is made , as long as it is pending , can not be referred to arbitration save with the parties agreement; and in the event that a final judgment is rendered.

5. National courts shall not have jurisdiction over any dispute referred to arbitration. However the provisions of this paragraph do not bar the winning party to seek for the enforcement of the arbitral award before national courts.

6. The decisions of the tribunal shall be final and binding on the parties to the dispute. Each Contracting Party shall execute the award according to its national law.

7. Where a specific investment contract between a Contracting Party or any of its entities and an investor of the other Contracting Party provides for dispute settlement under an internationally recognized court of arbitration, the investor cannot invoke dispute settlement under this Agreement.

   However, if the award of the above arbitration is not executed by the Contracting Party or its entities, as the case may be, then the investor can invoke dispute settlement under this Article.

Article 10
Settlement of Disputes between the Contracting Parties

1. All disputes arising between the Contracting Parties relating to the interpretation or application of this Agreement shall, in the first place, be settled by amicable consultation. If the dispute can not be settled through consultation within six months from the date of arising of the dispute, either of the Contracting Parties may, while sending a notice to the other party, submit the dispute to a board of arbitration of three members consisting of two arbitrators appointed by the Contracting Parties and an umpire.

   In case of submission of the dispute to the arbitration , either of the Contracting Parties shall appoint an arbitrator within sixty days from the receipt of the notification and the arbitrators appointed by the Contracting Parties shall appoint the umpire within sixty days from the date of the last appointment. If any of the Contracting Parties does not appoint its arbitrator or the appointed arbitrators do not agree on the appointment of the umpire within the said periods either of the Contracting Parties may request the President of the International Court of Justice, to appoint the arbitrator on behalf of the failing party or the umpire, as the case may be . However the umpire shall have to be a national of a country having diplomatic relations with the parties to the dispute at the time of the arbitration.

2. In the case of appointment of the umpire by International Court of Justice, if 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 of the International Court of Justice, and if he is also prevented from carrying out the said function or he is a national of either Contracting Party, the appointment shall be made by the member of the International Court of Justice who is next in seniority and is not national of either Contracting party.

3. Subject to other provisions agreed by the Contracting Parties, the tribunal shall determine its procedure and the place of arbitration. In the absence of such an agreement on the procedure, the arbitration rules of procedure of United Nations Commission on International Trade Law (UNCITRAL) will serve as the applicable rules.

4. The decision of the tribunal shall be binding for the Contracting Parties.

Article 11
Continuation of Agreement in case of Dispute

The Agreement shall continue to be in force in the event that disputes of any kind arise between the Contracting Parties and notwithstanding the existence or otherwise of diplomatic relations or any other type of representation between the states concerned.

Article 12
Entry into force

The Agreement shall come into force two months after the deposit of the fourth Instrument of Ratification; and shall come into force, with regard to each new state that may join it, one month after the date of depositing its instrument of ratification.

Article 13
Amendment

Any process for amendment could be initiated at the request of any of the Contracting Parties. However, the Agreement may only be amended with the consensus of the Contracting Parties.

Article 14
Consultation

The Contracting Parties agree to consult each other at the request of any Contracting Party on any matter relating to investments covered by this Agreement, or otherwise effecting the implementation of this Agreement.

Article 15
Withdrawal

The Agreement shall continue in force for an unlimited period. Contracting Parties may withdraw from it, after five years from its coming into force with regard to the state concerned by giving notice in writing to the Secretary General provided that the withdrawal shall not become effective before the lapse of one year from the date of notification. Provided, however, that in respect of investments made while the Agreement was in force, its provisions shall continue in effect for an additional period of the ten years from the date of withdrawal.

Article 16
Application of Bilateral Investment Agreements

In case of any conflict between the provisions of the present Agreement and Bilateral Agreements on Reciprocal Promotion and Protection of Investments concluded between the Contracting Parties, provisions of bilateral investment agreements shall prevail.

Article 17
Miscellaneous provisions

1. This Agreement may not be signed with reservation nor shall reservations be admitted at the time of ratification.

2. This Agreement shall be deposited with the Secretary General who shall promptly furnish a certified copy thereof to each Contracting Party.

3. Each Contracting Party shall deposit its Instrument of Ratification with the Secretary General who shall promptly inform each Contracting Party of such deposit.

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

DONE AT Istanbul on July 7, 2005 in two authentic copies in English and Russian language which shall be deposited with the Secretary General of the ECO Secretariat. In case of discrepancy between the English and Russian texts, the English text shall prevail. The depositary shall transmit certified copies to all Contracting Parties.

For the Islamic Republic of Afghanistan

For the Republic of Azerbaijan

For the Islamic Republic of Iran

For the Republic of Kazakhstan

For the Kyrgyz Republic

For the Islamic Republic of Pakistan

For the Republic of Tajikistan

For the Republic of Turkey

For Turkmenistan

For the Republic of Uzbekistan