# AGREEMENT BETWEEN THE REPUBLIC OF DOMINICAN REPUBLIC AND THE REPUBLIC OF CHILE FOR THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Dominican Republic and the Government of the Republic of Chile (hereinafter referred to as the "Contracting Parties"),

Desiring to enhance cooperation in the interests of both Contracting Parties;

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other party, involving transfers of capital;

Recognizing that the reciprocal promotion and protection of investments under a bilateral agreement stimulate the flow of capital and private initiatives in this field, increasing prosperity in both countries.

Have agreed as follows:

## Article I. Definitions

For the purposes of this Agreement:

1. The term "investor" designates the following subjects who have made investments in the territory of the other Contracting Party in accordance with this Agreement:

a) Natural or natural persons who, according to the law of that Contracting Party, are considered to be nationals of the same;

b) Legal entities, including companies, corporations, business associations or any other entity constituted under the laws of that Contracting Party, having their seat, as well as their effective econórmicas activities, in the territory of that Contracting Party;

c) Legal entities constituted under the law of any country, which are directly or indirectly controlled by nationals of that Contracting Party or by legal entities, whose headquarters is located in the territory of that same Contracting Party, where the Entity has also effective economic activity.

2. The term investment means every kind of assets or rights related thereto, provided that it is carried out in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, and shall include in particular, though not exclusively:

a) Movable and immovable property, as well as all other rights in rem, such as mortgages, liens, pledges and usufructs;

b) Shares and social quotas and any other kind of participation in companies;

c) Rights of claim or any other performance having economic value;

(d) Intellectual Property Rights, including copyrights, industrial property rights, such as patents, technical processes, trademarks or trade names, trademarks, industrial designs, business names, know-how and goodwill;

(e) Concessions conferred by law, by an administrative act or under a contract, including concessions to cultivate, extract, explore or exploit natural resources.

Any change in the form in which assets are reinvested does not affect their character as investments provided that such change is made in accordance with the legislation of the Contracting Party in whose territory the investment has been made.

3. The term "territory includes, in addition to the land, sea and air space under the sovereignty of each Contracting Party,

marine and submarine areas over which they exercise sovereign rights and jurisdiction in accordance with their respective laws and international law.

## Article II. Scope

This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party, in accordance with the laws of the other Contracting Party in the territory of the latter. However, it shall not apply to differences or disputes which have arisen prior to its validity or directly related to events before its Entry into Force.

## Article III. Admission , Promotion and Protection of Investments

1. Each Contracting Party shall, subject to its general policy in the field of investment, encourage investments in its territory of investors of the other Contracting Party, shall contribute to the development and smooth shall admit in accordance with its legislation.

2. Each Contracting Party shall protect within its territory investments made in accordance with its laws and regulations by investors of the other Contracting Party and shall not hinder the maintenance, treatment, use, enjoyment and liquidacion, extension and sale of such investments by unreasonable or discriminatory measures.

3. Each Contracting Party shall contribute to effective means of asserting claims and rights relating to investment agreements and investment authorizations.

## Article IV. Treatment of Investments

1. Each Contracting Party shall ensure fair and equitable treatment within its territory to investments of investors of the other Contracting Party and shall ensure that the exercise of the rights recognized shall not be hindered in practice.

2. Each Contracting Party shall accord to investments of investors of the other Contracting Party in its territory treatment no less favourable than that accorded to its own of investments or investors to investors of any third country, whichever treatment is more favourable.

3. Where a Contracting Party grants special advantages to investors of any third State by virtue of an agreement establishing a free trade area, customs union, economic union, a common market or other forms of regional economic organization or any multilateral international agreements concluded in the framework of an international organisation of which the Contracting Parties are members, as well as any international agreement designed to facilitate frontier trade to which it belongs Contracting Party that at present or future membership in or by virtue of any agreement relating wholly or mainly to taxation matters; the Party shall not be obliged to accord such advantages to investors of the other Contracting Party.

## Article V. Administration, Management and Personnel Entry

1. Companies that are legally constituted under the applicable law of a Contracting Party and to investments within that legal framework may employ, managerial and technical personnel of their choice.

2. Subject to its domestic law relating to the Entry and Sojourn of aliens, each Contracting Party shall permit the Entry and Sojourn in its territory to investors of the other party and persons employed by them, with the aim of establishing and developing, adminístrar or advise the operation of such an investment of investor in the commitment of capital or other resources.

## Article VI. Performance Requirements

Neither Contracting Party may impose or enforce any of the following requirements with respect to permit for the establishment, expansion, mantenímiento or acquisition of an investment.

(a) Export a given level or percentage of goods or services;

(b) To achieve a given level or percentage of domestic content;

(c) To purchase or use a accord preference to produced goods or services provided in its territory;

(d) Any relationship between the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows with such investments.

## Article VII. Free Transfer

1. Each Contracting Party shall allow investors to without delay of the other Contracting Party to make the transfer of funds related to investments in a freely convertible currency, in particular, though not exclusively:

a) Dividends, interests, income, profits and other income;

b) Repayments of loans from abroad in connection with an investment;

c) The capital or the proceeds of the total or partial sale or liquidation of an investment;

d) The proceeds of the settlement of a dispute and compensation in accordance with this Agreement.

2. Transfers shall be made in accordance with the rate of exchange prevailing on the date of transfer, according to the Law of the Contracting Party which has admitted the investment once tax obligations.

3. A transfer shall be deemed to be made "without delay" when it has been made within the period normally necessary for the completion of the formalities of transfer. This period shall not exceed 60 days in accordance with the foreign exchange regulations in force and the availability of currencies at the market exchange rate of the Contracting Parties.

## Article VIII. Expropriation and Compensation

1. Neither Contracting Party shall take any measures depriving, directly or indirectly, an investor of the other Contracting Party of an investment unless the following conditions are met:

a) Where are the measures taken pursuant to a law, for reasons of public interest or national or social purpose;

b) Where the measures are not discriminatory;

c) Where the measures are accompanied by provisions for the payment of prompt, effective and adequate compensation.

2. The compensation shall be based on the market value of the investments have affected at the time immediately preceding the date on which the measure was taken or has become public knowledge the impending expropriation.

Where it is difficult to determine the value, the compensation shall be determined in accordance with generally recognized principles of appraising as equitable, taking into account the invested capital depreciation, capital, repatriated until that date, replacement value and other relevant factors. Any delay in payment of compensation shall be based on the average interest rate of interest passive of commercial banks of the Contracting Party where the expropriation, from the date of implementation of the measure until the date of payment.

3. The legality of expropriation, nationalization or any other measures having an equivalent effect and the amount of compensation shall may claim before the courts of the Contracting Party that measure.

## Article IX. Compensation for Damage or Loss

Investors of either Contracting Party whose investments in the territory of the other Contracting Party are damage or loss owing to war, armed conflict, a national state of emergency, civil disturbance or other similar events in the territory of the other party shall receive contratante. from this latter, as regards restitution, indemnification, compensation or other settlement, a treatment no less favourable than that accorded to its own investors or of any third State.

## Article X. Subrogation

1. If a Contracting Party or by an authorised agency that has been granted an insurance or other financial guarantee against non-commercial risks with regard to an investment by one of its investors in the territory of the other Contracting Party, the latter shall recognize the rights of the first Contracting Party to the rights of subrogation of the investor, when it has made a payment under such insurance or guarantee.

2. If a Contracting Party has paid to its investor and has taken by its rights and benefits, such an investor may not claim their rights and benefits to the other Contracting Party, except with the express authorization of the first Contracting Party.

## Article XI. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Disputes arising under this agreement between one Contracting Party and an investor of the other Contracting Party which has made investments in the territory of the first, shall, as far as possible, be settled through consultations.

2. If consultations fail to produce an solution within four months from the date of request for settlement, the investor may submit the dispute to:

a) The competent courts of the Contracting Party in whose territory the investment was made; or

b) An ad hoc tribunal which, unless the parties to the dispute agree otherwise, shall be established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL); or

c) To international arbitration of the International Centre for Settlement of Investment Disputes), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965.

3. Each Contracting Party consents to advance and irrevocably any difference that may be subject to one of the arbitral tribunals mentioned in subparagraphs (b) and (c) above.

4. Once the investor has submitted the dispute to the competent court of the Contracting Party in whose territory the investment has been made or to one of the arbitral tribunals referred to above, the choice of one or other of the procedure shall be final.

5. The arbitral awards shall be final and binding on the parties to the dispute and shall be executed in accordance with the domestic law of the Contracting Party in whose territory the investment has been made.

6. The Contracting Parties shall seek, through diplomatic channels matters related to disputes submitted to court proceedings or international arbitration in accordance with the provisions of this article, until the relevant processes are completed, except where the other party in the dispute has not complied with the court decision or the decision of the arbitral tribunal, under the terms established in the respective decision or award.

7. The arbitral tribunal shall decide the dispute in accordance with such rules of law as agreed by the parties. In the absence of agreement, the tribunal shall apply the law of a State that is a party to the dispute including its rules of private international law and such rules of International Law as may be applicable.

## Article XII. Settlement of Disputes between the Contracting Parties

1. Disputes arising between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled as far as possible through direct negotiations.

2. If an agreement cannot be achieved within a period of six months from the date of notification of the dispute, either Contracting Party may submit it to an ad hoc arbitral tribunal in accordance with the provisions of this article.

3. The arbitral tribunal shall consist of three members and shall be constituted in the following manner: within two months after the date of notification of the request for arbitration, each Contracting Party shall appoint an arbitrator. Those two arbitrators within thirty days after the appointment of the last one shall select a third member who shall be a national of a third State, who shall chair the Tribunal. The designation of the Chairman shall be approved by the Contracting Parties within thirty days after the date of his nomination.

4. If within the periods specified in paragraph 3 of this Article, the appointment has not been made or required the approval has been granted, either Contracting Party may request the President of the International Court of Justice to make the appointment. 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 Vice-President shall make the appointment, and if the latter is prevented or is a national of either of the Contracting Parties, the judge of the Court who in seniority who is not a national of one of the Contracting Parties shall make the appointment.

5. The President of the Tribunal shall be a national of a third State with which both Contracting Parties maintain diplomatic relations.

6. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the principles of international law and applicable general principles of law recognized by the Contracting Parties. The Tribunal shall decide by a majority of votes and shall determine its own procedural rules.

7. Each Contracting Party shall bear the costs of the arbitrator, as well as those relating to its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs of the proceedings shall be removed in equal parts by the

Contracting Parties unless they agree otherwise.

8. The decisions of the Tribunal shall be final and binding on both Contracting Parties.

## Article XIII. Consultations

1. The Contracting Parties shall consult on any matter relating to the application or interpretation of this Agreement.

2. At the request of either of the Contracting Parties shall exchange information on the measures taken by the other Contracting Party that may affect investments or returns covered by this Agreement.

## Article XIV. Final Provisions

1. The Contracting Parties shall notify to the fulfilment of constitutional requirements for the Entry into Force of this Agreement. This Agreement shall enter into force 45 days after the date of the last notification.

2. It shall remain in force for an initial period of ten years and shall be automatically renewed for further periods of equal length, except that the agreement is denounced.

3. Ten years, each Party may denounce this Agreement by a written notification, done at least six months before its expiry.

4. In the event of a complaint, the provisions of this Agreement shall continue to apply to investments made before the date of the complaint, for a further period of ten years.

Done at the city of Santo Domingo, Dominican Republic, twenty-eight (28) day of November in the year two thousand (2000), in duplicate in Spanish both texts being equally authentic.

FOR THE GOVERNMENT OF THE DOMINICAN REPUBLIC

Hugo Tolentino Dipp,

Secretary of State for Foreign Affairs.

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE

Antonio Ortega Riquelme,

Extraordinary Ambassador and Plenipotentiary of the Republic of Chile in the Dominican Republic.

## Protocol

At the signing of the Agreement for the Promotion and Reciprocal Protection of Investments, the Government of the Dominican Republic and the Government of the Republic of Chile have agreed on the following provision constitutes an integral part of this Agreement.

## Ad Article V

The invested capital may be transferred only after one year after its entry into the territory of the host Contracting Party of an investment unless the legislation of the latter provides for more favourable treatment.

Done at the city of Santo Domingo, Dominican Republic, twenty-eight (28) day of November in the year two thousand (2000), in duplicate in Spanish both texts being equally authentic.

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