

AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHILE AND THE GOVERNMENT OF THE HELLENIC REPUBLIC ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Hellenic Republic and the Government of the Republic of Chile,

Hereinafter referred to as the "Contracting Parties",

DESIRING to intensify their economic cooperation to the mutual benefit of both States on a long term basis,

HAVING as their objective to create and maintain favourable conditions for investments by investors of one Contracting Party, which implies the transfer of capital in the territory of the other Contracting Party,

RECOGNIZING that the reciprocal promotion and protection of investments, on the basis of this Agreement, will stimulate the initiative in this field and favour the economic prosperity of both countries;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement:

1 . "Investor" means the following persons of one Contracting Party which have made an investment in the territory of the other Contracting Party, in accordance with this Agreement:

- a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;
- b) Legal entities, including companies, corporations, business associations and other legally recognised entities, which are constituted or otherwise duly organised under the law of that Contracting Party and have their effective economic activities in the territory of that same Contracting Party.

2 . "Investment" means every kind of asset, provided that the investment has been made in accordance with the laws and regulations of the host Contracting Party and shall include, in particular, though not exclusively:

- a) Movable and immovable property and any other real rights such as servitudes, usufructus, mortgages or pledges;
- b) Shares, stock and debentures of a company and any other form of participation in a company;
- c) Claims to money or to any performance under contract having an economic value, as well as loans connected to an investment;
- d) Intellectual and industrial property rights, copyright, patents, trade marks, technical processes, know-how, goodwill and any other similar rights;
- e) Concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources;

Any alteration in the form in which assets are invested shall not affect their character as investment.

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

Returns from the investment and, in cases of reinvestment, the income insuing therefrom, enjoy the same protection as the initial investment.

4 . "Territory" means in respect of either Contracting Party, the land, sea and airspace under its sovereignty, including the exclusive economic zone and the continental shelf over which that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

Article 2. Scope of Application

This Agreement shall apply to investments made prior to as well as after its entry into force by investors of either Contracting Party in the territory of the other Contracting Party, in accordance with the latter's legislation. It shall, however, not apply to disputes which arose prior to its entry into force.

Article 3. Promotion and Protection of Investments

1 . Each Contracting Party shall, subject to its general policy in the field of foreign investments, promote in its territory investments by investors of the other Contracting Party and shall admit such investments in accordance with its legislation.

2 . Each Contracting Party shall protect and accord full security, within its territory, to investments by investors of the other Contracting Party and shall not impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale or liquidation of such investments.

3 . Each Contracting Party shall observe any other obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 4. Treatment of Investments

1 . Each Contracting Party shall guarantee a fair and equitable treatment to investments made by investors of the other Contracting Party in its territory and shall ensure that the exercise of the rights thus recognised shall not be hindered in practice.

2 . Each Contracting Party shall accord to investments, made in its territory by investors of the other Contracting Party, treatment not less favourable than that which it accords to investments of its own investors or to investments of investors of any third State, whichever is more favourable.

3 . Each Contracting Party shall accord to investors of the other Contracting Party, as regards their activity in connection with investments in its territory, treatment not less favourable than that which it accords to its own investors or to investors of any third State, whichever is more favourable, provided that this activity is exercised in accordance with its laws and regulations.

4 . If a Contracting Party accords special advantages to investors of any third country by virtue of an agreement establishing a free trade area, a customs union, a common market, an economic union, a regional economic integration organisation or other similar agreement of which that Contracting Party is a member or through the provisions of an agreement or arrangement relating wholly or mainly to taxation, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

Article 5. Free Transfer

1 . Each Contracting Party shall guarantee, in respect of investments of investors of the other Contracting Party, the unrestricted transfer of the investment and its returns,

The transfers shall be effected without delay, in a freely convertible currency, at the market rate of exchange applicable on the date of transfer.

2 . Such transfers shall include in particular, though not exclusively:

- a) Capital and proceeds of sale or liquidation of the whole or any part of the investment;
- b) Profits, interest, dividends and other current income;
- c) Funds in repayment of loans;
- d) Royalties and fees;
- e) Compensation under Articles 6 and 7.

3 . A transfer shall be deemed to be made without delay if carried out within such period as is normally required for the completion of transfer formalities. The said period shall start on the day on which the relevant request has been submitted in due form and may in no case exceed thirty days.

Article 6. Compensation In Case of Expropriation

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 complied with:

- a) The measures are taken in the public benefit and in accordance with the law;
- b) The measures are not discriminatory;
- c) The measures are accompanied by the payment of prompt, adequate and effective compensation.

2 . The compensation shall amount to the market value of the investment affected immediately before the actual measure was taken or became public knowledge, whichever is the earlier. Where that value cannot be readily ascertained, the compensation may be determined in accordance with generally recognised equitable principles of valuation, taking into account the capital invested, depreciation, capital already repatriated, replacement value, goodwill and other relevant factors.

The compensation shall carry interest at the appropriate market rate from the date of expropriation until the date of payment.

3 . The investor affected shall have the right to access, under the law of the Contracting Party making the expropriation, to the judicial organs of that Party, in order to review the amount of compensation and the legality of any such expropriation or comparable measure.

Article 7. Compensation for Losses

1 . Investors 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, civil disturbance or other similar events in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State, whichever is more favourable. Resulting payments shall be made without delay and shall be freely transferable in a freely convertible currency.

2 . Without prejudice to paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from: paragraph 1 of this Article, investors of one Contracting Party who, in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

- a) Requisitioning of their investment or part thereof by the latter's forces or authorities, or
- b) Destruction of their investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation,

Shall be accorded restitution or compensation which in either case shall be prompt, adequate and effective.

Article 8. Subrogation

1 . If the investments of an investor of one Contracting Party in the territory of the other Contracting Party are insured against non-commercial risks under a legal system of guarantee, 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, without prejudice to the rights of the investor under Article 9 of this Agreement. Article 9 of this Agreement.

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

3 . Disputes between a Contracting Party and an insurer shall be tried to be remedied in accordance with the provisions of Article 9 of this Agreement. Article 9 of this Agreement.

Article 9. Settlement of Disputes between an Investor and a Contracting Party

1 . Disputes between an investor of a Contracting Party and the other Contracting Party concerning an obligation of the latter under this Agreement, in relation to an investment of the former, shall, if possible, be settled by the disputing parties in an amicable way.

2 . If such disputes cannot be settled within three months from the date either party requested amicable settlement, the investor concerned may submit the dispute either to the competent courts of the Contracting Party in the territory of which the investment has been made or to international arbitration.

3 . Once the investor has submitted the dispute to the competent tribunal of the Contracting Party in whose territory the investment was made or to international arbitration, that election shall be final.

4 . Where the dispute is referred to international arbitration the investor concerned may submit the dispute either to:

a) The International Centre for the Settlement of Investment Disputes, established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington D.C. on March 18, 1965, for arbitration or conciliation, or Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington D.C. on March 18, 1965, for arbitration or conciliation, or

b) An ad hoc arbitral tribunal to be established under the arbitration rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.), arbitration rules of the United Nations Commission on International Trade Law (U.N.C.I.T.R.A.L.).

Each Contracting Party hereby consents to the submission of such dispute to international arbitration.

5 . The arbitral tribunal shall decide the dispute in accordance with the provisions of this Agreement and the applicable rules and principles of international law. The awards of arbitration shall be final and binding on both parties to the dispute. Each Contracting Party shall carry out without delay any such award and such award shall be enforced in accordance with domestic law.

6 . During arbitration proceedings or the enforcement of the award, the Contracting Party involved in the dispute shall not raise the objection that the investor of the other Contracting Party has received compensation under an insurance contract in respect of all or part of the damage.

7 . Neither Contracting Party shall pursue through diplomatic channels any matter referred to arbitration, on the basis of this Article, until the proceedings have been terminated and a Contracting Party has failed to abide or to comply with the award rendered by the arbitral tribunal.

Article 10. Settlement of Disputes between the Contracting Parties

1 . Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled by negotiations, through diplomatic channels.

2 . If the dispute cannot thus be settled within six months from the date of notification of the dispute, it shall, upon request of either Contracting Party be submitted to an ad hoc arbitration tribunal.

3 . The arbitration tribunal shall be constituted ad hoc as follows: Each Contracting Party shall appoint one arbitrator and these two arbitrators shall agree upon a national of a third State as chairman. The arbitrators shall be appointed within two months, the chairman within four months from the date on which either Contracting Party has informed the other Contracting Party that it intends to submit the dispute to an arbitration tribunal.

The appointment of the chairman shall be approved by the Contracting Parties within thirty days of that person's nomination.

4 . if within the periods specified in paragraph 3 of this Article 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 the necessary appointments. If the President of the Court is a national of either Contracting Party or if he is otherwise prevented from discharging the said function, the Vice-President or if he too is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Member of the Court next in seniority, who is not a national of either Contracting Party, shall be invited to make the necessary appointments.

5 . The chairman of the tribunal shall be a national of a third country which has diplomatic relations with both Contracting Parties.

6 . The arbitration tribunal shall reach its decision taking into account the provisions of this Agreement, the principles and rules of international law on this subject and the general principles of Law as recognised by the Contracting Parties.

7 . Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

The tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding on the Contracting Parties.

8 . Each Contracting Party shall bear the cost of the arbitrator appointed by itself and of its representation. The cost of the chairman as well as the other costs will be born in equal parts by the Contracting Parties. The tribunal may, however, in its decision direct that a higher proportion of costs shall be born by one of the two Contracting Parties and this award shall be binding on both Contracting Parties.

Article 11. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to this Agreement, contain a regulation, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by this Agreement, such regulation shall, to the extent that it is more favourable, prevail over this Agreement.

Article 12. Consultations

Representatives of the Contracting Parties shall, whenever necessary, hold consultations on any matter affecting the implementation or interpretation of this Agreement. These consultations shall be held on the proposal of one of the Contracting Parties at a place and at a time to be agreed upon through diplomatic channels.

Article 13. Entry Into Force — Duration — Termination

1 . This Agreement shall enter into force thirty days after the date on which the Contracting Parties have exchanged written notifications informing each other that the procedures required by their respective laws to this end have been completed. It shall remain in force for a period of fifteen years from that date.

2 . Unless notice of termination has been given by either Contracting Party at least one year before the date of expiry of its validity, this Agreement shall thereafter remain in force indefinitely, each Contracting Party reserving the right to terminate the Agreement upon notice of at least one year.

3 . In respect of investments made prior to the date of termination of this Agreement, the foregoing Articles shall continue to be effective for a further period of fifteen years from that date.

4 . This Agreement shall be applicable irrespective of whether diplomatic or consular relations exist between the Contracting Parties.

In case of divergence the English text shall prevail.

FOR THE GOVERNMENT OF THE HELLENIC REPUBLIC

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE