

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ICELAND AND THE GOVERNMENT OF THE REPUBLIC OF CHILE FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

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

Desiring to develop economic co-operation to the mutual benefit 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 Contracting Party, and

Conscious that the promotion and reciprocal protection of investments in terms of this Agreement stimulates the business initiatives in this field,

Have agreed as follows:

## **Article I. Definitions**

For the purpose of this Agreement

1. The term "investment" means any kind of asset, invested in connection with economic activities, provided that the investment has been made in accordance with the legislation and regulations of the other Contracting Party, and shall include in particular, though not exclusively:

- a) movable and immovable property and any other property rights such as mortgages, liens or pledges;
- b) shares, debentures or any other kinds of participation in companies;
- c) claims to money or to any performance having an economic value;
- d) intellectual property rights, including copyrights, patents, trademarks, trade names, technical processes, know-how and goodwill;
- e) concessions conferred by law or under contract, including concessions to search for, extract or exploit natural resources.

2. The term "investor" means:

- 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 organizations, which are incorporated or constituted in accordance with the law of that Contracting Party and have their seat, together with real economic activities, in the territory of that same Contracting Party.

3. The term "territory" means the territory of each Contracting Party, as well as areas beyond the territory in which each Contracting Party may exercise sovereign rights or jurisdiction in accordance with international law.

## **Article II. Scope of Application**

The present Agreement shall apply to investments within the territory of one Contracting Party made in accordance with its legislation, prior to or after the entry into force of the Agreement, by investors of the other Contracting Party. It shall however not be applicable to divergencies or disputes which have arisen prior to its entry into force.

## **Article III. Promotion and Protection of Investments**

1. Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments within its territory, subject to its general policy in the field of foreign investments, and shall admit such investments 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 impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment, extension, sale and liquidation of such investments.

#### **Article IV. Treatment of Investments**

1. Each Contracting Party shall ensure fair and equitable treatment within its territory of the investments of the investors of the other Contracting Party. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory to the investments by its own investors or investors of the most favoured nation.
2. The treatment granted under this article shall not apply to any advantage accorded to investors of a third state by the other Contracting Party based on any existing or future customs or economic union or free trade agreement to which either of the Contracting Parties is or becomes a party. Neither shall such treatment relate to any advantage which either Contracting Party accords to investors of a third state by virtue of a double taxation agreement or other agreements regarding matters of taxation or any domestic legislation relating to taxation.

#### **Article V. Expropriation and Compensation**

1. Neither Contracting Party shall take any measure depriving, directly or indirectly, an investor of the other Contracting Party of an investment unless the following conditions are complied with:
  - a) the measure is taken in the public or national interest and under due process of law;
  - b) the measure is not discriminatory;
  - c) the measure is accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall be based on the market value of the investments affected immediately before the measure became public knowledge. This compensation shall carry interest at a commercial rate established on a market basis from the date of expropriation until the date of payment.
2. There shall be legal provision giving an investor concerned a right to prompt review of the legality of the measure taken against the investment and of their valuation in accordance with the principles set out in this paragraph by due process of law in the territory of the Contracting Party making the expropriation.
3. The investor of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion, which took place in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other valuable consideration, no less favourable than that which that Contracting Party accords to investors of any third State.

#### **Article VI. Free Transfer**

1. Each Contracting Party shall allow without delay the investors of the other Contracting Party the transfer of payments in connection with an investment in a freely convertible currency, particularly of:
  - a) interests, dividends, profits and other returns;
  - b) repayments of loans related to the investment;
  - c) payments derived from rights enumerated in Article I, paragraph (1), letter (d) of this Agreement;
  - d) the proceeds of the partial or total sale of the investment;
  - e) compensation for dispossession or loss described in Article V of this Agreement;
2. A transfer shall be deemed to have been 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 two months. Transfers shall be made at the prevailing rate of exchange on the date of transfer.

3. Equity capital can only be transferred one year after it has entered the territory of the Contracting Party unless its legislation provides for a more favourable treatment.

## **Article VII. Principle of Subrogation**

Where one Contracting Party or its designated agency has granted any 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 by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the first Contracting Party

## **Article VIII. Disputes between an Investor and a Contracting Party**

1. Any dispute between an investor of a Contracting Party and another Contracting Party arising directly out of an investment by that investor in the territory of that other Contracting Party shall, as far as possible, be settled amicably through consultations between the investor and that other Contracting Party.

2. If these consultations do not result in a solution within six months from the date of request for consultations, the investor may submit the matter to one the following:

a) the competent tribunal of the Contracting Party in whose territory the investment was made;

b) arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States (the "ICSID Convention"), if this Convention is available and provided the State party to the dispute gives its consent under Article 25 of the ICSID Convention for that specific dispute;

c) arbitration under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), provided the State party to the dispute gives its consent.

Once the investor has submitted the dispute to the competent tribunal of the Contracting Party in whose territory the investment was made or the State party to the dispute has accepted that it be submitted to international arbitration, the election of one or the other procedure will be final.

3. A company of a Contracting Party, which from the time of the events giving rise to the dispute until its submission for resolution under paragraph 2 above was an "investment of an investor of another Contracting Party", shall for the purposes of disputes concerning that investment be considered an investor of another Contracting Party (i.e. a "national or company of another Contracting State" under Article 25 (2) (b) of the ICSID Convention).

4. A Contracting Party which is involved in any proceeding in accordance with this Article shall at no time whatsoever assert as a defense any counterclaim or right of set-off on the fact that the investor has received or will receive compensation under an insurance or guarantee contract.

5. Any arbitral award rendered pursuant to this Article shall be final and binding on parties to the dispute and shall be executed without delay according to the national law of the Contracting Party concerned.

## **Article IX. Settlement of Disputes between the Contracting Parties**

1. Disputes between the Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

2. If a dispute between the Contracting Parties cannot thus be settled within six months after the beginning of negotiations, it shall, upon request of either Contracting Party, be submitted to an arbitral tribunal of three members. Each Contracting Party shall appoint one arbitrator, and these two arbitrators shall appoint a chairman who shall be a national of a third State.

3. If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months, the arbitrator shall be appointed upon the request of that Contracting Party by the President of the International Court of Justice.

4. If the appointment of a chairman has not been made within two months after the appointment of the two arbitrators, either Contracting Party may invite the President of the International Court of Justice to make the appointment of a chairman.

5. If, in the cases specified under paragraphs (3) and (4) of this Article, 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, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

6. Subject to other provisions made by the Contracting Parties, the tribunal shall determine its procedure. The tribunal reaches its decision on the basis of the provisions of the present agreement and of the general principles and rules of international law. Furthermore each Contracting Party shall bear the cost of the arbitrator it has appointed and of its representation in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by the Contracting Parties unless agreed otherwise.

7. The decisions of the tribunal are final and binding for each Contracting Party.

## **Article X. Entry Into Force , Duration and Termination**

1. Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.

2. This Agreement shall remain in force for a period of ten years. Thereafter, it shall remain in force until the expiration of a twelve month period from the date either Contracting Party notifies the other in writing of its intention to terminate this Agreement.

3. In respect of investments made prior to the termination of this Agreement, the provisions of this Agreement shall continue to be effective for a period of ten years from the date of termination.

Done at Kristiansand, this 26th day of June 2003, in duplicate in the English language.

For the Government of Iceland

Halldór Ásgrímsson

For the Government of Chile

María Soledad Alvear Valenzuela