

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

The Government of the Republic of Chile and the Government of the Kingdom of Sweden, desiring to intensify economic cooperation to the mutual benefit of both countries and to maintain fair and equitable conditions for investments by investors of one Contracting Party in the territory of the other Contracting Party,

recognizing that the promotion and reciprocal protection of such foreign investments favour the expansion of the economic relations between the two Contracting Parties and stimulate investment initiatives,

have agreed as follows.

Article 1. Definitions

For the purposes of this Agreement:

(1) "investment" shall mean any kind of asset, invested by an investor of one Contracting Party in the territory of the other Contracting Party, provided that the investment has been made in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, though not exclusively,

(a) movable and immovable property as well as any other property rights, such as mortgage, lien, pledge, usufruct and similar rights;

(b) shares and other kinds of participation in companies;

(c) title to money or any performance having an economic value;

(d) intellectual property rights, technical processes, trade names, know-how, goodwill, and other similar rights; and

(e) business concessions conferred by law, administrative decisions or under contract, including concessions to search for, develop, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investment.

(2) "investor" shall mean:

(a) any natural person who is a national of a Contracting Party in accordance with its laws; and

(b) any legal person constituted under the law of either Contracting Party and having its seat in the territory of that same Contracting Party, or any legal person constituted under the law of a third country and effectively controlled by nationals of a Contracting Party or by legal persons having their seat in the territory of a Contracting Party and constituted under the law of that Contracting Party.

(3) "returns" shall mean the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividend, royalties or fees.

(4) "territory" shall mean the territory of each Contracting Party including the exclusive economic zone, the seabed and the subsoil, over which the Contracting Party exercises, in accordance with international law, sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investment, 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 at all times ensure fair and equitable treatment of the investments by investors of the other Contracting Party and shall not impair the management, maintenance, use, enjoyment or disposal thereof as well as the acquisition of goods and services and the sale of their production, through unreasonable or discriminatory measures.

(3) Goods under a leasing agreement shall be treated no less favourably than an investment.

(4) Subject to the laws and regulations relating to the entry and sojourn of aliens, individuals working for an investor of one Contracting Party, as well as members of their household, shall be permitted to enter into, remain on and leave the territory of the other Contracting Party for the purpose of carrying out activities associated with investments in the territory of the latter Contracting Party.

(5) The investments made in accordance with the laws and regulations of the Contracting Party in whose territory they are undertaken, enjoy the full protection of this Agreement.

Article 3. Treatment of Investments

(1) Each Contracting Party shall accord to investments made in its territory by investors of the other Contracting Party a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of third States, whichever is the most favourable.

(2) Notwithstanding the provisions of Paragraph (1) of this Article, a Contracting Party which has concluded or may conclude an agreement regarding the formation of a customs union, a common market or a free-trade area shall be free to grant more favourable treatment to investments by investors of the State or States which are also parties to the aforesaid agreements, or by investors of some of these States.

(3) The provisions of Paragraph (1) of this Article shall not be construed so as to oblige one Contracting Party to extend to investors of the other Contracting Party the benefit of any treatment, preference or privilege resulting from any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

Article 4. 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 complied with:

a) the measures are taken in the public or national interest and under due process of law;

b) the measures are unequivocal and not discriminatory; and

c) the measures are accompanied by provisions for the payment of prompt, adequate and effective compensation, which shall be transferable without delay in a freely convertible currency.

(2) The legality of any such measures and the amount of compensation shall be subject to review by due process of law, in accordance with the principles set out in Paragraph (1).

(3) The provisions of Paragraphs (1) and (2) of this Article shall also apply to the returns from an investment as well as, in the event of liquidation, the proceeds from the liquidation.

(4) Investors of either Contracting Party who suffer losses of their investments in the territory of the other Contracting Party due to war or other armed conflict, a state of national emergency, revolt, insurrection or riot shall be accorded, with respect to restitution, indemnification, compensation or other settlement, a treatment which is no less favourable than that accorded to its own investors or investors of any third State. Resulting payments shall be transferable without delay in a freely convertible currency.

Article 5. Transfers

(1) Each Contracting Party shall allow without delay the transfer in a freely convertible currency, of:

a) the returns;

b) the proceeds from a total or partial sale or liquidation of any investment by an investor of the other Contracting Party;

c) funds in repayment of loans related to an investment; and

d) the earnings of individuals, not being its nationals, who are allowed to work in connection with an investment in its territory and other amounts appropriated for the coverage of expenses connected with the management of the investment.

(2) Each Contracting Party undertakes to accord to transfers referred to in paragraph (1) of this Article a treatment no less favourable than that accorded to transfers originating from investments made by its own investors or investors of any third State.

(3) Any transfer referred to in this Agreement shall be effected at the exchange rate prevailing on the date the transfer is made.

(4) Transfers concerning investments made under the Chilean Special Programme of Foreign Debt Equity Swaps are subject to special regulations.

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

Article 6. Subrogation

If one Contracting Party or its designated agency makes a payment to any of its investors under a guarantee it has granted in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party, without prejudice to the rights of the former Contracting Party under Article 8, recognise the transfer of any right or title to such investor to the former Contracting Party or its designated agency and the subrogation of the former Contracting Party or its designated agency to any such right or title.

Article 7. Disputes between an Investor and a Contracting Party

(1) Any dispute concerning an investment between an investor of one Contracting Party and the other Contracting Party shall, if possible, be settled amicably.

(2) If the dispute cannot thus be settled within six months following the date on which the matter of the dispute has been raised by either party, it may be submitted upon request of the investor either to

- the national jurisdiction of the Contracting Party in whose territory the investment was made; or
- international arbitration according to the provisions of Paragraph (3) of this Article.

Once an investor has submitted a dispute to the aforementioned national jurisdiction or to international arbitration, the choice of one or other of these procedures shall be final, unless the parties in dispute agree otherwise.

(3) Where the dispute is referred to international arbitration in accordance with the provisions of this Article, each Contracting Party hereby gives its consent to its submission to the International Centre for Settlement of Investment Disputes for settlement, by conciliation or arbitration, under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965.

(4) For the purpose of this Article, any legal person which is constituted under the law of one Contracting Party and which before a dispute arises is controlled by investors of the other Contracting Party shall be treated, in accordance with Article 25 (2) (b) of the said Washington Convention, as a legal person of the other Contracting Party.

Article 8. 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 between the Governments of the two Contracting Parties.

(2) If the dispute cannot thus be settled within six months following the date on which such negotiations were requested by either Contracting Party, it shall at the request of either Contracting Party, be submitted to an arbitration tribunal.

(3) The arbitration tribunal shall be set up from case to case, each Contracting Party appointing one member. These two members shall agree upon a national of a third State as their Chairman, to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months, and the Chairman within four months, from the date either Contracting Party has advised the other Contracting Party of its wish to submit the dispute to an arbitration tribunal.

(4) If the time limits referred to in Paragraph (3) of this Article have not been complied with, either Contracting Party may, in

the absence of any other relevant arrangement, invite the President of the International Court of Justice to make the necessary appointments.

(5) If the President of the International Court of Justice is prevented from discharging the function provided for in Paragraph (4) of this Article or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is prevented from discharging the said function or is a national of either Contracting Party, the most senior member of the Court who is not incapacitated or a national of either Contracting Party shall be invited to make the necessary appointments.

(6) The arbitration tribunal shall reach its decision by a majority of votes, the decision being final and binding on the Contracting Parties. Each Contracting Party shall bear the cost of the member appointed by that Contracting Party as well as the costs for its representation in the arbitration proceedings: the cost of the chairman as well as any other costs shall be borne in equal parts by the two Contracting Parties. The arbitration tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the Contracting Parties. In all other respects, the procedure of the arbitration tribunal shall be determined by the tribunal itself.

Article 9. Application of the Agreement

(1) This Agreement shall apply to all investments, whether made before or after the entry into force, but shall not apply to disputes concerning an investment which have arisen prior to its entry into force.

(2) This Agreement shall in no way restrict the rights and benefits which an investor of one Contracting Party enjoys under national or international law in the territory of the other Contracting Party.

Article 10. Entry Into Force, Duration

(1) The Contracting Parties shall notify each other when the constitutional requirements for the entry into force of this Agreement have been fulfilled. The Agreement shall enter into force thirty days after the date of receipt of the last notification.

(2) This Agreement shall remain in force for a period of twenty years. Thereafter it shall remain in force until the expiration of twelve months from the date that either Contracting Party in writing notifies the other Contracting Party of its decision to terminate this Agreement.

(3) With respect to investments made prior to the date when the notice of termination of this Agreement shall be effective, the provisions of Articles 1 to 9 shall remain in force for a further period of twenty years from that date.

In witness whereof, the undersigned, duly authorized, to this effect, have signed this Agreement.

Done at Stockholm, dated 24 May 1993, in duplicate in the Spanish, Swedish and English languages, the three texts being equally authentic. In the case of divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Chile

For the Government of the Kingdom of Sweden

Protocol

On signing the Agreement between the Republic of Chile and the Kingdom of Sweden on the Promotion and Reciprocal Protection of Investments, the undersigned plenipotentiaries have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement.

Ad Article 1(2)(b)

The Contracting Party in whose territory the investments are undertaken may require proof of the effective control invoked by investors of the other Contracting Party. The following facts, inter alia, shall be accepted as evidence of such control;

i) the status of an affiliate of a legal person of the other Contracting Party;

ii) a direct or indirect participation in the capital of a legal person which allows an effective control as, in particular, a direct or indirect participation higher than 50% of the capital;

iii) that the votes directly or indirectly controlled by investors of the other Contracting Party makes it possible for them to exercise such control.

Done at Stockholm on 24 May 1993 in duplicate in the Spanish, Swedish and English languages, the three texts being equally authentic. In case of divergence of interpretation the English text shall prevail.

For the Government of the Republic of Chile

For the Government of the Kingdom of Sweden