

# **AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF CHILE AND THE GOVERNMENT OF THE REPUBLIC OF FRANCE ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS**

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

Desiring to strengthen economic cooperation between the two States and to create favorable conditions for French investments in Chile and Chilean investments in France,

Convinced that the promotion and protection of such investments will be conducive to the stimulation of foreign capital and technology transfer between the two countries in the interest of their economic development,

Have agreed as follows:

## **Article 1.**

For the purposes of this Agreement:

1. the term "investment" means assets, such as property rights and interests of all kinds, and particularly but not limited to:

- a) Movable and immovable property as well as any other rights in rem such as mortgages, liens, usufructs, deposits, and similar rights;
- b) Shares, stocks and other forms of participation, including minority and indirect forms, in companies incorporated in the territory of one of the Contracting Parties ;
- c) obligations or debentures, or rights to claim any performance having economic value;
- d) Copyrights, industrial property rights, such as patents, licenses, trademarks, industrial designs or models, technical processes, trade names, and goodwill;
- e) Concessions granted by law or under contract, including concessions to search for, culture, extract or exploit natural resources including those of the maritime area situated in Contracting Parties.

It is understood that such assets must be or have been invested in accordance with the law of the Contracting Party in the territory or maritime area in which the investment is made before or after the entry into force of this Agreement.

Any alteration of the form in which assets are invested shall not affect their classification as an investment, provided that such change is not contrary to the legislation of the Contracting Party in the territory or maritime area in which the investment is made.

2. The term "national" means natural persons having the nationality of either Contracting Party, in accordance with its legislation.

3. The term "companies" juridical means any person in the territory of one of the Contracting Parties in accordance with their legislation and having its registered office or directly or indirectly controlled by nationals of either Contracting Party, or by a juridical person with its head office in the territory of one of the Contracting Parties and in accordance with its law.

4. The term of "returns" means all amounts yielded by an investment, such as profits, royalties or interests during a period of time. Investment returns and in case of reinvestment, returns from their reinvestment shall enjoy the same protection as the investment.

5. This Agreement shall apply to the territory of each Contracting Party as well as the maritime area of each of the

Contracting Parties, hereinafter referred to as defined as the economic zone and the continental shelf extending beyond the limits of the territorial waters of each of the Contracting Parties and on which they have, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploitation and exploration for and preservation of natural resources.

## **Article 2.**

Each Contracting Party recognizes and encourages, within the framework of its laws and the provisions of this Agreement, all investments made by companies and nationals of the other party in its territory and in the maritime area.

## **Article 3.**

Each Contracting Party undertakes to provide, in its territory and in the maritime area, fair and equitable treatment in accordance with the principles of international law, to investments of nationals and companies of the other party and to ensure the enjoyment of the right thus recognized is hampered in either law or in fact.

## **Article 4.**

Each Contracting Party shall apply in its territory and in its maritime area, to nationals and companies of the other Party, in respect of their investments and related activities, treatment no less favorable than that accorded to its nationals or companies, or treatment accorded to nationals or companies of the most favored nation, whichever is the better. In this connection, nationals authorized to work in the territory and a maritime area of one of the Contracting Parties shall enjoy appropriate facilities for the exercise of their professional activities related to investment.

This treatment shall not include privileges accorded by a Contracting Party to nationals or companies of a third State Party by virtue of their participation or association in a free trade area, customs union, common market, or any other form of regional economic organization.

The provisions of this Article shall not apply to tax matters.

## **Article 5.**

1. Investments made by companies or nationals of either Contracting Party shall enjoy full protection and security, in the territory, and in the maritime zones of the other Contracting Party.

2. No Contracting Party shall take measures to expropriate or nationalization or any other measure having the effect of depriving, in a manner or indirect, to the nationals or companies of the other Contracting Party of its investments on its territory and in its maritime area, except for the common good. These measures shall not be discriminatory or inconsistent with a special as referred to in Article 10 of this Convention.

Any measures of deprivation which may be taken shall give rise to a prompt and adequate compensation, the amount of which shall be calculated on the basis of the value The actual amount of the investments concerned shall be determined in accordance with the situation normal economic conditions prevailing before any threat of deprivation being verifiable in accordance with a regular court procedure.

Such compensation, amounts, and conditions of payment shall be fixed no later than on the date of dispossession. This compensation shall be effectively realizable, it shall be shall pay without delay and shall be freely transferable. Until the date of payment, it will accrue interest calculated at the corresponding market rate.

3. Nationals or companies of one of the Contracting Parties whose investments have suffered losses due to war or other armed conflicts, revolution, state of national emergency or revolt occurring in the territory or in the maritime areas of the other Contracting Party, shall be treated by that Party Contracting Party which is not less favorable than that granted to its own or societies or those of the most favored nation.

## **Article 6.**

Each Contracting Party in the territory or maritime area in which the investments were made by nationals or companies of the other Contracting Party shall grant those nationals or companies the free transfer of:

a) Profits, dividends, interests and other current income;

- b) Royalties arising out of intangible rights referred to in paragraph 1 (d) and (e) of article 1;
- c) Payments made for the reimbursement of loans contracted and regularly associated with investment;
- d) The proceeds of the sale of or the partial or total liquidation of the investment, including the value of the investment capital;
- e) Compensation of dispossession or loss as provided for in article 5, paragraphs 2 and 3 above.

The nationals of either Contracting Party who have been authorized to work in the territory or maritime zones of the other Contracting Party in respect of an approved investment shall also be authorized to transfer their country of origin in a proportion appropriate remuneration.

The transfers referred to in the preceding paragraphs shall be effected without delay formally at the normal rate of exchange applicable on the date of transfer.

## **Article 7.**

If the legislation of either Contracting Party provides a guarantee for investments abroad, it may be granted within the framework of a case-by-case review, to investments made by companies or nationals of that Party in the territory or maritime zones of the other party. Investments of nationals and companies of one Contracting Party in the territory or maritime zones of the other party may request the Security referred to in the preceding paragraph only if they have previously obtained accreditation of that other party.

## **Article 8.**

1. Any investment dispute between a Contracting Party and a national or company of the other Contracting Party shall as far as possible, be settled amicably between the two parties concerned.

2. If such a dispute cannot be settled within six months from the time at which it was raised by either party to the dispute, it shall be submitted at the request of the national or company:

- either to the competent court of the Contracting Party in whose territory the investment has been made;
- or to arbitration by the International Centre for Settlement of Investment Disputes (ICSID), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States done at Washington on 18 March 1965.

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 international arbitration, the choice of one of these procedures is final.

3. The arbitration award shall be final and binding on the parties.

## **Article 9.**

If one of the Contracting Parties, by virtue of a guarantee given in respect of an investment in the territory or maritime zones of the other party makes its payment to one of its nationals or companies, it is thereby entered into the rights and claims of the national or company.

Such nationals or companies will be entitled to initiate or continue actions to protect claims which have not been subjected to any subrogation.

As regards the claims which have been the subject of a subrogation, the procedure chosen under Article 8 shall apply.

## **Article 11.**

1. Disputes concerning the interpretation or application of this agreement should, if possible, be settled through diplomatic channels.

2. If within a period of six months from the time at which it was raised by either Contracting Party, the dispute is not settled, it shall be submitted, at the request of either contracting party to an arbitral tribunal.

3. The Tribunal shall be constituted for each individual case in the following way:

4. Each Contracting Party shall appoint one member and these two Members shall designate by common agreement, a national of a third State who shall be chairman appointed by both contracting parties. all members shall be appointed within two months from the date one Contracting Party has informed the other contracting party of its intention to submit the dispute to arbitration.

5. If the periods specified in paragraph 3 above have not been made, either Contracting Party, in the absence of any other agreement, invite the Secretary-General of the United Nations to make the necessary appointments. If the Secretary-General is a national of either Contracting Party or if he is otherwise prevented from exercising this function, the Under-Secretary-General the oldest and who is not a national of either Contracting Party shall make the necessary appointments.

6. The Tribunal shall take its decisions by majority vote. These decisions shall be final and legally binding on the Contracting Parties. The Tribunal shall establish its own rules of procedure. It shall interpret the judgment at the request of any of the Contracting Parties. Unless the Tribunal decides otherwise, in accordance with special circumstances, the two Governments shall share equally the legal costs, including the fees of the arbitrators.

## **Article 12.**

This Agreement shall apply to all investments made by companies or nationals of either Contracting Party in the territory or maritime zones of the other contracting party but shall not apply to any dispute concerning an investment that arose before entry into force of the Agreement.

## **Article 13.**

Each Party shall notify the other of the completion of the internal procedures required for the entry into force of this Agreement, which shall take effect one month after the date of receipt of the last notification.

This agreement is concluded for an initial period of ten years. it shall remain in force after the term unless one of the Parties denounces through diplomatic channels with one year notice.

On the expiry of the period of validity of the present Agreement investments over which it was in force will continue to benefit from the protection of its provisions for a further period of twenty years.

Signed in Paris, 14 July 1992, in duplicate in the French and Spanish languages, both texts being equally authentic.

For the Government of the French Republic:

Michel Sapin

For the Government of the Republic of Chile:

Patricio Aylwin

## **Protocol**

At the time of signing, this same day, the agreement between the Government of the Republic of Chile and the Government of the Republic of France, on the Promotion and Reciprocal Protection of Investments, the Contracting Parties have also agreed to the following provisions which are an integral part of this Agreement.

## **With Regard to Article 1**

The direct or indirect control of a juridical person as referred to in Article 1, Section 3 of this Agreement may be established in particular by the following evidence

- the status of a branch;

- a percentage of direct or indirect holding which represents effective control, and in particular a holding which exceeds 50%;

- direct or indirect holding of a voting right which represents a decisive position in the executive bodies or a decisive influence by other means on their business.

### **With Regard to Article 3**

(a) Any discriminatory restriction on the purchase or transport of raw and auxiliary materials, energy sources and fuels, means of production and operation of any kind, such as any discriminatory obstacle to the sale or transport of products within the country and abroad, and any other measures having a similar effect, shall be deemed to constitute a de jure or de facto impediment to fair and equitable treatment

(b) Within the framework of their internal legislation, the Contracting Parties shall give due consideration to applications for entry and for residence, work, and travel permits made by nationals of one of the Contracting Parties in connection with an investment made in the territory in the maritime zone of the other Contracting Party.

### **With Regard to Article 6**

(a) Notwithstanding the provisions of Article 6 and insofar as it is provided for in Chilean legislation, the Republic of Chile may reserve the right to authorize exclusively the repatriation of capital, at the latest after three years from the date of the investor's admission.

(b) While the Chilean foreign debt conversion program is still in force, the Republic of Chile shall grant French investors the right to repatriate any investment made under this program after ten years have elapsed from the date of its admission and the transfer of profits after four years have elapsed. The profits of the first four years will be transferable from the fifth year in annual installments of 25% respectively. This will not affect the investor's right to opt for the shorter periods stipulated in the special rules established by the Central Bank of Chile.

(c) In no case shall French investors be treated, with respect to transfer matters, in a less favorable manner than investors of a third State.

### **With Respect to Articles 6 and 8**

The provisions under Articles 6 and 8 shall not apply to investments made by natural persons who are nationals of one of the Contracting Parties and who, on the date of the investment in the territory or in the maritime zones of the other Contracting Party, have had their domicile in the territory of that other Contracting Party for more than five years, unless the funds required for the investment come from abroad.

Signed at Paris, 14 July 1992, in duplicate in the French and Spanish languages, both texts being equally authentic.

For the Government of the French Republic:

Michel Sapin

For the Government of the Republic of Chile:

Patricio Aylwin