# AGREEMENT BETWEEN THE REPUBLIC OF CHILE AND THE REPUBLIC OF TUNISIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Republic of Chile and the Republic of Tunisia (hereinafter the "Contracting Parties").

DESIRING to intensify economic cooperation to the mutual benefit of both States;

INTENDING 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 such foreign investments according to the present Agreement, stimulate the business initiative in this field.

HAVE AGREED AS FOLLOWS:

## Article 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" shall mean the following subjects of one Contracting Party which has made an investment in the territory of the other Contracting Party in accordance with the present Agreement.

(a) Natural persons who, according to the law of that Contracting Party, are considered to be its nationals;

(b) Legal person, including companies, corporations, business associations and other legally recognized entities, which are constituted or otherwise duly organised under the law of that Contracting Party and have their seat together with effective economic activities in the territory of that same Contracting Party.

(2) The term "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 admitted 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 and any other property rights such as servitude, mortgages, enjoyment, liens or pledges and other similar rights;

(b) Shares, debentures or any other kinds of participation in companies;

(c) A loan or other claim to money or to any performance having an economic value;

(d) Intellectual property rights, including copyright, patents, trademarks, trade names, technical processes know-how and goodwill;

(e) Concessions conferred by law or under contract including concessions to search for, cultivate, extract or exploit natural resources.

(3) The term "returns" shall mean amounts yielded by an investment and includes, in particular though not exclusively, profits, interest, capital gains, shares, dividends, royalties or fees.

(4) The term "territory" shall mean in respect of each Contracting Party the land, maritime and air space under its sovereignty, including the exclusive economic zone and the continental shelf where that Contracting Party exercises, in conformity with international law, sovereign rights or jurisdiction.

## Article 2. Scope of Application

This Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws and regulations prior to or after ther entry into force of the Agreement, by investors of the other Contracting Party. It shall however not be applicable to disputes which arose prior to its entry into force or to disputes directly related to events which occurred 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 investments, promote investments by investors of the other Contracting Party.

(2) Each Contracting Party shall accord full protection and security within its territory to the 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 4. Treatment of Investments

(1) Each Contracting Party shall accord a fair and equitable treatment to investments made by investors of the other Contracting Party of its territory and shall ensure that the exercise of the right thus recognized shall not be hindered in practice.

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

(3) 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 and economic union or any other form of regional economic organization to which the Contracting Party is or may become a Party or through the provisions of an agreement 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 allow without delay the investors of the other Contracting Party the transfer of funds in connection with an investment and returns in a freely convertible currency, particularly though not exclusively:

(a) Interests, dividends, profits and other returns;

(b) Repayments of a loan agreement related to the investment;

(c) Any capital or proceeds from the sale or partial sale or liquidation of the investment;

(d) Compensation for expropriation or loss described in Article 6 of this Agreement and

(e) The earnings of natural persons subject to the laws and regulations of the Contracting Party in which investments have been made.

(2) Transfers shall be made at the exchange rate applying on the date of transfer in accordance with the laws and regulations of the Contracting Party which has admitted the investment.

## Article 6. Expropriation and Compensation

(1) Neither Contracting Party shall nationalize, expropriate or subject the investments of an investor of the other Contracting Party to any measures having an equivalent effect (hereinafter referred to as "expropriation") unless the following conditions are complied with:

(a) The measures are taken in the public interest and in accordance with the law;

(b) The measures are not discriminatory;

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

(2) The measures are taken against just compensation. Such compensation shall:

- Represent the market value of the investments affected, and shall, in order to be effective for the claimants, be paid and made transferable without delay to the territory of the Contracting Party of the claimants or any other country agreed upon by the claimants and the expropriating Contracting Party, and

- Include an amount to compensate for any delay in payment that may occur from the date of expropriation provided that the delay of payment is not caused by the investor.

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

(4) The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of emergency or rebellion or other similar events, which took place in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment as regard restitution, indemnification, compensation or other consideration, no less favourable than that which that Contracting Party accords to its own investors or to investors of any third country, whichever is more favourable to the investors concerned.

## Article 7. Subrogation

(1) Where one Contracting Party or an agency authorized by the Contracting Party has granted a contract of insurance or any form of 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 contract or financial guarantee by the first Contracting Party.

(2) Where a Contracting Party has made a payment to its investor and has taken over rights and claims of the investor, that investor shall not, unless authorized to act on behalf of the Contracting party making the payment, pursue those rights and claims against the other Contracting Party.

## Article 8. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) With a view to an amicable solution of disputes, which arise within the terms of this Agreement, between a Contracting Party and an investor of the other Contracting Party consultations will take place between the parties concerned.

(2) If these consultations do not result in a solution within four months from the date of request for settlement, the investor may submit the dispute either:

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

(b) To international arbitration of the International Centre for Settlement of Investment Disputes (ICSID), created by the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington on March 18, 1965.

(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) For the purpose of this Article, any legal person which is constituted in accordance with the legislation of one Contracting Party, and in which, before a dispute arises, the majority of shares are owned 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.

(5) The arbitration decisions shall be final and binding on both parties and shall be enforced in accordance with the laws of the Contracting Party in whose territory the investment was made.

(6) Once a dispute has been submitted to the competent tribunal or international arbitration in accordance with this Article, neither Contracting party shall pursue the dispute through diplomatic channels unless the other Contracting Party has failed to abide or comply with any judgment, award, order or other determination made by the competent international or local tribunal in question.

## Article 9. Settlement of Disputes between Contracting Parties

(1) The Contracting Parties shall endeavour to resolve any difference between them regarding the interpretation or application of the provisions of this Agreement by friendly negotiations.

(2) If the difference cannot thus be settled within six months following the date of notification of the difference, either Contracting Party may submit it to an Ad-hoc Arbitral Tribunal in accordance with this Article.

(3) The Arbitral Tribunal shall be formed by three members and shall be constituted as follows: within two months of the notification by a Contracting Party of its wish to settle the dispute by arbitration, each Contracting Party shall appoint one arbitrator. These two members shall then, within thirty days of the appointment of the last one, agree upon a trhird member who shall be a national of a third country and who acts as the Chairman. The appointment of the chairman shall be approved by the Contracting Parties within thirty days of that persons nomination.

(4) If, within the time limits provided for in paragraph (2) and (3) of this Article the required appointment has not been made or the required approval has not been given, either Contracting Party may request President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is prevented from carrying out the said function or if that person is a national of either Contracting Party, the appointments shall be made by the Vice-President, and if the latter is prevented or if that person is a national o either Contracting Party, the appointments shall be made by the most senior judge of the Court who is not a national of either Contracting Party.

(5) The Chairman of the Tribunal shall be a national of a third country which has diplomatic relations with both Contracting Parties.

(6) The Arbitral Tribunal shall reach its decisions taking into account the provisions of this Agreement, the principles of international law on this subject and the general principles of Law as recognized by the Contracting Parties. The Tribunal shall reach its decisions by a majority vote and shall determine its procedure.

(7) 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.

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

## Article 10. Application of other Rules and Special Commitments

Where a matter is governed simultaneously both by this Agreement and by another international agreement to which

both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rule are the more favourable to his case.

## Article 11. Final Provisions

(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 the latter notification.

(2) This Agreement shall remain in force for a period of fifteen years. Thereafter it shall remain in force indefinitely unless one of the Contracting Parties gives one year's written notice of termination through diplomatic channels.

(3) In respect of investments made prior to the date when the notice of termination of this Agreement becomes effective, the provisions of this Agreement shall remain in force a further period of fifteen years from that date.

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

DONE at Santiago, Chile, on this twenty third day of october, one thousand nine hundred and ninety eight, in duplicate in the Spanish, Arabic and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

On signing the Agreement on Reciprocal Promotion and Protection of Investment between the Republic of Chile and the Republic of Tunisia the Contracting Parties have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement.

Ad Article 2:.

For the Republic of Tunisia, this Agreement shall apply to investment made in its territory in accordance with its laws and regulations after January first, 1957.

Ad Article 5:.

(1) 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. Nevertheless that investor is allowed to invest that capital in a manner which will preserve the value until the transfer occurs.

(2) A transfer shall be deemed to have been made without delay if carried out within the necessary period normally required for the completion of transfer formalities. That period shall in no case exceed thirty days.

DONE at Santiago, Chile, on this twenty third day of October, one thousand nine hundred and ninety eight, in duplicate in the Spanish, Arabic and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.