

# **TREATY BETWEEN THE REPUBLIC OF CHILE AND THE FEDERAL REPUBLIC OF GERMANY ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Federal Republic of Germany and the Republic of Chile,

In the desire to deepen economic cooperation between the two countries by increasing mutual investment,

In the endeavor to create favorable conditions for the investments of nationals or companies of one State in the territory of the other State,

Recognizing the fact that the promotion and the contractual protection of these investments are capable of stimulating private economic initiatives and increasing the prosperity of the two peoples,

Have agreed as follows:

## **Article 1.**

For the purposes of this Treaty

1. the term "investments" means assets of any kind, in particular

- a) Ownership of movable and immovable property as well as other rights in rem such as mortgages and liens,
- b) Shareholdings in companies and other types of participations in companies,
- c) Claims for money that has been used to create an economic value or claims for benefits which have an economic value,
- d) Intellectual property, such as, in particular, copyrights, patents, utility models, industrial designs, trade names, business and business secrets, technical procedures, know-how and goodwill,
- e) Public-law concessions, including concession and concession concessions;

A change in the form in which assets are invested does not affect their property as an investment;

2. The term "income" means the amounts accruing to an investment for a certain period, such as profit shares, dividends, interest, royalties or other charges;

3. The term "nationals"

a) With regard to the Federal Republic of Germany:

Germans within the meaning of the Basic Law for the Federal Republic of Germany,

b) With regard to the Republic of Chile:

Chilean States within the meaning of the Constitution of the Republic of Chile;

4. The term "companies"

a) With regard to the Federal Republic of Germany:

Any legal person as well as any commercial or other company or association with or without legal personality having its head office in the German territory and complying with German law, whether or not its activity is directed at profit,

b) With regard to the Republic of Chile:

Any legal person established in the Republic of Chile in accordance with the legislation in force there and situated in the territory of Chile, whether or not its activity is directed to profit or not.

## **Article 2.**

(1) Each Contracting Party shall, as far as possible, promote the investment of nationals or companies of the other Contracting Parties in its territory and permit such investments in accordance with its laws. In any case, it will treat capital investments fairly and cheaply.

(2) Investments made by nationals or companies of the other Contracting Parties in accordance with the legal provisions of a Contracting Party within the scope of their jurisdiction enjoy the full protection of the contract.

(3) A Contracting Party shall in no way affect the management, use, use or use of the investments of nationals or companies of the other Contracting Parties in its territory by means of arbitrary measures or unjustified unequal treatment.

(4) This Treaty shall also apply to the areas of the exclusive economic zone and the continental shelf to the extent that international law authorizes the respective Contracting Party to exercise sovereignty or jurisdiction in such areas. areas.

## **Article 3.**

(1) Each Contracting Party shall treat investments in its territory owned or under the influence of nationals or companies of the other Contracting Parties no less favorable than the investments of its own nationals and companies or investments of nationals and companies of third States.

(2) Each Contracting Party shall not treat nationals or companies of the other Contracting Parties as less favorable than their own nationals and companies or nationals and companies of third States with regard to their activities in connection with investments in their territory.

(3) This treatment does not relate to privileges granted by a Contracting Party to nationals or companies of third countries because of their membership in a customs or economic union, a common market or a free trade area or because of their association with it.

(4) The treatment provided for in this Article does not relate to benefits which a Contracting Party shall provide to third-country nationals or companies under a double tax treaty or other agreements on tax questions.

## **Article 4.**

(1) Investments of nationals or companies of a Contracting Party shall enjoy full protection and full security in the territory of the other Contracting Parties.

(2) Investments of nationals or companies of one Contracting Party may not, in the territory of the other Contracting Party, be expropriated, nationalized, or subjected to other measures which in their effects are equivalent to expropriation or nationalization, except for the common good, in which case they shall be compensated. These measures must be authorized by law. The indemnification must correspond to the value of the investment immediately prior to the date on which the actual or imminent expropriation, nationalization or similar measure is made public. The compensation must be paid without delay and bear interest until the date of payment at the usual bank interest rate; it must be effectively realizable and freely non-transferable. At the latest at the time of the expropriation, nationalization or similar measure, arrangements must have been made in due form to fix and pay the compensation. The legality of the expropriation, nationalization or similar measure and the amount of the compensation must be verifiable in ordinary judicial proceedings.

(3) Nationals or companies of a Contracting Party who suffer losses in capital investments by war or other armed conflicts, revolutions, state crimes or turmoil in the territory of the other Contracting Party shall not be treated less favorably by the Contracting Party as regards their refunds, compensation, compensation or other consideration Nationals or companies. Such payments must be freely transferable.

(4) The nationals or companies of a Contracting Party in the territory of the other Contracting Party shall enjoy most-favored-nation treatment with regard to the matters governed by this Article.

## **Article 5.**

(1) Each Contracting Party shall guarantee to the nationals or companies of the other Contracting Parties the free transfer of

payments in connection with an investment, in particular

- a) Of the capital and additional amounts for the maintenance or expansion of the investment,
- b) The income,
- c) To repay loans,
- d) Of the proceeds in the event of complete or partial liquidation or disposal of the investment,
- e) Of the compensation provided for in Article 4.

(2) Transfers pursuant to Article 4 (2) or (3), Article 5 or 6 shall be effected without delay at the applicable rate.

## **Article 6.**

If a Contracting Party makes payments to its nationals or companies by virtue of a guarantee given for an investment in the territory of the other Contracting Party, the latter, without prejudice to the rights of the former Contracting Party under Article 9, shall recognize the subrogation of all rights of such nationals or companies to the former Contracting Party, whether by legal provision or by juridical act. In addition, the other Contracting Party in all these rights, which the latter shall be authorized to exercise to the same extent as in its previous holder. Paragraphs 2 and 3 of Article 4 and Article 5 shall apply mutatis mutandis for the transfer of payments to be made by virtue of the subrogated rights.

## **Article 7.**

(1) If the legislation of a Contracting Party or obligations under international law which exist between the contracting parties or which are established in the future are governed by a general or special regulation which gives the investments of the nationals or companies of the other Contracting Parties more favorable treatment than under this Treaty is to be granted, this provision shall be governed by this Treaty in so far as it is more favorable.

(2) Each Contracting Party shall comply with any other obligation which it has assumed in respect of investments in its territory by nationals or companies of the other Contracting Parties.

## **Article 8.**

This Agreement shall also apply to investments made by nationals or companies of one Contracting Party in accordance with the legislation of the other Contracting Party in its territory before the entry into force of this Treaty.

## **Article 9.**

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Treaty shall, as far as possible, be settled amicably by the Governments of the two Contracting Parties.

(2) If a disagreement can not be established, it shall be submitted to an arbitration court upon request of either party.

(3) The arbitral tribunal shall be constituted on a case-by-case basis by appointing a member to each of the Contracting Parties, and both members as members of a third State as chairman to be appointed by the Governments of the two Contracting Parties. The members shall be appointed within two months to appoint the chairman within three months after the one party to the agreement has notified the other that it wishes to submit the dispute to an arbitration tribunal.

(4) If the deadlines set out in paragraph 3 are not met, in the absence of any other agreement, each Contracting Party may ask the President of the International Court of Justice to make the necessary appointments. If the President has the nationality of either Contracting Party or if he is prevented from doing so for another reason, the Vice-President shall make the appointments. If the Vice-President also has the nationality of either Contracting Party, or if he is also prevented from attending, the next member of the Court, who is not a national of either Contracting Party, shall make the appointments.

(5) The arbitral tribunal shall decide by a majority of votes. Its decisions are binding. Each Contracting Party shall bear the costs of its member and its representation in the proceedings before the arbitral tribunal; The costs of the chairman and the other costs are borne equally by the two contracting parties. The arbitral tribunal may adopt a different cost regime. Moreover, the arbitral tribunal shall regulate its own procedures.

(6) If both Contracting Parties are Contracting States to the Convention of 18 March 1965 on the resolution of disputes

between States and nationals of other States, the provisions of Article 27 (1) of this Convention shall not apply to the arbitration referred to above. Or the company of a Contracting Party and the other Contracting Party, an agreement has been concluded in accordance with Article 25 of the Convention. The possibility of calling the arbitral tribunal provided for in the event of failure to comply with a judicial decision of the arbitral tribunal of the said Convention (Article 27) or in the case of a transfer by force of law or legal transaction pursuant to Article 6 of this Treaty shall remain unaffected.

## **Article 10.**

- (1) Disputes concerning investments under this Treaty between one of the Contracting Parties and a national or a company of the other Contracting Parties shall, as far as possible, be settled amicably between the parties concerned.
- (2) If a disagreement within the meaning of paragraph 1 can not be settled within a period of six months from the date of its assertion by one of the two parties, it shall, at the request of either party, be the competent courts of the Contracting Party in whose territory the investment was made, submit to.
- (3) At the request of a dispute, the differences of opinion are submitted to an international arbitration court,
  - a) If, within 18 months of the commencement of the judicial proceedings pursuant to paragraph 2, a court decision has not been taken by the court seised, or
  - b) If such a decision exists, but one of the parties considers that it is contrary to the provisions of this Treaty; The arbitration shall be initiated within one year from the date of notification of the written decision.
- (4) The provisions of paragraphs 2 and 3 shall not affect the right of the parties to submit the dispute to an international arbitral tribunal by mutual agreement.
- (5) Unless the parties to the dispute have agreed otherwise, disputes between the parties in the cases referred to in paragraph 3 of this Article shall be subject to arbitration under the Convention of 18 March 1965 on the resolution of disputes between States and nationals of other States.
- (6) The arbitral tribunal shall make its decisions on the basis of this Treaty and, where applicable, other contracts between the parties, the national law of the Contracting Party in whose territory the investment is situated,
  - including their rules of private international law
  - and the general principles of international law.
- (7) The arbitration shall be binding and shall be enforced in accordance with national law.

## **Article 11.**

This Agreement shall apply irrespective of whether diplomatic or consular relations exist between the two Contracting Parties.

## **Article 12.**

- (1) This Treaty shall be subject to ratification; The instruments of ratification will be exchanged as soon as possible in Bonn.
- (2) This Treaty shall enter into force one month after the exchange of the instruments of ratification. It remains in force for ten years; After the expiry of which period, the term of validity shall be extended indefinitely unless one of the two Contracting Parties terminates the contract in writing with a notice period of twelve months before the expiry of the contract. After ten years, the contract may be terminated at any time by a period of twelve months.
- (3) For investments made up to the date of the expiry of this Treaty, Articles 1 to 11 shall continue to apply for a further twenty years from the date of expiry of the Treaty.

DONE at Santiago, on the twenty-first day of October, 1991 in two copies, in German and Spanish each, both texts being equally authentic.

For the Federal Republic of Germany

Wiegand Pabsch

For the Republic of Chile

Enrique Silva Cimma

Carlos Ominami Pascual

## **Protocol**

At the signing of the Treaty between the Republic of Chile and the Federal Republic of Germany for the promotion and reciprocal protection of investments, the undersigned Plenipotentiaries have adopted the following agreements, which shall be considered as an integral part of the Treaty:

### **1. Ad Article 1**

(a) This Treaty shall not apply to investments made in the Republic of Chile by natural persons who are nationals of the other Contracting Party if such persons, at the date of the initial investment, have had their permanent domicile for more than 5 years in the Republic of Chile, except where it is proved that the investments originate abroad.

b) The income from an investment, and in the case of its reinvestment, also the income therefrom, shall enjoy the same protection as the investment itself.

(c) Without prejudice to other procedures for determining nationality, any person holding a national passport issued by the competent authority of the respective Contracting Party shall in particular be considered a national of a Contracting Party. This Treaty shall not apply to investors who are nationals of both Contracting Parties.

(d) The rights to funds referred to in paragraph 1(c) include rights to loans related to a participation and having by reason or amount the character of a participation (loans having the character of a participation). However, they do not include claims of third parties, e.g. bank loans on commercial terms.

e) Rights to benefits referred to in paragraph 1 (c) comprise deliveries of products resulting from investment projects which have been obtained within the framework of service contracts, especially in the commodities sector.

### **2. Ad Article 3**

(a) "Activities" within the meaning of paragraph 2 shall mean in particular, but not exclusively, the administration, utilization, use and development of an investment. The following, in particular, shall be considered as "less favorable" treatment within the meaning of Article 3: limitations on the acquisition of raw materials and auxiliary inputs, energy and fuels, as well as any means of production and exploitation, hindrance of the sale of products within the country and abroad, and any measures having similar effects. Measures required for reasons of security and public order, public health or morality shall not be considered as "less favorable" treatment within the meaning of Article 3.

(b) The provisions of Article 3 do not oblige a Contracting Party to extend to individuals and corporations domiciled in the territory of the other Contracting Party the tax advantages, exemptions and reliefs which under its tax laws are accorded only to individuals and corporations domiciled in its territory.

c) The Contracting Parties, in accordance with their internal legal provisions, shall deal kindly with applications for immigration and residence of persons of one of the Contracting Parties who wish to enter the territory of the other Contracting Party in connection with an investment; the same rule shall apply to employees of a Contracting Party who, in connection with an investment, wish to enter and reside in the territory of the other Contracting Party to carry out their activity as employees. Likewise, applications for work permits shall be dealt with kindly.

### **3. Ad Article 4**

The right to compensation shall also exist in the event of an intervention by state measures in the enterprise which is the object of the investment and which results in considerable impairment of its economic value.

### **4. Ad Article 5**

(a) Without prejudice to the provisions of Article 5, the Republic of Chile shall guarantee the right of repatriation of investments made by German investors three years after they have been made.

(b) As long as the Chilean Foreign Debt Conversion Program remains in force, the Republic of Chile shall further guarantee the right of repatriation of investments made by German investors under the Program after ten years have elapsed since they were made, as well as the transfer of income after four years for the following years. The income of the first four years will be transferred as from the fifth year in annual installments of 25% each. The foregoing is without prejudice to the option to take advantage of the reduction of these terms in accordance with the regulations established by the Central Bank of Chile.

(c) A transfer within the meaning of paragraph 2 of Article 5 shall be deemed to have been made "without delay" when it is made within the period normally required for compliance with the transfer formalities. The period, which in no case may exceed two months, shall begin to run at the time of delivery of the corresponding duly submitted request.

(d) The exchange rate within the meaning of paragraph 2 shall not deviate essentially from the market value resulting from the conversion of the United States dollar into the currency of the Contracting Party in whose territory the investment is located and into the freely convertible currency desired by the investor in the official markets of the respective countries for current transactions.

## **5. Ad Article 8**

This Treaty shall in no case be applicable to divergences or disputes concerning facts prior to its entry into force.

## **6.**

With respect to the international transportation of goods and persons in connection with an investment, the Contracting Parties shall not exclude or impede the transportation undertakings of the other Contracting Party and, if necessary, shall grant authorizations for the performance of the transportation.

The above clause shall cover the transport of:

(a) goods intended directly for investment within the meaning of this Treaty or acquired in the territory of a Contracting Party or of a third State by an enterprise, or on behalf of an enterprise in which an investment within the meaning of this Treaty has been made.

b) persons traveling in connection with investments.

DONE at Santiago, this twenty-first day of October 1991 in two copies, in German and Spanish each, both texts being equally authentic.

For the Federal Republic of Germany

Wiegand Pabsch

For the Republic of Chile

Enrique Silva Cimma

Carlos Ominami Pascual

## **PROTOCOL OF AMENDMENT AND SUPPLEMENT RELATING TO THE TREATY BETWEEN THE REPUBLIC OF CHILE AND THE FEDERAL REPUBLIC OF GERMANY ON RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS AND ITS PROTOCOL, SIGNED IN SANTIAGO ON OCTOBER 21, 1991.**

THE REPUBLIC OF CHILE AND THE FEDERAL REPUBLIC OF GERMANY

Aware that the Treaty between the Republic of Chile and the Federal Republic of Germany on the Promotion and Reciprocal Protection of Investments and its Protocol, signed in Santiago on October 21, 1991, require amendments and supplements, have agreed as follows:

## **1.**

Paragraph 3 of Article 10 of the said Treaty shall be replaced by the following:

"If the dispute has been referred to the competent tribunal of the Contracting Party in whose territory the investment was made, recourse may be had to an international arbitral tribunal only within thirty days from the date of service of the statement of defence, or if the competent tribunal has not made a decision on the merits within eighteen months from the date of service of the statement of claim. However, each Contracting Party may offer more favorable treatment. ".

## **2.**

The Protocol Ad. Article 5(a) shall be replaced by the following:

"Without prejudice to the provisions of Article 5, the Republic of Chile shall guarantee the right of repatriation of investments made by German nationals or companies after one year has elapsed since they were made. ".

## **3.**

Protocol Ad. Article 5 b) is hereby deleted.

## **4.**

The following Addendum to Article 10 of the Treaty shall be included in the Protocol:

"Ad. Article 10

Without prejudice to the provisions of Article 10 for the settlement of disputes between a Contracting Party, Chilean nationals or companies making or having made investments in the territory of the Federal Republic of Germany shall have the right to submit any dispute to an Arbitral Tribunal within the framework of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) of March 13, 1965. This right may also be exercised if the nationals or companies have previously submitted the disputes to the competent courts of the Federal Republic of Germany, and even if there is a decision on the merits, insofar as the national or company considers that such a decision is in violation of the provisions of this Treaty".

## **5.**

The present Protocol of Amendment and Supplement constitute an integral part of the Treaty between the Republic of Chile and the Federal Republic of Germany on the Encouragement and Reciprocal Protection of Investments and its Protocol, signed in Santiago on October 21, 1991, and shall be interpreted and applied as a single instrument.

DONE at Bonn, on April 14, 1997 in two copies, in Spanish and German each, both texts being equally authentic.

For the Federal Republic of Germany

Kinkel

For the Republic of Chile

Insulza