

# **AGREEMENT BETWEEN THE REPUBLIC OF CHILE AND THE REPUBLIC OF COSTA RICA FOR THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS**

The Republic of Chile and the Republic of Costa Rica, hereinafter referred to as the Contracting Parties;

Desiring to intensify economic cooperation in the mutual benefit of both States;

With the intention to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other party;

Recognizing the need to promote and protect foreign investment with a view to promoting the economic prosperity of both States;

Have agreed as follows:

## **Article I. Definitions**

For the purposes of this Agreement:

1. The term "investor" designates the following subjects who has made investments in the territory of the other Contracting Party in accordance with this Agreement:

- a) Natural or natural persons who, according to the law of that Contracting Party, are considered to be nationals of the same;
  - b) Legal entities, including companies, corporations, business associations or any other entity constituted under the laws of that Contracting Party and having its registered office, as well as their effective economic activities in the territory of that Contracting Party; regardless of whether or not its activities are non-profit-making.
2. The term "investment" includes all forms of tangible and intangible assets related to an investor of a Contracting Party has invested in the territory of the other Contracting Party in accordance with the legislation of the latter and includes in particular, though not exclusively:
- a) Property rights on movable and immovable property as well as any other rights in rem, such as mortgages, liens, pledges and usufructs;
  - b) Shares and social quotas and any other kind of participation in companies;
  - c) Rights and obligations or any other performance having economic value;
  - d) Intellectual property rights, including copyrights and related rights and intellectual property rights, such as patents, technical processes, trademarks or trade names, commercial names, industrial designs, know-how and other rights such as company name and goodwill.
  - e) Concessions conferred by law, by an administrative act or under a contract, including concessions to cultivate, extract, explore or exploit resources naturales.

Any change in the form of the investment does not affect its character of such.

3. The term "territory" includes, in addition to the land, sea and air space under the sovereignty of each Contracting Party, the exclusive economic zone and the continental shelf extends beyond the limits of the territorial waters of each of the Contracting Parties on which they have, in accordance with international law, sovereign rights and jurisdiction for the purpose of exploration and exploitation and preservation of natural resources.

## **Article II. Scope**

This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party, in accordance with the laws of the other Contracting Party in the territory of the latter. However, it shall not apply to differences or disputes which have arisen prior to its validity or directly related to events before its entry into force. Furthermore, nor affect property rights acquired or legal situations consolidated prior to the date of entry into force of the Agreement.

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

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

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

1. Each Contracting Party shall ensure fair and equitable treatment within its territory to investments of investors of the other Contracting Party and shall ensure that the exercise of the rights recognized shall not be impaired by administrative acts.
2. Each Contracting Party shall grant, in accordance with their national legislation, to investments of investors of the other Contracting Party in its territory, treatment no less favourable than that accorded to investments by its own investors.
3. Each Contracting Party shall accord to investments of investors of the other Contracting Party in its territory, treatment no less favourable than that accorded to investments of investors of any third State if the latter is more favourable treatment. Between the national treatment and most favoured nation treatment each Contracting Party shall apply the treatment that is more favourable to the investment of the investor, at the choice of the latter.
4. This treatment shall not apply, however, to privileges which either Contracting Party accords to investors of a third State by virtue of its participation or association with any existing or future free trade area, customs union, common market, economic and monetary union or other similar regional economic integration.
5. The treatment granted under the present article shall not extend to deductions and tax exemptions or other similar privileges granted by either Contracting Party to investments of investors of third countries under an agreement for the avoidance of double taxation or any other arrangement relating to taxation.

## **Article V. Free Transfer**

1. Each Contracting Party shall promptly allow investors of the other Contracting Party the free transfer of funds related to investments in freely convertible currencies, in particular, but not exclusively:
  - a) Dividends, interests, income, profits and other returns;
  - b) Repayments of loans from abroad in connection with an investment;
  - c) The capital or the proceeds of the total or partial sale or liquidation of an investment;
  - (d) the proceeds of the settlement of a dispute; and compensation pursuant to article 6.
2. Transfers shall be made at the rate of exchange prevailing on the exchange market at the date of the transfer, according to the law of the Contracting Party which has admitted the investment.

## **Article VI. Expropriation and Compensation**

1. Neither Contracting Party shall take any measure having the effect, directly or indirectly, of nationalising or expropriating investments of investors of the other Contracting Party, or any measure having equivalent effect, unless the following conditions are met:
  - a) The measures are taken for a public purpose or public interest and in accordance with the law;

b) The measures are not discriminatory;

c) The measures are accompanied by provisions for the payment to the investor or its legal person, of prompt, effective and adequate compensation.

2. The compensation shall be based on the market value of the expropriated investment at the time immediately prior to which the measure has been announced, published by any means or has become public knowledge. The compensation shall include interest calculated from the date of dispossession of the expropriated property until the date of payment. This interest shall be calculated on the basis of a commercial rate established on the market value shall be paid in freely convertible currency and shall be effectively realizable and freely transferable.

3. The legality of nationalization, expropriation or any other measure having equivalent effect and the amount of compensation may be challenged before the ordinary courts of justice of each Contracting Party.

## **Article VII. Compensation for Losses**

Investors of either Contracting Party whose investments in the territory of the other contracting party are losses due to war or any other armed conflict, a national state of emergency, civil disturbance or other similar events in the territory of the other Contracting Party, shall be accorded by the latter, as regards restitution, compensation or other settlement in connection with their investments, a treatment no less favourable than that which the Contracting Party accords to the investments of investors or nationals of any third State.

## **Article VIII. Subrogation**

If a Contracting Party or an agency authorised by it has granted a contract of insurance or other 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 to the rights of subrogation of the investor, when it has made a payment under the contract or guarantee.

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

1. Disputes arising under this Agreement between one Contracting Party and an investor of the other Contracting Party which has made investments in the territory of the first, shall, as far as possible, be settled through amicable consultations. For this purpose, the investor shall give written notice of the dispute to the Contracting Party receiving the investment.

2. If consultations fail to produce a solution within five months from the date of the written notification mentioned in Paragraph 1, the investor may submit the dispute to:

a) The competent courts of the Contracting Party in whose territory the investment was made; or

b) International arbitration by the International Centre for Settlement of Investment Disputes), established by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, opened for signature at Washington on 18 March 1965. To this end, each Contracting Party consents to advance and irrevocably any difference cannot be admitted to arbitration. The arbitral tribunal shall decide on the basis of:

a) The provisions of this Agreement and any other agreements concluded between the contracting parties;

b) International arbitration of 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, opened for signature at Washington on 18 March 1965. To this end, each Contracting Party gives its advance and irrevocable consent that any dispute may be admitted to this arbitration. The arbitral tribunal shall decide on the basis of :

a) the provisions of this Agreement and those of other Agreements concluded between the Contracting Parties;

b) the national law of the Contracting Party in whose territory the investment has been made, including rules relating to conflicts of law and the terms of any particular agreements concluded in relation to the investment; and

c) The rules and the universally accepted principles of International Law.

3. Once the investor has submitted the dispute to the competent court of the Contracting Party in whose territory the investment has been made or the arbitral tribunal, the choice of one or other of the procedure shall be final and exclusive.

4. For the purposes of this Article, any legal entity which has been formed in accordance with the laws of one of the Contracting Parties and whose shares, prior to the occurrence of the dispute, were held by a majority of investors of the other Contracting Party, shall be treated, in accordance with Article 25(2)(b) of the said Washington Convention, as a legal entity of the other Contracting Party.

5. The arbitral awards shall be final and binding on the parties to the dispute and shall be executed in accordance with the domestic law of the Contracting Party in whose territory the investment has been made.

6. The Contracting Parties shall refrain from dealing through diplomatic channels with matters related to disputes submitted to judicial proceedings or to international arbitration in accordance with the provisions of this Article, except where the other party to the dispute has failed to comply with the judgment or decision of the Arbitral Tribunal as provided for in the respective judgment or decision.

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

1. Disputes arising between the Contracting Parties concerning the interpretation and application of this Agreement shall be settled as far as possible through amicable negotiations. To this end the contracting party affected shall notify in writing the dispute to the other Contracting Party.

2. If an agreement cannot be achieved within six months of the date of the submission of the dispute, either Contracting Party may submit it to an ad hoc arbitral tribunal in accordance with the provisions of this article.

3. The arbitral tribunal shall consist of three members and shall be constituted in the following manner: within two months after the date of notification of the request for arbitration, each Contracting Party shall appoint an arbitrator. Those two arbitrators within 60 days from the appointment of the last one, shall select a third member who shall be a national of a third State, who shall chair the Tribunal. The designation of the Chairman shall be approved by the Contracting Parties within thirty days after the date of his nomination.

4. If within the periods specified in paragraph 2 of this article, the appointment has not been made or required the approval has been granted, either Contracting Party may request the President of the International Court of Justice to make the appointment. If 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 Vice-President shall make the appointment, and if the latter is prevented or is a national of either of the Contracting Parties, the judge of the Court next in seniority who is not a national of one of the Contracting Parties shall make the appointment.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the principles of international law and the general principles of law recognized by the Contracting Parties. The Tribunal shall decide by a majority of votes and shall determine its own procedural rules.

6. Each Contracting Party shall bear the costs of the arbitrator, as well as those relating to its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs of the proceedings shall be removed in equal parts by the Contracting Parties unless they agree otherwise.

7. The decisions of the Tribunal shall be final and binding on both Contracting Parties.

## **Article XI. Consultations**

The Contracting Parties shall consult on any matter relating to the application or interpretation of this Agreement.

## **Article XII. Final Provisions**

1. The Contracting Parties shall notify each other when their 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 last notification.

2. This Agreement shall remain in force for a period of ten years and thereafter shall be extended for an indefinite period. Ten years after this Agreement may be denounced at any time by either contracting party giving 12 months notice, communicated through diplomatic channels.

3. With respect to investments made prior to the date that was made effective notice of termination of this agreement, its provisions shall remain in force for a further period of ten years from that date.

4. This Agreement shall apply irrespective of the existence of diplomatic or consular relations between the two Contracting

Parties.

Done in the city of San José, Costa Rica, on the eleventh day of July 1996, in duplicate in the Spanish language, both texts being equally authentic.

For the Government of the Republic of Chile

For the Government of the Republic of Costa Rica

## PROTOCOL

At the signing of the Agreement for the Promotion and Reciprocal Protection of Investments, the Government of the Republic of Chile and the Government of the Republic of Costa Rica agreed on the following provisions which constitute an integral part of the Agreement.

### **Ad Article V**

1. The invested capital may be transferred only after one year after its entry into the territory of the Contracting Party, except that it provides for more favourable treatment.
2. A transfer shall be deemed to be made "without delay" when it has been made within the period normally necessary for the completion of the procedures of the transfer. The term, which in no case shall exceed 60 days, shall commence at the time of delivery of the request duly submitted.

### **Ad Article Vi**

1. For the purposes of this article, in the case of Costa Rica the term "market value" shall be the concept of "fair price" used in Costa Rican legislation, which shall be equivalent to the amount of the compensation shall be determined as follows: the assessment must include all the information necessary to identify the property to be valued: in the case of real estate, the assessment must include the valuation regardless of the land, crops, buildings, tenancies, leases, commercial rights, rights to exploit deposits and any other property or rights subject to compensation; in the case of movable property, each must be valued separately and the characteristics that influence its valuation must be indicated; assessments must take into account only real permanent damage. Future events and legal expectations affecting the property shall not be included or taken into account. Any expert opinion must indicate, in a broad and detailed manner, the elements of judgement on which the value assigned to the property is based and the methodology used.
2. The Contracting Parties agree that nothing in this article shall affect the powers of the Government of a Contracting Party in deciding whether or not to negotiate with the other Contracting Party or with third States quantitative restrictions on exports or its authority to define the allocation of quotas negotiated through appropriate mechanisms and criteria as it deems appropriate.

Done in the city of San José, Costa Rica, on the eleventh day of July 1996, in duplicate in the Spanish language, both texts being equally authentic.

For the Government of the Republic of Chile

For the Government of the Republic of Costa Rica