AGREEMENT BETWEEN THE REPUBLIC OF CHILE AND THE REPUBLIC OF SOUTH AFRICA FOR THE RECIPROCAL PROMOTION AND PROTECTİDN OF INVESTMENTS

The Government of the Republic of Chile and the Government of the Republic of South Africa, hereinafter jointly referred to as the "Parties" and each in the singular as a "Party".

Desiring to intensify economic cooperation to the mutual benefit of both Parties;

Intending to create and maintain favourable conditions for investments by investors of one Party in the territory of the other Party, which imply the transfer of capital;

Recognising that the encouragement and reciprocal protection under international agreement of such investments will be conducive to the stimulation of individual business initiative and will increase prosperity in the territories of both Parties;

Hereby agree as follows:

Article I. Definitions

For the purpose of this Agreement:

(1) The term "Investor" shall mean in respect to either Party;

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

(b) Legal entities, including companies, corporations, business associations or any other entity constituted under the law of that Party having their seat together with their effective economic activities in the territory of that Party; which have made investments in the territory of the other Party in accordance with the present Agreement.

(2) The term "investment" shall refer to evey kind of asset or right related to it provided that it has been effected in accordance with the law of the Party in whose territory it was carried out and shall include in particular, though not exclusively:

(a) Movable and immovable assets, property rights over them as well as all other property rights such as servitudes, mortgages, liens or pledges;

(b) Shares, debentures and any other kinds of particiption in companies;

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

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

(e) Concessions conferred by law, by an administrative act or by virtue of a contract, including concessions to search for, cultivate, extract or exploit natural resources. Any modification in the form in which assets are reinvested shall not affect their character as investment, provided that such modification is carried out pursuant to the law of the Party in whose territory the investment has been made.

(3) The term "territory" means the territory of a Party, including the territorial sea and any maritime area situated beyond the territorial sea of that Party, which has been or might in the future be designated under the national law of the Party concerned, in accordance with international law, as an area within which the Party may exercise sovereign rights and jurisdiction.

Article II. Scope of Application

This Agreement shall apply to all investment made in the territory of either Party in accordance with its law, whether such investment is made before or after the date of entry into force of this Agreement, but shall not apply to any dispute which arose before entry into force of this Agreement or to disputes directly related to events which occurred prior to its entry into force.

Article III. Promotion and Protection of Investments

(1) Each Party, subject to its general policy in the field of foreign investments, shall promote in its territory investments by investors of the other Party, and shall admit such investments in accordance with its law.

(2) Each Party shall protect within its territory investments made in accordance with its law by investors of the other Party and shall not impair the management, maintenance, use, enjoyment, extension, sale and liquidation of such investments by unreasonable or discriminatory measures.

Article IV. Treatment of Investments

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

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

(3) If a 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, an economic union or any other form of regional economic organization or any international agreement intended to facilitate frontier trade to which the Party belongs at the present time or may belong in the future or through the provisions of an agreement related wholly or mainly to taxation, it shall not be obliged to accord such advantages to investors of the other Party.

(4) If a Party accords special advantages to development finance institutions with foreign participation and established for the exclusive purpose of development assistance through mainly non-profit activities, that Party shall not be obliged to accord such advantages to development finance institutions or other investors of the other Party.

Article V. Free Transfer

(1) Each Party shall allow investors of the other Party the undelayed transfer of funds in connection with their investments in freely convertible currency, in particular but not exclusively:

(a) Interest, dividends, revenues, profits and other returns;

(b) Repayments of foreign loan agreements related to an investment;

(c) The capital or proceeds from the total or partial sale or liquidation of an investment; and

(d) The proceeds from the settlement of a dispute and compensation and indemnities in accordance with the present Agreement.

(2) Transfers shall be made at the exchange rate in force in the market on the date of transfer, in accordance with the law of the Party which has admitted the investment. (3) A transfer shall be deemed to have been made undelayed if carried out within such period as is normally required for the completion of transfer formalities.

Article VI. Expropriation and Compensation

(1) Neither Party shall take any measure depriving, directly or indirectly, an investor of the other Party of its investment unless the folllowing conditions are complied with:

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

(b) The measures are not discriminatory;

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

(2) Such compensation shall be at least equal to the market value of the investment expropriated immediately before the

expropriation or before the impending expropriation became public knowledge, whichever is the earlier. Where that value cannot be readily ascertained, the compensation shall be determined in accordance with principles of valuation generally recognized as equitable, taking into account the capital invested, its depreciation, the capital already repatriated, the replacement value and other relevant factors. In case of delay in the payment of compensation, it shall carry interest at a commercial rate on the basis of the market value from the date of expropriation or loss until the date of payment.

(3) Regarding the legality of the nationalization, expropriation or any other measure having an equivalent effect and the amount of the compensation a claim may be raised before the ordinary courts of justice of the Party which adopted the measure.

Article VII. Compensation for Losses

The investors of each Party whose investments in the territory of the other Party suffer damages or losses due to war, armed conflict, a state of national emergency, civil commontion or other similar events in the territory of the other Party shall be accorded by the latter, as regards restitution, indemnification, compensation or other arrangement, treatment no less favourable than that accorded to its own investors or to those of any third State.

Article VIII. Subrogation

(1) Where one Party or an agency authorized by it has granted a contract of insurance or any 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 Party, the latter shall recognize the rights of the first Party to subrogate for the rights of the investor, when it has made payment under such contract or financial guarantee.

(2) If a Party or its designated agency has made payment to its investor as contemplated in paragraph (1) and has taken over the rights and claims of the investor, the investor, unless authorised in writing to act on behalf of the Party making the payment, shall not pursue those rights and claims against the other Party.

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

(1) Any disputes which arise within the terms of this Agreement, between a Party and an investor of the other Party who has made investments in the territory of the first, shall, to the extent possible, be settled through consultations.

(2) If through these consultations a solution can not be reached within three months from the date of request for settlement, the investor may submit the dispute:

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

(b) To an ad-hoc tribunal which, unless otherwise agreed upon by the parties to the dispute, shall be established according to the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL); or

(c) To international arbitration of the International Center 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 in Washington on March 18, 1965, if both Parties are party to the said Convention; as long as this requirement is not met, each Party agrees that the dispute may be settled under the rules governing the Additional Facility for the Administration of Proceedings by the Secretariat of ICSID.

(3) Each Party gives its advance and irrevocable consent for any dispute of this kind to be submitted to any of the arbitration tribunals mentioned under paragraphs 2 (b) and (c).

(4) Once an investor has submitted the dispute to a competent tribunal of the Party in whose territory the investment was made or to any of the above-mentioned arbitration tribunals, the election of either procedure shall be final.

(5) The arbitration tribunal shall make its decision on the basis of the national law, including the rules relating to conflicts of law, of the Party involved in the dispute in whose territory the investment has been made, the provisions of this Agreement, the terms of any specific agreement which may have been entered into regarding the investment as well as the principles of international law.

(6) The arbitration awards shall be final and binding on both parties and shall be enforced in accordance with the law of the Party in whose territory the investment was made.

(7) Once a dispute has been submitted to the competent tribunal or international arbitration in accordance with this Article,

neither Party shall pursue the dispute through diplomatic channels unless the other Party has failed to abide by or comply with any judgement, award, order or other determination made by the competent international or national tribunal in question.

Article X. Settlement of Disputes between Parties

(1) Any differences that may arise between the Parties regarding the interpretation or application of the present Agreement, shall be settled, to the extent possible, by direct negotiations.

(2) If no agreement can be reached within six months following the date of notification of the dispute, either Party may submit it to an ad-hoc arbitral tribunal in accordance with the provisions of this Article.

(3) Such an arbitral tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration, each Party shall appoint one member of the tribunal. Those two members shall then select a national of a third State who on approval by the two Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within 30 days from the date of appointment of the other two members.

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

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

(6) The Arbitral Tribunal shall reach its decisions on the basis of the provisions of this Agreement, the principles of International Law on this subject and the General Principles of Law as recognized by the Parties. The Tribunal shall reach its decisions by a majority vote and shall determine its own proceeding rules.

(7) Each Party shall bear the cost of their respective arbitrator and that of its representation in the arbitral proceedings. The cost of the Chairman and the remaining costs of the process shall be borne in equal parts by the Parties unless agreed otherwise.

(8) The decisions of the arbitral tribunal shall be final and binding on both Parties.

Article XI. Consultations

The Parties shall consult on matters concerning the interpretation or application of this Agreement.

Article XII. Final Provisions

(1) The 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 it shall remain in force indefinitely. After ten years, the Agreement may be denounced at any time by either Party, with twelve months previous notice, communicated 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 ten years from that date.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement in duplicate in Spanish and English, both texts being equally authentic.

DONE at Pretoria on this twelfth day of november one thousand nine hundred and ninety eigth.

On signing the Agreement on the Reciprocal Promotion and Protection of Investments, the Republic of Chile and the

Republic of South Africa have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement.

AD ARTICLE IV.

Without detriment to the provisions of this Agreement ensuring fair, equitable and non-discriminatory treatment, the provisions to paragraph (2) of Article IV shall not be construed so as to oblige the Republic of South Africa to extend to the investors of the other Party the benefit of any treatment, preference or privilege resulting from any law or other measure the purpose of which is to promote the achievement of equality in its territory, or designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination in its territory.

AD ARTICLE V.

(1) The capital invested may only be transferred one year after it has entered the territory of a Party, unless its legislation provides for more favourable treatment.

(2) Any natural person who is not a national of the Republic of South Africa but who has resided in the Republic of South Africa for more than five years and who has completed the required exchange control formalities connected with immigration to South Africa, is, in terms of South African exchange control rules, deemed to have become permanently resident in the Republic of South Africa and the provisions for transfers of investments and returns as contemplated in Article V shall not apply in their favour.

(3) The exemptions to Article V as contemplated in paragraph (2) of this Protocol shall terminate automatically in respect of each restriction, upon removal of the relevant restriction as part of the domestic law of South Africa.

(4) The Republic of South Africa shall make every effort to remove the said restrictions from their domestic law as soon as possible.

(5) Paragraph (2) of this Protocol shall not apply to or restrict the transfer of compensation payments made pursuant to Articles VI and VII of this Agreement.

(6) This Protocol shall enter into force at the same time as the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement in duplicate in Spanish and English, both texts being equally authentic. DONE at Pretoria on this twelfth day of november one thousand nine hundred and ninety eigth.