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

The Government of the Republic of Chile and the Government of the Republic of the Philippines referred to hereinafter as the "Contracting Parties";

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

Intending to create and maintain favourable conditions for investment 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 favour the economic prosperity of both countries;

Have agreed as follows:

## Article I. Definitions

For the purposes of this Agreement:

(1) "Investor" means the following subjects which has made an investment in the territory of the other Contracting Party in accordance with this Agreement:

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

(b) Legal entities, including companies, corporations, business associations and other legally recognized entities or otherwise, constituted duly organized 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) "Investment" means every kind of asset 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 mortgages, liens, pledges or usufructs;

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

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

(d) Intellectual and industrial property rights, including copyrights, 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 "territory" shall refer to the territory of each Contracting Party in accordance with its Constitution and laws including adjacent areas, exclusive economic zone, continental shelves and such other areas where each Contracting Party has sovereign rights and other rights in accordance with international law.

(4) The term "returns" means the amounts yielded returns by an investment and in particular, though not exclusively, shall include profit, interest, capital gains, dividends, royalties, fees and other legitimate returns.

## Article II. Scope of Application

This Agreement shall apply to investments in the territory of one Contracting Party in accordance with its legislation, prior to or after the 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 III. Admission , Promotion and Protection of Investments

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

## Article IV. Treatment of Investments

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

(2) Each Contracting Party shall accord admitted investments of the investors of one other Contracting Party in its territory, a treatment which is no less favourable than that accorded to investments made by its own investors or by investors of any third country, whichever is the more 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, an economic union, a common market or any other form of regional economic organization to which the Contracting Party belongs or through the provisions of an agreement relating wholly or mainly to taxation matters, it shall not be obliged to accord such advantages to investors of the other Contracting Party.

## Article V. 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 in a freely convertible currency, particularly of:

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

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

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

(d) Compensation for expropriation or loss described in article VI of this Agreement;

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

## Article VI. Expropriation and Compensation

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

(a) The measures are taken in the public purpose or national 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, effective and adequate compensation.

(2) The compensation shall be based on the market value of the investments affected immediately before the measure became public knowledge. Where that value cannot be readily ascertained, the compensation may be determined in accordance with generally recognized equitable principles of valuation taking into account the capital invested, depreciation, capital already repatriated, replacement value, and other relevant factors. In case of delay of the compensation payment, it shall carry an interest at the appropriate market rate of interest, from the date of expropriation or loss until the date of payment.

(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 measures.

(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, which took place in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment as regards restitution, indemnification, compensation or other valuable consideration, no less favourable than that which that Contracting Party accords to its domestic investors or to investors or of any third country, whichever is more favourable treatment to the investors concerned.

## Article VII. Subrogation

(1) Where a 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 payments has been made under the 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 after to the other Contracting Party.

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

(1) With a view to an amicably 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 three 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 Disputes in respect of Investments Occurring Between States and Nationals of Other States, opened for signature at Washington, D.C. on 18 March 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 arbitral decision 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 to 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 un question.

## Article IX. Settlement of Disputes between the Contracting Parties

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

(2) If the dispute 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 desire to settle the dispute by arbitration, each Contracting Party shall appoint one arbitrator. These two members shall then, within thirty days after the appointment of the last one, agree upon a third member who shall be a national of a third country and who shall act as the Chairman. The appointment of the Chairman shall be approved by the Contracting Parties within thirty days of that person's nomination.

(4) If within the time limits provided for in paragraphs (2) and (3) of this Article the required appointment has not been made or the required the approval has not been given, either Contracting 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 if that person is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if that person is a national of either Contracting Party, the appointment 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 of the proceedings shall be borne in equal parts by the Contracting Parties unless they agree otherwise.

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

## Article X. Consultations between the Contracting Parties

The Contracting Parties agree to consult each other, at the request of either Contracting Party on any matter relating to investments between the two countries, or otherwise affecting the interpretation or implementation of this Agreement.

## Article XI. 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 a one year's written of termination through diplomatic channels.

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

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

IN WITNESS WHEREOF, the undersigned, duly authorized thereto by their respective Governments, have signed this Agreement.

Done at Manila this 20 day of November 1995, in duplicate in the Spanish and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE

FOR THE GOVERNMENT OF THE REPUBLIC OF PHILIPPINES

**PROTOCOL**

On signing of the Agreement for the Reciprocal Promotion and Protection of Investments between the Republic of Chile and the Republic of the Philippines, the Contracting Parties have, in addition, agreed on the following provisions which shall be

regarded as an integral part of the said Agreement.

## Addendum to Article V

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

(2) A transfer shall be deemed to have been made without delay if carried out within such period as normally required for the completion of transfer formalities. The said period shall start on the day on which the relevant request has been submitted in due form and may in no case exceed thirty days.

Done at Manila, on 20 November 1995, in duplicate in the Spanish and English and languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE

FOR THE GOVERNMENT OF THE REPUBLIC OF PHILIPPINES