

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

The Government of the Republic of Chile and the Government of the Czech Republic, hereinafter the "Contracting Parties";

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

With the intention to create and maintain favourable conditions for investments, based originally on a transfer of assets, by investors of one Contracting Party 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 1. Definitions

For the purpose of this Agreement:

(1) The term "investor" means the following subjects which have made an investment in the territory of the other Contracting Party in accordance with the present Agreement:

(a) a natural person who, according to the law of that Contracting Party, is considered to be its national;

(b) a legal entity, 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 has its seat together with effective economic activities in the territory of that same Contracting Party.

(2) The term "investment" shall comprise every kind of asset invested in connection with economic activities by an investor of one Contracting Party in the territory of the other Contracting Party in accordance with the laws and regulations of the Latter and shall include, in particular, though not exclusively:

(a) movable and immovable property and any other real rights such as servitudes, mortgages, liens or pledges;

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

(c) Loans or other claims to money or to any performance having an economic value and associated with an investment;

(d) intellectual and industrial 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.

Any alteration of the form in which assets are invested shall not affect their character as investment.

(3) The term "territory" shall mean the territory of the Czech Republic and the territory of the Republic of Chile including the territorial sea and any maritime or submarine area within which the Republic of Chile may exercise, in accordance with international law, sovereign rights.

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

Article 2. Scope of Application

The provisions of this Agreement shall apply to future investments made by investors of one Contracting Party in the territory of the other Contracting Party, and also to the existing investments according to the laws of the Contracting Parties on the date of this Agreement coming into force. 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, in accordance with its general economic policy in the field of foreign investments, promote investments by investors of the other Contracting Party in accordance with its laws and regulations.
- 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, sale and liquidation of such investments.

Article 4. Treatment of Investments

- (1) Each Contracting Party shall extend fair and equitable treatment to investments made by investors of the other Contracting Party in its territory and shall ensure that the exercise of the right thus recognized shall not be hindered in practice.
- (2) Each Contracting Party shall in its territory accord investments and returns of investors of the other Contracting Party treatment which is not less favourable than that which it accords to investments and returns of its own investors or to investments and returns of investors of any third State, whichever is the most favourable.
- (3) Each Contracting Party shall in its territory accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investment, treatment which is fair and equitable and not less favourable than that which it accords to investors of any third State.
- (4) 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, an economic union or any other form of regional economic organization to which the Party belongs 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

Each Contracting Party shall guarantee to investors of the other Contracting Party the transfer of funds in connection with an investment in a freely convertible currency and without delay, particularly of:

- (a) interests, dividends, profits and other kinds of returns;
- (b) repayments of loan or credit in relation to an investment;
- (c) any capital or proceeds from the sale or partial sale or liquidation of the investment;
- (d) compensation for expropriation or loss, including any interest, as described in Article 6 of this Agreement;

and

(e) earnings of personnel who are working in connection with an investment, but are not nationals of the Contracting Party in whose territory the investment is made,

- (2) Transfers shall be made at the prevailing exchange rate on the date of transfer set in accordance with the law of the Contracting Party in which the investment has been made.
- (3) Transfers concerning investments made under the Chilean Program of Foreign Debt Equity Swaps are subject to special regulations.
- (4) 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.
- (5) A transfer shall be deemed to have been made without delay if carried out within such period as is 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.

Article 6. Expropriation and Losses

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 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, adequate and effective 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. This compensation 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 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, 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 consideration, no less favourable than that which that Contracting Party accords to its domestic investors or to investors of any third country, whichever is more favourable to the investors concerned.

(5) Without prejudice to paragraph (4) of this Article, investors of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party resulting from:

- (a) requisitioning of their property by its forces or authorities, or
- (b) destruction of their property by its forces or authorities, which was not caused in combat action or was not required by the necessity of the situation,

shall be accorded just and adequate compensation for the losses sustained during the period of the requisitioning or as a result of the destruction of the property.

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 or an agency authorized by the 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.

(3) The subrogated rights or claims shall not be greater than the original rights or claims of the investor.

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 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 Investment Disputes between States and Nationals of other States opened for signature at Washington on 19 March 1965; or

(c) an arbitrator or international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL). The parties to the dispute may agree in writing to modify these Rules.

(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) (6) 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 by or comply with any judgment, award, order or other determination made by the competent international or local tribunal in question.

Article 9. Consultations between Contracting Parties

The Contracting Parties shall consult at the request of either of them on matters concerning the interpretation or application of this Agreement.

Article 10. Settlement of Disputes between Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through negotiations.

(2) If the dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party, be submitted to an Arbitral Tribunal in accordance with the provisions of 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 third member who shall be a national of a third country and who shall act as the Chairman. The Contracting Parties shall appoint the Chairman within thirty days of that person's nomination.

(4) If, within the time limits specified in paragraph (3) of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the necessary appointments. If the President of the International Court of Justice is a national of either Contracting Party, or if that person is prevented from carrying out the said function, the appointments 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 appointments shall be made by the most senior Judge of the Court who is not a national of either Contracting Party.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be final and binding. Each Contracting Party shall bear the cost of its own arbitrator 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. The Arbitral Tribunal shall determine its own procedure.

(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 generally recognized principles of international law.

Article 11. Application of other Rules and Special Commitments

(1) 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 rules are more

favourable to its case.

(2) If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by the Agreement, the more favourable shall be accorded.

Article 12. 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 or consular relations exist between the Contracting Parties.

Done in duplicate at Prague on the 24th day of April 1995 in the Spanish, Czech and English Languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

For the Government of the Republic of Chile

For the Government of the Czech Republic