Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Chile for the Promotion and Protection of Investments

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Chile;

Desiring to create favourable conditions for greater foreign investment by investors of one State in the territory of the other State;

Recognizing that the encouragement and reciprocal protection under international agreement of such foreign investment will be conducive to the stimulation of individual business initiative and will increase prosperity in both States;

Have agreed as follows:

Article 1. Definitions

(1) For the purposes of this Agreement:

(a) "investment" means every kind of asset and in particular, though not exclusively, includes:

(i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;

(ii) Shares in and stock and debentures of a company and any other form of participation in a company;

(iii) Claims to money or to any performance under contract having a financial value;

(iv) Intellectual property rights, goodwill, technical processes and know-how;

(v) Business concessions conferred by law or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

A change in the form in which assets are invested does not affect their character as investments;

(b) "returns" means the amounts yielded by an investment and in particular, though not exclusively, includes profit, interest, capital gains, dividends, royalties and fees;

(c) The term "investor" means with regard to a Contracting Party:

(i) Natural persons having the nationality of that Contracting Party in accordance with its laws;

(ii) Any corporations, firms or associations incorporated or constituted under the law in force in the territory of that Contracting Party and having their registered office, central administration or principal place of business in that territory;

(d) "territory" means the land territory of each Contracting Party and includes the territorial sea and any maritime area situated beyond the territorial sea designated in conformity with the national law of the Contracting Party concerned and in accordance with international law as an area within which that Contracting Party may exercise rights with regard to the sea-bed and subsoil and the natural resources and any territory to which this Agreement is extended in accordance with the provisions of Article 11.

(2) This Agreement shall apply to investments in the territory of one Contracting Party made in accordance with its laws, prior to or after the entry into force of this Agreement, by investors of the other Contracting Party. It shall however not be applicable to differences or disputes which have arisen prior to its entry into force.

Article 2. Promotion and Protection of Investment

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory, and, subject to its right to exercise powers conferred by its laws, shall admit such investments.

(2) Investments of investors of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Contracting Party. Neither Contracting Party shall in any way impair by unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of the other Contracting Party. Each Contracting Party shall observe any obligation it may have entered into with regard to investments of investors of the other Contracting Party.

Article 3. National Treatment and Most-favoured-nation Provisions

(1) Neither Contracting Party shall in its territory subject investments or returns of investors of the other Contracting Party to treatment less favourable than that which it accords to investments or returns of its own investors or to investments or returns of investors of any third State.

(2) Neither Contracting Party shall in its territory subject investors of the other Contracting Party, as regards their management, maintenance, use, enjoyment or disposal of their investments, to treatment less favourable than that which it accords to its own investors or to investors of any third State.

(3) The provisions of this Agreement relative to the grant of treatment not less favourable than that accorded to investors of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to investors of the other the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future agreement establishing a free trade area, a customs union, a common market or any other form of regional economic organisation to which either of the Contracting Parties is or may become a party, or

(b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating wholly or mainly to taxation.

(4) For the avoidance of doubt it is confirmed that the treatment provided for in paragraphs (1) to (3) above shall apply to the provisions of Articles 1 to 10 of this agreement.

Article 4. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalised, expropriated or subjected to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") in the territory of the other Contracting Party unless the measures are taken for a public benefit related to the internal needs of that Party in a non-discriminatory manner, by authorisation of a formal law, and against prompt, adequate and effective compensation. Such compensation shall amount to the genuine value of the investment expropriated immediately before the expropriation or before the impending expropriation became public knowledge, whichever is the earlier, shall include interest at a normal commercial rate until the date of payment, shall be made without delay, be effectively realizable and be freely transferable. The investor affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this paragraph.

(2) Where a Contracting Party expropriates the assets of an investor which is incorporated or constituted under the law in force in any part of its own territory, and in which investors of the other Contracting Party own shares, it shall ensure that the provisions of paragraph (1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect of their investment to such investors of the other Contracting Party who are owners of those shares.

Article 5. Compensation for Losses

(1) Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, estate of national emergency, revolt, insurrection or riot in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, no less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State. Resulting payments shall be freely transferable.

(2) Without prejudice to paragraph (1) 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 restitution or adequate compensation. Resulting payments shall be freely transferable.

Article 6. Repatriation of Investment and Returns

Each Contracting Party shall in respect of investments guarantee to investors of the other Contracting Party the free transfer of their investments and returns. Transfers shall be effected without delay in the convertible currency in which the capital was originally invested or in any other convertible currency agreed by the investor and the Contracting Party concerned. Transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

Article 7. 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 to the International Centre for the Settlement of Investment Disputes (hereinafter referred to as "the Centre") for settlement by arbitration under the Convention on the Settlement of Investment Disputes between States and Nationals of other States opened for signature at Washington DC on 18 March 1965.

(3) Notwithstanding the provision of paragraph (2) of this Article, the Centre shall not have jurisdiction if the investor has already submitted the dispute to the courts of the Contracting Party which is a party to the dispute.

(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 arbitration award 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 court 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 or comply with any judgement, award, order or other determination made by the competent court or by the Centre.

Article 8. Disputes between the Contracting Parties

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

(2) If a Dispute between the Contracting Parties cannot thus be settled, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal.

(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 Contracting 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 Contracting Parties shall be appointed Chairman of the tribunal. The Chairman shall be appointed within two months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or is otherwise prevented from discharging the said function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or is prevented from discharging the said function, the Member of the International

Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

(5) The arbitral tribunal shall reach its decision by a majority of votes. Such decision shall be binding on both Contracting Parties. Each Contracting Party shall bear the cost of its own member of the tribunal 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 tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 9. Subrogation

(1) If one Contracting Party or its designated Agency ("the first Contracting Party") makes a payment under an indemnity given in respect of an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognise:

(a) The assignment to the first Contracting Party by law or by legal transaction of all the rights and claims of the party indemnified, and

(b) That the first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

(2) The first Contracting Party shall be entitled in all circumstances to the same treatment in respect of:

(a) The rights and claims acquired by it by virtue of the assignment, and

(b) Any payments received in pursuance of those rights and claims,

As the party indemnified was entitled to receive by virtue of this Agreement in respect of the investment concerned and its related returns.

(3) Any payments received in non-convertible currency by the first Contracting Party in pursuance of the rights and claims acquired shall be freely available to the first Contracting Party for the purpose of meeting any expenditure incurred in the territory of the second Contracting Party.

Article 10. Application of other Rules

If the provisions of law of either Contracting Party or obligations under international law existing at present or established hereafter between the Contracting Parties in addition to the present Agreement contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

Article 11. Territorial Extension

At the time of entry into force of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to such territories for whose international relations the Government of the United Kingdom are responsible as may be agreed between the Contracting Parties in an Exchange of Notes.

Article 12. Entry Into Force

Each Contracting Party shall notify the other in writing of the completion of the constitutional formalities required in its territory for the entry into force of this Agreement. This Agreement shall enter into force on the date of the latter of the notifications1.

Article 13. Duration and Termination

This Agreement shall remain in force for a period of ten years. Thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party shall have given written notice of termination to the other. Provided that in respect of investments made whilst the Agreement is in force, its provisions shall continue in effect with respect to such investments for a period of twenty years after the date of termination and without prejudice to the application thereafter of the rules of general international law.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Santiago, Chile, this eighth day of January 1996, in the English and Spanish languages, bOth texts being equally authoritative.

KENNETH CLARKE

FERNANDEZ

On the signature of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Chile for the Promotion and Protection of Investments the signatories below being duly authorised thereto by their respective Governments have, in addition, agreed the following provision which shaII form an integral part of the above mentioned Agreement.

Notwithstanding the provisions in Article 6, with respect to the Republic of Chile, capital can ouly be transferred one year after it has entered into the territory of that Contracting Party in accordance with the Foreign Investment Statute (Decree Law 600) or Chapter XIV of the Chilean Central Bank's Compendium of International Exchange Regulations unless its legislation provides for a more favourable treatment.

Done in duplicate at Santiago, Chile, this eighth day of January 1996, in the English and Spanish languages, both texts being equally authoritative.

KENNETH CLARKE

FERNANDEZ