

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

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

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

With the intention to create and maintain favorable conditions for investments 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 1

Definitions

For the purpose of this Agreement:

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

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

(b) legal entities, including companies, corporations, business associations and other legally recognized entities which are constituted or otherwise 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 any kind of asset, provided that the investment has been 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 real rights such as servitudes, mortgages, liens or pledges;

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

(c) a loan or other claim to money or to any performance having an economic value;

(d) intellectual property rights, including copyrights and industrial property rights such as patents, trademarks, trade names, technical processes, industrial design, as well as know-how and goodwill;

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

3) "territory" means the land, maritime and aerial spaces under the sovereignty of each Contracting Party, as well as the maritime and submarine areas where each of the Contracting Parties exercises sovereign rights and jurisdiction, in accordance with their internal law and international law.

Article 2
Scope of application

This Agreement shall apply to investments in the territory of one Contracting Party made 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 3
Promotion and Protection of Investments

(1) Each Contracting Party shall, subject to its general policy in the field of foreign investments, 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, 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 accord to investments of the investors of the 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 State, whichever is the most favourable.

(3) If a Contracting Party accords special advantages to investors of any third State 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

(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 proceeds from the sale or partial sale or liquidation of the investment; and
- (d) compensation for expropriation or loss described in Article 6 of this Agreement.

- (2) Transfers shall be made in accordance with the law of the Contracting Party which has admitted the investment, at the exchange rate applying on the date of transfer, after the fulfillment of all tax obligations.

Article 6
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 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 taking into account the capital invested, depreciation, capital already repatriated, replacement value and other relevant factors. 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 valuable consideration, no less favourable than that which that Contracting Party accords to its domestic investors or to investors of any third State, whichever is more favourable to the investors concerned.

Article 7

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 payment has been made under this 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 against the other Contracting Party.

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 the Settlement of Investment Disputes (ICSID), created by the Convention for the Settlement of Disputes in respect of Investments occurring between States and Nationals of other States, signed in Washington on March 18, 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, the 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 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 admitted 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 or comply with any judgment, award, order or other determination made by the competent international or local tribunal in question.

Article 9

Settlement of disputes between Contracting Parties

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

(2) If the difference 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 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 State and who shall act as Chairman. The Contracting Parties shall appoint the Chairman within thirty days of that person's nomination.

(4) If, within the time limits provided for in paragraph (2) and (3) of this Article the required appointment has not been made or the required 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 State 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 generally recognised principles of international law. 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 shall be borne in equal parts by the Contracting Parties unless otherwise agreed.

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

Article 10

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 11

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 for 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.

In witness thereof the Undersigned, being duly authorized by their respective Government have signed this Agreement.

Done at Bucharest this fourth. day of July 1995,
in duplicate in the Spanish, Romanian and English languages,
all texts being equally authentic. In case of difference of
interpretation, the English text shall prevail.



FOR THE GOVERNMENT OF
THE REPUBLIC OF CHILE



FOR THE GOVERNMENT OF
ROMANIA

PROTOCOL

On signing the Agreement on the Reciprocal Promotion and Protection of Investments between the Government of the Republic of Chile and the Government of Romania have, in addition, agreed on the following provisions, which shall be regarded as an integral part of the said Agreement.

Ad Article 5

(1) Transfers concerning investments made under the Chilean Program of Foreign Debt Equity Swaps are subject to special regulations.

(2) In respect of the Republic of Chile, the invested capital can only be transferred one year after it has entered, unless its legislation provides for a more favourable treatment.

(3) 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 for the transfer of the freely convertible currency has been submitted in due form and may in no case exceed thirty days.



FOR THE GOVERNMENT OF THE
REPUBLIC OF CHILE



FOR THE GOVERNMENT OF
ROMANIA