

No. 30883

**SPAIN
and
CHILE**

**Agreement on the reciprocal protection and promotion of
investments (with protocol). Signed at Santiago on 2 Oc-
tober 1991**

Authentic text: Spanish.

Registered by Spain on 5 April 1994.

**ESPAGNE
et
CHILI**

**Accord relatif à la protection et à l'encouragement récipro-
ques des investissements (avec protocole). Signé à San-
tiago le 2 octobre 1991**

Texte authentique : espagnol.

Enregistré par l'Espagne le 5 avril 1994.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ BETWEEN THE KINGDOM OF SPAIN AND THE REPUBLIC OF CHILE ON THE RECIPROCAL PROTECTION AND PROMOTION OF INVESTMENTS

The Kingdom of Spain and the Republic of Chile, hereinafter referred to as “the Parties”,

Desiring to intensify their economic cooperation for the mutual benefit of both countries,

Seeking to create favourable conditions for investments made by investors of each Party in the territory of the other Party which involve transfers of capital,

Recognizing that the promotion and protection of investments under this Agreement will stimulate initiatives of this field,

Have agreed as follows:

Article 1

DEFINITIONS

For the purposes of this Agreement:

1. The term “investors” means individuals who are nationals, under the laws of the relevant Party, and legal entities, including companies, associations of companies, trading corporate entities and other organizations which are incorporated or, in any event, properly organized under the laws of that Party and have their headquarters in the territory of that Party, whether or not they are owned by foreign individuals or legal entities.

2. The term “investment” means any kind of assets, such as goods and rights of all sorts, acquired under the laws of the host country of the investment, including, but not limited to, the following:

- Shares and other forms of participation in companies;
- Claims, securities and rights arising from all types of contributions made for the purpose of creating economic value, expressly including any loans granted for this purpose, whether capitalized or not;
- Movable and immovable property and rights of any kind related thereto;
- Any rights in the field of intellectual property, expressly including patents and trademarks, as well as manufacturing licences and know-how;
- Rights to engage in economic and commercial activities authorized by law or by virtue of a contract, particularly those relating to the prospecting, cultivation, extraction or exploitation of natural resources.

¹ Came into force on 28 March 1994, i.e., one month after the date of the exchange of the instruments of ratification, which took place at Madrid on 28 February 1994, in accordance with article 11 (1).

3. The term “investment returns or earnings” means income deriving from an investment in accordance with the definition set out in the previous paragraph and includes, in particular, profits, dividends and interest.

4. The term “territory” means the land territory and territorial sea of each of the Parties, as well as the exclusive economic zone and the continental shelf extending beyond the limits of the territorial sea of each of the Parties, over which they have or may have jurisdiction and sovereign rights under international law for the purpose of prospecting, exploring and conserving natural resources.

Article 2

PROMOTION, ACCEPTANCE

1. Each Party shall promote, insofar as possible, the investments made in its territory by investors of the other Party and shall accept such investments in accordance with its laws.

2. This Agreement shall apply to investments made following its entry into force by investors of one Contracting Party in the territory of the other. However, it shall also apply to investments made prior to its entry into force which are considered foreign investments under the laws of the relevant Contracting Party.

3. Nonetheless, it shall not apply to disputes or claims initiated or settled prior to its entry into force.

Article 3

PROTECTION

1. Each Party shall protect in its territory the investments made in accordance with its laws by investors of the other Party, and shall not hamper, by means of unjustified or discriminatory measures, the management, maintenance, use, enjoyment, expansion, sale or, as the case may be, liquidation of such investments.

2. Each Party shall grant the necessary permits relating to these investments and shall allow, within the framework of its laws, the execution of contracts relating to manufacturing licences and technical, commercial, financial and administrative assistance.

3. Each Party shall also grant, where necessary and in accordance with its laws, the permits required in connection with the activities of consultants or experts hired by investors of the other Party.

Article 4

TREATMENT

1. Each Party shall guarantee in its territory, in accordance with its domestic laws, fair and equitable treatment of the investments made by investors of the other Party, in conditions which are not less favourable than those enjoyed by its national investors.

2. This treatment shall not be less favourable than that which is extended by each Party to the investments made in its territory by investors of a third country.

3. However, this treatment shall not extend to the privileges which one Party may grant to investors of a third country by virtue of its membership in:

- A free-trade area;
- A customs union;
- A common market; or
- A mutual economic assistance organization or an agreement signed before the date of signature of this Agreement which contains provisions similar to those applied by that Party to the members of such an organization.

4. The treatment granted pursuant to this article shall not extend to tax deductions and exemptions or other similar privileges granted by either of the Parties to investors of third countries by virtue of an agreement to avoid double taxation or any other tax agreement.

Article 5

NATIONALIZATION AND EXPROPRIATION

Nationalization, expropriation or any other measure having similar characteristics or effects that may be adopted by the authorities of one Party against the investments in its territory of investors of the other Party must be adopted exclusively for reasons of public utility or national interest pursuant to constitutional and legal provisions, and shall in no case be discriminatory. The Party adopting such measures shall pay to the investor an adequate indemnity in freely convertible currency without unjustified delay. The legality of the expropriation, nationalization or comparable measure and the amount of the indemnity shall be subject to appeal in ordinary judicial proceedings.

Article 6

TRANSFER

With regard to the investments made in its territory, each Party shall grant to investors of the other Party the right to freely transfer the income deriving therefrom and other payments related thereto, including particularly but not exclusively the following:

- Investment returns, as defined in article 1;
- The indemnities provided for in article 5;
- Amortization payments;
- The proceeds of the sale or liquidation, in full or in part, of an investment.

The transfers shall be made in freely convertible foreign currency.

The host Party of the investment shall give the investor of the other Party, or the company in which he has invested, access to the official foreign-exchange market on a non-discriminatory basis.

Transfers shall be made net of tax after the investor has fulfilled his fiscal obligations pursuant to the laws of the Party in whose territory the investment was made.