ASEAN BRIEFING

Bilateral Investment Treaty between Chile and Indonesia

DEZAN SHIRA & ASSOCIATES

Corporate Establishment, Tax, Accounting & Payroll Throughout Asia

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

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

Bearing in mind the friendly and cooperative relations existing between the two countries and their peoples;

Desiring to intensify economic cooperation to the mutual benefit of both countries;
Intending to create favourable conditions for investments by investors of one Contracting Party on the basis of sovereign equality and mutual benefit;

and 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 purpose of this Agreement:

(1) "investor" means a national of one Contracting Party who has made an investment in the territory of the other Contracting Party in accordance with the present Agreement. "National" shall comprise:
(a) natural persons having the nationality of that Contracting Party;
(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 transferred to the territory of the other Contracting Party and has been admitted in accordance with the laws and regulations of the other Contracting Party, and shall include in particular, although not exclusively:
(a) movable and inmovable property and any other property rights such as mortgages, pledges and any other similar rights;
(b) shares, debentures or any other kinds of participation in companies;
(c) claims to money or to any performance having an economic value;
(d) intellectual and industrial property rights, including copyrights, patents, trademarks, 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) "territory" means, in respect of each Contractin Party, the territory as defined in its laws and parts of the continental shelf and adjacent seas over which each Contracting Party has sovereignty, sovereign rights, or jurisdiction in accordance with international law.

Article II
Scope of application

(1) This Agreement shall apply to investments by investors of the Republic of Chile in the territory of the Republic of Indonesia which have been previously granted admission in accordance with the Law N°. 1 of 1967 concerning Foreign Investment and any law amending or replacing it, and to investments by investors of the Republic of Indonesia in the territory of the Republic of Chile which have been granted admission in accordance with its legislation.

(2) This Agreement shall apply to all investments, whether made before or after the date of entry into force of this Agrement, but the provisions of this Agreement shall not apply to any disputes, claim or difference which arose before its entry into force.

Article III
Promotion and Protection of Investments

(1) Either Contracting Party shall, subject to its general policy in the field of foreign investments, encourage and create favourable conditions for investors of the other Contracting Party to invest in its territory, and shall admit such investments in accordance with its laws and regulations.

(2) Investments of investors of either Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy adequate protection and security in the territory of the other Contracting Party.

Article IV
Treatment of Investments

(1) Each Contracting Party shall ensure fair and equitable treatment of the investments of investors of the other Contracting Party and shall not impair, by unreasonable or discriminatory measures, the operation, management, maintenance, use, enjoyment or disposal thereof by those investors. Each Contracting Party shall accord to such investments adequate physical security and protection.

(2) Each Contracting Party shall accord investments of the investors of one Contracting Party in its territory a treatment which is no less favourable than that accorded to investments made by investors of any third country.

(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 custom 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 V
Free Transfer

(1) Each Contracting Party shall guarantee within the scope of its laws and regulation in respect to investment by investors of the other Contracting Party to grant to those investors without delay, in a freely convertible currency, the transfer of funds, although not exclusively:
(a) profits, interests, dividends, and other current income;
(b) funds in repayment of loans;
(c) royalties or fees;
(d) earnings of natural persons,
(e) any capital or proceeds from the sale or partial sale or liquidation of the investment;
(f) compensation for losses described in Article VII of this Agreement.
(g) compensation for expropriation described in Article VI of this Agreement.

(2) Transfers shall be made at the exchange rate applying on the date of transfer

Article VI
Compensation for Expropriation

(1) Each Contracting Party shall not take any measures of expropriation, nationalization or any other dispossession, having an effect equivalent to nationalization or expropriation against the investments of an investor of the other Contracting Party except under the following conditions:
(a) the measures are taken for the public benefit and in accordance with the law;
(b) the measures are non 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 effected inmediately before the measure became public knowledge. Such market value shall be determined in accordance with internationally acknowledge practices and methods or, where such fair market value cannot be determined, it shall be such reasonable amount as may be mutually agreed between the Contracting Parties hereto. In case of delay of the compensation payment, it shall carry interest at the appropriate market rate of interest from the date of expropriation or loss until the date of payment.

(3) To determine the legality of the expropriation, nationalization or any other measures with an equivalent effect and the amount of the compensation, a claim may be presented in a due process of law, in accordance with existing laws and regulations of the expropriating Contracting Party. - 7 -

Article VII
Compensation for Losses

The investors of one Contracting Party whose investments have suffered losses due to a war or any other armed conflict, revolution, state of national emergency, which took place in the territory of the other Contracting Party shall be accorded by the latter Contracting Party treatment as regard 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.

Article VIII
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. The insurer or the reinsurer shall not be entitled to exercise any rights other than the rights which the investor would have been entitled to exercise.

(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. - 8 -

Article IX
Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Whith 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 and negotiations will take place between the parties concerned.

(2) If these consultations and negotiations do not result in a solution within four months from the date of a written notifications 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 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, that election shall be final.

(4) The award shall be final and binding; it shall be executed according to its respective national laws.

(5) 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. - 9 -

Article X
Settlement of Disputes between Contracting Parties concerning Interpretation and Application of the Agreement

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

(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 citizen 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 persons 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 appointments. If the President of the International Court of Justice is prevented from carrying out the said function or if that person is a citizen 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 citizen of either Contracting Party, the appointments shall be made by the most senior Judge of the Court who is not a citizen of either Contracting Party.

(5) The Chairman of the Tribunal shall be a citizen 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 shall be borne in equal parts by the Contracting Parties unless agreed otherwise.

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

Article XI
Application of other Provisions

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 a regulation, 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 regulation shall be to the extent that it is more favourable prevail over the present Agreement.

Article XII
Consultations and Amendment

(1) Either Contracting Parties may request that consultations be held on any matter concerning this Agreement. The other Party shall accord sympathetic consideration to the proposal and shall afford adequate opportunity for such consultations.
(2) This Agreement may be amended at any time, if deemed necessary, by mutual consent.

Article XIII
Entry into Force, Duration and Termination

(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 three months after the date of the latest notification.

(2) This Agreement shall remain in force for a period of ten 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 ten years from that date.

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

Done at Santiago on this seventh day of April one thousand one hundred and ninety nine, in duplicate, in the Indonesian, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

PROTOCOL

To the Agreement between the Government of the Republic of Chile and the Government of the Republic of Indonesia on the Reciprocal Promotion and Protection of Investments. On the signing of the Agreement between the Government of the Republic of Chile and the Government of the Republic of Indonesia on the Reciprocal Promotion and Protection of Investments, the undersigned representatives have agreed on the following provisions which constitute an integral part of the Agreement:

With reference to Article IV:
The Government of the Republic of Indonesia, while recognizing the principle of national treatment of investments made by investors of the Republic of Chile, reserves its right to maintain limited exceptions to national treatment of such

investments in view of the fact that there are separate laws governing investments in Indonesia, i.e.:

1. Law N° 1 of 1967 concerning Foreign Investment.

2. Law N° 6 of 1968 concerning Domestic Investment.

Notwithstanding the above statement, the Government of the Republic of Indonesia shall endevour the best of its ability to assure national treatment of investments of investor of the Republic of Chile. In no case shall treatment of investor of the Republic of Chile. In no case shall treatment of such investments be less favourable than law N°. 1 of 1967, as amended in 1970, permits.

With reference to Article V:

1. In case of the Government of the Republic of Chile: Capital can only be transferred one year after it has entered the territory of the Republic of Chile.

2. 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. Done at Santiago on this seventh day of April one thousand one hundred and ninety nine, in duplicate, in the Indonesian, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.