

MINING INTEGRATION AND COMPLEMENTATION TREATY BETWEEN CHILE AND ARGENTINA

Scopes and aims of the Treaty

Article 1: The Treaty constitutes a legal framework that shall rule the mining business within its scope of application. Its objective is to allow investors from each one of the Parties to participate in the development of the mining integration that the Parties declare of public purpose and of general interest for the Nation.

The prohibitions and restrictions in force in the legislation of each Party relative to the acquisition of property, the exercise of the possession or mere tenancy or the constitution of real rights over real estate, or of mining rights established in virtue of the quality of foreigner and Chilean or Argentinean national, shall not be applicable to the mining businesses ruled by the present Treaty.

Likewise, the Parties will allow, in accordance with their respective juridical regulations:

- a) the access, performance and protection of all activities and services related to the mining business through the exercise of the rights established in the legislation of each of the Parties, among which the easements and other rights provided in favor of the mining concessions and beneficiation, smelting and refining plants are included, all of which shall be extended to the concessions and plants on the territory of the other Party where the Treaty is applied. The Specific Additional Protocol referred to in Article 5 shall determine the area of creation of the necessary easements and the exercise of the rights set forth in the above paragraph;
- b) the development of the mining business; and
- c) the development of the activities accessory to the mining business.

Terms Used

Article 2: For the purposes of this Treaty by the following terms it shall be understood:

- A) *Mining business*: Group of civil, commercial or other nature activities directly related to the acquisition, research, prospecting, exploration and exploitation of deposits or of concessions and mining rights in general; with the beneficiation of minerals and obtaining products and sub-products from them through smelting, refining or other processes; and with the transportation and commercialization of them.
- B) *Accessory activity*: Every other activity that without being intrinsically of a mining nature is directly related to the operation and development of the mining business.
- C) *Investment*: It shall be understood in the terms defined by number 1 of Article 1 of the Agreement on Reciprocal Investments Promotion and Protection in force between both Parties, signed on August 2nd 1991.
- D) *Investor*: The “nationals” and “societies” that allocate resources to the mining business or its accessory activities in the sphere of the Treaty. The concepts of “nationals” and “societies” are used in the sense that the Reciprocal Investment

Promotion and Protection Treaty between the Republic of Chile and the Republic of Argentina assigns them.

The concept of “nationals” designates: a) Regarding the Republic of Chile: Chileans in the sense of the Constitution of the Republic of Chile; b) Regarding the Republic of Argentina: Argentines in the sense of the legal provisions in force in the Republic of Argentina. The concept of “societies” designates all the legal entities constituted in accordance with the legislation of one Party and that have their headquarters in the territory of that Party, regardless that its activity has profit purposes.

- E) *Prospecting*: a) Regarding the Republic of Chile it means: geological mining works aimed at examining or assessing the potential of the mining resources detected. b) Regarding the Republic of Argentina it means: group of actions and works that enable to identify, through the application of one or more geological recognition techniques, areas with favorable characteristics for the presence of mineral accumulations and deposits.
- F) *Exploration*: a) Regarding the Republic of Chile it means: group of actions and works that enable to identify, through the application of one or more geological recognition techniques, areas with favorable characteristics for the presence of mineral accumulations and deposits. b) Regarding the Republic of Argentina it means: mining geological works aimed at examining or assessing the potential of mining resources detected.
- G) *Exploitation*: Extraction of mineral substances for its economic use.
- H) *Benefaction*: Process, in which the minerals are subject to treatment with the aim of concentrating the useful substances, separating them from the ones that lack economic significance.
- I) *Smelting* Process of fusion of minerals concentrates or precipitates from them, with the aim of separating the metallic product to be obtained from other minerals accompanying them.
- J) *Refining*: Process aimed at separating the substances considered as impurities, from a metallic product obtained through smelting or leaching, from the substance or metal to be obtained, either through smelting or an electrochemical process.
- K) *Maquila or Transformation by Third Parties*: Activity through which a mining product is processed in treatment plants belonging to natural or physical and juridical persons other than the owner of such mining product, who pays with a portion of the production or in currency.
- L) *Operation Area*: Area delimited in the corresponding Specific Additional Protocol and where the respective mining business is developed. In such area, each one of the Parties shall exercise the corresponding controls, with the modalities of boundary facilitation that such Protocol provides.

M)Integrated Control: The activity effectuated in one or more places by the officers of the different organisms of both Parties that intervene in the Control, using compatible and similar administrative and operative procedures sequentially and, whenever possible, simultaneously.

Scope of Application

Article 3: The Sphere of Application of the Treaty is the area defined by the linkage of the geodetic co-ordinates shown in Annex I. The representation of the points corresponding to the vertexes of the co-ordinates indicated in Annex I is shown in the referential map that constitutes Annex II of the this Treaty. Both Annexes integrate this Treaty. The Scope of Application excludes all kinds of maritime spaces, insular territories, or the coastal border as defined, the latter, in the legislation of each Party. The amplification of the Sphere of Application can be carried out by agreement between the Parties, through the same proceedings of entry into force of this Treaty.

National Treatment

Article 4: Within the scope of application of this Treaty and in relation to the mining rights and to the activities mentioned in Article 1, none of the Parties shall subject the investors from the other Party to a treatment less favorable than the one given to their own nationals and societies.

Specific Additional Protocols

Article 5: The investors that require border facilitation, cross-border activities, the creation of easements or the exercise of the rights provided in Article 1, paragraph three, letter a), for the development of mining business must request them to the Administrating Commission established in Article 18 of this Treaty. The Administrating Commission, previous assessment, may recommend the Parties adopting the Specific Additional Protocols, where the Operations Area and the proceedings that correspond for each case shall be determined. The Specific Additional Protocols shall enter into force at the date of their subscription. The Parties shall be able, when necessary, to determine -in the Specific Additional Protocols- an area that exceptionally exceeds the Scope of Application of the present Treaty for the creation of the easements provided in Article 1.

Border Facilitation

Article 6: The Parties, according to their respective legislation and for each Specific Additional Protocol, shall take the coordinated actions of their competent public organisms, as to facilitate the investors from both Parties the development of the respective mining business. Likewise, they shall allow with that objective, the use of all kinds of natural resources, inputs and infrastructure provided in the respective Specific Additional Protocol, with no discrimination whatsoever, in relation to the Chilean or Argentinean nationality of the investors. The Parties shall be able to establish integrated controls for the administrative and operative procedures with the aim of facilitating the access and exit to and from the Operations Area in the territory of one or both Parties.

Taxation and Customs Aspects

Article 7: The Parties agree that any person or legal entity, with domicile, residence or constituted in their territory, who are committed to the mining business or activities accessory to it under protection of this Treaty, shall submit, in relation to their home taxation, to the home legislation of each Party or to the specific agreement or agreements to avoid the double duty in force between them, and to the provisions in this Article. Likewise, the Parties agree that, for duty and customs purposes exclusively, the movement of goods from outside the Operations Area and carried out within such Area –defined as such by the corresponding Specific Additional Protocol- shall not constitute import, export nor temporary admission or departure; which shall circulate freely within it under the facilitation and co-ordination measures that the competent Services determine. The import and export general regulations shall be applied, as the case may be, each time that a property goes out of the Operations Area to the territory different from the country that originally it entered through into said Area.

The national or nationalized goods from one or other Party that enter into the Operations Area or go out of it, shall not be bound to the payment of the rights, duties, taxes and additional customs charges or taxation nature that could affect the respective customs destination, provided that such entry or departure is carried out through the same territory.

For the purposes of the Treaty herein, the referred entries and departures shall not constitute import or export, according to each case. Nonetheless, the commercial transactions related to those goods carried out within the mentioned Area, shall be subject to the customs and taxes duties, rights and other charges/burdens of general nature, accordingly.

The foreign goods for both Parties that enter into such Area or go out from it, shall be subject to the general customs and tax legislation applicable to one or other Party, accordingly. Likewise, the goods obtained or produced in the Operations Area shall be subject to such general prescriptions of each Party, accordingly. Once the demands provided in the above sections are fulfilled, the goods referred to shall be able to circulate freely in the mentioned Areas, subject to the facilitation or coordination measures that the competent organisms and services determine.

The natural persons domiciled or resident and the juristic persons constituted in the territory of the Parties that develop the mining business shall be bound to demonstrate to the taxation authorities of the other Party that so requested it, according to the technical proceedings generally used in the mining activity, the origin of the extracted mineral, detailing what quantities come from one of the Parties and what quantities from the territory of the other. Likewise, the Parties are bound to give the facilities that come out to be necessary so that the taxation and mining authorities of the other Party are able to verify physically the observance of such proceedings.

The revenues or incomes originated from sales or exports of the mineral extracted from the territory of one Party, belonging to the domiciled or residing physical person, or to the juridical person constituted or established in it, that develops a mining business in it, can only be submitted to imposition by that Party, even though at the moment of these transactions the mineral is located in the territory of the other Party for having been processed in it.

The Parties agree that the contractors or subcontractors hired by any person or legal entity domiciled, residing or constituted, accordingly, in the territory of one of the Parties that give services in the territory of the other for the effects of making possible the extraction of the mineral located in the territory of the first Party, receiving exclusively counter-benefits for their services from the hiring person or legal entity, shall only be subject to the home taxation where

the contractor has domicile, resides or had been constituted, with respect to such services and the incomes they generate.

Likewise, the Parties agree that the same criteria shall be applied with respect to the activities that the person or legal entity domiciled, residing or constituted in the territory of one Party, that develop the mining business, carry out in the territory of the other Party with the same purpose.

Likewise, the depending personnel, that works in the Operations Area, shall be subject to the taxation system of the country where it is hired, regardless of its physical movements within the Operations Area.

In the case of services not considered in the above paragraphs that are given in the Operations Area or to the physical or juridical persons that develop the mining business in it, the Parties agree that they shall be subject only to the consumption tax of the Party where they give their services.

The taxation problems that the application of the present Article might generate, shall be submitted by the Administrating Commission to consideration of the competent authorities of the bilateral Covenant to Avoid the Double International Taxation in force, so that they solve them according to the proceedings provided in it, even though they refer to charges not included in that covenant.

Promotional Systems

Article 8: Mining business developed under the protection of the Treaty herein shall enjoy, when corresponding, in each State, the benefits and franchises that the Parties establish, in spite of the fact that the processes involved in each mining business are carried out in the territories of both Parties.

Social Security Aspects

Article 9: As for social security, it shall be subject to the provisions in the Social Security Covenant in force between the Parties and to the national legislation of each one of them, in the applicable extent.

Labor Aspects

Article 10: The applicable labor legislation shall be that of the country where the worker effectuates his tasks, give his services or effectively develops the activity. When the tasks are developed in both sides of the border indifferently, the law of the place where the work contract was signed shall be applied. In case of doubt about the applicable legislation, the principle of the most favorable legislation for the worker shall prevail.

Investments and Consequential Expenditure

Article 11: Any investment and operation expenditure that the Parties, their companies or institutions must incur in as consequence of the development of a mining business, included in the respective Specific Additional Protocol, must be absorbed by the investor or investors that set up such mining business.

Environment

Article 12: The Parties shall apply their respective national legislation on the protection of the environment, submitting the mining activities to the Environmental Impact Assessment System in Chile and to the Environmental Impact Declaration in Argentina, correspondingly. Likewise, the Parties shall promote the exchange of relevant information that has relation to the main environmental effects of each one of the mining business or accessory activities, included in the present Treaty.

People's Health

Article 13: The Parties shall apply in the sphere of people's health, in the areas of general health and labor, the provisions of their legislation in force. Notwithstanding the above, in case of differences between these, the regulations of higher level of demand shall be adopted.

Likewise, the Parties shall apply their national legislation in sanitary matters relative to food, pharmaceutical products, environmental health, chemical product management and others. The Parties shall exchange all relevant sanitary information that has relation to the development of the mining projects included in the present Treaty or produced as a consequence of it. The companies holding the mining projects included in the Treaty herein shall be liable for the payment of the expenses of medical treatment of their workers medical treatment, and of the workers from contractor or subcontractor companies employed for the respective mining business, given in the medical facilities of the Party to whose sanitary/social security legislation they are not subjected, when they are taken to these for this purpose in request of the company. The Parties shall allow the development of their activity, within the Operations Area of the mining project, to the professionals and technicians of the health area that are authorized for such exercise according to the legislation of the other Party in all those cases or circumstances that endanger the life or health of the people that are in the Operations Area.

Shared Water Resources

Article 14: The use of shared water resources, for all the effects of the Treaty herein, shall be performed in accordance with the regulations of international law on the matter, and especially, according to the "Act of Santiago on Hydrological Basins" dated June 26th of 1971, the "Treaty on Environment" between the Republic of Chile and the Republic of Argentina signed on August 2nd of 1991 and the "Specific Additional Protocol on Shared Water Resources between the Republic of Chile and the Republic of Argentina" of the same date.

Preservation of Border Demarcation

Article 15: The companies operating in virtue of the present Treaty shall not be able to effectuate works that affect the landmarks or alter the courses and divisions of waters or other geographical accidents that determine the international border between the Parties. Any special situation that might arise in relation to this matter shall be consulted with the Foreign Affairs Ministries of both Parties so that, with the intervention of the Border Mix Commission, it is duly considered. The interested companies shall pay the expenses of the Mix Commission that might be necessary to deal with these cases. The Foreign Affairs Ministries, through the Border Mix Commission

shall be competent to know any inquiry or requirement that the Parties make relative to the precise determination of the border trace for the effects of the application of this Treaty.

Cessation and Suspension, of the Mining Business

Article 16: The Parties agree that, once the mining business under the protection of the provisions of the Treaty is concluded by any cause, the real property acquired for the development of said activity shall continue to be subject to the legal regulations of each Party. The Administrating Commission shall be able, by request of the investor, to suspend for a definite and renewable time the border facilitation granted by a Specific Additional Protocol in the extent that the mining business requires it and the investor so demonstrates it. The investor shall be able to request the renovation of the suspension of the border facilitations at least thirty days before the date of the end of the term of suspension granted by the Administrating Commission.

In case that the investor or investors so require, they shall request the resumption of the suspended border facilitations at least thirty days before the end of the suspension period granted to them. If the investor does neither request the renovation of the suspension period of the border facilitations granted by the Administrating Commission, nor requests the resumption of such facilitations within the above deadlines, the Specific Additional Protocol shall be considered as terminated.

General Exceptions

Article 17: None of the provisions of the Treaty herein shall be interpreted in the sense of preventing one of the Parties from adopting or applying measures in accordance to Article 50 of the Treaty of Montevideo 1980 or to Article XX of the General Agreement on Tariffs and Trade in 1994.

Administration and Assessment of the Treaty

Article 18: The administration and assessment of the Treaty shall be in the hands of an Administrating Commission, constituted by representatives of the Foreign Affairs Ministry of the Republic of Chile and the Foreign Affairs, Foreign Trade and Cult Ministry of the Republic of Argentina, and the Ministry of Mining of the Republic of Chile and the Secretary of Industry, Trade and Mining of the Republic of Argentina. The Administrating Commission shall be able to summon the representatives of the competent public organisms when so they require so.

That Commission shall be constituted within six (6) months from the date of entry into force of the Treaty and in its first meeting it shall establish its internal regulations.

The Administrating Commission shall adopt its decisions by common consent.

The Administrating Commission of the Treaty shall have, among others, the following tasks:

- a) To implement the necessary mechanisms to guarantee the execution of the Treaty;
- b) To develop the corresponding actions leading to the subscription of the Specific Additional Protocols in the mining business that so require it, taking care for their proper application.
- c) Present recommendations through the Ministries of Foreign Affairs, Foreign Trade and Cult of the Republic of Argentina, and the Ministry of Foreign Affairs of the Republic of Chile, to the authorities and organisms competent on the matter, with respect to the problems that might arise in the application of the provisions of the present Treaty;

- d) To participate in the solution of controversies in accordance with the provisions of Articles 19 and 20 of the Treaty herein; and
- e) To fulfil the remaining tasks commissioned to the Administrating Commission in virtue of the provisions of this Treaty, its Additional Protocols, Specific Additional Protocols and other instruments deriving from it.

Solving Controversies between the Parties

Article 19: The controversies that might arise between the Parties about the interpretation, application or infringement of the Treaty, its Additional Protocols, Specific Additional Protocols and other instruments deriving from it, shall be settled, as possible, through direct negotiations carried out through the Administrating Commission.

If a solution is not reached through such direct negotiations, within one hundred and eighty days from the date that one of the Parties communicated in writing to the other its intention of submitting the controversy to the mentioned proceeding, the resorting one shall be able to submit it to consideration of the Economic Complementation Council according to the proceedings provided in articles 4 and following of Chapter III of the Second Additional Protocol of the Economic Complementation Agreement 16, between Chile and Argentina.

Solving controversies between one Party and an investor from the other Party

Article 20: The Investments Reciprocal Protection and Promotion Treaty between the Republic of Chile and the Republic of Argentina on August 2nd of 1991, nowadays in force, shall be applied to the controversies that arise between one Party and investors from the other Party.

Incorporation of Protocols

Article 21: The Additional Protocols that rule the mining business developed by investors from any of the Parties and subscribed under the protection of ACE 16 shall be incorporated into the present Treaty, from its entry into force.

Entry into Force and Duration

Article 22: This Treaty shall be ratified by the Parties and shall enter into force on the date of exchange of the ratification instruments. This Treaty shall last indefinitely.

Complaint

Article 23: After thirty years in force, any of the Parties shall be able to complain –through the diplomatic path- about the present Treaty, and such complaint shall not be effective before three years from the date it was performed. As for the investments carried out before the date that the notice of termination of this Treaty is made effective, its provisions shall remain in force until the cessation of the mining business object of the investment.

PARTIES

In Antofagasta Republic of Chile and in San Juan, Republic of Argentina, on December 29th of 1997 in two originals, being both of them identically authentic.

BY THE GOVERNMENT OF THE REPUBLIC OF CHILE
BY THE GOVERNMENT OF THE REPUBLIC OF ARGENTINA

ANNEX B:

ANNEX I SCOPE OF APPLICATION OF THE MINING INTEGRATION AND COMPLEMENTATION TREATY

CHILE

ARGENTINA

South Latitude W Longitude. South Latitude W Longitude.

Of D. Of D.

1 23°00' 68°18' 1 23°00' 66°00'
2 24°00' 68°18' 2 25°00' 66°00'
3 24°00' 68°18' 3 25°00' 67°00'
4 27°00' 69°00' 4 28°00' 67°00'
5 27°00' 70°13' 5 28°00' 68°00'
6 29°00' 70°13' 6 30°00' 68°00'
7 29°00' 70°30' 7 30°30' 69°00'
8 30°10' 70°30' 8 37°00' 69°00'
9 30°10' 70°55' 9 37°00' 70°00'
10 32°12' 70°55' 10 40°00' 70°00'
11 32°12' 70°43' 11 40°00' 70°30'
12 34°52' 70°43' 12 46°00' 70°30'
13 34°52' 71°07' 13 46°00' 71°00'
14 36°00' 71°07' 14 49°00' 71°00'
15 36°00' 71°45' 15 51°02' 72°00'
16 39°00' 71°45' 16 51°40' 72°00'
17 39°00' 72°20' 18 41°17' 72°20'
19 41°17' 72°13' 20 41°45' 72°13'
21 41°45' 72°15' 22 42°35' 72°15'
23 42°35' 72°20' 24 46°00' 72°20'
25 46°00' 73°07' 26 49°00' 73°00'
27 51°02' 72°28' 28 51°40' 72°28'

Note: a) the geodetic co-ordinates of Chile are referred to the South American Datum of 1969 (SAD69). b) The geodetic co-ordinates of Argentina are referred to the astronomical point Campo Inchauspe (International Ellipsoid).

ANNEX C:

ANNEX I SCOPE OF APPLICATION OF THE MINING COOPERATION AND INTEGRATION TREATY

SYMBOLS:

Mining deposit

City

International border

Sphere of Application

Vertex co-ordinate in Chile

Vertex co-ordinate in Argentina

The present map is annexed only for the purpose to represent the vertexes that define the scope of application of the Mining Integration and Complementation Treaty.

This map partially represents the territory of each one of the parties.

The parties reserve the use of their own toponymy in their respective territories (map not edited).

ANNEX D:

**COMPLEMENTARY PROTOCOL OF THE MINING INTEGRATION AND
COMPLEMENTATION TREATY BETWEEN THE REPUBLIC OF ARGENTINA AND THE
REPUBLIC OF CHILE**

ANNEX E:

EXCHANGE OF NOTES, CHILEAN EMBASSY ARGENTINA N°459/99