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EXPLANATORY MEMORANDUM

ON THE DOUBLE TAXATION CONVENTION

BETWEEN

THE REPUBLIC OF SOUTH AFRICA

AND

THE REPUBLIC OF CHILE

It is the practice in most countries for income tax to be imposed both on the world-wide income derived by residents of the country and on income derived by non-residents which arises in the country. The effect of such a system is that income derived by a resident of one country from a source in another country is subjected to tax in both countries. As this position clearly discourages foreign investment, it is normal for countries which have trade relations to conclude double taxation conventions. Such conventions commonly provide that income of a particular nature will either be taxable in only one of the countries, or may be taxed in both countries with one of them allowing a credit for the tax imposed by the other.

The Convention concluded with Chile closely follows the OECD Model. In the explanation which follows, the general principles of each Article of the Convention are set out.

The entire text has been made gender neutral.

Preamble

The Preamble records that the object of the Convention is to avoid double taxation and prevent fiscal evasion with respect to taxes on income and on capital.

Article 1

Persons Covered

The Convention is made applicable to persons who are residents of one or both of the Contracting States except as otherwise stated. This means, *inter alia*, that a citizen of one of the States who is resident in a third State will not enjoy the benefits of the Convention, apart from the non-discrimination provisions.

Article 2

Taxes Covered

Paragraphs 1 and 2 of this Article provide that the Convention will apply to all taxes on income and on capital imposed by the two States irrespective of the manner in which they are levied.

Paragraph 3 lists the existing taxes imposed by each State and paragraph 4 provides that the Convention will also apply to identical or substantially similar taxes and to taxes on capital which are subsequently imposed by either State.

Article 3

General Definitions

This Article defines various expressions which are used in the body of the Convention. Several of these definitions are self-evident and are not further explained.

The definition of "South Africa" includes not only the sovereign territory but also those areas outside its territorial sea over which it may exercise jurisdiction in accordance with international law, for example, in relation to the exploitation of natural resources.

"Person" is defined to include an individual, a company and any other body of persons that is treated as an entity for tax purposes. The underlined words are of particular relevance to partnerships. Partnerships are not regarded as taxable entities in South A frica, rather, the income of a partnership is taxed in the hands of the partners. Accordingly, should a partnership consisting of a Chilean resident and a resident of a third State derive income in South Africa, only the Chilean resident will be entitled to the benefits of the Convention on his/her share of the partnership income.

"International traffic" is defined as any transport by ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other State. Special provisions are contained in Article 8 for the taxation of international traffic. The effect of the exclusion mentioned above is that should a Chilean company operate a purely domestic airline operation within South Africa, that operation will not fall to be dealt with under Article 8, but rather under Article 7 which deals with business profits in general. This provision is intended to place that operation on the same footing as South African domestic airlines.

Paragraph 2 follows the OECD Model in providing that expressions not defined in the Convention bear the meaning that they have under the domestic taxation laws of the States at the time of application of the provisions of the Convention. Any meaning under the taxation laws will take precedence over a meaning under other laws of the State.

Article 4

Resident

The concept of "resident of a Contracting State" is used throughout the Convention and is of importance in three cases:

(a) in determining the Convention's personal scope of application as set out in Article 1;

(b) in solving cases where double taxation arises because of dual residence;

(c) in solving cases where double taxation arises as a consequence of taxation in the State of residence and in the State in which the income arose, the State of source.

This Article defines the meaning of the term and further solves cases of dual residence.

In paragraph 1, the term "resident of a Contracting State" is defined. The definition refers to the concept of residence adopted in the domestic law of each of the Contracting States. As criteria for taxation as a resident, domicile, residence, place of management, place of incorporation or any other criterion of a similar nature are used in the definition.
The term "resident" also includes specific reference to the State itself.

Paragraph 2 provides solutions to the cases where individuals are residents of both Contracting States and sets out a step by step method of finally deciding which State has the right to claim the individual as its resident.

Paragraph 3 provides that an item of income, profit or gain derived through a fiscally transparent person will be considered to be derived by a resident of a Contracting State if that item of income, profit or gain is taxable under the taxation laws of that State as the income, profit or gain of such resident.

Paragraph 4 deals with companies and other bodies of persons who are not individuals but who are residents of both States and specifies that in these cases the competent authorities shall by mutual agreement decide which State will have the sole right to claim the company or body of persons as its resident. The paragraph further provides that in the absence of such an agreement between the competent authorities, the person will be denied benefits under the Convention.

Article 5

Permanent Establishment

One of the goals of the Convention is to determine the right of a Contracting State to tax the business profits of an enterprise of the other Contracting State which arise through a permanent establishment situated in the first-mentioned State. The Article defines what is to be regarded as a permanent establishment.

Paragraph 1 gives a general definition of a "permanent establishment" as being a fixed place of business through which the business of an enterprise is carried on.

Paragraph 2 contains a list, which is not exhaustive, of what is regarded to be a permanent establishment, subject to the provisions of paragraph 1.

Paragraph 3(a) provides expressly that a building site or construction, assembly or installation project will constitute a permanent establishment only if it continues for a period of more than six months. Supervisory activities carried on in a Contracting State in connection with such site or project will also constitute a permanent establishment if they continue for more than six months and irrespective of the fact that the enterprise carrying on such activities has no fixed place of business in that State.

Paragraph 3(b) introduces provisions dealing with the furnishing of services through employees or other personnel engaged by that enterprise for such purpose and specifies that a permanent establishment will be deemed to exist, despite there being no fixed place of business, if such services are rendered in a State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned.

Paragraph 3(c) introduces provisions dealing with the income from professional services or other activities of an independent nature by an individual and specifies that a permanent establishment will exist if the individual is present in that State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned.

A number of preparatory or auxiliary activities which are treated as exceptions to the general definition laid down in paragraph 1 are set out in paragraph 4. The paragraph specifies that the term "permanent establishment" will be deemed not to exist if the enterprise only carries on the various activities set out therein. The Contracting State in which these activities take place will in any event not have any, or negligible profits, to tax if these are the only activities which occur.

Paragraph 5 sets out the generally accepted principle that an enterprise will be treated as having a permanent establishment in a Contracting State if it carries on business in that State through an agent situated in that State, provided that the agent is not of an independent status and provided that such agent has the power to conclude contracts in the name of the enterprise.

Paragraph 6 deems an insurance enterprise, except in regard to reinsurance, to have a permanent establishment in the other Contracting State if it collects premiums in that territory or insures risks situated therein, through a person other than an independent agent.

Paragraph 7 deals with the situation where an enterprise carries on business through an independent agent in the other Contracting State and provides that no permanent establishment will be deemed to exist if the activities are carried on through such an agent who is acting in the normal course of business and that conditions of a commercial or financial nature are not made or imposed that would differ from those generally agreed to by independent agents.

Paragraph 8 sets out the principle that the existence of a subsidiary company does not, of itself, constitute that subsidiary company a permanent establishment of its parent company. This follows from the principle that for tax purposes a subsidiary company constitutes an independent legal entity and will be taxed in its State of residence on its own profits.

Article 6

Income from Immovable Property

Paragraph 1 provides that income from immovable property may be taxed in the State in which the property is situated. Income from agriculture and forestry is specifically included in this rule.

Paragraph 2 establishes the general rule that what constitutes fixed property will be decided under the law of the State in which the property is situated. Nevertheless, property accessory to fixed property and livestock and equipment used in agriculture and forestry are specifically included. So too are usufructs and payments for the right to extract minerals and other natural resources.

Paragraph 3 makes it clear that the rule established in paragraph 1 applies irrespective of the manner in which the property is exploited.

Paragraph 4 provides that the provisions of paragraphs 1 and 3 also apply to income derived from fixed property owned by an enterprise. In the absence of this provision, it might be argued that this income should be dealt with in terms of the provisions of Article 7 which establishes somewhat different rules for the treatment of business profits.

Article 7

Business Profits

This Article deals with the taxation of business profits and is to be read together with Article 5 as it uses the test of "permanent establishment" in determining where such profits are to be taxed.

Paragraph 1 specifies that the profits of an enterprise which is a resident of a Contracting State are taxable only in that State unless it carries on business in the other Contracting State through a permanent establishment situated in that other State in which case that other State may tax the profits which are attributable to that permanent establishment.

Paragraph 2 deals with the allocation of profits to a permanent establishment and specifies that the profits which are to be attributed to the permanent establishment are those which it would have made if it had been dealing with entirely separate enterprises under arms-length conditions and not with its head office.

Paragraph 3 recognises the fact that in calculating the profits of a permanent establishment, allowance must be made for certain expenses, wherever incurred, which were incurred for the purposes of the permanent establishment. For example, if the head office incurs general administrative expenses it is most likely that a portion of those expenses was in fact incurred on behalf of the permanent establishment and it will therefore be necessary to allocate that portion of the expenses to the permanent establishment in determining its profits. The emphasis here is on the fact that the expenses must have been actually incurred. Notional charges such as management fees are excluded.

Paragraph 4 provides for profits attributable to a permanent establishment to be determined on the basis of apportionment if this method is customary in a Contracting State. However, the proviso specifies that the result of this method should still be in accordance with the principles of this Article.

Paragraph 5 deals with the situation where a permanent establishment which, although carrying on other business, also carries on purchasing for its head office. The paragraph provides that the profits which are attributed to the permanent establishment cannot be increased by the addition of a notional profit from such purchase transaction.

Paragraph 6 stipulates that the method of allocation of profits to the permanent establishment should not be changed merely for the reason that a different method may result in more profit becoming taxable in the State of residence of the permanent establishment. This also establishes a degree of certainty regarding the tax treatment to be expected in the State in which the permanent establishment is situated.

It is possible that the term "profits" could include other items of income which are dealt with in other Articles of the Convention. Paragraph 7 stipulates that the preceding provisions of Article 7 shall not affect the provisions of such other Articles. An example of this is where profits include interest which is dealt with separately under Article 11.

Article 8

Shipping and Air Transport

Paragraph 1 provides that profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic are taxable only in that State. Thus, for example, profits derived by South African Airways from its flights into and out of airports in Chile are taxable only in South Africa.

Paragraph 2 specifies that the expression "operation of ships or aircraft" by an enterprise includes, charter or rental on a bareboat basis of ships or aircraft, the rental of containers and related equipment, provided such activities are connected to the operation by the enterprise of ships or aircraft in international traffic.

Paragraph 3 makes the above rules also applicable where the business is conducted through a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

This Article deals with associated enterprises and in paragraph 1 provides that a Contracting State may recalculate the profits of the enterprises if they have created conditions between themselves which would not be created by enterprises dealing at arms-length with each other. This paragraph is effective in dealing with the effects of transfer pricing between associated enterprises. The concept of what is regarded to be an associated enterprise is also set out in this paragraph.

The recalculation of profits envisaged in paragraph 1 may of course result in double taxation if, for example, one of the Contracting States increases the profits of its enterprise, and subjects the increased amount to tax, although such increased amount may already have been subjected to tax in the hands of its associated enterprise in the other Contracting State.

The provisions of paragraph 2 oblige that other State to make a corresponding adjustment to the profits of the associated enterprise and, in so doing, avoid double taxation. It should be noted that the paragraph provides for consultation between the States in deciding on such adjustment.

Article 10

Dividends

Paragraphs 1 and 2 of this Article provide for the common international tax treatment of cross-border dividends, in terms of which the State in which the dividends are declared may impose a limited withholding tax on the non-resident shareholder and the State of residence in which the dividends are received has an unlimited taxing right.

The limitation on withholding tax rates in the source State imposed by paragraph 2 is as follows:

(a) the tax is limited to 5% of the gross dividend where the shareholder is a company which holds directly at least 25 per cent of the capital of the company

paying the dividend. This limitation is intended to encourage substantial (i.e. at least 25 per cent) investment by companies in one State in subsidiaries in the other State;

(b) in all other cases the rate of tax is limited to 15 per cent of the gross amount of the dividends.

Both the above limitations apply only if the registered shareholder is also the beneficial holder i.e. the limitation does not apply to nominee shareholders.

The mode of application of these limitations shall be settled by the competent authorities of the two States.

Tax on the profits of the company will not be affected by this paragraph.

It is further provided that the provisions of paragraph 2 shall not limit the application of the Additional Tax payable under Chilean Income Tax Act as long as the First Category Tax is fully deductible in computing the amount of Additional Tax. Non-domiciled and non-resident persons are subject to a 35 per cent withholding of Additional Tax on distributions or remittances, with a 16 per cent credit being granted in respect of the First Category Tax.

Paragraph 3 contains the standard definition of what constitutes a dividend.

Paragraph 4 provides that this Article will not apply in cases where a resident of one State carries on business in the other State through a permanent establishment and derives dividends from shares the holding of which is effectively connected with that permanent establishment. In other words, the holding must be part of the business assets of the permanent establishment. The source State is therefore not limited in its taxing rights which are then exercised under the provisions of Article 7 of the Convention.

Paragraph 5 deals with the limitation of the right of one of the States to impose tax on dividends declared by, or the undistributed profits of, a company which is a resident of the other State. One situation in which tax may be imposed, is where the shareholding is effectively connected with a permanent establishment, as mentioned in relation to paragraph 4 above.

The second situation can best be explained through an example of a Chilean company which carries on business through a branch in South Africa. The paragraph provides that South Africa may not impose tax on the dividends declared by the Chilean company, even though its profits are partly derived in South Africa, except in so far as the dividends are received by South African resident shareholders.

Paragraph 6 provides that the provisions of Article 10 will not apply if the right giving rise to the dividend was created or assigned mainly for the purpose of taking advantage of the Article by means of that creation or assignment. This is an anti-avoidance provision.

Article 11

Interest

This Article deals with the taxation of income in the form of interest.

Paragraph 1 specifies that interest which arises in a Contracting State and is paid to a resident of the other Contracting State may be taxed in the State of residence.

Paragraph 2 gives a right of taxation to the source State as well but limits the amount of tax to 5 per cent of the gross amount of interest derived from loans granted by banks and insurance companies, interest derived from bonds or securities that are regularly and substantially traded on a recognised securities market, as well as interest derived from a sale on credit paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment. In all other cases the limit is 15 per cent of the gross amount of the interest.

Paragraph 3 contains the standard definition of what is to be regarded as interest.

Paragraph 4 specifies that if the beneficial owner of the interest carries on business in the Contracting State in which the interest arises through a permanent establishment situated in that State, the interest may be taxed in that State if the debt in respect of which the interest is paid is connected to that permanent establishment. The provisions of Article 11 will not apply to such interest but rather the provisions in Article 7. This paragraph is similar to paragraph 4 of Article 10 dealing with dividends.

Paragraph 5 lays down the principle that the State of source of the interest is the State of which the payer of the interest is a resident. It also provides for an exception to this rule in the case of interest-bearing loans which have an economic link with a permanent establishment operated in the other Contracting State by the payer of the interest. If the loan was contracted for the requirements of the permanent establishment and the interest is borne by such permanent establishment, the paragraph specifies that the source of the interest is the Contracting State in which the permanent establishment is situated.

The purpose of paragraph 6 is to restrict the operation of the provisions of this Article with regard to the taxation of interest in cases where there is a special relationship between the beneficial owner of the interest and the payer or between both of them and a third party. If, in the presence of this relationship, the interest paid exceeds the interest which would have been paid in the absence of such a relationship, the provisions of this Article will not apply to the amount of the interest which is considered to be excessive and such excessive amount will remain taxable in accordance with the laws of both Contracting States. The limitation placed on the source State under paragraph 2 will in such circumstances be negated in respect of the excessive amount. This is an anti-avoidance provision.

Paragraph 7 stipulates that there will be no relief granted under this Article if the interest arising was due to a scheme created to take advantage of this Article. This is an anti-avoidance provision and is in line with the provisions in Article 10(6) and Article 12(7).

Article 12

Royalties

Paragraphs 1 and 2 of this Article provide for the common international tax treatment of cross-border dividends, in terms of which the State in which the royalties arise may impose a limited withholding tax on the non-resident shareholder and the State of residence in which the royalty payment is received has an unlimited taxing right.

The limitation on withholding tax rates in the source State imposed by paragraph 2 is as follows:

(a) 5 per cent of the gross amount of the royalties for the use of, or the right to use, any industrial, commercial or scientific equipment;
(b) 10% per cent of the gross amount of the royalties in all other cases

The competent authorities of the Contracting States shall settle the mode of application of this limitation by mutual agreement.

Paragraph 3 defines which payments will constitute royalties for purposes of the Article. It includes amounts normally understood as royalties, such as patents, copyrights, trade marks, etc, and also includes payments for the use of, or right to use, industrial, commercial or scientific experience (know-how). Information concerning, industrial, commercial or scientific experience is also included.

Paragraph 4 provides that the provisions of paragraphs 1 and 2 will not apply if the beneficial owner of the royalties carries on business in the State in which the royalties arise through a permanent establishment and the royalties are effectively connected with that permanent establishment. In this case, the royalties are in effect regarded as part of the business profits of the permanent establishment, and may be taxed by the source State. This paragraph is similar to paragraph 4 of Article 10 dealing with dividends and paragraph 4 of Article 11 dealing with interest.

An example of where this paragraph would apply would be a Chilean company with a permanent office in South Africa through which it sold franchise rights for the use of its product brand. South Africa would in this case be entitled to tax the franchise payments received by the Chilean company.

Paragraph 5 is a deeming provision which establishes the source of royalties by laying down the principle that the State of source of the royalties is the State of which the payer of the royalties is a resident. It also provides for an exception to this rule in the case of royalties which have an economic link with a permanent establishment operated in the other Contracting State by the payer of the royalties. If the liability to pay the royalties was incurred by the permanent establishment and the royalties are borne by such permanent establishment, the paragraph specifies that the source of the royalties is the Contracting State in which the permanent establishment is situated.

Paragraph 6 contains an anti-abuse provision in respect of transfer pricing. Where the payer and recipient of a royalty are connected persons and the royalty is excessive, the source State may tax the portion which is excessive according to its laws. In other words, the limitation set out in paragraph 2 would only apply to the portion of the royalty which meets the arms-length test.

Paragraph 7 provides that the provisions of Article 12 will not apply if the rights giving rise to the royalties were created or assigned mainly for the purpose of taking

advantage of the Article by means of that creation or assignment. This is an anti-avoidance provision.

Article 13

Capital Gains

The Article deals with the taxation of capital gains and covers all kinds of taxes which are imposed on such gains.

Paragraph 1 specifies that the right to tax gains derived from the alienation of immovable property is also given to the Contracting State in which the property is situated although the alienator may be a resident of the other Contracting State.

Paragraph 2 deals with the alienation of movable property which forms part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State. It provides that gains from the alienation of such property may also be taxed in the State in which such permanent establishment is situated and includes such gains arising from the alienation of the permanent establishment as such and the enterprise as a whole.

Paragraph 3 provides that gains from the alienation of ships or aircraft operated in international traffic and movable property related to the operation of such ships or aircraft are taxable only in the State of which the alienator is resident. This follows the principle laid down in Article 8 with regard to the taxation of the business profits of such an enterprise.

Paragraph 4 specifies that gains arising from the alienation of shares or other rights representing the capital of a company, or comparable interests or rights in any other person that is a resident of the other Contracting State, may be taxed in that other State.

Paragraph 5 specifies that gains from the alienation of any property not covered by the preceding paragraphs of this Article shall only be taxed in the State of residence of the alienator.

Article 14

Income from Employment

Paragraph 1 lays down the principle that salaries, wages and other remuneration in respect of an employment is taxable only in the State of residence of the employee unless the services in respect thereof are rendered in the other Contracting State, in which case the remuneration arising from the services rendered in the other State may also be taxed in that other State.

Paragraph 2 limits the right of taxation of the State in which the services are rendered (the source State) in that remuneration for services rendered in that State is taxable only in the State of residence if the following conditions are all met:

(a) the recipient is present in the source State for a period or periods not exceeding 183 days in any twelve-month period; and

(b) the employer who pays the remuneration, or on whose behalf the remuneration is paid, is not a resident of the source State; and

(c) the relevant remuneration is not borne by a permanent establishment which the employer has in the source State.

It is important to note that all three requirements must be met before the provisions of the paragraph operate.

Paragraph 3 deals with remuneration derived by employees in respect of employment aboard a ship or aircraft operated in international traffic and it specifies that such remuneration may be taxed in the State of residence of the operator of such ship or aircraft.

Article 15

Directors' Fees

The Article provides that directors' fees may be taxed by the State in which the company paying the fees is resident. It does not, however, prevent the director from also being taxed on those fees in the director's State of residence.

Article 16

Entertainers and Sportspersons

In terms of paragraph 1 the income derived by entertainers and sportspersons may be taxed in the Contracting State in which their activities are exercised.

Paragraph 2 expands the principle laid down in paragraph 1 in that it specifies that in cases where income in respect of the activities of entertainers and sportspersons accrues to some other person rather than the entertainer or sportsperson, such income may still be taxed in the Contracting State in which such activities are exercised. This paragraph covers the frequent situation in which a professional sportsperson forms a company and competes in a sporting event in another country not in a personal capacity, but rather as an employee of that company. As the sportsperson's activities in the country continue for a very short period and do not constitute a permanent establishment, neither the sportsperson nor the company would under the normal provisions of the Convention be taxable in that country.

Article 17

Pensions

Paragraph 1 provides that pensions may be taxed in the State in which they arise. The State of residence may also tax but must then give a credit for the source State tax.

Paragraph 2 provides that alimony and other maintenance payments paid to a resident of a State by a resident of the other State is taxable only in the State of residence of the recipient of such alimony or other maintenance payments. However, paragraph 2 further provides that alimony and other maintenance payments shall, to the extent that it is not allowable as a relief from tax to the payer thereof, be taxable only in the State in which the payer is resident. This provision has been inserted at the request of Chile, although neither Chile nor South Africa tax alimony payments in the hands of the recipient thereof neither do they allow it as a

deduction in the hands of the payer thereof.

Article 18

Government Service

Subparagraph 1(a) provides that salaries, wages and other remuneration (other than a pension), which is paid by a Contracting State, a political subdivision or a local authority thereof to an individual for services rendered, is taxable only in that State.

However, subparagraph 1(b) provides that such salaries, wages and other similar remuneration are taxable only in the other Contracting State if the services are rendered in that other State by a resident who is also a national of that other State or did not become resident of the other State with the express purpose of rendering the services. An example of this is a South African national, normally resident in South Africa, who is employed by the Chilean Embassy. Such person would be taxable in South Africa even though the person's salary is paid by the Chile.

Paragraph 2 provides that the provisions of paragraphs 1 and 2 will not apply in respect of salaries, wages, pensions and other similar remuneration paid by a Contracting State, a political subdivision or a local authority thereof in respect of services rendered in relation to any business carried on by them. In such circumstances, the provisions of Articles 14, 15 and 16 dealing with remuneration other than of a public nature will apply.

Article 19

Students

In terms of this Article, students or business apprentices who are residents of one State but are present in the other State solely for the purpose of undergoing education or training, will not be taxed in that other State on payments received for the purposes of their maintenance, education or training, if those payments are received from outside that other State.

Article 20

Other Income

This Article deals with the treatment of income which is not dealt with in other Articles of the Convention and specifies in paragraph 1 that such items of income will be taxable only in the State of residence of the recipient thereof.

Paragraph 2 reintroduces the principle established in paragraph 4 of Article 10 dealing with dividends and paragraph 4 of Article 11 dealing with interest that if such income is connected to a permanent establishment which a resident of a Contracting State has in the other Contracting State, then such income may be included in the profits which are attributable to the permanent establishment as envisaged in Article 7 and taxed in that other Contracting State.

Paragraph 3 states that, notwithstanding the provisions of paragraphs 1 and 2, the source State also retains a taxing right in respect of other income.

Article 21

Capital

The Article deals with the taxation of capital.

Paragraph 1 specifies that the right to tax capital represented by immovable property is also given to the Contracting State in which the property is situated although the alienator may be a resident of the other Contracting State.

Paragraph 2 deals with capital represented by movable property which forms part of the business property of a permanent establishment which a resident of a Contracting State has in the other Contracting State. It provides that such capital may be taxed in the State in which such permanent establishment is situated.

Paragraph 3 provides that capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to such operation, are taxable only in the State of which the enterprise operating such ships or aircraft is resident.

Paragraph 4 specifies that capital not covered by the preceding paragraphs of this Article shall only be taxable in the State of residence of the owner.

Article 22

Avoidance of Double Taxation

The provisions of this Article are designed to allow for the actual mechanisms required for the elimination of double taxation.

In subparagraph 1(a) the position with regard to the manner in which Chile will provide relief in cases of double taxation of its residents is set out while subparagraph 1(b) enables Chile to retain the right to take into consideration the amount of income or capital exempted in Chile, when determining the rate of tax to be imposed on the remainder of the income or capital.

The South African position with regard to the manner of relief to its residents is set out in paragraph 2.

Both States use the credit method of relief.

Article 23

Non-discrimination

Paragraph 1 provides that a State may not impose upon nationals of the other State any tax or requirement connected therewith which is other or more burdensome than that which it imposes on its own nationals in the same circumstances. The underlined words above are crucial to understanding the effect of this paragraph. By way of example, if Chile imposed a withholding tax (NRST) on dividends paid to non-residents, but did not impose a similar tax on residents, NRST would be paid by South African shareholders but not by Chilean shareholders. Nevertheless, this tax does not contravene the provisions of this paragraph, because the shareholders are not in the same circumstances, as they are resident in different States. A Chilean national taking up residence in South Africa would also become liable for NRST and the discrimination is thus on the basis of residence and not nationality. This is permitted.

The paragraph extends the application of the non-discrimination provisions to all nationals of either of the States who are resident in a third State.

Paragraph 2 provides that where an enterprise of one State has a permanent establishment in the other State, that permanent establishment shall not be less favourably taxed than enterprises of the home State which carry on similar activities.

An exception is made in paragraph 3 in the case of personal allowances, reliefs and reductions on account of civil status or family responsibilities. An example of such an allowance or relief would be the child rebates previously granted by South Africa. These reliefs may be withheld from non-residents.

Paragraph 4 provides that interest, royalties and other disbursements paid to non-residents deriving income in a State are to be allowed as a deduction by that State in the same manner as that State grants those deductions to residents. It is provided, however, that this paragraph does not override Articles 9(1), 11(6) and 12(6), which allow a State to make adjustments in cases where excessive payments are made because of a special relationship between payer and recipient. These provisions will apply equally to debts of an enterprise for the purpose of determining taxable capital.

Paragraph 5 prevents a State from giving less favourable taxation treatment to companies owned by non-residents than it gives to companies owned by residents. The paragraph deals only with the taxation of the company – it is still permissible, as discussed in relation to paragraph 1 above, to impose a different tax regime on the owners of the company.

The Convention generally applies only to the taxes listed in Article 2 and paragraph 6 provides that the non-discrimination provisions of this Article will apply only to such taxes.

Article 24

Mutual Agreement Procedure

This Article institutes a mutual agreement procedure for difficulties arising out of the application of the Convention.

If, due to the actions of one or both of the Contracting States, a resident of one of the Contracting States considers that taxation which is not in accordance with the provisions of the Convention has been imposed, paragraph 1 enables such resident of a Contracting State to present a case to the competent authority of that State. This may be done irrespective of remedies provided by domestic legislation. The taxpayer must notify the competent authority within 3 years of the notification of the action which results in such incorrect taxation.

Paragraph 2 stipulates that the competent authority, considering the objection to be justified and unable to arrive at a satisfactory solution shall, in an endeavour to avoid incorrect taxation, consult with the competent authority of the other Contracting State.

In paragraph 3, the competent authorities of the two States are authorised to resolve by mutual agreement any problems relating to the interpretation or application of the Convention.

Finally, for practical purposes, paragraph 4 authorises the competent authorities to communicate directly for the purpose of reaching mutual agreement in respect of any of these matters.

Article 25

Exchange of Information

Paragraph 1 provides that the States shall exchange such information as may be required both for carrying out the provisions of the Convention and for applying the domestic taxation laws of the States. Information obtained by a State under this provision must be treated with the same degree of secrecy as applies to information obtained under the domestic laws of that State. In addition to this general stipulation on secrecy, it is specifically provided that information obtained under this Article may be disclosed only to persons or authorities involved in the administration of the taxes covered by the Convention, and that those persons and authorities shall use the information only for the purposes of such administration.

Thus, should South Africa obtain tax information relating to a resident of a third State who is liable for Kenyan tax, it may make that information available to Kenya. The exchange extends to residents of a third State.

In terms of paragraph 2, the preceding provisions will not impose on a State the obligation:

(a) to do anything which is contrary to the laws and administrative practice of either State;
(b) to supply information which is not obtainable under the laws of either State or in the normal course of the administration of either State;
(c) to supply information which discloses any business secret, or information the disclosure of which is contrary to public policy.

In terms of paragraph 3 a Contracting State is obliged to exchange information even in cases where the requested information is not needed by that State for domestic tax purposes.

Article 26

Members of Diplomatic Missions and Consular Posts

The Article ensures that members of diplomatic missions and consular posts are not deprived of any right which is accorded to them under international law or special agreements between Contracting States. In effect this normally means that the remuneration which they receive from their State of residence while they are stationed in the other Contracting State is not subjected to tax in that other State.

Article 27

Miscellaneous Rules

Paragraph 1 provides that, notwithstanding the provisions of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that disputes between them as to whether a measure relating to a tax to which any provision of this Convention applies, falls within the scope of Convention may be brought before the Council for Trade in Services only with the consent of the Contracting States. Paragraph 1 further provides that the competent authorities of the two States are authorised to resolve by mutual agreement any problems relating to the interpretation of this paragraph or should no agreement be reached under the mutual agreement procedures, pursuant to any other procedure which both Contracting States may agree to.

Paragraph 2 provides that the provisions of the Convention must not be interpreted to restrict Chile from imposing on pooled investment accounts or funds under the Foreign Capital Investment Fund legislation a tax at a flat rate on its remittances from such accounts or funds in respect of investments in assets situated in Chile. The Foreign Capital Investment Fund is regulated by special law in Chile, namely, Law N° 18.657. It is the entity formed by contributions made from outside Chile by persons for investment in publicly offered securities and is required to be administered by a resident of Chile.

Paragraph 3 once again takes account of Chilean legislation and states that nothing in the Convention will affect the application of the existing provisions of the Foreign Investment Statute (DL 600) as they are in force at the time of signature of the Convention or may from time to time be amended without changing the general principle thereof.

Paragraph 4 provides that where pension plan contributions are paid by or on behalf of an individual who is a resident of a Contracting State, to a pension plan in the other Contracting State which is recognised for tax purposes in that other State, then the first-mentioned State shall, during a period not exceeding in the aggregate 60 months, treat those contributions in the same way for tax purposes as it would treat contributions paid to a pension plan recognised for tax purposes in that first-mentioned State, provided that such individual contributed to that pension plan for a period which ended immediately before the individual became a resident of the first-mentioned State and the competent authority of that State agrees that the pension plan corresponds to a pension plan which is recognised for tax purposes in that first-mentioned State. The paragraph further provides that a pension plan created under a public social security system would be included for purposes of this paragraph.

Paragraph 5 states that nothing in the Convention will prevent Chile from imposing tax on the profits attributable to a permanent establishment situated in Chile, of a resident in South Africa, both the First Category Tax and the Additional Tax, but only if the First Category Tax is deductible in computing the Additional Tax.

Paragraph 6 states that nothing in the Convention will prevent South Africa from imposing a tax on the profits attributable to a permanent establishment in South Africa, of a company resident in Chile, at a rate which does not exceed the rate of normal tax by more than five percentage points.

Article 28

Entry into Force

Paragraph 1 stipulates that the Contracting States will notify each other, through the diplomatic channel, once the legal procedures required in each country for completion of their domestic requirements for entry into force of the Convention have been fulfilled. The Convention will then enter into force on the date of receipt of the later of these notifications.

Paragraph 2 specifies the date on which the provisions will begin to operate in both States:

(a) In Chile, in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following the date of entry into force of the Convention.

(b) In the case of South Africa, this will be on the first day of January in the calendar year next following the date of entry into force of the Convention with regard to taxes withheld at source as well as other taxes, for taxable years beginning on or after such date.

Article 29

Termination

Paragraph 1 provides that the Convention shall operate for a minimum period of five years after which it may be terminated by giving written notice of termination not later than 30 June of any calendar year.

The Convention will then cease to operate from 1 January in the calendar year following such notice on the basis set out in paragraph 2.

PROTOCOL

Paragraph 1 of the Protocol provides that the competent authorities of the Contracting States will jointly decide on the methods of implementing the terms, operation and application of the Convention to ensure that the purpose of the Convention, namely, to avoid double taxation and prevent fiscal evasion, continues and further, to amend the Convention by way of Protocols when necessary.

Paragraph 2 of the Protocol provides that for purposes of determining the duration of activities under paragraph 3 of Article 5, the period during which the activities are carried on in a Contracting State by an enterprise associated with another enterprise within the meaning of Article 9 will, if the activities of the associated enterprises are identical or substantially the same, be aggregated with the period during which the activities are carried on by the enterprise.

Paragraph 3 of the Protocol states that the provisions of paragraph 3 of Article 7 regarding the attribution of expenses to the permanent establishment will be in accordance with the laws of the Contracting State in which the permanent establishment is situated. This is merely a clarification of how allowable expenses are in any case dealt with.

Paragraph 4 of the Protocol provides that the Chilean forms set out in the Chilean Circular 17 of 2004 is compatible with the Convention in regard to the requirement of residence for entitlement to the benefits of the Convention. Any change of residence certificates will be settled by mutual agreement by the competent authorities.

Paragraph 5 of the Protocol provides that the income referred to in paragraph 1 of Article 16 which is derived by an entertainer or sportsperson from any personal activity exercised in the other State, will include any other income which is related to that person's fame as an entertainer or sportsperson.

Paragraph 6 of the Protocol provides that the term "pensions" will include any payments made by a pension scheme recognised for tax purposes by the Contracting State in which the pension arises to a scheme member or beneficiary in accordance with a scheme's rules. Lump sum payments are, for example, included in the term "pensions".

CONVENTION

BETWEEN

THE REPUBLIC OF SOUTH AFRICA

AND

THE REPUBLIC OF CHILE

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

AND ON CAPITAL

Preamble

The Government of the Republic of South Africa and the Government of the Republic of Chile desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital,

HAVE AGREED as follows:

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

Persons Covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3. The existing taxes to which the Convention shall apply are in particular:

   (a) in Chile, the taxes imposed under the Income Tax Act, "Ley sobre Impuesto a la Renta";

   (hereinafter referred to as "Chilean tax"); and

(b) in South Africa:

(i) the normal tax;
(ii) the secondary tax on companies: and
(iii) the withholding tax on royalties;

(hereinafter referred to as "South African tax").

4. The Convention shall apply also to any identical or substantially similar taxes and to taxes on capital that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation laws.

CHAPTER II

DEFINITIONS

Article 3

General Definitions

1. For the purposes of this Convention, unless the context otherwise requires:

(a) the term "Chile" means the Republic of Chile and includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, designated under the laws of Chile and in accordance with international law, as an area within which Chile may exercise sovereign rights or jurisdiction; and

(b) the term "South Africa" means the Republic of South Africa and includes the territorial sea thereof as well as any area outside the territorial sea, including the continental shelf, designated under the laws of South Africa and in accordance with international law, as an area within which South Africa may exercise sovereign rights or jurisdiction;

(c) the terms "a Contracting State" and "the other Contracting State" mean Chile or South Africa, as the context requires;

(d) the term "business" includes the performance of professional services and of other activities of an independent character;

(e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(f) the term "competent authority" means:

(i) in Chile, the Minister of Finance or an authorised representative; and
(ii) in South Africa, the Commissioner for the South African Revenue Service or an authorised representative;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when such transport is solely between places in the other Contracting State;

(i) the term "national", in relation to a Contracting State, means:

(i) any individual possessing the nationality or citizenship of that Contracting State; and
(ii) any legal person or association deriving its status as such from the laws in force in that Contracting State; and

(j) the term "person" includes an individual, a company and any other body of persons.

2. As regards the application of the provisions of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of that person's domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then that individual's status shall be determined as follows:

(a) the individual shall be deemed to be a resident solely of the State in which a permanent home is available to the individual; if a permanent home is available to the individual in both States, the individual shall be deemed to be a resident solely of the State with which the individual's personal and economic relations are closer (centre of vital interests);

(b) if sole residence cannot be determined under the provisions of subparagraph (a), or if the individual has not a permanent home available in either State, the individual shall be deemed to be a resident solely of the State in which the individual has an habitual abode;

(c) if the individual has an habitual abode in both States or in neither of them, the individual shall be deemed to be a resident solely of the State of which the individual is a national;

(d) if the individual is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. An item of income, profit or gain derived through a person that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a Contracting State to the extent that the item is treated for the purposes of the taxation laws of that Contracting State as the income, profit or gain of a resident.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavour to determine the mode of application of the Convention to the person. In the absence of such agreement by the competent authorities of the Contracting States, the person shall not be entitled to any relief or exemption from tax provided by the Convention.

Article 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" includes especially:

(a) a place of management;
(b) a branch;
(c) an office;
(d) a factory;
(e) a workshop, and
(f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or the exploitation of natural resources.

3. The term "permanent establishment" shall also include:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection with such site or project, but only if such site, project or activities last more than six months;

(b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by an enterprise for such purpose, where activities of that nature continue within the Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned;

(c) the performance of professional services or of other activities of an independent character in a Contracting State by an individual, if that individual is present in that Contracting State for a period or periods exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
(e) the maintenance of a fixed place of business solely for the purpose of advertising, supplying information or carrying out scientific research for the enterprise, provided that the activity is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except in the case of re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or if it insures risks situated therein through a representative other than an agent of independent status to whom paragraph 7 applies.

7. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business and that the conditions that are made or imposed in their commercial or financial relations with the enterprise do not differ from those which would be generally made by independent agents.

8. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

Article 6

Income from Immovable Property

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Convention, the term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

Business Profits

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on or has carried on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment and with all other persons.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4. In so far as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2. For the purposes of this Article, the expression "operation of ships or aircraft" by an enterprise, also includes:

   (i) the charter or rental on a bareboat basis of ships and aircraft;

   (ii) the rental of containers and related equipment,

   if that charter or rental is incidental to the operation by the enterprise of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State, if it agrees that the adjustment made by the first-mentioned State is justified both in principle and as regards the amount, shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

Dividends

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 25 per cent of the capital of the company paying the dividends;
(b) 15 per cent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

The provisions of this paragraph shall not limit application of the Additional Tax payable in Chile provided that the First Category Tax is fully creditable in computing the amount of additional tax.

3. The term "dividends" as used in this Article means income from shares or other rights participating in profits (not being debt-claims), as well as income from other rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

Article 11

Interest

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

   (a) 5 per cent of the gross amount of the interest derived from:

      (i) loans granted by banks and insurance companies;
      (ii) bonds or securities that are regularly and substantially traded on a recognised securities market;
      (iii) a sale on credit paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment;

   (b) 15 per cent of the gross amount of the interest in all other cases.

   The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. The term interest shall not include any item which is treated as a dividend under the provisions of Article 10.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

   (a) 5 per cent of the gross amount for the use of, or the right to use, any industrial, commercial or scientific equipment;
   (b) 10 per cent of the gross amount of the royalties in all other cases.

   The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and films, tapes or discs for radio or television broadcasting and other means of image or sound reproduction, any patent, trade mark, design or model, plan, secret formula or process or other intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether that person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

Article 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property situated in the other Contracting State may be taxed in that other State.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the alienator is a resident.

4. Gains derived by a resident of a Contracting State from the alienation of shares or other rights representing the capital of a company, or comparable interests or rights in any other person, that is a resident of the other Contracting State, may be taxed in that other Contracting State.

5. Gains from the alienation of any property other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Income from Employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

   (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned, and
   (b) the remuneration is paid by, or on behalf of, an employer being a person who is not a resident of the other State, and
   (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 15

Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors or a similar organ of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 16

Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsperson, from that person's personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in that person's capacity as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

Article 17

Pensions

1. Pensions arising in a Contracting State and paid to a resident of the other Contracting State, may be taxed in the first-mentioned State.

2. Alimony and other maintenance payments paid to a resident of a Contracting State shall be taxable only in that State. However, any alimony or other maintenance payments paid by a resident of one of the Contracting States to a resident of the other Contracting State, shall, to the extent it is not allowable as a relief from tax to the payer, be taxable only in the first-mentioned State.

Article 18

Government Service

1. (a) Salaries, wages and other remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

   (b) However, such salaries, wages and other remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

      (i) is a national of that State; or
      (ii) did not become a resident of that State solely for the purpose of rendering the services.

2. The provisions of Articles 14, 15 and 16 shall apply to salaries, wages and other remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 19

Students

Students or business apprentices who are present in a Contracting State solely for the purpose of their education or training and who are, or immediately before being so present were residents of the other Contracting State, shall be exempt from tax in the first-mentioned State on payments received from outside that first-mentioned State for the purpose of their maintenance, education or training.

Article 20

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case, the provisions of Article 7 shall apply.

3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of the Convention and arising in the other Contracting State may also be taxed in that other State.

CHAPTER IV

TAXATION OF CAPITAL

Article 21

Capital

1. Capital represented by immovable property owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State of which the enterprise operating such ships or aircraft is resident.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

CHAPTER V

METHODS FOR AVOIDANCE OF DOUBLE TAXATION

Article 22

Avoidance of Double Taxation

1. In Chile, double taxation shall be avoided as follows:

   (a) residents of Chile, obtaining income or owning capital which has, in accordance with the provisions of this Convention, been subject to taxation in South Africa, may credit the tax so paid against any Chilean tax payable in respect of the same income or capital, subject to the applicable provisions of the law of Chile (which shall not affect the general principle hereof). This paragraph shall apply to all income or capital referred to in this Convention;

(b) where, in accordance with any provision of this Convention, income derived or capital owned by a resident of Chile is exempt from tax in Chile, Chile may nevertheless, in calculating the amount of tax on other income or capital, take into account the exempted income or capital.

2. In South Africa, double taxation shall be avoided as follows:

subject to the provisions of the law of South Africa regarding the deduction from tax payable in South Africa of tax payable in any country other than South Africa (which shall not affect the general principle hereof), Chilean tax paid by residents of South Africa in respect of income or capital taxable in Chile, in accordance with the provisions of this Convention, shall be deducted from the taxes due according to South African fiscal law. Such deduction shall not, however, exceed an amount which bears to the total South African tax payable the same ratio as the income or capital concerned bears to the total income or capital, as the case may be.

CHAPTER VI

SPECIAL PROVISIONS

Article 23

Non-discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities that it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11 or paragraph 6 of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Companies which are residents of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar companies which are residents of the first-mentioned State are or may be subjected.

6. In this Article, the term "taxation" means taxes that are subject of this Convention.

Article 24

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the remedies provided by the domestic law of those States, present a case to the competent authority of the Contracting State of which the person is a resident or, if the case comes under paragraph 1 of Article 23, to that of the Contracting State of which the person is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented in accordance with the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes imposed by that State. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same way as if its own taxation were involved even though the other State does not, at that time, need such information.

Article 26

Members of Diplomatic Missions and Consular Posts

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 27

Miscellaneous Rules

1. For the purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 24 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

2. With respect to pooled investment accounts or funds (as for instance the existing Foreign Capital Investment Fund, Law N°18.657), that are subject to a remittance tax and are required to be administered by a resident in Chile, the provisions of the Convention shall not be interpreted to restrict imposition by Chile of the tax on remittances from such accounts or funds in respect of investment in assets situated in Chile.

3. Nothing in the Convention shall affect the application of the existing provisions of the Chilean legislation DL 600 (Foreign Investment Statute) as they are in force at the time of signature of the Convention and as they may be amended from time to time without changing the general principle thereof.

4. Contributions in a year in respect of services rendered in that year paid by, or on behalf of, an individual who is a resident of a Contracting State or who is temporarily present in that State to a pension plan that is recognised for tax purposes in the other Contracting State shall, during a period not exceeding in the aggregate 60 months, be treated in the same way for tax purposes in the first-mentioned State as a contribution paid to a pension plan that is recognised for tax purposes in that first-mentioned State, if:

   (a) such individual was contributing on a regular basis to the pension plan for a period ending immediately before that individual became a resident of or temporarily present in the first-mentioned State; and

(b) the competent authority of the first-mentioned State agrees that the pension plan generally corresponds to a pension plan recognised for tax purposes by that State.

For the purposes of this paragraph, "pension plan" includes a pension plan created under the social security system of a Contracting State.

5. Nothing in the Convention shall affect the taxation in Chile of a resident in South Africa in respect of profits attributable to a permanent establishment situated in Chile, under both the First Category Tax and the Additional Tax but only as long as the First Category Tax is deductible in computing the Additional Tax.

6. Nothing contained in the Convention shall prevent South Africa from imposing on the profits attributable to a permanent establishment in South Africa of a company, which is a resident of Chile, a tax at a rate which does not exceed the rate of normal tax on companies by more than five percentage points.

CHAPTER VII

FINAL PROVISIONS

Article 28

Entry into Force

1. Each of the Contracting States shall notify to the other, through the diplomatic channel, the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the date of receipt of the later of these notifications.

2. The provisions of the Convention shall have effect:

(a) in Chile,

in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which the Convention enters into force; and

(b) in South Africa,

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or after the first day of January in the calendar year next following that in which the Convention enters into force; and

(ii) with regard to other taxes, in respect of taxable years beginning on or after the first day of January in the calendar year next following that in which the Convention enters into force.

Article 29

Termination

1. This Convention shall remain in force indefinitely but either of the Contracting States may terminate the Convention through the diplomatic channel, by giving to the other Contracting State written notice of termination on or before 30 June of any calendar year starting five years after the year in which the Convention entered into force.

2. The provisions of the Convention shall cease to have effect:

(a) in Chile,

in respect of taxes on income obtained and amounts paid, credited to an account, put at the disposal or accounted as an expense, on or after the first day of January in the calendar year next following that in which the notice is given; and

(b) in South Africa,

(i) with regard to taxes withheld at source, in respect of amounts paid or credited on or the first day of January in the calendar year next following that in which such notice is given; and

(ii) with regard to other taxes, in respect of taxable years beginning on or after the first day of January in the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF the undersigned. being duly authorised thereto, have signed this Convention.

DONE at ..... in duplicate in the English and Spanish languages, this ..... day of .....20..... both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE

PROTOCOL

On signing the Convention between the Republic of South Africa and the Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, the undersigned, being duly authorised thereto, have agreed on the following provisions that shall form an integral part of this Convention:

1. In general

It is understood that the two Governments shall, through the competent authorities, consult together regarding the terms, operation and application of the Convention to ensure that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion and shall, where they consider it appropriate, conclude Protocols to amend the Convention.

Either Government may at any time request consultations, to be conducted by the competent authorities in an expeditious manner on matters relating to the terms, operation and application of the Convention which it considers require urgent resolution.

2. Ad Article 5, paragraph 3

It is understood that for the purposes of computing the time limits in paragraph 3 of Article 5, activities carried on by an enterprise associated with another enterprise within the meaning of Article 9 of the Convention shall be aggregated with the period during which activities are carried on by the enterprise if the activities of the associated enterprises are identical or substantially the same.

3. Ad Article 7

It is understood that the provisions of paragraph 3 of Article 7 shall apply only if the expenses can be attributed to the permanent establishment in accordance with the provisions of the tax laws of the Contracting State in which the permanent establishment is situated.

4. Ad Articles 4, 10, 11, 12 and 22

(i) It is understood that the Chilean forms contained in Circular 17 of 2004 complies with the requirement to establish residence and thereby obtaining the benefits of this Convention.

(ii) Any amendment or change of the residence certificates as agreed above shall be settled by mutual agreement by the competent authorities.

5. Ad Article 16

It is understood that the income referred to in paragraph 1 of Article 16 shall include any income derived from any personal activity exercised in the other State related with that person's renown as an entertainer or sportsperson.

6. Ad Article 17

It is understood that the term "pensions" includes any payments made to a scheme member or beneficiary in accordance with the scheme's rules by a pension scheme that is recognised for tax purposes by the Contracting State in which the pension arises.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Protocol.

DONE at ..... in duplicate in the English and Spanish languages, this ..... day of .....20....., both texts being equally authentic.

FOR THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA

FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE

DEPARTMENT: JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

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The Commissioner
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Ref: 71/2005
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Date: 16 February 2005

Attention: Petro Bester

DRAFT CONVENTION BETWEEN THE REPUBLIC OF CHILE AND THE REPUBLIC OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL: YOUR 25/6/1/246 DATED 9 FEBRUARY 2005

1. We have scrutinized the draft "Convention between the Republic of Chile and the Republic of South Africa for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital" (hereinafter referred to as the "draft Convention"), in terms of *paragraph 5.20(a)* of the *Manual on Executive Acts of the President of the Republic of South Africa* and are of the opinion that no provision of the draft Convention is in conflict with the domestic law of the Republic of South Africa.

Naidoo
CHIEF STATE LAW ADVISER
M NAIDOO

OFFICE OF THE CHIEF STATE LAW ADVISER (INTERNATIONAL LAW)
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Mr / Ms Mr F Theron
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DRAFT CONVENTION BETWEEN THE REPUBLIC OF CHILE AND THE REPUBLIC OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVETION OF FISCAL EVASION WITH RESPECT TO TAXES AND CAPITAL

1. Your request for legal advice under your reference no BL1/CHL/3/A26 dated 12 April 2005, refers

2. The State Law Advisers (IL) have had an opportunity to examine the Double Taxation Agreement, as requested. We comment as follows:

2.1 **Ad Title**

We realised that the term "Convention" has been employed consistently in the Agreement. The term "Convention" is used usually for multilateral agreements. The Parties may therefore wish to consider employing the title "Agreement" instead.

2.2 **Ad Preamble**

We advise that the preambular paragraph be placed on the second page of the Agreement and not on the same page with the cover page.

2.3 **Ad Testimonial**

We advise that this paragraph should be amended to read as follows:
"**IN WITNESS WHEREOF** the undersigned, being duly authorised by their respective Governments, have signed and sealed the Agreement in duplicate in Spanish and English languages, both texts being equally authentic.

DONE at.....on.....day of.....in the year 2005 "

3. It is understood that Double Taxation Agreement are customary submitted for Parliamentary approval in terms od section 231(2) of the Constitution of the Republic if South Africa, Act No. 108 of 1996 and provisions of the Income Tax, 1962 (Act No. 58 of 1962). We are of the view that this Agreement can be signed and submitted to Parliament for approval in accordance with the above-mentioned legislation.