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LEGAL MEMORANDUM

The following is a brief summary of legal regulations recently enacted by the Chilean Government which are of interest to international lenders in credit transactions with Chile:

RULES FOR INTERNATIONAL CONTRACTS OF THE PUBLIC SECTOR.

Decree Law 2349 of 1978* (Official Gazette October 28, 1978) enacts the following provisions:

a) Stipulations on international contracts of an economic or financial nature providing that said contracts are subject to foreign laws or to foreign jurisdictions, or establishing special domiciles or designating agents abroad, are declared to be valid;

b) The State of Chile and its entities, institutions, and enterprises, may waive immunity from execution in international contracts, provided this waiver is limited to the enforcement of judgments obtained in lawsuits arising out of the specific contract in which said waiver has been given;

c) In order that contracts be governed by provisions mentioned in a) and b), an authorization from the President of the Republic, by decree of the Ministry of Finance, is required; the Central Bank and the State Bank are exempted from the requirement;

d) Restrictive provisions contained in Chilean law on interest, commissions, surcharges, prepayments, and other financial conditions are not applicable to foreign credit operations of the public or private entities. Usual conditions prevailing in the external capital market shall apply, and it is presumed that those contained in transactions approved by the Central Bank prevail in the external capital market.

AUTHORIZATION TO STATE ENTITIES, INSTITUTIONS, AND ENTERPRISES.

Decree 1009 of 1978 of the Ministry of Finance (Official Gazette December 23, 1978) pursuant to the requirement of authorization established in Decree Law 2349, contains the following:

a) Authorization to all State entities, institutions, and enterprises, to enter into international contracts with institutions and en-

*An unofficial translation published by the Legal Department of the Central Bank of Chile is reprinted in Appendix I.

terprises whose main place of business is located abroad, to submit to foreign laws and jurisdiction, to establish special domiciles abroad, to designate agents abroad, and to waive immunity from execution.

Types of contracts included in this authorization are those on technical assistance, rentals, leasing, freight, supply, sale of raw materials, supply parts, equipment, and goods in general; long term transactions in Commodities Exchange Markets; processing of raw materials; acquisition, use, and sale of licenses, trademarks, and other forms of industrial or intellectual property; partnership, stock corporations, or others, where there are capital contributions to foreign firms or organizations; storage in airports or in maritime or land ports and other port business; and also personal services to be rendered abroad.

b) Authorization to some entities, institutions, and enterprises engaging in credit operations connected with institutions and enterprises whose main place of business is located abroad, to subject these operations to foreign laws and jurisdiction, establish special domiciles abroad, designate agents abroad, and waive immunity from execution.

The following entities are included: Corporación Nacional del Cobre, Corporación de Fomento de la Producción and its affiliated enterprises, all the Universities, Empresa Nacional de Minería, Empresa Nacional del Petróleo, Empresa de Ferrocarriles del Estado, Empresa Portuaria de Chile, Empresa Marítima del Estado, Empresa de Transportes Colectivos del Estado, Línea Aérea Nacional, Empresa de Comercio Agrícola, Televisión Nacional de Chile, Corporación de Televisión de la Universidad de Chile, de la Universidad Católica de Chile, de la Universidad Católica de Valparaíso.

c) The same authorizations include guarantees given by the Corporación de Fomento de la Producción.

d) Authorizations contained in Decree 1009 are granted for a period of one year, counted from December 23, 1978.

EXEMPTION OF THE STAMP TAX.

Decree Law 2415 of 1978 (Official Gazette December 22, 1978) contains an amendment to Decree Law 619 on Stamp Tax. According to this amendment, foreign investment contracts, documents on foreign credit operations, documents on issuance of bonds and credit instruments for placement abroad, documents on foreign capital contributions, and contracts on foreign technical assistance and royalties are exempted from the Stamp Tax. The same amendment eliminates the former requirement by which exemption only existed when

documents were signed abroad and credits or other contracts were used to improve the conditions of capitalization of local companies or else to carry out activities or fulfill objectives of national interest.

FOREIGN CREDITS FOR FINANCING IMPORTS AND EXPORTS.

The Executive Committee of the Central Bank, at meeting No. 1253, held on January 10, 1979 (Official Gazette January 15, 1979), resolved that banks established in Chile shall require prior approval from the Central Bank under article 15 of the Exchange Control Law in order to contract foreign credits for financing some types of imports and exports. These are imports under the system of deferred coverage, and exports of capital goods and durable goods.

Philippi, Yrarrázaval, Oyarzún & Cox
Santiago, January 22, 1978

APPENDIX I

OFFICIAL GAZETTE No. 30.201

Santiago, Chile, October 28, 1978.

DECREE LAW No. 2.349

Rules for international contracts of the public sector No. 2.349 Santiago, October 13, 1978. Pursuant to the provisions of Decree-Laws No. 1 and 128 of 1973; 527 of 1974, 991 of 1976, and considering:

1. That in international contracts dealing with transactions and operations of commercial nature which the State or its organisms, institutions and enterprises execute with international or foreign organisms, institutions or enterprises the main center of whose operations is located abroad, it constitutes a generalized commercial practice, whose application extends to our country, that stipulations be included by which such contracts are subjected to foreign legislation, disputes arising from them are submitted to foreign judicial or arbitration courts, special domiciles outside the country are established and mechanisms to set the procedural relationship are contemplated.

2. That within the Chilean juridical system such stipulations are licit and therefore have frequent application in contracts between private persons, and, also they are contemplated in the Code of Private International Law approved at the Sixth International American Conference which has been in force in our country since 1934.

3. That without prejudice to the full validity of the rules by which private persons may exercise their freedom of contracting, it is of the utmost convenience to regulate in our legal system, as far as the public sector is concerned certain matters of the aforementioned nature, determining the scope of application of such stipulations and their effects. Likewise, it is necessary to amend some existing rules in order to harmonize them with said regulations.

The Government Junta of the Republic of Chile hereby dictates the following:

DECREE LAW:

Article 1. Stipulations intended to subject to foreign law international contracts whose main objective concerns transactions or operations of an economic or financial nature, executed or to be executed

by international or foreign organisms, institutions or enterprises whose main center of operations is located abroad with the Chilean State or with its organisms, institutions or enterprises, are declared to be valid.

Stipulations by which disputes arising out of such contracts have been or are submitted to the jurisdiction of foreign courts including courts of arbitration contemplated in pre-established mechanisms of arbitration or in the respective contract, as well as stipulations by which special domiciles have been or are established and agents abroad have been or are designated for purposes of the contract, are likewise valid.

The above is also applicable to the acts and contracts by which the State of Chile or its organisms, institutions and enterprises have granted or grant, in any manner, its guarantee to third parties in the contracts referred to in the first paragraph.

By the submission to the jurisdiction of a foreign court, the right to invoke immunity from jurisdiction will cease, unless in case of express stipulation to the contrary.

Article 2. It is declared that the State of Chile and its organisms, institutions or enterprises, may waive immunity from execution in the contracts referred to in the previous article. However, such waiver will be limited to the enforcement of judgments obtained in lawsuits arising out of the specific contract in which said waiver has been given. In the case of organisms, institutions and enterprises with a legal personality separate from that of the State, the waiver will only affect assets belonging to them.

Waiver stipulated in the contracts referred to in this article that have been executed prior to this decree law will be valid with the same limitations indicated in the previous paragraph.

Article 3. For purposes of this decree law, State organisms, institutions and enterprises will be understood to be all public services, fiscal or semifiscal institutions, be they centralized or decentralized, State enterprises and, generally, all autonomus [sic] organisms created by law, as well as all public or private enterprises, companies or entities in which the State or its enterprises, companies or institutions, centralized or decentralized, have capital contributions, representation or participation amounting to more than 50% of the equity, even if an explicit declaration is required for the legal provisions applicable to the public sector to be applied to them.

Article 4. In order that contracts and stipulations indicated in article[s] 1 and 2 and executed subsequently to this decree law be

governed by its provisions, it will be necessary that the submission [sic] to foreign law or to foreign courts, the establishment of domicile, the designation of agents abroad and the waiver to immunity from execution be authorized by the President of the Republic by decree of the Ministry of Finance. The Central Bank of Chile and the State Bank of Chile are exempted from this requirements [sic].

The President of the Republic may grant his authorization generally to certain State organisms, institutions or enterprises, or particularly for certain kinds of agreements. In any event, this authorization may not be granted for a term of over one year, but it may be renewed.

The authorization referred to in this article does not exclude other authorizations that may be necessary in consideration of the nature of the contract in question.

Article 5. Without prejudice to the validity of stipulations contained [sic] in acts or contracts already executed, no waiver of immunity from execution with relation to the funds, rights and assets which the Central Bank of Chile may maintain abroad for its own account will be valid, except if the waiver relates to obligations of said Bank.

Article 6. No waiver of immunity from execution relating to real estate and furnishings used for purposes of maintaining a diplomatic or consular mission, or the residence of the head of said mission, will be valid.

No waiver of immunity from execution relating to property used for military purposes be it of military character or be it such property as may be under the control of a military authority or of a defense agency, will be valid.

Article 7. The stipulations contained [sic] in articles 1 and 2 may not be included in contracts executed under Decree Law No. 600 of July 13, 1974, and its amendments.

Likewise, neither will they be allowable in contracts executed for the concession of property of public use or of fiscal assets, or in the acts or contracts executed by the organisms, institutions or enterprises of the State of Chile when the particular legislation governing [sic] them expressly excludes the submission [sic] to foreign law or courts or provides that disputes arising out of such acts or agreements must be subject to Chilean law or to national courts.

Article 8. The designation of special agents referred to in article 1 may only fall in the future on a general or special or district Chilean consul, on an agency or bureau abroad of organisms, institutions or

enterprises of the Chilean State, or on the legal representative of such an agency or bureau.

Article 9. Any foreign State and its organisms, institutions and enterprises may claim in Chile immunity from jurisdiction and from execution, as the case may be, on the same terms and with the same scope and identical exceptions as acknowledged by its own legislation in favour of the State of Chile or of its organisms, institutions and enterprises.

Article 10. No. 3 of article 245 of the Code of Civil Procedure is hereby substituted for the following:

“3. That the party against which the judgment is claimed has been duly given notice of the suit. Nevertheless, said party will be allowed to prove that due to other reasons it was prevented from exercising its defense.”

Article 11. It is declared that foreign credit operations executed with foreign or international banking or financial institutions or enterprises have been and will be subject with regard to stipulations concerning interest, commissions, surcharges, pre-payments and other financial conditions to the usual conditions prevailing in the external capital market, the restrictive provisions concerning such matters contained in the Chilean law not being applicable to them.

It is presumed that the conditions contained in transactions approved by the Central Bank of Chile are those prevailing in the respective foreign capital market.

Transitory Article. The provisions contained in the first paragraph of article 4 and in article 8 will not be applicable to operations approved by the competent authority prior to this Decree Law being in force.