

Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Colombia for the promotion and protection of investments

The Government of the Republic of Colombia and the Government of the United Kingdom of Great Britain and Northern Ireland;

Desirous of establishing a climate of confidence in order to facilitate greater investment by companies and nationals of one State in the territory of another State;

Recognising that the encouragement and reciprocal protection of such investments under an international agreement could stimulate individual business initiative and increasing prosperity in both States;

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

a) "Investment" means all kinds of assets and in particular, but not exclusively includes:

- (i) Movable and immovable property and any other property rights such as mortgages, liens or pledges;
- ii) Shares in and securities and debentures of a company and any other form of participation in a company;
- iii) Rights to money or benefits under contract that have a financial value;
- iv) Intellectual property rights, goodwill, technical processes and know how;
- v) Commercial concessions conferred by law or under contract, including concessions to explore, cultivate, extract, or exploit natural resources.

Notwithstanding the foregoing, for purposes of this Agreement, loans shall not be considered as investments.

A change in the form in which the assets are invested does not affect their character as an investment, provided that the new form of investment is not a loan. The term "investment" includes all investments, whether made before or after the effective date of this Agreement;

b) "Income" means the amounts produced by an investment and in particular, but not exclusively, includes profits, interest, capital gains, dividends, royalties and royalties;

(c) "Domestic" means:

- (i) in respect of the United Kingdom: individuals who derive their status as nationals of the United Kingdom from the law in force in the United Kingdom;
- (ii) in respect of the Republic of Colombia: natural persons deriving their status as Colombian nationals from the law in force in the Republic of Colombia; (iii) in respect of the Republic of Colombia: natural persons deriving their status as Colombian nationals from the law in force in the Republic of Colombia;

(d) "Companies" means:

- (i) as regards the United Kingdom: companies, firms and associations incorporated or formed under the law in force in any part of the United Kingdom, or in any territory to which this Agreement is extended in accordance with the provisions of Article 13, each having a registered office, central administration or principal place of business in that territory;

(ii) with respect to the Republic of Colombia: companies, firms and associations incorporated or constituted under the laws in force in Colombia;

e) "Territory" means:

(i) as regards the United Kingdom: Great Britain and Northern Ireland, including the territorial sea and any maritime area beyond the territorial sea of the United Kingdom that has been designated or may in the future be designated under the national law of the United Kingdom in accordance with international law as an area within which the United Kingdom may exercise rights in respect of the seabed and subsoil and its natural resources and any territory to which the scope of this Agreement extends, as provided in Article 13;

ii) with respect to the Republic of Colombia: the territory of Colombia, as well as those maritime areas including the marine soil and subsoil adjacent to the territorial sea over which Colombia exercises, in accordance with international law, rights for the purpose of exploring and exploiting the natural resources in those areas.

Article 2. The Admission of Investment

Each Contracting Party shall encourage nationals or companies of the other Contracting Party to invest capital in its territory, and subject to its right to exercise powers conferred by its laws and regulations shall admit such capital.

Article 3. Treatment of Investment

1. Investments of nationals or companies of each Contracting Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in accordance with international law at a level not lower than that enjoyed by investments of nationals or companies of the other Contracting Party in its own territory.

2. Neither Contracting Party shall hinder by arbitrary or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments in its territory of nationals or companies of the other Contracting Party. Each Contracting Party shall comply with any obligations it may have entered into with respect to investments of nationals or companies of the other Contracting Party.

Article 4. National Treatment and Most-favoured-nation Clause

1. Neither Contracting Party shall in its territory or investments returns of nationals or companies of the other Contracting Party to treatment less favourable than that which it accords to investments and returns of its own nationals or companies or returns to investment or of nationals or companies of any third State.

2. Neither Contracting Party shall in its territory of nationals or companies of the other Contracting Party, as regards the management, maintenance, use, enjoyment or disposal of their investments to treatment less favourable than it accords to its own nationals or companies or to nationals or companies of any third State.

3. For the avoidance of doubt it is confirmed that the treatment referred to in paragraphs 1 and 2 above shall apply to the provisions of Articles 3 to 12 of this Agreement.

4. Notwithstanding the provisions of this article and article 3, paragraph 2, the Republic of Colombia reserves the right to establish or maintain restrictions relating to the granting of National Treatment in the following sectors:

- i) Procurement can be effected through Portfolio Investment;
- ii) Utilities (telecommunications, energy and water supply and sewage);
- iii) Provision of goods and services to the public sector;
- iv) Automotive blending.

Article 5. Compensation for Losses

1. Nationals or companies of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses owing to war or other armed conflict, revolution, state of national emergency, revolt, riot or insurrection in the territory of the latter Contracting Party shall be accorded by the latter Contracting Party as regards restitution, indemnification, compensation or other settlement, treatment not less favourable than that which that Contracting Party accords to its own nationals or companies or to nationals or companies of any third State. Resulting payments shall be

freely transferable in accordance with Article 7.

2. Without prejudice to paragraph 1 of this Article, nationals and companies of a Contracting Party who suffer in any of the situations referred to in that paragraph the requisition of their property by the armed forces or authorities of the other Contracting Party shall have their property restored to them. If losses result from damage to their property caused by the armed forces or authorities of the other Contracting Party which were not required by the necessities of the situation, they shall be granted adequate compensation. The resulting payments shall be freely transferable in accordance with Article 7.

Article 6. Expropriation and Nationalization

1. Investments of companies or nationals of either Contracting Party shall not be subjected in the territory of the other Contracting Party, to:

a) Nationalization or equivalent measures, by means of which one of the Contracting Parties to take control of certain strategic activities or services; or

b) Any other form of expropriation or measures having an equivalent effect, except that any such measures shall be carried out in accordance with the law on a non-discriminatory basis, for reasons of public purpose or social interest related to the internal needs of that Party and to a prompt, effective and adequate compensation.

2. In accordance with the Principles of International Law, compensation for the acts referred to in paragraphs (1) (a) and (b) of this article shall amount to the genuine value of the investment immediately before the measures taken or are before the impending measures became public knowledge, whichever occurs first. It shall include interest until the date of payment shall be paid without undue delay, be effectively realizable and be freely transferable in accordance with the rules laid down in Article 7 on repatriation and returns of investments as and when even where exceptional difficulties Balance of Payments shall guarantee the transfer of at least thirty three and a third.

3. The national or company affected shall have a right under the law of the Contracting Party taking the measure relevant to a prompt review by a judicial or other independent authority of that party of its case and of the valuation of its investment in accordance with the principles set out in paragraphs 1 and 2 of this article.

4. If a Contracting Party takes any of the measures referred to in paragraphs 1 a) and b) of this Article in relation to the assets of a company incorporated or constituted under the law in force in any part of its territory in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provisions of paragraphs 1 to 3 of this Article are applied so as to ensure prompt, adequate and effective compensation in respect of the investment of such nationals or companies of the other Contracting Party as owners of the shares.

5. Nothing in this Agreement shall oblige either Contracting Party to protect investments of persons involved in criminal activities.

Article 7. Returns from Investments and Returns

1. Each Contracting Party in respect of Investments Guarantee to nationals or companies of the other Contracting Party the unrestricted transfer of their investments and returns. Transfers shall be effected without delay in the convertible currency in which the capital was originally invested in convertible currency or any other agreed between the investor and the Contracting Party concerned. Unless otherwise agreed by the investor transfers shall be made at the rate of exchange applicable on the date of transfer pursuant to the exchange regulations in force.

2. Notwithstanding paragraph 1 of this Article, in exceptional circumstances balance of payments difficulties, each Contracting Party shall have the right, for a limited period of time, to engage in an equitable and non-discriminatory and in good faith, the powers conferred by its laws and procedures to restrict the free transfer of investments and returns.

Article 8. Exceptions

The provisions of this Agreement relating to the grant of not less favourable treatment than that accorded to nationals or companies of either Contracting Party or of any third State shall not be construed so as to oblige one Contracting Party to extend to nationals or companies of the other the treatment of any benefit or privilege, preference resulting from:

a) Any customs union or similar to existing or future international agreement which is or becomes a party any of the Contracting Parties; or

b) Any international agreement or arrangement relating wholly or mainly to taxation or any domestic legislation relating

wholly or mainly to taxation.

Article 9. Reference to the International Centre for Settlement of Investment Disputes

1. Each Contracting Party, consents by this agreement to submit to the International Centre for Settlement of Investment Disputes (hereinafter "the Centre") any dispute arising between that Contracting Party and a national or company of the other Contracting Party concerning an investment of the latter in the territory of the first for settlement by conciliation or arbitration as provided for by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States opened for signature at Washington on 18 March 1965.

2. A company which is incorporated or constituted under the law in force in the territory of a Contracting Party and which, before a dispute arises the majority of shares are owned by nationals or companies of the other Contracting Party, shall be treated in accordance with Article 25 (2) (b) of the Convention, as a company of the other Contracting Party for the purposes of the Convention.

3. If there is one of those differences and it cannot be settled amicably by the parties to the dispute through the exercise of local remedies or otherwise within three months from the date of the written notification of the claim, then, if the national or company affected also consents in writing to submit the dispute to the Centre for settlement by conciliation or arbitration under the Convention, either Party may initiate the procedure by addressing a request to that effect to the Secretary-General of the Centre as provided for in articles 28 and 36 of the Convention. In case of disagreement as to whether conciliation or arbitration is the more appropriate procedure, the national or company which is a party to the dispute shall have the right to choose. the Contracting Party which is party in the dispute shall not be submitted as an objection at any stage of the proceedings or enforcement of an award the fact that the national or company which is the other party to the dispute has received compensation for the whole or part of its losses in pursuance of an insurance contract.

4. Notwithstanding the general thrust of the above provisions, the Centre shall not have jurisdiction if the party initiates the procedure has decided, agrees, or subjected to submit the dispute to the courts or administrative tribunals of the Contracting Party which is a party to the dispute.

5. No Contracting Party shall seek through diplomatic channels to resolve any dispute referred to the Centre unless:

a) The Secretary-General of the Centre or a conciliation commission or an arbitral tribunal constituted by it decides that the dispute is not within the jurisdiction of the Centre; or

b) The other Contracting Party fails to abide by or to comply with any award rendered by an arbitral tribunal.

6. When the Republic of Colombia to accede to the Convention referred to in paragraph 1 of this article, cualquier difference in either party and to be referred to the Centre shall be treated in accordance with the additional facility for the administration of conciliation or arbitration proceedings and surveys.

Article 10. Disputes between the Contracting Parties

1. Disputes between the Contracting Parties concerning the interpretation or application of this agreement should, as far as possible be settled through the diplomatic channel.

2. If a dispute between the Contracting Parties cannot be settled in this way within three months from the date on which the written notification of the dispute shall be submitted, at the request of either of the Contracting Parties to an arbitration tribunal.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: within three months of the receipt of the request for arbitration, each Contracting Party shall appoint one member of the Tribunal. Those two members shall then select a national of a third State who, subject to approval by the two Contracting Parties shall be appointed Chairman of the Tribunal. the Chairman shall be appointed within two months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this article have not been produced the necessary appointments either Contracting Party may, in the absence of any other agreement, invite the President of the International Court of Justice to make the necessary appointments. If the President is a national of either of the Contracting Parties or if he is said otherwise prevented from exercising the function, the Vice-President shall be invited to make the necessary appointments. If the Vice-President is a national of either Contracting Party or if he too is prevented from exercising the function, the said member of the International Court of Justice to continue in seniority who is not a national of either Contracting Party shall be invited to make the necessary appointments.

5. The arbitration tribunal shall reach a decision by a majority of votes. This decision shall be binding on both Contracting parties. Each Contracting Party shall bear the costs of the member of the Tribunal and of its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall be borne in equal parts by the Contracting Parties. However, the Tribunal in its decision may direct that a higher proportion of the costs charged to be one of the two Contracting Parties and this decision shall be binding on both Contracting Parties. The tribunal shall determine its own procedure.

Article 11. Subrogation

1. If a Contracting Party or its designated agency ("the first Contracting Party ") makes a payment of compensation in connection with an investment in the territory of the other Contracting Party ("the second Contracting Party"), the second Contracting Party shall recognize:

- a) The assignment to the first Contracting Party of all the rights and claims as the party indemnified was received under this Agreement or under the laws of the latter Contracting Party, and
- b) The first Contracting Party is entitled to exercise such rights and enforce such claims by virtue of subrogation, to the same extent as the party indemnified.

2. The first Contracting Party shall be entitled in all circumstances to the same treatment in respect of:

- a) The rights and claims by acquired it by virtue of the assignment; and
- b) Any payments received in pursuance of those rights and claims as the party was entitled to receive indemnified by virtue of this Agreement in respect of the concerned and its related investment returns.

3. Any payments received in non-convertible currency by the former Contracting Party in pursuance of the acquired rights and claims shall be freely available to the former Contracting Party for the purposes of cancelling any expenditure incurred in the territory of the latter Contracting Party.

Article 12. Implementation of other Rules

If the laws of either Contracting Party or obligations under international law existing or established hereafter between the Contracting Parties in addition to this Agreement contain rules whether general or specific), which accords to investments of nationals or companies of the other Contracting Party to a more favourable treatment than is provided for by the present Agreement, such rules shall to the extent that they are more favourable to the provisions of this Agreement.

Article 13. Territorial Extension

At the time of ratification of this Agreement, or at any time thereafter, the provisions of this Agreement may be extended to the Territories for the International Relations of the Government of the United Kingdom is responsible, as may be agreed between the Contracting Parties through an exchange of letters.

Article 14. Duration

This Agreement shall be ratified and shall enter into force as of the exchange of instruments of ratification.

Article 15. Duration and Termination

This Agreement shall remain in force for a period of ten years. thereafter it shall continue in force until the expiration of twelve months from the date on which either Contracting Party notifies the other party in writing the termination of this Agreement. However, in respect of investments made during the term of the Agreement, of its provisions shall continue to be effective with respect to such investments for a period of ten years after the date of termination and thereafter without prejudice to the application of the rules of International Law.

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

Done in duplicate at London on 9 March 1994 in the English and Spanish languages, both texts being equally authentic.

For the Government of the Republic of Colombia,

(Signature).

For the Government of the United Kingdom of Great Britain and Northern Ireland,

(Signature).