

# **Convention between the Government of the Republic of Colombia and the Government of the Republic of Cuba on the Promotion and Reciprocal Protection of Investments.**

The Government of the Republic of Colombia and the Government of the Republic of Cuba, hereinafter referred to as the contracting parties.

Intended to create a climate of confidence in order to facilitate greater investment by companies and nationals of one State in the territory of another State.

Recognizing that the reciprocal promotion and protection of such investments under an international agreement may serve to stimulate economic initiative and improving the well-being of the peoples of both countries.

Have agreed as follows:

## **Article 1. Definitions**

For the purposes of this Agreement:

1. "investment" means every kind of asset and in particular, though not exclusively:

- a) Ownership of movable and immovable property and other property rights such as mortgages and pledges;
- b) Actions and any other kind of participation in companies or rights generated into risk-sharing contracts;
- c) Certificates, securities and financial documents, papers and any other obligation of a contract having an economic value;
- d) Intellectual Property Rights;
- e) Concessions conferred by law or under a contract for the exercise of an economic activity, including concessions of prospecting, exploration and exploitation of natural resources.

However, for the purpose of this agreement the Republic of Colombia does not consider loans as investments.

2. "Proceeds" means the amounts obtained from an investment made in accordance with this Agreement, in particular, though not exclusively, profits, dividends, royalties.

3. "Enterprises" means:

- a) With respect to the Republic of Colombia, firms, companies or associations incorporated or constituted under the law in force in Colombia and having their headquarters in the Colombian territory.
- b) As regards the Republic of Cuba, legal entities including companies, associations of companies, corporations and other organizations, which are duly constituted or otherwise organized under domestic law and having their headquarters in the Cuban Territory.

4. "Nationals" means natural persons who according to the laws of each Contracting Party have the same nationality.

5. "territory" designates further areas under the land boundary, the adjacent maritime areas including the soil and subsoil and airspace within the territory of each of the Contracting Parties, in accordance with its Constitution and the rules of international law.

## **Article 2. Promotion and Protection of Investments**

Each Contracting Party shall promote investments in its territory from nationals or companies of the other Contracting Party

and shall admit in accordance with its laws and regulations.

### **Article 3. Treatment of Investments**

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 the principles of international law so no less favourable than that accorded to investments of nationals or companies of the other contracting party in its own territory in similar activities in accordance with the legislation in force.

2. The Contracting Parties in accordance with the annex to this Agreement shall refrain from Arbitrary or Discriminatory Measures to the management, maintenance, use, enjoyment or disposal of investments in its territory from nationals or companies of the other contracting party.

### **Article 4. National Treatment and Most Favoured Nation Clause**

1. Each Contracting Party in accordance with the annex to this Agreement shall accord to investments in its territory and returns of nationals or companies of the other contracting party treatment not less favourable than that accorded to the returns of investments and investors of third countries.

2. Each Contracting Party shall accord not less favourable treatment to investments and returns of nationals or companies of the other Contracting Party, in accordance with the legislation in force, that that established to investments and returns of its own investors in similar activities.

3. Each Contracting Party shall accord in its territory treatment no less favourable to nationals or companies of the other Contracting Party, in similar activities and in accordance with the legislation in force, as regards to the management, maintenance, use, enjoyment or disposal of investments, than that accorded to its own nationals or companies or to nationals or companies of any third State.

### **Article 5. 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 Contracting Party the benefit of any treatment, preference or privilege resulting from:

a) Any customs union or common market, free trade area or similar international agreement or any existing in the future, which is or becomes a party of any contracting parties; or

b) Any international agreement, arrangement or domestic legislation relating wholly or partially to taxation.

### **Article 6. Repatriation of Capital and Profits of Investments**

1. Each Contracting Party shall guarantee to nationals or companies of the other Contracting Party the free transfer of payments relating to an investment in particular, though not exclusively:

a) The capital of the investment and reinvestment is carried out in accordance with the laws and regulations of the Contracting Party where the investment was made;

b) All the profits;

c) The proceeds of the total or partial sale or liquidation of the investment.

2. The transfer shall be effected in a freely convertible currency, without any restriction or delay.

3. Notwithstanding the preceding paragraph the Contracting Parties may establish restrictions on the free transfer of payments relating to an investment, in the event of serious difficulties in their balance of payments. In any case, this power shall be exercised by limited period, under a fair treatment, non-discriminatory and in good faith.

4. Contracting Parties shall accord a treatment no less favourable to the transfers referred to in this article than that accorded to transfers originating by investors of any third State.

5. Notwithstanding paragraphs 1 and 2 of this article, each party may maintain laws and regulations applicable to establish

taxes on dividends or other transfers.

## **Article 7. Expropriation and Equivalent Measures**

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 take control of certain activities deemed strategic in accordance with its domestic law, or services; or
- b) Any other form of expropriation or equivalent measures having an equivalent effect.

Unless that any such measures shall be carried out in accordance with the Constitution and the Law on a non-discriminatory basis, for reasons of public purpose or social interest related to the internal needs of that Party and with a prompt, effective and adequate compensation.

2. The compensation for the acts referred to in paragraph 1 (a) and (b) of this article, in accordance with the principles of international law, shall amount to the genuine value of the investment immediately before the measures are taken or before the impending measures became of public knowledge, whichever occurs first. It shall include interest until the date of payment, it shall be paid without undue delay, be effectively realizable and be freely transferable in accordance with the rules laid down in article 6 on repatriation of capital and profits of investments, provided that, even under exceptional difficulties of transfer of at least one third annual.

3. The national or company affected shall have a right under the law of the Contracting Party taking the measure with a prompt review by a competent authority of that Contracting 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 adopts any measures referred to in paragraphs 1 (a) and (b) of this article, in relation to the assets of a company which is incorporated or constituted under the law in force in any part of its territory and in which nationals or companies of the other contracting party own shares, it must ensure that the provisions of paragraphs 1 to 3 of this article are applied so as to guarantee prompt, adequate and effective compensation with regard to investment of nationals or companies of the other contracting party own shares.

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

## **Article 8. Compensation for Losses**

1. Nationals or companies of one Contracting Party who suffer losses of their investments due to war or other armed conflict, a national state of emergency, a state of siege, insurrection or other similar events in the territory of the other Contracting Party, shall be treated by the latter no less favourably than to its own nationals or companies or to nationals or companies of any third State as regards to restitution, indemnification, compensation. These refunds, compensation and resulting payments shall be freely transferable in accordance with article 6 of this Agreement.

2. Without prejudice to paragraph 1 of this article, in the event in which nationals or companies of one Contracting Party suffer any of the situations referred to in the paragraph mentioned, the occupation of their property by authorities of the other Contracting Party, shall be returned. If there is losses as a consequence of damages to property caused by acts of force from authorities of the other contracting party which were not required by the exigencies of the situation, an adequate compensation shall be accorded . The resulting payments shall be freely transferable in accordance with article 6 of this Agreement.

## **Article 9. Subrogation**

1. Without prejudice to paragraph 2 of this article, if one contracting party or its authorized agent makes payment to its nationals; a guarantee given by an investment against non-commercial risks in the territory of the other contracting party, the latter, without prejudice to their rights under article 13 relate to the first Contracting Party shall accept the subrogation of the first contracting party into the rights of the investor from the first time that the Contracting Party has made a payment under the guarantee granted. This subrogation will ensure that the first Contracting Party or its authorized agent is direct beneficiary of any payments of compensation the investor might be secured.

2. As regards property rights, use, enjoyment or any other right, the subrogation may occur only after obtaining the relevant authorisations in accordance with the legislation of the Contracting Party where the investment was made.

## **Article 10. Implementation of the Convention**

This Agreement shall apply to investments made by nationals or companies of one Contracting Party in the territory of the other contracting party prior to their entry into force, provided that such investments are acting as and legally operating at that time, it shall apply to investments which shall be held alternately in the scope and application of this Agreement.

## **Article 11. The Most Favourable Treatment**

The legal provisions of one of the Contracting Parties or as agreed upon by the contracting parties beyond as agreed in this Agreement is of a general or special rules under which must be accorded to investments of nationals or companies of the other contracting party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over the same as is more favourable.

## **Article 12. Settlement of Disputes between a Contracting Party and a National or Company of the other Contracting Party**

1. Any dispute which may arise between a Contracting Party and an investor of the other Contracting Party with regard to investments of this agreement should, as far as possible, be settled amicably between the parties to the dispute.

2. If a dispute cannot be settled within six months from the date on which the written notification of the dispute, it may be submitted at the choice of the investor, to:

a) The competent court of the Contracting Party in whose territory the dispute has arisen;

b) An arbitral tribunal according to the provisions of paragraphs 3 to 5 of article 13 with respect to its composition and other aspects according to the Arbitration Rules of the United Nations Commission on International Trade Law "UNCITRAL Arbitration Rules), adopted by the United Nations General Assembly on 15 December 1976.

3. The Contracting Party involved in the dispute shall abstain during the arbitration proceedings or the enforcement of the award to raise the fact that the investor of the other Contracting Party has received compensation arising out of an insurance policy covering all or part of the damage.

## **Article 13. 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 diplomatic channels.

2. If a dispute between the contracting parties cannot be settled in this way within six months from the date on which the written notification of the dispute shall be submitted, at the request of either contracting party to an arbitral tribunal in accordance with this article.

3. Such an arbitral tribunal shall be constituted for each individual case in the following way: within two 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 three months from the date of appointment of the other two members.

4. If within the periods specified in paragraph 3 of this article the necessary appointments have occurred, 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 is also 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 arbitral tribunal shall reach a decision by a majority of votes. This decision shall be binding. 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 portion of the costs will be charge to one of the two contracting parties and this decision shall be binding on both contracting parties. the tribunal shall determine its own procedure.

## **Article 14. Interruption of Diplomatic or Consular Relations**

The provisions of this Agreement shall continue to be fully apply irrespective of the existence of diplomatic or consular relations between the contracting parties.

## **Article 15. Entry Into Force, Duration and Termination of the Agreement**

1. The Contracting Parties shall notify each other that the requirements of their national legislation for the entry into force of this Agreement have been fulfilled.
2. This Agreement shall enter into force thirty days after the date of the second notification. They shall be valid for 10 years and thereafter shall be extended indefinitely unless either contracting party notifies in writing the other contracting party of its intention to terminate twelve (12) months before its expiration.
3. For investments made prior to the date of termination of this Agreement, this will continue to apply for a period of ten years after that date.

In WITNESS WHEREOF the undersigned, duly,

Authorized by their respective Governments,

Have signed this Agreement.

Done at the city of Bogota D.C.

On 16 July 1994

In duplicate in Spanish,

Both texts being equally authentic.

For the Government of the Republic of Colombia

The Director of the National Planning Department

Armando Montenegro.

For the Government of the Republic of Cuba

The Deputy Minister of the Ministry of Foreign Investment and Economic Collaboration,

Raul Taladrid.