# AGREEMENT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN THE REPUBLIC OF COLOMBIA AND THE REPUBLIC OF INDIA

The Government of the Republic of Colombia and the Government of the Republic of India, hereinafter referred in as the "Contracting Parties",

Desiring to in intensify the economic cooperation to the mutual benefit of both Contracting Parties;

Intending to create favourable conditions for the investments made by investors of one Contracting Party in the territory of the other Contracting Party; and

Recognizing the need for reciprocal promotion and protection, of investments with the aim to foster the economic prosperity of both Contracting Parties.

Have agreed to the following:

## Article 1. Definitions

For the purposes of this Agreement,

1. Investor

1.1 The term Investor" means a physical or natural person or an entity of one of the Contracting Parties that has made investments in the territory of the other Contracting Party in accordance with its national legislation.

a. A physical or natural person" shall mean a person who,

In the case of India is a citizen of India, and

In the case of Colombia is a national of Colombia pursuant to their respective legislations.

b. An entity shall mean a company, corporation, firm or association incorporated or constituted or otherwise duly established pursuant to the laws of that Contracting Party and is engaged in substantial business activities in the territory of that Contracting Party.

1.2 This Agreement shall not apply to investments made by natural persons who are nationals of both Contracting Parties.

2. Investment

2.1 Investments shall mean every type of assets that have been established or acquired by investors of a Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter including particularly, but not exclusively, the following:

a. Movable and immovable property, as well as other property rights such as mortgages, liens or pledges;

b. Shares, bonds, debentures and any other similar form of participation in an enti ty;

c. Rights to money or to any performance under contract having an economic value;

d. Intellectual property rights, including, among others, copyrights and related rights, and industrial property rights such as patents, technical processes, manufacturers brands and trademarks, trade names, industrial designs, know-how and goodwill, in accordance with the relevant laws of the respective Contracting Party;

e. Concessions granted by law, administrative act or contract, including concessions to explore, extract or exploit natural

resources;

Investment does not include:

i. public debt operations;

ii. Claims to money arising solely from:

a. Commercial contracts for the sale of goods and services by a national or legal entity in the territory of a Contracting Party to a national ora legal entity in the territory of the other Contracting Party, or

b. The extension of credit in connection with a commercial transaction.

2.2 Any alteration in the form in winch assets are invested or re-invested shall not affect their character as investments provided such a modification is in accordance with the definitions under this Article and is made in conformity with the legislation of the Contracting Party in whose territory the investment was made

2.3 In accordance with paragraph 2.1 of this Article, the minimum characteristics of an investment shall be:

a. The commitment of capital or other resources:

b. The expectation of gain or profit; and

c. The assumption of risk for the investor.

3. Returns

The term returns means the monetary amounts yielded by aii investment, and particularly, but not exclusively, profits, dividends, interests, capital gains, royalties and fees.

4. Territory

Territory means:

(a) With respect to Colombia, in addition to its continental territory, the archipelago of San Andres, Providencia and Santa Catalina, the island of Malpelo, and all the other islands, islets, keys, headlands and shoals that belong to it, as well as air space and the maritime areas over which it has sovereignty or sovereign rights or jurisdiction in accordance with its domestic law and international law, including applicable international treaties:

(b) with respect to India, the territory of the Republic of India including its territorial waters and the airspace above it and other maritime zones including the Exclusive Economic Zone and continental shelf over which the Republic of India has sovereignty, sovereign rights or exclusive jurisdiction in accordance with its laws in force, the 1982 United Nation Convention on the Law of the Sea and International Law.

## Article 2. Scope of the Agreement

This Agreement shall apply to all investments made by investors of either Contracting Party in the territory of the other Contracting Party, accepted as such in accordance with its laws and regulations, whether made before or after the coming into force of this Agreement, but shall not apply to any dispute that has arisen or any measure that has been taken before the entry into force of this Agreement.

## Article 3. Promotion and Protection of Investments

1. Each Contracting Party shall promote in its territory investments of investors of the other Contracting Party. Each Contracting Party shall admit these investments in accordance with its laws, regulations and policies.

2. Each Contracting Party shall protect within its territory investments made in accordance with its law by investors of the other Contracting Party and shall not impair with discriminatory measures the management, maintenance, use, enjoyment, sale or disposition of such investments.

3. Each Party shall accord to investments of investors of the other Contracting Party fair and equitable treatment and full protection and security in its territory.

4. For greater certainty,

a. "Fair and equitable treatment" includes the prohibition against denial of justice in criminal, civil, or administrative proceedings in accordance with the principle of due process.

b. The "Full protection and security" standard does not imply, in any case, a better treatment to that accorded to nationals of the Contracting Party where the investment has been made.

c. A determination that there has been a breach of another provision of this Agreement or another international agreement does not imply that the minimum standard of treatment of aliens has been breached.

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

1. Each Contracting Party shall accord in its territory to the investments of investors of the other Contracting Party, as regards the management, maintenance, use, enjoymentm sale or disposition of the investments made in its territory, a treatment that shall not he less favourable than that it accords, in like circumstances, to the investments of its own investors or to the investments of investors of any other third State.

2. Each Contracting Party shall accord in its territory to the investors of the other Contracting Party, as regards the management, maintenance, use, enjoyment, sale or disposition of the investments mande in its territory, a treatment that shall not be less favourable than that it accords, in like circumstances, to the investors of any third State.

3. The most favourable treatment to be granted in like circumstances referred to in this Agreement does not encompass mechanisms for the settlement of investment disputes, such as those contained in Articles 9 (Settlement of Disputes between One Contracting Party and an Investor of the Other Contracting Party) and 10 (Settlement of Disputes between the Contracting Parties) of this Agreement, which are provided for in treaties or international investment agreements.

4. The provisions of this Agreement according a treatment no less favourable than that accorded to investments of investors or to investors of any of the Contracting Parlies or of any third slate shall not be construed so as to oblige one Contracting Parly to extend to investments of investors or to investors of the other Contracting Parly the benefit of any treatment, preference or privilege resulting from:

(a) Any existing or future free trade area, customs union, common market, economic or monetary union or any other regional or bilateral economic agreement having the effect of setting up a free trade area or similar international agreement or arrangement to which it is or may become a party.

(b) Any matter pertaining wholly or mainly to taxation including an agreement for the Avoidance of Double Taxation.

## Article 5. Transfers

1. Each Contracting Party shall permit investors of the other Contracting Party the free transfer of all payments related to its investments, without unreasonable delay and on a noil-discriminatory basis, and in particular, but not exclusively, the following:

a. The principal amount and additional sums necessary for maintaining, increasing and developing the investment;

b. Returns as defined in Article I;

c. The necessary funds for reimbursement of loans involved in the investment;

d. Funds yielded from settlement of disputes and compensations, as provided for in Articles 6 (Expropriation) and 7(Compensalion for Losses);

e. Proceeds from the sale of all or any part of the investment, or from the partial or complete disposition of the investment;

f. Salaries and remunerations received by staff employed overseas in connection with an investment;

g. The payments resulting from the resolution of disputes under this Agreement.

2. Transfers shall be made in the currency of the original investment or any other convertible currency at the prevailing market rate of exchange on the date of transfer, pursuant to the exchange regulations in force of the Contracting Party in whose territory the investment was made,

3. Notwithstanding the provisions of this Article, a Contracting Party may condition or prevent a transfer through the equitable, non-discriminatory and good faith application of its laws relating to:

a. Bankruptcy, insolvency or the protection of the rights of the creditors;

b. Compliance with judicial, arbitral or confirmed administrative verdicts and awards;

c. Compliance with labour obligations;

For greater certainty, such measures and their application are not to be used in a way to avoid meeting commitments or obligations of the Contracting Party in accordance with the present Article.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, the Contracting Parties may temporarily restrict the transfers in the event of serious balance-of-payments or threat thereof; or in cases where, in exceptional circumstances, movements of capital cause or threaten to cause serious difficulties for macroeconomic management, in particular, monetary and exchange rate policies, provided such restrictions are compatible or are issued in conformity with the agreements of the IMF or are applied upon request of the latter and are equitable, non discriminatory and in good faith.

## Article 6. Expropriation

1. Investments of investors of either Contracting Party in the territory of the other Contracting Party shall not be subject to nationalization, expropriation, or any other measure having similar effects (hereinafter "expropriation") except for reasons of public purpose (1) in accordance with the law, on a non-discriminatory basis and against fair and equitable compensation.

2. It is is understood that:

a. Indirect expropriation results from a measure or series of measures of a Contracting Party having an equivalent effect to direct expropriation without formal transfer of title or outright seizure.

b. The determination of whether a measure or series of measures of a Contracting Party constitute indirect expropriation requires a case-by-case, fact-based inquiry considering:

i) The economic impact of the measure or series of measures; however, the sole fact of a measure or series of measures having adverse effects on the economic value of an investment does not imply that an indirect expropriation has occurred,

ii) the extent to which the measures are discriminatory either in scope or in application with respect to an investor or an entity of a Party;

iii) The extent to which the measures or series of measures interfere with distinct, reasonable investment-backed expectations concerning the investment;

iv) The character and intent of the measures or series of measures, whether they are for bona fide public interest purposes or not and whether there is a reasonable nexus between them and the intention to expropriate

c. Non-discriminatory regulatory actions by a Contracting Party that are designed and applied to protect legitimate public welfare objectives including the protection of health, safety and environment, do not constitute expropriation of nationalization; except in rare circumstances, where those actions are so severe that they cannot be reasonably viewed as having been adopted and applied in good faith for achieving their objectives,

d. Actions and awards by judicial bodies of a Contracting Party that are designed, applied or issued in public interest including those designed to address health, safety and environmental concerns do not constitute expropriation or nationalization.

3. The compensation shall be equivalent to the fair market value of the investment expropriated, immediately before the expropriation or before the impending expropriation became public knowledge, whichever is earlier, shall include interest at a commercially reasonable rate until the dale of payment, shall be made without unreasonable delay, be effectively realizable and be freely transferable.

4. The affected investor shall have the right to, in conformity with the law of the Contracting Party that makes the expropriation, the prompt review, by a judicial or other independent authority of that Contracting Party, of its case, in order to decide if the expropriation and assessment of its investment have been adopted pursuant to the principles established in this Article,

5. When a Contracting Party expropriates the assets of a company that is constituted in its territory according to its legislation in force and in which investors of the other Contracting Party participate, it shall ensure that the provisions of this Article are applied in such a way that it guarantees such investors a fair and equitable compensation,

6. Any establishment of a monopoly (2) by either Contracting Party shall conform to the obligations set out in this Article.

7. The Contracting Parties confirm that the issuance of compulsory licenses granted in accordance with the TRIPS Agreement of the WTO is not covered under the provisions set out in this Article.

(1) With respect to Colombia, it is understood that the term "utilidad pública o interés social" contained in Article 58 of the Constitución Política de Colombia (1991) is compatible with the term "public purpose" used in this Article.

(2)With regard to Colombia monopolies shall be established in accordance with Article 336 of the Constitución Política de Colombia (1991)

## Article 7. Compensation for Losses

Investors of one Contracting Party whose investments in the territory of the other Contracting Party suffer losses on account of war, armed conflict, revolution, national state of emergency, uprising, disturbances or other similar events, shall enjoy as regards restitution, indemnification, compensation or other settlement, treatment no less favourable than that granted by the latter Contracting Party to its own investors or to investors of any other third State

## Article 8. Subrogation

1. If a Contracting Party or its designated agency has granted a financial guarantee against non-commercial risks, and makes a payment under such guarantee, or acts under its rights as subrogator with respect to an investment made by one of its investors in the territory of the other Contracting Party, that other Contracting Party shall recognise the subrogation of any right, title, claim privilege or actions existing or that might occur. The Contracting Party or its designated agency as subrogators shall not have rights beyond those the original investor had.

2. In case a dispute arises, the Contracting Party which has been subrogated in the rights of the investor may not initiate or participate in proceedings before a national tribunal nor submit the case to international arbitration in accordance with the provisions of Article 9 (Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party) of this Agreement.

## Article 9. Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party

1. Any dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment under this Agreement or in connection to the interpretation or application of this Agreement, shall as far as possible be settled amicably between the parties to the dispute. Every dispute shall be notified in writing including detailed information by the investor to the Contracting Party that receives the investment (Notice of the Dispute).

2. Such a dispute shall be submitted for settlement to the competent non-judicial administrative bodies, if established, under the law of the Contracting Party.

3. If the dispute is not so settled in accordance with paragraphs 1 and 2 within six months from the date of the written notice of the dispute under paragraph 1, the investor may choose to submit it for resolution:

a. To the relevant courts or competent tribunals of the Contracting Party in whose territory the investment was made; or

b. To international conciliation under the Conciliation Rules of the United Nations Commission on International Trade Law (UNCITRAL);

c. To arbitration in accordance with this subparagraph:

i. The International Centre for Settlement of Investment Disputes (ICSID), unde the rules of the Convention on Settlement of Disputes between States and Nationals of other States, open for signature in Washington on March 18, 1965, when both of the Contracting Parties have adhered to it; or

ii. In the event that one of the Contracting Parties has not adhered to the mentioned Convention, the dispute may be resolved in accordance with the ICSID Rules Governing the Additional Facility for the Administration of Procedures for Conciliation, Arbitration and Fact-Finding; or

iii. An ad hoc arbitral tribunal, established in accordance with the UNCITRAL Arbitration Rules 1976, subject to the following modifications:

a. The appointing authority under Article 7 of the Rules shall be the President, the Vice-President or the next senior Judge of the International Court of Justice, who is not a national of either Contracting Party. The third arbitrator shall not be a national of either Contracting party.

b. The parties shall designate the respective party appointed arbitrators within two months

4. The choice made by the investor to submit a dispute either under paragraph 3(a) or (b) or (c) of this Article shall be final:

5. The disputing investor shall submit to the Contracting Party a written notice of its intention ("notice of intent") to submit a request for arbitration at least a hundred and eighty (180) days prior to submitting such a request. Such a notice shall indicate the name and address of the disputing investor, the provisions of the Agreement which the disputing investor considers have been infringed, the facts on which the dispute is based on, the estimated value of the damages and the amount of compensation sought.

6. The notice of intent submitted by the disputing investor for arbitration under paragraph 5, during the pendency of settlement under paragraphs 1 and 2 shall not preclude the investor from making the choice under paragraph 3 of this Article

7. Each Contracting Party hereby gives in advance its irrevocable consent to the submission of a dispute to any of the arbitral proceedings established in paragraph 3.c, of this Article.

8. Arbitral awards shall be final and binding on the disputing parties.

9. An investor may not file a request for arbitration if more than three years have elapsed since the date the investor had knowledge or should have had knowledge of the alleged violation of this Agreement, as well as of the alleged losses and damages.

10. The dispute settlement mechanisms provided in this Agreement will be based on the provisions of the present Agreement, the national law of the Contracting Party in whose territory the investment has been made, including the rules related to conflict of laws, on the general principles of law and international law.

11. The tribunal shall consider whether the claim of the claimant is frivolous and shall provide the disputing parties a reasonable opportunity for comments. In the event of a frivolous claim the tribunal shall award costs against the claimant.

12. The tribunal shall not be competent to rule on the legality of the measure as a matter of domestic law.

13. The presentation of the notice of intent and other documents to a Party will be done in the place designated by that Party in Annex I (Presentation of Documents Regarding Article 9).

14. The arbitral tribunal shall state file basis of its decision and give reasons upon the request of either party.

## Article 10. Settlement of Disputes between the Contracting Parties

1. Any dispute arising between the Contracting Parties regarding the interpretation or application of this Agreement shall be settled as far as possible through negotiations.

2. In case the dispute cannot be resolved in this manner within a period of 6 months from the beginning of the negotiations, it shall be submitted, upon request of either Contracting Party, to an arbitration tribunal.

3. The arbitration tribunal shall be constituted as follows: Each Contracting Party shall designate an arbitrator and the two arbitrators shall appoint a citizen of a third State with whom both the Contracting Parties maintain diplomatic relations, as the Chairman. The arbitrators shall he designated within a period of 3 months and the Chairman within a period of 5 months from the date on which either of the Contracting Parties had informed the other Contracting Party of its intent of bringing the dispute to an arbitration tribunal. The appointment of the Chairman shall he approved by the Contracting Parties within thirty (30) days from the date of his nomination.

4. If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, either Contracting Party may, in the absence of any other agreement, invite the President of the international Court of Justice to make any necessary appointments. If the President is a national of either Contracting Party or if he is otherwise prevented from discharging the said 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 discharging the said function, the Member of the international Court of Justice next in seniority who is not a national of either Contrasting Party shall be invited to make the necessary apppintments.

5. The arbitration tribunal shall decide on the basis of the provisions enshrined in the present Agreement and of the principles admitted, in general, by the International Law applicable to the subject matter. The Tribunal shall reach its decisions by a majority of votes and shall, determine its own procedural rules. The decisions of the tribunal shall be limit and binding for the Contracting Parties

6. Each of the Contracting Parties shall equally bear the costs of the arbitrators, and the arbitral proceeding, unless otherwise established.

## Article 11. Denial of Benefits

1. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party and to investments of that investor if persons of a non-Party own or control such investor and the.denying Contracting Party:

a. does not maintain diplomatic relations with such non-Party; or

b. adopts or maintains measures with respect to such non-Party that prohibit transactions with the investor or that would be violated or circumvented if the benefits of this Agreement were accorded to the investor or to its investments,

2. A Contracting Party may deny the benefits of this Agreement to an investor of the other Contracting Party that is a company of such other Party and to investments of that investor if the company has no substantial business activities in the territory of the other Contracting Party and persons of a non-Party, or of the denying Contracting Party, own or control the company.

## Article 12. Entry and Sojourn of Personnel

A Contracting Party shall, subject to its laws applicable relating to the entry and sojourn of non-citizens, permit natural persons of the other Contracting Party and personnel employed by companies of the other Contracting party to enter and temporarily remain in its territory for the purpose of engaging in activities connected with investments.

## Article 13. General Exceptions

1. Nothing in this Agreement shall apply to tax matters.

2. Nothing in this Agreement shall bind either Contracting Party to protect investments made with capital or assets derived from illegal activities.

3. Notwithstanding any other provision of this Agreement either Contracting Party shall not be prevented from adopting or maintaining measures relating to financial services for prudential reasons (3). Where such measures do not conform with the provisions of this Agreement, they shall not be used as a means of avoiding the Contracting Party's commitments or obligations under such provisions, in particular those obligations under Articles 5 (Transfers) and 6 (Expropriation).

4. Nothing in this Agreement precludes either Contracting Party from taking action, which it considers necessary for the protection of its essential security interests or in circumstances of extreme emergency in accordance with its laws normally, and reasonably applied on a non-discriminatory basis.

5. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against the investors of the other Contracting Party or a disguised restriction on investment of investors of a Contracting Party in the territory of the other Contracting Party, nothing in this Agreement shall be construed to prevent the adoption or enforcement by a Contracting Party of measures:

a. necessary to maintain public order;

b. necessary to protect human, animal, plant life or health;

c. relating to the protection of the environment or the conservation of exhaustible natural resources, if such measures are made effective in conjunction with restrictions on domestic production or consumption;

d. in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

(3)It is understood that the adoption or maintenance of measures relating to financial services for prudential reasons includes measures for the protection of investors, depositors, policy holders or to ensure the integrity and stability of the financial system.

## Article 14. Applicable Laws

All investments made under this Agreement shall be governed by the laws and regulations in force in the territory of the Contracting Party in which such investments are made.

## Article 15. Other Provisions

If the provisions of international law existing at present or establised hereafter contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

## Article 16. Consultations

All investments made under this Agreement shall be governed by the laws and regulations in force in the territory of the Contracting Party in which such investments are made.

## Article 15. Other Provisions

If the provisions of international law existing at present or establised hereafter contain rules, whether general or specific, entitling investments by investors of the other Contracting Party to a treatment more favourable than is provided for by the present Agreement, such rules shall to the extent that they are more favourable prevail over the present Agreement.

## Article 16. Consultations

The Contracting Parties shall consult with each other concerning any: matter related to the application or interpretation of this Agreement.

## Article 17. Entry Into Force, Duration and Termination

1. The present Agreement shall come into force 60 days after the date on which the Contracting Parties have reciprocally notified each other that the respective constitutional formalities required for the coming into effect of international agreements have been complied with.

2. This Agreement shall remain in force for a period of 10 years. Thereafter it shall be deemed to have been automatically extended unless either Contracting Party gives to the other Contracting Party a written notice through diplomatic channels of its intention to terminate the Agreement. The Agreement shall stand terminated one year from the date of receipt of such written notice.

3. This Agreement may be amended at any time after its entry into force by mutual consent.

4. Notwithstanding termination of this Agreement pursuant to paragraph 2 of this Article, this Agreement shall continue to be effective for a further period of 10 years from the date of its termination in respect of investments made or acquired before the date of termination of this Agreement.

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

Signed in the city of New Delhi on the 10th day of the month of November of the year 2009 in three originals, each in the Spanish, English and Hindi languages, all the texts being equally authentic. In case of any divergence, the English text shall prevail.

For the Government of the Republic of Colombia

For the Government of the Republic of India

## Annex I. Presentation of documents to a Party regarding Article 9

INDIA

The place of presentation of the notice of intent and other documents concerning settlement of disputes regarding Article 9, in India is:

Department of Economic Affairs

Ministry of Finance

North Block, New Delhi 1 10001, India

COLOMBIA

The place of presentation of the notice of intent and other documents concerning settlement of disputes regarding Article 9, in Colombia is:

Dirección de Inversión Extranjera y Servicios

Ministerio de Comercio, Tndustria y Turismo

Calle 28 No. 13a-15

Bogota D,C, - Colombia.

## JOINT INTERPRETATIVE DECLARATION BETWEEN THE REPUBLIC OF INDIA AND THE REPUBLIC OF COLOMBIA REGARDING THE AGREEMENT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS BETWEEN INDIA AND COLOMBIA, SIGNED ON NOVEMBER 10TH 2009

The Government of the Republic of India ("lndia"), and the Oovemmenr of the Republic of Colombia ("Colombia"), hereinafter referred as the Contracting Parties:

Recognizing the uncertainties and ambiguities that may arise regarding interpretation and application of the standards contained in the Agreement for the Promotion and Protection of Investments between India and Colombia signed on November 10th 2009 (the "Agreement"/APPI), with a duration of 10 years, entered in force on July 2nd 2012,

Taking into account the power of the Contracting Parties to provide clarification on the object and purpose of the Agreement, whilst affirming their understanding of their mutual obligations enshrined therein, and

Recalling the requirement under customary international law and Article 31 (a) & (b) of the Vienna Convention of the Law of Treaties, that any interpretation of the Agreement must take into account the Contracting Parties' subsequent statements and practice reflecting their shared understanding of the meaning of that Agreement,

The Contracting Parties, while recognizing that additional uncertainties and ambiguities may remain and need to be li.trlher clarified al a future date, issue the following notes (the "Notes") to resolve certain questions regarding the scope and meaning of several of the Agreement's provisions.

**NOTE I: General principles applicable for Interpretation of the APPI**

1. This interpretative note shall be read together with the Agreement and shall form an integral part of the Agreement.

2. The term of this interpretative note shall be co-terminus with the Agreement.

3. Interpretation of this Agreement shall be done in accordance with the high level of deference inlernational law accords to States with regard to their development and implementation of domestic policies.

4. Interpretation and application of the Agreement shall also reflect the strong presumption of legitimacy and regularity international law provides lo domestic legislative, administrative and judicial determinations made by the Contracting Parties.

**NOTE 2: Definition of "Investor" (Article 1.1)**

1. For greater certainty regarding the definition of an "lnvestor"

a. The term "entity" referred to in Article 1.1.b of this Agreement means only a company, corporation, firm or association of a Contracting Party that is incorporated or constin1tcd or otherwise duly established pursuant to the laws and regulations

of that Contracting Party, and that has its seal in that Contracting Party and is engaged in substantial business activities in the territory of that Contracting Party. (1)

b. In the case of dual nationals the term 'physical person or natural person", refers to his or her dominant and effective nationality.

2. The Contracting Parties affirm that the Agreement aims to protect investors that have direct real and transparent links with the economies of both Contracting Parties. The term "investor" therefore, does not include persons of one Contracting Party that (a) invest in another Contracting party through a person or a non-Party, or (b) are owned or controlled by persons of a non-Party, or persons of the other Contracting Party.

(1) "Substantial business activities" do not include activities such as (a) strategies/arrangements, the main purpose of which is to avoid tax liabilities, (b) the passive holding of stock, securities, land, or other property, or (e) the ownership or leasing of real or personal property used in a trade or business, unless the owner or lessor performs significant services with respect to the operation and management of the property which demonstrate an effective control of the investment.

**NOTE 3: Definition of "Investment" (Article 2)**

1. The Contracting Pa1ties confirm their understanding that nothing in this Agreement covers pre-establishment or pre-investment activities.

2. The existence, scope and nature of the different assets that may be deemed an "Investment" shall be determined by the laws and regulations of the Contracting Party in the territory in which the investment is made.

3. For the purpose of Article 2.1 (d), the term 'Intellectual Property' shall be construed as categories of intellectual property that are the subject of Section I through 7 o C Part II of the Agreement on Trade-related Aspects of Intellectual Prope1ty Rights, Annex IC of the Marrakesh Agreement Establishing the World Trade Organization.

4. In accordance with Article 2.3, the minimum characteristics of an "Investment" are (a) the lasting contribution of capital or other resources; (b) the expectation of gain or profit; (c) the assumption of risk by the investor, and (d) significance for development of the Contracting Party receiving the investment. (2)

For the avoidance of doubt, an investor of one Contracting Party must make its investment in the territory of the other Contracting Party. This means, for example, that claims to money arising solely from cross-border commercial transaction, or other relationships or instruments not involving an investor's actual investment project in the territory of the other Contracting Party, do not constitute covered investment. Furthermore, the mere fact that an investment "benefits" the Contracting Party in which it is made is insufficient to establish that it is an investment "in the territory of" that Contracting Party.

(2) Interests or assets that do not typically possess the characteristics of "Investments" include portfolio investments, claims to payments resulting from a sale of goods or services by an individual or entity in one Contracting Party to an individual or entity in the other, or an order or judgment sought or entered in a judicial, administrative, or arbitral action.

**NOTE 4: Promotion and Protection of Investments (Article 3)**

1. The concept of "fair and equitable treatment" under Article 3 does not require treatment in addition or beyond that which is required by the customary international law minimum standard of treatment of aliens, and docs not create additional substantive rights. (3)

For greater certainty, a measure shall constitute a violation through customary international law minimum standard of treatment in case of:

(i) Denial ofjusrice in any judicial or administrntive proceedings; or

(ii) fundamental breach of due process; or

(iii) targeted discrimination on manifestly unjustified grounds, such as gender, race or religious belief; or

(iv) manifestly abusive treatment, such as coercion, duress and harassment.

2. For further clarification, the "Fair and Equitable Treatment" standard under Article 3 does not require compensation for measures designed or applied to further public policy objectives, including but not limited to:

a. protection or improvement of natural resources and the environment;

b. protection or improvement of human, animal or plant life or health;

c. protection or improvement of human capital conditions of work, and human rights;

d. protection or improvement of economic conditions and the integrity of the financial system;

e. implementation of fiscal policy measures, including taxation.

3. For further avoidance of doubt, "measures'" referred to under subparagraph (2) herein include new laws and regulations, amendments to existing laws and regulations, as well as changes in interpretation and application of existing laws and regulation, provided such changes or amendments are in accordance with the law of the Contracting Party taking the measure.

4. a) The "fair and equitable treatment" requirement does not, alone elevate alleged representations, contractual promises or other undertakings by the Contracting Party where the investment is made to the investor or investment to commitments binding or enforceable under the Agreement. The legal significance of those representations, contractual promises or other undertakings to the investor or investment are to be determined, (i) in the case of a written contract between the investor or investment and Contracting Party that specifies the applicable law, under that law; and (ii) in all other cases, under the law of the Contracting Party ut which the investment is made. For greater certainty, the "law of the Contracting Party" in which the investment is made means the law that a domestic court or tribunal of proper jurisdiction would apply in the same case.

b) Subparagraph (a) is without prejudice to the question of whether a Contracting Party has inappropriately interfered with representations, contractual promises or other undertakings in breach of the Agreement through, in particular, wilful and egregious abuse of law amounting to a violation of Article 3.

5. The Contracting Parties understand chat the obligation to provide "full protection and security" extends only to the physical security of the investor and to its investments and does not suppose any other obligation whatsoever.

(3) "Customary international law" is law that results from evidence of general and consistent practice of States when acting out or a sense of legal litigation. The burden to establish the existence and applicability of a binding obligation under customary international law that meets the requirements of State practice and opinion juris is always on the claimant. Once a rule of customary international law has been established, a claimant must show that the Contracting Party has engaged in conduct that violated that binding obligation.

**NOTE 5: National Treatment and Most Favoured Nation Treatment (Article 4)**

1. The most-favored-nation (MFN) and national treatment provisions under Article 4 are designed to protect against illegitimate and intentional discrimination against an investment, or investor with respect to its investment on the basis of nationality.

2. a) The Contracting Parties further affirm that the MFN obligation is not intended to alter the Agreement's substantive content by for example, permitting piecemeal incorporation of and reliance on provisions found in other treaties, investment or otherwise;

b) For greater certainty, the Contracting Parties note their agreement that the MFN obligation provided under Article 4 does not apply to the mechanism for settlement of investment disputes contained in this Agreement or to other procedural and jurisdictional issues under any circumstance.

3. a) Establishing a breach under Article 4 requires a comparison between investors and investments that are in "like circumstances".

b) Determining whether investors or investments are in "like circumstances" is a fact-specific inquiry that is highly dependent on context. It requires a case-by-case examination of all relevant factors, including:

i) the sectors and industries in which the investors and investments are operating;

ii) the activities and operations of the investors and investments;

iii) the nature of the enterprise in question, i.e.: whether it is a public, private or state-owned or -controlled enterprise;

iv) the nature of goods or services involved;

v) the legal and regulat0ry regimes governing the investors and investments and their activities;

vi) the actual and potential effects of the investments on third persons and the local community;

vii) the actual and potential effects of the investments on the local, regional or national environment including the cumulative effects of all investments within a jurisdiction on the environment;

viii) the aim of the policies or measures concerned; and

ix) other factors directly relating to the investors and investments in relation to the policies or measures concerned.

4. For greater certainty, legitimate exercises of prosecutorial discretion, including decisions regarding whether, when and how to enforce or not enforce a law or regulation, are not a violation of Article 4, provided such decisions are taken to further a policy, law or regulation that is not inconsistent with the Agreement.

**NOTE 6: Expropriation (Article 6)**

1. Article 6 addresses two situations. The first is direct expropriation, where an investment is nationalised or expropriated. The second is where a measure or series of measures have the effect of a nationalisation or expropriation.

2. The determination of whether a measure or series of measures have an effect equivalent to nationalisation or expropriation requires a case-by-case, fact-based inquiry considering the following factors, including whether:

a) the measures result in a total or near total and permanent destmction of the value of the investment,

b) the measures deprive the investor of its rights of management and control over the investment (4), and

c) there is an appropriation of the investment by a Contracting Party which results in transfer the investment, in whole or significant part, to that Contracting Party or to an agency or instrumentality of the Contracting Party or a third party.

3. Notwithstanding paragraph 2, legislative, executive, regulatory, administrative or judicial measures or actions or general applicability that are designed or applied to further a Contracting Party's public policy objectives shall not constitute expropriation. These public policy objectives include, but are not limited to:

a) protection and improvement of natural resources and the enviromnent;

b) protection and improvement of human, animal or plant life or health;

c) protection and improvement of human capital, conditions of work and human rights;

d) protection and improvement of economic conditions and the integrity of the financial system;

e) implementation of fiscal policy measures, including taxation.

(4) This does not prohibit a Contracting Party from interfering with management or control when done in good faith and in compliance with the law of the Contracting Party where the investment is made. This would cover, for example. requirements under financial or insolvency law of the relevant Contracting Party, or law regarding senior management positions in sensitive industries that the Contracting Party considers necessary.

**NOTE 7: Settlement of Disputes between a Contracting Party and an Investor of the other Contracting Party (Artide 9)**

1. For the purposes of this Agreement, ''[a]ny dispute between an investor of one Contracting Party and the other Contracting Party in relation to an investment under this Agreement or in connection to the interpretation or application of this Agreement'' is a dispute between a Contracting Party and an investment, or an investor with respect its investment, arising of an alleged breach of an obligation of a Contracting Party under this Agreement. The Contracting Parties further confirm their understanding that to establish the existence or a dispute actionable under Article 9, a claimant bears the burden of demonstrating that the respondent has breached an obligation owed under the Agreement, and the claimant has:

i. Suffered actual and non-speculative damages,

ii. As a direct and foreseeable result of that breach, and

iii. Its claims are ripe for adjudication under the Agreement. (5)

2. Absent express language to the contrary, nothing in this Agreement shall be interpreted to constitute a waiver or

limitation of any rights or defences of either of the Contracting Parties under international law, including rights to regulate within their respective borders, and abilities to invoke defences of necessity, force majeure and sovereign immunity.

3. Any interpretation of this Agreement, including any interpretation contained in these Notes, which is jointly agreed to and issued as such by the Contracting Parties shall be binding on tribunals established under Article 9 upon issuance or that interpretation in accordance with the Vienna Convention on the Law of Treaties and customary international law, other evidence of the Contracting Parties' agreement and practice regarding interpretation or application or this Agreement, including subsequent agreement and practice manifested through submissions made to tribunals on issues of treaty interpretation, shall similarly constitute authoritative interpretations of this Agreement and must be taken into account as such by tribunals constituted under Article 9 and Article 10. (6)

(5) To be "'ripe", claims must be based on government conduct that is final and legally binding, and inflicts a definitive and concrete injury capable of being assessed as a breach. It is related to, and serves similar functions as the requirement of "exhaustion", but the two are separated doctrines: Whereas ripeness addresses whether issues are fit for review, exhaustion relates to the process that must be followed. Where the challenge is one for a denial of justice, the "ripeness'' requirement means that unless there are extremely exceptional circumstances, such as where a claimant proves that continuing to pursue domestic relief would be manifestly and wholly ineffective or obviously futile, the claimant must have exhausted all local legal remedies.

(6) The failure of a non-disputing Contracting Party to make such a submission, however, shall not be interpreted to constitute agreement or disagreement with any issue of interpretation.

**NOTE 8: Denial of Benefits (Article 11)**

1. The Contracting Parties affirm their understanding that they may deny the benefits of this Agreement pursuant to Article 11 at any time, including after the initiation of arbitration under Article 9.

**NOTE 9: General Exceptions (Article 13)**

1. Where the Contracting Party asserts as a defence that the measure alleged to be a breach of its obligations under this Agreement is for the protection of its "essential security interests" or in "circumstances of extreme emergency in accordance with its domestic laws applied on a reasonable basis" as set out in Article 13, any decision of such Contracting Party taken on such security considerations shall be non-justiciable in that it shall not be open to any arbitral tribunal to review the merits of any such decision, even where the arbitral proceedings concern an assessment of any claim for damages and/or compensation, or an adjudication of any other issues referred to the tribunal.

IN WITNESS WHEREOF the undersigned, being duly authorized by their respective Governments, have signed this Joint Interpretative Declaration.

Signed at Bogota on 4th October, 2018 in two originals, each in the Hindi, the Spanish and the English languages, all texts being equally authentic. In case of divergence in interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC Of INDIA

Name: Ravi Baugar

Ambassador ofl India to Colombia and Ecuador

FOR THE GOVERNMENT OF THE REPUBLIC OF COLOMBIA

Name: Carlos Holmes Trujillo

Minister of Foreign Affairs of Colombia