Agreement between the Kingdom of Spain and the Republic of Colombia for the Promotion and Reciprocal Protection of Investments

Preamble

The Kingdom of Spain and the Republic of Colombia, hereinafter referred to as the "Contracting Parties",

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

Aiming to create favourable conditions for investments by investors of either Contracting Party in the territory of the other party; and

Recognizing that the promotion and protection of investments under this Agreement stimulates initiatives in this field,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement,

1. "Investor" means any natural person or any natural or legal person of one Contracting Party who has effected or investments in the territory of the other Contracting Party.

a) "National" means any natural person has the nationality of a Contracting Party in accordance with its legislation;

b) "Legal person" means a company or other legal entity duly constituted or organized under the laws of that Contracting Party and having its registered office in the territory of that same Contracting Party, including companies, business associations or collective.

2. "Investment" refers to every kind of assets of an economic nature that have been invested by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the legislation of the latter including in particular, though not exclusively, the following:

a) Ownership of movable and immovable property as well as other rights in rem such as mortgages, pledge, usufructs and similar rights;

b) Shares, securities, debentures and any other form of participation with an economic implication in companies

c) Rights of credit and any other provision under contract having an economic value and associated with an investment. without prejudice to the rights and obligations, are excluded from this definition:

i. External credit operations that do not comply with the domestic legal system of each Contracting Party;

ii. Public debt operations;

iii. Monetary claims derived exclusively from:

(a) Commercial contracts for the sale of goods or services by a national or enterprise in the territory of a Contracting Party to an enterprise in the territory of the other Contracting Party; or

(b) The granting of credit in connection with a commercial transaction, which is less than three years, such as the financing of trade.

d) Industrial property rights and intellectual property rights, technical processes, know-how and goodwill;

e) Concessions conferred by law, by an administrative act or under a contract, including concessions to cultivate, extract, explore or exploit natural resources.

The investments made in the territory of one Contracting Party by a company of that same Contracting Party that is owned or controlled effectively in accordance with the legislation of the party that receives the investment by investors of the other Contracting Party, shall also be considered investments by investors provided that they have been made in accordance with the laws of the first Contracting Party.

Any change in the form in which assets are invested or reinvested shall not affect their character as investments provided that such change is made in accordance with the domestic law of the legislation of the Contracting Party in whose territory the investment has been admitted.

3. "Investment income" means the amounts yielded by an investment and in particular, though not exclusively, profits, dividends, interests, capital gains, royalties and fees.

4. The term "territory" means the land territory, internal waters and the territorial sea and the airspace of each Contracting Party as well as the exclusive economic zone and the continental shelf extending beyond the limits of the territorial waters of each of the Contracting Parties on which they are or may have jurisdiction or sovereign rights in accordance with the respective laws and international law.

Article 2. Promotion and Admit Investments

1. Each Contracting Party shall promote in its territory, as far as possible investments by investors of the other Contracting Party. Each Contracting Party shall admit such investments in accordance with its laws.

2. If a Contracting Party has admitted an investment in its territory it shall in accordance with its laws, the necessary permits in connection with such an investment and with the carrying out of licensing agreements, technical assistance, commercial or administrative. Each Contracting Party shall accord in accordance with its laws, whenever necessary, the necessary authorizations concerning the activities of qualified consultants or staff, whatever their nationality.

3. Investments made by investors of one Contracting Party in the territory of the other Contracting Party shall be accorded fair and equitable treatment and shall enjoy full protection and security do not impair in any way by arbitrary or discriminatory measures, the management, maintenance, enjoyment and use, sale or liquidation of such investments.

Article 3. National Treatment and Most-favoured-nation Clause

1. Each Contracting Party shall accord in its territory to investments of investors of the other Contracting Party a treatment no less favourable than that accorded to investments in like circumstances of its own to investors or investments of investors of any third State, whichever is more favourable to the investor.

2. Each Contracting Party shall accord to investors of the other Contracting Party, as regards the management, maintenance, enjoyment and use, sale or liquidation of investments in its territory treatment no less favourable than that accorded in like circumstances to its own investors to investors or of any third State, whichever is more favourable to the investor.

3. The treatment granted under paragraphs 1 and 2 of this article shall not be construed as to oblige either Contracting Party to extend to investors of the other Contracting Party and their investments the benefit of any treatment, preference or privilege resulting from its association or present or future participation in a free trade area, customs union, economic or monetary or in any other form of regional economic organization or international agreement of similar characteristics.

Article 4. Expropriation and Nationalization

1. Investments of investors of one Contracting Party in the territory of the other Contracting Party shall not be subjected to any expropriation or nationalization or any other measures having similar effects (hereinafter expropriation) except for reasons of public interest or social purpose, under due process of law, on a non-discriminatory basis and accompanied by payment of prompt, effective and adequate compensation.

2. The compensation shall be equivalent to the fair market value of the expropriated investment was immediately before taking the measure of expropriation or before the impending outside the same public knowledge, whichever comes first (hereinafter referred to as the valuation date).

3. The fair market value shall be calculated in a freely convertible currency at the rate of exchange prevailing for that currency on the valuation date. the compensation shall include at a commercial interest rate according to market criteria

established for that currency from the date of expropriation until the date of payment. the compensation shall be paid without undue delay, be effectively realizable and freely transferable.

4. The Investor affected shall have a right under the law of the Contracting Party making the expropriation, to prompt review by a judicial authority or another competent and independent authority of that Contracting Party of its case to determine whether such expropriation and the valuation of its investment have been adopted in accordance with the principles set out in this Article.

5. If a Contracting Party expropriates the assets of a company which is constituted in its territory in accordance with its applicable laws and in which there is participation of investors of the other Contracting Party, the first Contracting Party shall ensure that the provisions of this Article are applied to investors so as to guarantee prompt, effective and adequate compensation.

6. The Contracting Parties may establish, in accordance with the law and for reasons of public interest or social purpose, monopolies depriving an investor to develop an economic activity. the investor shall receive prompt, effective and adequate compensation, under the conditions laid down in this article.

7. The Contracting Parties confirm that Complusory Issuance of Licenses in accordance with the WTO TRIPS Agreement may not be challenged under the provisions of this Article.

Article 5. Compensation for Losses

Investors 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 any other similar event shall, as regards restitution, indemnification, compensation or other settlement, the same treatment that the latter Contracting Party accords to its own investors or to treatment granted by virtue of the most-favoured-nation clause.

Article 6. Transfers

1. Each Contracting Party shall guarantee to investors of the other Contracting Party the free transfer of all payments relating to their investments and in particular, though not exclusively, the following:

a) The initial capital and additional amounts needed for the maintenance, expansion and development of the investment;

b) The investment income as defined in Article 1;

c) The necessary funds in repayment of loans related to an investment;

d) Compensation and compensation pursuant to Articles 4 and 5;

e) The proceeds of the total or partial sale or liquidation of an investment;

f) Wages and remuneration of other personnel engaged from abroad in connection with an investment;

g) Payments arising from the settlement of disputes.

2. The transfers referred to in the present Agreement shall be made without delay or restrictions in accordance with the practices of international financial centres. in particular, they shall not exceed three months from the date on which the investor has duly submitted applications necessary for the transfer until the date on which the transfer is made. Each Contracting Party undertakes to fulfil the necessary formalities for the transfer including those relating to information and the purchase of foreign exchange before the term referred to above.

3. Without prejudice to the provisions of paragraphs 1 and 2 of this Article, each Contracting Party may delay or prevent a transfer by the equitable, non-discriminatory and good faith application of measures:

a) Designed to protect the rights of creditors;

b) In connection with criminal offences and judgements or orders in administrative and judicial proceedings;

The foregoing, provided that such measures and their application shall not be used as a means of avoiding the commitments or obligations of the Contracting Party under this article.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, in circumstances of macroeconomic imbalances seriously affecting, or threatening to affect, the balance of payments, Contracting Parties may temporarily restrict transfers,

provided that such restrictions are consistent with or issued in accordance with IMF agreements or applied at the request of the IMF and are established in an equitable, non-discriminatory and bona fide manner.

Article 7. Other Provisions

1. If the provisions of the law of either Contracting Party or obligations under international law than this agreement, current or future between the Contracting Parties result in a general or special rules under which must be accorded to investments of investors of the other Contracting Party to a more favourable treatment than that provided for by the present Agreement, such rules shall prevail over the present Agreement, as is more favourable.

2. More favourable terms than those of this Agreement which have been agreed to by one of the Contracting Parties with investors of the other Contracting Party shall not be affected by this Agreement.

3. Nothing in this Agreement shall affect as set out in the international agreements relating to intellectual property rights in force at the time of signature.

Article 8. Subrogation

1. If a Contracting Party or its designated agency by a payment under a contract of guarantee or insurance against non-commercial risks given in respect of an investment of any of its investors in the territory of the other Contracting Party, the latter Contracting Party shall recognize the subrogation of any right or title in respect of the first such investor of Contracting Party or its designated agency and the right of the former Contracting Party or its designated agency to exercise subrogation by virtue of any such right or title to the same extent as its previous holder. the subrogation will ensure that the first Contracting Party or its designated agency by it are direct beneficiaries of any payments of compensation to the investor might be initial creditor.

2. If a Contracting Party or an agency authorised by that have been subrogated into the rights of the investor that investor may not claim their rights and benefits to the other Contracting Party, except with the express authorization of the first Contracting Party or the agency authorised.

Article 9. Settlement of Disputes between the Contracting Parties

1. Any dispute between the Contracting Parties concerning the interpretation or application of this Agreement shall be settled as far as possible through diplomatic channels.

2. If the dispute cannot be settled in this way within six months from the beginning of negotiations, the dispute shall be submitted, at the request of either of the two Contracting Parties to an arbitration tribunal.

3. The arbitration tribunal shall be constituted as follows: each Contracting Party shall appoint one arbitrator and these two arbitrators shall elect a national of a third State with which both Contracting Parties maintain diplomatic relations, as Chairman. The arbitrators shall be appointed within three months and the Chairman within five months from the date on which either Contracting Party has informed the other Contracting Party of its intention to submit the dispute to an arbitration tribunal.

4. If within the periods specified in paragraph 3 of this Article have not been completed 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 of the International Court of Justice cannot discharge the said function or is a national of either Contracting Party, the Vice-President shall be invited to make the necessary appointments. if the Vice-President cannot discharge the said function or is a national of either Contracting Party the appointment shall be made by the member of the International Court of Justice that follows in seniority who is not a national of either of the Contracting Parties.

5. The arbitral tribunal shall decide on the basis of the provisions of this Agreement and the generally accepted principles of International Law.

6. Unless the Contracting Parties decide otherwise, the tribunal shall determine its own procedure.

7. The tribunal shall reach its decision by a majority of votes and it shall be final and binding on both Contracting Parties.

8. Each Contracting Party shall bear the costs of the arbitrator appointed by it and its representation in the arbitral proceedings. the other expenses, including the President, shall be borne in equal parts by both Contracting Parties.

Article 10. Disputes between Investors and a Contracting Party of the other Contracting Party

1. In the case of administrative acts, in order to submit a claim to the domestic forum or to the arbitration provided for in this Section, it shall be indispensable to previously exhaust governmental channels when the legislation of the Party so requires.

2. Any dispute concerning an investment which may arise between a Contracting Party and an investor of the other Contracting Party with respect to matters governed by this Agreement shall be notified in writing, including detailed information by the investor Contracting Party to the recipient of the investment. to the extent possible, the parties to the dispute seek to settle the dispute by means of a friendly settlement.

3. If the dispute cannot be resolved in this manner within six months from the date of written notification referred to in paragraph 2, the dispute may be submitted, at the option of the investor, to:

a) The competent courts of the Contracting Party in whose territory the investment was made; or

b) An ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law; or

c) The International Centre for International Settlement Centre for Settlement of Investment Disputes (ICSID) established 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, when each State Party to this Agreement has acceded to it. If one of the Contracting Parties is not a Contracting State to the said Convention, the dispute may be settled under the Additional Facility for the administration of conciliation or arbitration proceedings and fact-finding by the secretariat of ICSID.

4. Provided that the period provided for in paragraph 3 has elapsed and the disputing investor has given 90 days' notice in writing to the Contracting Party of its intention to submit the claim to arbitration, the disputing investor may submit the claim to arbitration.

The notification referred to in this subparagraph shall have as the basis of the claim that the Contracting Party has breached an obligation under this Agreement and that the investor has incurred loss or damage by the violation or as a result of it. The notice shall specify the name and address of the investor claimant, the provisions of the agreement that it considers contravened the facts and the estimated value of the damages and compensation.

5. An investor may not make a claim if more than three years have elapsed from the date on which it had knowledge or should have had knowledge of the alleged breach of this Agreement and the loss or damage.

Without prejudice to the provisions of paragraph 1 of this Article, in the case of administrative acts, the three years referred to in this paragraph shall be counted from the date on which such acts are considered final or definitive.

6. Each Contracting Party consents to advance and irrevocably any dispute of this nature might be subjected to any of the arbitral proceedings referred to in subparagraphs (b) and (c) of paragraph 3 of this Article.

7. Within 30 days following the submission of a claim to arbitration by an investor of one Contracting Party, the other Contracting Party may request the financial authorities of the Contracting Parties shall consult each other if the origin of the dispute is a prudential measure fair, non-discriminatory and in good faith on the financial sector. The consultations shall take place within 120 days. If the authorities of both Contracting Parties consider that the origin of the dispute is a prudential measure fair, non-discriminatory and in good faith, shall preclude the responsibility of the Contracting Party which is a party to the dispute. For the purposes of this paragraph, prudential measures on the financial sector shall mean those adopted for the maintenance of security, integrity, responsibility or financial soundness of financial institutions.

8. Once the investor has submitted the dispute to the competent court of the Contracting Party in whose territory the investment has been admitted or some of the arbitral proceedings referred to above, the choice of one or another forum shall be final.

9. The arbitration shall be based on the provisions of this Agreement, the national law of the Contracting Party in whose territory the investment was made, including the rules relating to conflicts of law, and in the generally accepted principles and rules of International Law.

10. The Contracting Party which is a party to the dispute may not assert that the investor as a defence under a contract of insurance or guarantee, has received or will receive indemnification or other compensation for all or part of its losses in accordance with Article 8.

11. The arbitral decisions shall be final and binding on the parties to the dispute. each Contracting Party undertakes to execute the decisions in accordance with its national legislation.

12. The Contracting Parties shall not treat through diplomatic channels matters related to disputes between a Contracting Party and an investor of the other Contracting Party submitted to court proceedings or international arbitration in accordance with this article, except in the case where a party to the dispute has not complied with the judgment or in the award of the arbitral tribunal, under the terms established in the respective decision or arbitral award.

Article 11. Scope

1. This Agreement shall apply to all investments made before or after its entry into force by investors of one Contracting Party in the territory of the other Contracting Party in accordance with the laws of the latter. however, it shall not apply to disputes arising out prior to its validity or disputes on facts prior to its Entry into Force, even if their effects persist thereafter.

2. Nothing in this Agreement shall oblige either contracting party to protect investments made with capital or assets of illicit origin, or shall be construed as preventing a Party may adopt or maintain measures to preserve public order.

3. The provisions of this Agreement shall not apply to matters of taxation.

4. In the event that the investor is a natural or natural person holding the nationality of both Contracting Parties to this Agreement shall apply only in respect of those investments in the State territory of which the investor is not exercising effectively nationality.

5. For the purposes of paragraph 1, the State of nationality means effective State with which the investor retains full political ties and has established therein habitual residence under the Convention of dual nationality between Spain and Colombia, of 27 June 1979, and its additional protocol of 14 September 1998.

Article 12. Consultations

The Contracting Parties shall consult on any matter relating to the application or interpretation of this Agreement.

Article 13. Entry Into Force, Duration and Termination

1. This Agreement shall enter into force 60 days after the date on which the Contracting Parties have notified each other that their respective constitutional formalities required for the Entry into Force of international agreements have been fulfilled. it shall remain in force for an initial period of ten years. after the expiry of the initial period of validity, shall continue in force indefinitely unless either reported by either Contracting Party by written notification to the other Contracting Party. Denunciation shall take effect twelve months after the notification.

2. With respect to investments made prior to the date on which the denunciation becomes effective, the provisions contained in the other articles of this Agreement shall remain in force for a further period of ten years from the date of termination of this Agreement.

Done in duplicate in Bogotá on 31 March 2005, in the English language, both texts being equally authentic.

For the Kingdom of Spain

Miguel Ángel Moratinos Cuyaubé

Minister of Foreign Affairs and Cooperation

For the Republic of Colombia

Dr. Carolina Barco

Minister of Foreign Affairs