

**AGREEMENT FOR THE PROMOTION AND PROTECTION OF INVESTMENTS**

**BETWEEN**

**THE REPUBLIC OF COLOMBIA**

**AND**

**THE REPUBLIC OF INDIA**

**PREAMBLE**

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

Desiring to 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 entity;
  - 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 or a 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 which 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 an 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 Andrés, 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, enjoyment, sale or disposition of the investments made in its territory, a treatment that shall not be 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 made 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 Parties or of any third state shall not be construed so as to oblige one Contracting Party to extend to investments of investors or to investors of the other Contracting Party 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 non-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 1;
  - 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(Compensation 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 subjected to nationalization, expropriation, or any other measure having similar effects (hereinafter "expropriation") except for reasons of public purpose<sup>1</sup> in accordance with the law, on a non-discriminatory basis and against fair and equitable compensation.
  
2. It 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 or nationalization; except in rare circumstances, where those actions are so severe that they cannot be

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<sup>1</sup> 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.

- 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 date 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<sup>2</sup> 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.

## 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,

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

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 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 recognize 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.





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 the 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.

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); or
  - c. To arbitration in accordance with this subparagraph:
    - i. The International Centre for Settlement of Investment Disputes (ICSID), under 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.

## **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.

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 be 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 intention of bringing the dispute to an arbitration tribunal. The appointment of the Chairman shall be 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 Contracting Party shall be invited to make the necessary appointments.
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 final 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.

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<sup>3</sup>. 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.

#### **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.

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<sup>3</sup> 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 15**  
**Other Provisions**

If the provisions of international law existing at present or established 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

**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 110001, 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, Industria y Turismo  
Calle 28 No. 13<sup>a</sup>-15  
Bogotá D.C. – Colombia.

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 10<sup>th</sup> 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