

CHAPTER 5

INVESTMENT

ARTICLE 5.1

Coverage

This Chapter shall apply to commercial presence in all sectors, with the exception of services sectors as set out in Article 4.1 (Scope and Coverage) in Chapter 4 (Trade in Services) of this Agreement.

ARTICLE 5.2

Definitions

1. For the purpose of this Chapter,
 - (a) “juridical person” means any legal entity duly constituted or otherwise organised under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
 - (b) “juridical person of a Party” means a juridical person constituted or otherwise organised under the law of Colombia or of an EFTA State and engaged in substantive business operations in Colombia or in the EFTA State concerned;
 - (c) “natural person” means a national of Colombia or of an EFTA State according to its respective legislation;
 - (d) “national” means a natural person who has the nationality of a Party or is a permanent resident of a Party in accordance with its domestic law;
 - (e) “commercial presence” means any type of business establishment, including through:
 - (i) the constitution, acquisition or maintenance of a juridical person, or

- (ii) the creation or maintenance of a branch or a representative office,
within the territory of another Party for the purpose of performing an economic activity.

2. As regards natural persons, this Chapter shall not extend to seeking or taking employment in the labor market or confer a right of access to the labor market of another Party.

ARTICLE 5.3

National Treatment

With respect to commercial presence, and subject to the reservations/non-conforming measures set out in Annex XVIII (Reservations/Non-conforming Measures) to this, each Party shall grant to juridical and natural persons of another Party, and to the commercial presence of such persons, treatment no less favorable than that it accords, in like situations to its own juridical and natural persons.

ARTICLE 5.4

Reservations/Non-conforming Measures

1. National Treatment as provided for under Article 5.3 (National Treatment) shall not apply to:

- (a) any reservation/non-conforming measure that is listed by a Party in Annex XVIII (Reservations/Non-conforming Measures);
- (b) an amendment to a reservation/non-conforming measure covered by paragraph (a) to the extent that the amendment does not increase the non-conformity of the reservation with Article 5.3 (National Treatment);
- (c) any new reservation/non-conforming measure adopted by a Party in accordance with paragraph 4 of this Article and incorporated into Annex XVIII (Reservations/Non-conforming Measures);
- (d) any measure that a Party adopts or maintains with respect to sectors, subsectors, or activities, as set out in Annex XVIII (Reservations/Non-conforming Measures) ;

to the extent that such reservation/non-conforming measure is inconsistent with Article 5.3 (National Treatment).

2. As part of the review provided for in Article 5.9 (Review) of this Chapter the Parties undertake to review at least every three years the status of the reservations/non-conforming measure set out in Annex XVIII (Reservations/Non-conforming Measures) with a view to reducing or removing such reservations/non-conforming measures.

3. A Party may, at any time, either upon the request of another Party or unilaterally, remove in whole or in part reservations/non-conforming measure set out in Annex XVIII (Reservations/Non-conforming Measures) by written notification to the other Parties.

4. In case of the adoption of a new reservation, based on a law adopted by the legislature, as referred to in subparagraph 1(c), the Party concerned shall ensure that the overall level of its commitments under this Agreement is not affected. It shall promptly notify the other Parties of the reservation and set out, where applicable, the measures aimed at maintaining the overall level of its commitments. On receiving such notification, any other Party may request consultations regarding the reservation and related issues. Such consultations shall be entered into without delay.

ARTICLE 5.5

Key Personnel

1. Each Party shall, subject to its laws and regulations, grant natural persons of another Party, and key personnel, which is employed by natural or juridical persons of another Party, temporary entry and stay in its territory in order to engage in activities connected with commercial presence, including the provision of advice or key technical services.

2. Each Party shall, subject to its laws and regulations, permit natural or juridical persons of another Party, and their commercial presence, to employ, in connection with commercial presence, any key personnel of the natural or juridical person's choice provided that such key personnel has been permitted to enter, stay and work in its territory and that the employment concerned conforms to the terms, conditions and time limits of the permission granted to such key personnel.

3. The Parties shall, subject to their laws and regulations, grant temporary entry and stay and provide any necessary confirming documentation to the spouse and minor children of key personnel who has been granted temporary entry, stay and authorisation to work in accordance with paragraphs 1 and 2. The spouse and minor children shall be admitted for the period of the stay of that person.

4. Subject to paragraphs 1 to 3 of this Article, Annex XIII (Movement of Natural Persons Supplying Services) shall apply to this Article *mutatis mutandis*.

ARTICLE 5.6

Right to Regulate

Subject to the provisions of this Chapter and Annexes XIV (Payments and Capital Movements) and XVIII (Reservations/Non-conforming Measures), a Party is not prevented from regulating the commercial presence as set out in subparagraph 1(d) of Article 5.2 (Definitions).

ARTICLE 5.7

Relation to other International Agreements

The provisions of this Chapter shall be without prejudice to the rights and obligations of the Parties under other international agreements, to which Colombia and one or several EFTA States are parties. It is understood that any dispute settlement mechanism in an investment protection agreement to which Colombia and one EFTA State are parties is not applicable to alleged breaches of this Chapter.

ARTICLE 5.8

Exceptions

The rights and obligations of the Parties in respect of general exceptions, including measures necessary to maintain public order¹¹, shall be governed by Article XIV of the GATS, which is hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

ARTICLE 5.9

Review

This Chapter shall be subject to periodic review within the framework of the Joint Committee regarding the possibility to further develop the Parties' commitments.

¹¹ Colombia reserves the right to adopt measures for reasons of public order pursuant to Article 100 of the Constitución Política de Colombia (1991), provided that Colombia promptly provides written notice to the Joint Committee that it has adopted a measure and that the measure is applied in accordance with the procedural requirements set out in the Constitución Política de Colombia (1991), such as the requirements set out in Articles 213, 214 and 215 of the Constitución Política de Colombia (1991).

ARTICLE 5.10

Payments and Transfers

1. Except under the circumstances envisaged in Article 5.11 (Restrictions to Safeguard the Balance-of-Payments) and Annex XIV (Payments and Capital Movements), a Party shall not apply restrictions on current payments and capital movements relating to activities with regard to “commercial presence” in non-services sectors.
2. Nothing in this Chapter shall affect the rights and obligations of the Parties under the Articles of the Agreement of the IMF, including the use of exchange actions which are in conformity with the said Articles, provided that a Party does not impose restrictions on capital transactions inconsistent with its obligations under this Chapter.

ARTICLE 5.11

Restrictions to Safeguard the Balance-of-Payments

1. The Parties shall endeavour to avoid the imposition of restrictions to safeguard the balance of payments.
2. The rights and obligations of the Parties in respect of such restrictions shall be governed by paragraphs 1 to 3 of Article XII of the GATS, which are hereby incorporated into and made part of this Chapter, *mutatis mutandis*.
3. A Party adopting or maintaining such restrictions shall promptly notify the Joint Committee.