

CHAPTER 9 INVESTMENT

Article 9.1: UAE-Colombia Bilateral Investment Treaty

The Parties commit to intensify, to their mutual benefit, economic cooperation between them with respect to investments made by investors of a Party in the territory of the other Party. The Parties further recognise the importance of promoting such investments through favourable and transparent conditions, including under future agreements between the Parties.

Article 9.2: Promotion of Investment

The Parties affirm their commitment to promote an attractive investment climate.

Article 9.3: Technical Council

The Parties shall establish a UAE-Colombia Technical Council on Investment (hereinafter referred to as the “Council”), which shall be composed of representatives of both Parties. The side of the UAE will be chaired by the Under Secretary of the UAE Ministry of Finance, or their authorised representative, and the side of Colombia will be chaired by the Viceminister of Trade of Colombia, or their authorised representative.

Article 9.4: Objectives of the Council

The objectives of the Council are to:

- (a) promote and enhance investment cooperation and facilitation between the Parties;
- (b) monitor investment and trade relations, to identify opportunities for expanding investment, and to identify issues relevant to investment that may be appropriate for further discussion in the Council;
- (c) hold consultations on specific investment matters of interest to the Parties;
- (d) work toward the promotion of investment flows;
- (e) identify and work toward the removal of impediments and facilitate investment flows; and
- (f) seek the views of the private sector, where appropriate, on matters related to the work of the Council.

Article 9.5: Role of the Council

The Council shall meet at such venue and time-period as the Parties agree. A Party may refer a specific investment matter to the Council by delivering a written request to the other Party that includes a description of the matter concerned. The Council shall take up the matter promptly after the request is delivered, unless the requesting Party agrees to postpone the discussion of the matter. The Parties shall avail themselves of the opportunity to discuss the matter and shall endeavour to resolve the matter amicably in the Council keeping in mind the objective of promoting and facilitating investment.

Article 9.6: Non-Application of Dispute Settlement

A Party shall not have recourse to dispute settlement under Chapter 18 (Dispute Settlement) for any matter arising under this Chapter.

CHAPTER 18 DISPUTE SETTLEMENT

Section A: Objective and Scope

Article 18.1: Objective

The objective of this Chapter is to establish an effective and efficient mechanism for preventing and settling disputes between the Parties concerning the interpretation and application of this Agreement with a view to reaching, where possible, a mutually agreed solution.

Article 18.2: Cooperation

The Parties shall endeavour to agree on the interpretation and application of this Agreement, and shall make every attempt through cooperation and consultation to arrive at a mutually satisfactory resolution of any matter that might affect its operation and application.

Article 18.3: Scope of Application

1. Unless otherwise provided in this Agreement, the provisions of this Chapter shall apply to the settlement of disputes between the Parties regarding the interpretation and application of the provisions of this Agreement, and wherever a Party considers that:
 - (a) a measure of the other Party is inconsistent with one of its obligations under this Agreement; or
 - (b) the other Party has otherwise failed to carry out one of its obligations under this Agreement, resulting in a violation of the Agreement.
2. This Chapter shall not cover non-violation complaints or other situation complaints.

Article 18.4: Contact Points

1. Each Party shall designate a contact point to facilitate communications between the Parties with respect to any dispute initiated under this Chapter.
2. Any request, notification, written submission, or other document made in accordance with this Chapter shall be delivered to the other Party through its designated contact point.

Section B: Consultations, Good Offices, Conciliation, and Mediation

Article 18.5: Request for Information

Before a request for consultations, good offices, conciliation, and mediation is made pursuant to Articles 18.6 or 18.7 respectively, a Party may request in writing any relevant information with respect to a measure at issue. The Party to which that request is made shall make all efforts to provide the requested information in a written response to be submitted no later than 20 days after the date of receipt of the request.

Article 18.6: Consultations

1. The Parties shall endeavour to resolve any dispute referred to in Article 18.3 by entering into consultations in good faith with the aim of reaching a mutually agreed solution.
2. A Party shall seek consultations by means of a written request delivered to the other Party identifying the reasons for the request, including the measure at issue and a description of its factual basis and the legal basis specifying the covered provisions that it considers applicable.
3. The Party to which the request for consultations is made shall reply to the request promptly, but no later than 10 days after the date of receipt of the request. Consultations shall be held within 30 days of the date of receipt of the request. The consultations shall be deemed to be concluded within 30 days of the date of receipt of the request, unless the Parties agree otherwise.
4. Consultations on matters of urgency, including those regarding perishable or seasonal goods shall be held within 15 days of the date of receipt of the request. The consultations shall be deemed to be concluded within those 15 days unless the Parties agree otherwise.
5. During consultations each Party shall provide sufficient information to enable a full examination of how the actual or proposed measure, or other matter might affect the operation and application of this Agreement.
6. Consultations, including all information disclosed and positions taken by the Parties during consultations, shall be confidential, and without prejudice to the rights of either Party in any further proceedings.
7. Consultations may be held in person or by any other means of communication agreed by the parties. Unless the Parties agree otherwise, consultations, if held in person, shall take place in the territory of the Party to which the request is made.
8. If the Party to which the request is made does not respond to the request for consultations within 10 days of the date of its receipt, or if consultations are not held within the timeframes laid down in paragraph 3 or in paragraph 4 respectively, or if the Parties agree not to have consultations, or if consultations have been concluded and no mutually agreed solution has been reached, the Party that sought consultations may have recourse to Article 18.8.

Article 18.7: Good Offices, Conciliation and Mediation

1. The Parties may at any time agree to enter into procedures for good offices, conciliation, or mediation. They may begin at any time and be terminated by either Party at any time.
2. Proceedings involving good offices, conciliation or mediation and the particular positions taken by the Parties in these proceedings, shall be confidential and without prejudice to the rights of either Party in any further proceedings under this chapter or any other proceedings before a forum selected by the Parties.
3. If the Parties agree, procedures for good offices, conciliation, or mediation may continue while the panel procedures set out in Section C proceed. Those procedures would be determined as mutually agreed by the Parties.

Section C: Panel Procedures

Article 18.8: Establishment of a Panel

1. The complaining Party may request the establishment of a panel if:
 - (a) the responding Party does not reply to the request for consultations in accordance with the time frames provided in Article 18.6.3;
 - (b) consultations are not held within the period provided in Article 18.6.3 or 18.6.4 on matter of urgencies; or
 - (c) the Parties have failed to settle the dispute through consultations within the period provided in Article 18.6.3 or 18.6.4 on matter of urgencies.
2. The request for the establishment of a panel shall be made by means of a written request delivered to the other Party and shall identify the measure at issue and indicate the legal basis specifying the relevant covered provisions in a manner sufficient to present how such measure is inconsistent, as such or/and in its application, with those provisions.
3. When a request is made by the complaining party in accordance with paragraph 1, a panel shall be established.
4. The request to establish the panel referred to in this Article shall form part of the terms of reference of the panel unless otherwise agreed by the Parties.

Article 18.9: Composition of a panel

1. Unless the Parties agree otherwise, a panel shall consist of three panelists.
2. Within 20 days after the establishment of a panel, each party shall appoint a panelist. The parties shall, by common agreement, appoint the third panelist, who shall serve as the chairperson of the panel, within 40 days after the establishment of a panel.

3. If either Party fails to appoint a panelist within the time period established in paragraph 2, the other party may request that the Secretary General of the Permanent Court of Arbitration designate a panelist within 20 days of that request.

4. If the Parties do not agree on the chairperson of the panel within the time period established in paragraph 2, they shall within the next 10 days, exchange their respective lists comprising three nominees each who shall not be nationals of either party. The chair shall then be appointed by draw of lot from the lists within 10 days after the expiry of the time period during which the parties shall exchange their respective lists of nominees. The selection by lot of the chairperson of the panel shall be made by the Secretary General of the Permanent Court of Arbitration.

5. If a Party fails to submit its list of three nominees within the time period established in paragraph 4, the chairperson shall be appointed by draw of lot from the list submitted by the other Party.

6. The date of composition of the panel shall be the date on which the last of the three selected panelists has notified to the Parties the acceptance of his or her appointment.

Article 18.10: Requirements for Panelists

1. Each panelist shall:

- (a) have demonstrated expertise in law, international trade, and other matters covered by this Agreement, or the resolution of disputes arising under international trade agreements;
- (b) be independent of, and not be affiliated with or take instructions from, either Party;
- (c) serve in their individual capacities and not take instructions from any organization or government with regard to matters related to the dispute;
- (d) comply with the Code of Conduct established in Annex 18B (Code of Conduct for Panelists, Conciliators, Mediators, and Experts);
- (e) be chosen strictly on the basis of objectivity, impartiality, reliability, and sound judgment;

2. The chairperson shall also have experience in dispute settlement procedures.

3. Persons who provided good offices or mediation to the Parties, pursuant to Article 18.7 in relation to the same or a substantially equivalent matter, shall not be eligible to be appointed as panelists in that matter.

Article 18.11: Replacement of Panelists

If any of the panelists of the original panel becomes unable to act, withdraws, or needs to be replaced because that panelist does not comply with the requirements of the Code of Conduct established in Annex 18B (Code of Conduct for Panelists, Conciliators, Mediators, and Experts), a successor panelist shall be appointed in the same manner as prescribed for the appointment of the original panelist and the successor shall have the powers and duties of the original panelist. The work of the panel shall be suspended during the appointment of the successor panelist.

Article 18.12: Functions of the Panel

Unless the Parties otherwise agree, the panel:

- (a) shall make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity of the measure at issue with the covered provisions. If the panel determines that a measure is inconsistent with this Agreement, it shall recommend that the responding Party bring the measure into conformity with this Agreement;
- (b) shall set out, in its decisions and reports, the findings of fact and law and the rationale behind any findings and conclusions that it makes;
- (c) shall base its reports on the relevant provisions of this Agreement and on the information provided during the proceedings including submissions, evidence and arguments made at the hearings; and
- (d) should consult regularly with the Parties and provide adequate opportunities for the development of a mutually agreed solution.

Article 18.13: Terms of Reference

1. Unless the Parties otherwise agree within 15 days after the date of composition of the panel, the terms of reference of the panel shall be: “to examine, in the light of the relevant covered provisions of this Agreement cited by the Parties, the matter referred to in the request for the establishment of the panel, to make findings on the conformity of the measure at issue with the relevant covered provisions of this Agreement as well as recommendations, if any, on the means to resolve the dispute, and to deliver a report in accordance with Articles 18.18 and 18.19.”

2. If the Parties agree on other terms of reference than those referred to in paragraph 1, they shall notify the agreed terms of reference to the panel no later than 5 days after their agreement.

Article 18.14: Decision on Urgency

1. If a Party so requests, the panel shall decide, within 15 days of its composition, whether the dispute concerns matters of urgency.
2. In cases of urgency, the applicable time periods set out in Articles 18.18 and 18.19 shall be half of the time prescribed therein.

Article 18.15: Rules of Interpretation

1. The panel shall interpret the covered provisions in accordance with customary rules of interpretation of public international law, including those codified in the *Vienna Convention on the Law of Treaties*. In its findings and recommendations, the panel cannot add to or diminish the rights and obligations provided in this Agreement.
2. When appropriate, the panel may also take into account relevant interpretations in reports of prior panels established under this Chapter and reports of panels and the Appellate Body adopted by the Dispute Settlement Body of the WTO.

Article 18.16: Rules of Procedure of the Panel

1. Unless the Parties otherwise agree, the panel shall follow the model rules of procedure set out in Annex 18A (Rules of Procedure for the Panel) that shall ensure:
 - (a) confidentiality of the proceedings and all written submissions to, and communications with, the panel;
 - (b) that the deliberations, hearings, sessions and meetings of the panel shall be held in closed sessions;
 - (c) a right to at least one hearing before the panel;
 - (d) an opportunity for each Party to provide initial and rebuttal submissions;
 - (e) the ability of the panel to seek information, technical advice and expert opinions; and
 - (f) the protection of confidential information.
2. A panel shall adopt its decisions by consensus. In the event that a panel is unable to reach consensus, it shall adopt its decisions by majority vote.
3. The panel shall not meet or contact a Party in the absence of the other Party. No panelist may discuss any aspect of the subject matter of the proceedings with one or both Parties in the absence of the other panelists.

4. The panel may, after consulting with the Parties, adopt additional rules of procedure not inconsistent with the model rules of procedures.

Article 18.17: Receipt of Information

1. Upon the request of a Party, or on its own initiative, the panel may seek from the Parties relevant information it considers necessary and appropriate. The Parties shall respond promptly and fully to any request by the panel for information.

2. Upon the request of a Party or on its own initiative, the panel may seek from any source any information it considers appropriate. The panel also has the right to seek the opinion of experts, as it considers appropriate, and subject to any terms and conditions agreed by the Parties, where applicable.

3. Any information obtained by the panel under this Article shall be made available to the Parties and the Parties may provide comments on that information.

Article 18.18: Interim Report

1. The panel shall deliver an interim report to the Parties within 90 days after the date of composition of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its report. Under no circumstances shall the delay exceed 30 days after the deadline.

2. The interim report shall set out a descriptive part and the panel's findings and conclusions.

3. Each Party may submit to the panel written comments and a written request to review precise aspects of the interim report within 15 days of the date of issuance of the interim report. A Party may comment on the others Party's request within 6 days of the delivery of the request.

4. After considering any written comments and requests by each party on the interim report, the panel may modify the interim report and make any further examination it considers appropriate.

Article 18.19: Final Report

1. The panel shall deliver its final report to the Parties within 120 days of the date of composition of the panel. When the panel considers that this deadline cannot be met, the chairperson of the panel shall notify the Parties in writing, stating the reasons for the delay and the date on which the panel plans to deliver its final report. Under no circumstances shall the delay exceed 30 days after the deadline.

2. The final report may include a discussion of any written comments and requests made by the Parties on the interim report.

3. The final report shall include the findings and reasoning thereof, recommendations and/or rulings, as the case may be, and shall exclude payment of monetary compensation. It shall contain the following details and any other element as the Panel may consider appropriate:

- (a) the Parties to the dispute;
- (b) the name of each of the panelists and the date of establishment of the panel;
- (c) the names of the representatives of the Parties;
- (d) the measures subject to the proceedings;
- (e) a report on the development of the panel procedure, including a summary of the arguments of each of the Parties;
- (f) the decision reached, indicating its factual and legal grounds;
- (g) the suggestions on the ways in which the final report could be implemented;
- (h) the date and place of issuance; and
- (i) the signature of all the panelists.

4. The final report shall be made public within 15 days of its delivery to the Parties unless the Parties otherwise agree to publish the final report only in parts or not to publish the final report.

5. The final report shall be binding on the Parties.

Article 18.20: Implementation of the Final Report

1. Where the panel finds that the respondent Party has acted inconsistently with a covered provision, the respondent Party shall take any measure necessary to comply promptly and in good faith with the findings and conclusions in the final report.

2. The respondent Party shall, no later than 30 days after delivery of the final report, notify the complaining Party of the length of the reasonable period of time necessary for compliance with the final report and the Parties shall endeavour to agree on the reasonable period of time required for compliance with the final report.

Article 18.21: Reasonable Period of Time for Compliance

1. If the Parties have not agreed on the length of the reasonable period of time, the complaining Party may, no later than 20 days after the date of receipt of the notification made by the respondent Party in accordance with paragraph 2 of Article 18.20, request in writing the original panel to determine the length of the reasonable period of time. Such request shall be notified simultaneously

to the respondent Party. The 20-day period referred to in this paragraph may be extended by mutual agreement of the parties.

2. The original panel shall deliver its decision to the Parties on the above referenced reasonable period of time within 20 days of the date of submission of the request.

3. The length of the reasonable period of time for compliance with the final report may be extended by mutual agreement of the parties.

Article 18.22: Compliance

1. The respondent Party shall deliver a written notification of its progress in complying with the final report to the complaining Party at least one month before the expiry of the reasonable period of time for compliance with the final report unless the Parties agree otherwise.

2. The respondent Party shall, no later than at the date of expiry of the reasonable period of time, deliver a notification to the complaining Party of any measure that it has taken to comply with the final report.

3. Where the Parties disagree on the existence of measures to comply with the final report, or their consistency with the covered provisions, the complaining Party may request in writing the original panel to decide on the matter. Such request shall be notified simultaneously to the respondent Party.

4. The request shall provide the factual and legal basis for the complaint, including the identification of the specific measures at issue and an indication of why any measures taken by the respondent fail to comply with the final report or are otherwise inconsistent with the covered provisions.

5. The panel shall deliver its decision to the Parties within 60 days of the date of delivery of the request.

Article 18.23: Temporary Remedies in Case of Non-Compliance

1. If the respondent Party:

- (a) fails to notify any measure taken to comply with the final report before the expiry of the reasonable period of time;
- (b) notifies the complaining party in writing that it is not possible to comply with the final report within the reasonable period of time; or
- (c) the original panel finds that no measure taken to comply exists or that the measure taken to comply with the final report as notified by the Party complained against is inconsistent with the covered provisions,

the respondent Party shall, on request of the complaining Party, enter into consultations with a view to agreeing on a mutually satisfactory agreement or any necessary compensation.

2. If the Parties fail to reach a mutual satisfactory agreement or to agree on compensation within 20 days after the date of receipt of the request made in accordance with paragraph 1, the complaining Party may deliver a written notification to the respondent Party and the Joint Committee that it intends to suspend the application to that Party of benefits or other obligations under this Agreement. The notification shall specify the level of intended suspension of benefits or other obligations.

3. The complaining Party may begin the suspension of benefits or other obligations referred to in the preceding paragraph 20 days after the date when it served notice on the responding Party, unless the respondent Party made a request under paragraph 7.

4. The suspension of benefits or other obligations:

- (a) shall be at a level equivalent to those affected by a measure found inconsistent with this Agreement;
- (b) shall be restricted to benefits accruing to the respondent Party under this Agreement.

5. In considering what benefits to suspend in accordance with paragraph 2, the complaining Party shall apply the following principles:

- (a) the complaining party should first seek to suspend benefits in the same sector or sectors as that affected by the measure that the panel has found to be inconsistent with this Agreement;¹ and
- (b) the complaining party may suspend benefit in other sectors, if it considers that it is not practicable or effective to suspend benefits or other obligations in the same sector.

6. The suspension of benefits or other obligations shall be temporary and be applied by the complaining Party, only:

- (a) until the measure found to violate this Agreement has been withdrawn or amended so as to comply with the final report and with the provisions of this Agreement;

¹For purposes of this paragraph, “sector” means: (i) with respect to goods, all goods; (ii) with respect to services, a principal sector as identified in the current “Services Sectoral Classification List” which identifies such sectors.

- (b) until the original panel decides that the compliance measure is compatible with the final report and with the provisions of this Agreement; or
- (c) until the Parties have agreed on a mutually satisfactory solution, any necessary compensation, or otherwise settled the dispute.

7. To terminate a suspension of benefits, the respondent Party shall notify the complaining Party of any measure adopted to comply with the final report and the provisions of this Agreement or of its compliance with the agreement on compensation. Such notification shall be accompanied by a request to terminate the suspension of benefits.

8. The suspension of benefits shall not be applied during the course of the proceedings initiated pursuant to Article 18.22.3.

9. If the respondent Party considers that the suspension of benefits does not comply with paragraphs 4 and 5 or is under the case described in paragraph 7, that party may request in writing the original panel to examine the matter no later than 15 days after the date of receipt of the notification referred to in paragraph 2. That request shall be notified simultaneously to the complaining Party. The original panel shall notify to the parties its decision on the matter no later than 30 days of the receipt of the request from the respondent Party. Benefits or other obligations shall not be suspended until the original panel has delivered its decision. The suspension of benefits or other obligations shall be consistent with this decision.

Article 18.24: Review of any Measure Taken to Comply After the Adoption of Temporary Remedies

1. Upon the notification by the respondent Party to the complaining Party of the measure taken to comply with the final report:

- (a) in a situation where the right to suspend benefits or other obligations has been exercised by the complaining Party in accordance with Article 18.23, the complaining Party shall terminate the suspension of benefits or other obligations no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2; or
- (b) in a situation where, necessary compensation has been agreed, the respondent Party may terminate the application of such compensation no later than 30 days after the date of receipt of the notification, with the exception of the cases referred to in paragraph 2.

2. If the Parties do not reach an agreement on whether the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions within 30 days after the date of receipt of the notification, the complaining Party shall request in writing the original panel to examine the matter. That request shall be notified simultaneously to the respondent Party. The decision of the panel shall be notified to the Parties no later than 45 days after the date of submission

of the request. If the panel decides that the measure notified in accordance with paragraph 1 is consistent with the relevant covered provisions, the suspension of benefits or other obligations, or the application of the compensation, shall be terminated no later than 15 days after the date of the decision. If the panel determines that the notified measure achieves only partial compliance with the covered provisions, the level of suspension of benefits or other obligations, or of the compensation, shall be adapted in light of the decision of the panel.

Article 18.25: Suspension and Termination of Proceedings

If both Parties so request, the panel shall suspend for a period agreed by the Parties and not exceeding 12 consecutive months. In the event of a suspension of the work of the panel, the relevant time periods under this Section shall be extended by the same period of time for which the work of the panel was suspended. The panel shall resume its work before the end of the suspension period at the written request of both Parties. If the work of the panel has been suspended for more than 12 consecutive months, the authority of the panel shall lapse and the dispute settlement procedure shall be terminated unless the Parties agree otherwise.

Section D: General Provisions

Article 18.26: Choice of Forum

1. Unless otherwise provided in this Article, this Chapter is without prejudice to the rights of the Parties to have recourse to dispute settlement procedures available under other international trade agreements to which they are both Parties.
2. When a dispute arises with regard to the alleged inconsistency of a particular measure with an obligation under this Agreement and a substantially equivalent obligation under another international trade agreement to which both Parties are party, including the WTO agreements, the complaining Party may select the forum in which to settle the dispute.
3. Once a Party has selected the forum and initiated dispute settlement proceedings under this Chapter or under the other international agreement with respect to the particular measure referred to in paragraph 2, that Party shall not initiate dispute settlement proceedings in another forum with respect to that particular measure unless the forum selected first fails to make findings on the issues in dispute for jurisdictional or procedural reasons.
4. For the purposes of paragraph 3:
 - (a) dispute settlement proceedings under this Chapter are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 18.8;

- (b) dispute settlement proceedings under the WTO Agreements are deemed to be initiated when a Party requests the establishment of a panel in accordance with Article 6 of the DSU; and
- (c) dispute settlement proceedings under any other agreement are deemed to be initiated when a Party requests the establishment of a dispute settlement panel in accordance with the relevant provisions of that agreement.

Article 18.27: Remuneration and Expenses

1. Unless the Parties otherwise agree, the remuneration and expenses of the panel and other expenses associated with the conduct of its proceedings shall be borne in equal parts by both Parties.
2. Each Party shall bear its own expenses and legal costs in the panel proceedings.

Article 18.28: Mutually Agreed Solution

1. The Parties may reach a mutually agreed solution to a dispute under this Chapter at any time.
2. If a mutually agreed solution is reached during the panel procedure, the Parties shall jointly notify that solution to the chairperson of the panel and to the Joint Committee. Upon such notification, the panel procedure shall be terminated.
3. Each Party shall take measures necessary to implement the mutually agreed solution within the agreed time period.
4. No later than at the expiry of the agreed time period, the implementing Party shall inform the other Party, in writing, of any measure that it has taken to implement the mutually agreed solution.

Article 18.29: Time Periods

1. All time periods laid down in this Chapter shall be counted in calendar days from the day following the act to which they refer.
2. Any time period referred to in this Chapter may be modified by mutual agreement of the Parties.

Article 18.30: Request for Clarification of the Final Report

1. Within 10 days after the issuance of the final report, a Party may submit a written request to the panel for clarification of any determinations or recommendations in the final report that the Party considers ambiguous. The panel shall respond to the request within 10 days after the presentation of such request.

2. The submission of a request pursuant to paragraph 1 shall not affect the time periods referred to in Articles 18.20 and 18.23 unless the panel decides otherwise.