Introduction and Summary

The role of foreign investment in Colombia's economic development

Colombia's efforts towards political stabilisation, improved domestic security and sound macroeconomic policy have enabled the country to boost its economic development, enhance its business climate and make progress in reducing poverty and inequality. This has resulted in the rapid increase of foreign direct investment (FDI) flows, which have also benefited from the commodity price boom. After a temporary decline in 2009-10 due to the world economic crisis, Colombia's FDI inflows are expected to reach a record level in 2011. With USD 85 billion of cumulated FDI by mid-2011, Colombia is one of the largest FDI beneficiaries in Latin America. The United States is the most important investor in the country, followed by Panama and Spain. With over 40% of the FDI stock, the primary sector, including oil and natural gas and mining, continues to absorb the largest part of international investment.

The surge in Colombia's FDI outflows reached almost the same level as its FDI inflows in 2010. This is in line with a more general trend shared with other Latin American countries, which have become an important source of FDI abroad. These developments reflect the growing internationalisation of these countries' enterprises, notably in basic industries, mass consumption goods, and services, such as telecommunications.

Privatisation, which is open without any limitations to foreign investors, has led to a significant increase in the weight of the private sector, which today accounts for 85% of GDP. In some sectors, such as the primary sector and financial services, foreign investor presence is important. According to Colombia's National Development Plan for 2010-14, FDI annual inflows are forecast to amount to over USD 13 billion in 2014. However, rather than simply increasing the amount of FDI, the government's objective is to enhance the qualitative role of FDI in the country's development, notably its contribution to job creation and infrastructure improvement.

Non-discrimination and equal treatment of investors

The principle of non-discrimination and equal treatment of foreign investors is embodied in Colombia's Political Constitution of 1991. National treatment and most-favoured nation status with respect to investment are referred to in recent free trade agreements (FTAs) signed by Colombia or under negotiation, with Canada, Mexico, Chile, the Northern Triangle countries (Honduras, Guatemala and El Salvador), EFTA countries, the United States, the European Union, South Korea and Panama. The Treaty of the Community of Andean Nations (Bolivia, Colombia, Ecuador and Peru) also provides for national treatment of foreign investment in member countries.

Colombia has a limited number of statutory restrictions on foreign direct investment in the meaning of the OECD investment instruments. As a result, Colombia's score under the FDI Regulatory Restrictiveness Index is below both the OECD average and the average of non-OECD countries for which the Index is available.

Colombia does not apply any trans-sectoral exceptions under the OECD *National Treatment instrument*, which is part of the OECD Declaration on International Investment and Multinational Enterprises. Sectoral limitations on foreign ownership concern television broadcasting, where foreign participation is allowed only up to 40% of ownership, and fisheries, where association with local investors is required. Equity limitations in transport, telecommunications and financial services have been eliminated. Foreign companies have non-discriminatory access to government procurement. Colombia has no exceptions to national treatment with respect to official aids and subsidies or tax obligations. There is no differentiated treatment applied by territorial subdivisions.

Several measures applied by Colombia qualify for notification as measures reported for transparency under the OECD National Treatment instrument. For national security reasons, foreign investment is prohibited in the following areas: land ownership in border areas; manufacturing, possession and use of chemicals, biological and nuclear weapons and trade with these products; and foreign presence in private security and surveillance services. Colombia also imposes some conditions on corporate organisation and key personnel in maritime transport, in newspapers and radio broadcasting. Public monopolies apply in production, import, export, distribution and sale of liquors, and in games of chance and gambling.

The fact that, notwithstanding its regulatory openness, the country has until now absorbed a relatively limited FDI stock expressed as a share of GDP, reflects its recent emergence as an FDI destination, and is partly due to its past political and security problems and investors' perception gap in evaluating its liberalisation achievements. Insufficient infrastructure development is also an important investment impediment in Colombia.

Policies in support of responsible business conduct

The *OECD Guidelines for Multinational Enterprises* (the *Guidelines*), which form part of the Declaration on International Investment and Multinational Enterprises, are recommendations addressed by governments to multinational enterprises in all major areas of business ethics, including corporate steps to obey the law, observe internationally-recognised standards and respond to other societal expectations. The concept of responsible business conduct is relatively new in Colombia. While there is no comprehensive national policy in place regarding corporate responsibility, the government has taken a range of initiatives to improve business conduct in areas covered by the *Guidelines*, consistent with adhering countries' commitment to good public policies. There are no public policies in place targeting responsible business conduct in specific sectors either. However, in light of the importance of the mining sector in the country, the government has undertaken internal consultations to consider the opportunity to adhere to the OECD Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.

Business associations and civil society organisations are also developing tools to raise awareness and provide guidance to companies on responsible business conduct. Recent surveys show that an increasing number of companies is taking measures related to corporate responsibility, mainly in the areas of labour and environment.

Following the update in May 2011, the *Guidelines* include new and more developed recommendations on human rights as well as on employment and industrial relations, which are particularly relevant for Colombia. For many years, human rights violations, including at the workplace, have been a major issue in the country. To tackle these weaknesses, the government adopted in 2011 a National Policy on Integrated Human Rights and International Humanitarian Law.

Colombia has ratified 60 ILO Conventions, including the 8 Fundamental Conventions, and three of the four "priority" Conventions. Basic workers' rights, including the rights of joining trade unions and collective bargaining are guaranteed by the 1991 Constitution. Colombia's labour market suffers from significant levels of unemployment and informality. The government enacted in December 2010 the Law on Formalising Labour and Employment Generation with the objective to formalise 250 000 jobs and create 300 000 new formal jobs by 2014. A Decree adopted in April 2010 seeks to improve income conditions for union members, allow for their active participation, and encourage collective bargaining. The Public Safety Act adopted in June 2011 further strengthens protection of workers' right of association.

Environmental protection and sustainable development are high priorities on Colombia's national and foreign relations agendas. Colombia is a Party to all major environmental agreements, including the UN Framework Convention on Climate Change and the Kyoto Protocol, and the Convention on Biological Diversity. All projects with potential environmental impacts, whether promoted by private investors or public entities, are subject to an environmental licence, which is granted following an environmental impact assessment. Effective implementation suffers from insufficient resources to monitor compliance with licences, but the government is currently strengthening the role and powers of the environmental authorities. The government has also launched voluntary programs to promote improved environmental performance by companies, such as the 2010 Policy for Sustainable Consumption and Production.

Corruption remains a challenge for Colombia, but the government has declared that it is committed to meeting the highest international standards in fighting it. The government enacted the Anti-Corruption Statute in July 2011, which contains preventive, investigative, prosecutorial and punitive measures applicable to both the public and private sectors, including, for the first time, liability of legal persons for corruption offences. Colombia is a Party to the United Nations (UN) Convention and the Inter-American Convention against Corruption (CICC) since 1999, and takes part in the Andean Plan to Fight against Corruption. In January 2011, Colombia requested to become a full participant in the OECD Working Group on Bribery and accede to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. In November 2011, the OECD Council invited Colombia to participate in the Working Group and accede to the Convention.

Consumer rights are recognised in the Constitution and in the 1982 Consumer Protection Statute. In practice, for many years consumer protection has been weak. The 2011 Consumer Protection Statute will strengthen consumer rights, better define producer liability, regulate e-commerce and prevent the use of abusive clauses.

The Constitution establishes free competition as a constitutional right. Colombia has one of the oldest competition laws in Latin America; it is transparent and non-discriminatory. Competition regulation allows sanctioning any undertaking for anticompetitive practices provided it has legally established offices and representatives on Colombian territory.

The government has taken a range of measures to make tax collection more effective and to ease the payment of taxes. For the 2010-14 period, the General Tax and Customs Administration focuses on fostering voluntary tax compliance by, *inter alia*, encouraging the social acceptance of taxation; rendering quality services to taxpayers; promoting and supporting the simplification of the tax system; and promoting the use of formal channels to carry out transactions which are relevant from a tax perspective. In 2003, Colombia passed legislation to limit transfers to tax havens.

As a part of its commitments under the *OECD Guidelines for Multinational Enterprises*, the government will establish Colombia's National Contact Point (NCP) in the Ministry of Trade, Industry and Tourism. The Ministry's focal position within the government and its regular contacts with the business community, trade unions and civil society organisations is expected to allow the Colombian NCP to operate in accordance with the core criteria of visibility, accessibility, transparency and accountability. The establishment of an advisory body is also planned.

Colombia's policy framework for investment

In addition to legal provisions, a number of policy areas have an important impact on countries' investment climate, such as investment policy, investment promotion and facilitation, trade policy and infrastructure development. The Colombian government has made great progress in improving the country's business environment over the past years, as reflected in the good rankings in the World Bank's 2011 *Doing Business* report. The government is determined to continue its efforts in this area and has included enhancement of the investment framework among the key objectives of the National Development Plan for 2010-14.

In accordance with the Constitutional principle of non-discrimination, foreigners enjoy the same treatment as Colombian citizens, including the right of access to justice. This also applies to investment-related disputes. In order to address the current shortcomings in the dispute settlement system, the government has increased resources for municipal courts, provided training to judges and improved the performance evaluation of court staff. In the last few years, there has been an increased use of alternative dispute settlement mechanisms, and arbitration is becoming more common, for both large and small commercial disputes. This is also due to improvements in arbitration procedures, which are now partly done electronically. Colombia has been party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention) since 1997. It is also Party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and the Inter-American Convention of International Commercial Arbitration. Colombia has never been involved in an international investor-State dispute.

To address investors' concerns regarding legal and regulatory instability, Colombia has introduced the possibility to conclude legal stability agreements, which guarantee the legal conditions applied at the time of signature of investment projects. Since their inception in 2005, 66 legal stability contracts have been signed for a total of USD 12.7 billion, mainly in manufacturing.

The government has undertaken to respect high standards of intellectual property rights (IPR) protection. It has ratified mayor IPR treaties and in certain areas domestic legislation grants higher levels of copyright protection than those contained in the WTO agreements. In order to comply with its

IPR-related obligations under WTO and free trade agreements, the government has streamlined customs controls. It has also amended the Criminal Code to punish various types of IPR violations, including cybercrime and interception of protected data.

In 2007, the government adopted an international investment agreements agenda, which set up priorities for investment negotiations, taking into account several criteria, such as countries' FDI stock in Colombia and the Colombian FDI stock abroad. Colombia had concluded or signed eight bilateral investment agreements by mid-2011, and is in the process of negotiating one with Turkey. Colombia regularly reviews its model investment agreement to adapt it to the latest developments and to the country's priorities.

Colombia's investment promotion agency, *Proexport*, is in charge of promoting exports, international tourism and foreign investment in Colombia. Its main priorities are to advance the process of internationalisation of the economy, increasing and diversifying foreign trade and FDI. *Proexport* has established a "System to Facilitate and Attract Investment" (SIFAI), which provides details on the impact of barriers to investment in terms of the amount of investment, job creation, etc. The government has put procedures in place to identify and remove unnecessary barriers to investment.

Colombian legislation accords with the instrument on *Conflicting Requirements Imposed on Multinational Enterprises* of the OECD Declaration, which invites adhering countries to co-operate so as to avoid or minimise the imposition of conflicting requirements on multinational enterprises. The Colombian authorities note that, so far, the government has not received any complaints from multinational enterprises on conflicting requirements which may arise from Colombian laws and regulations.

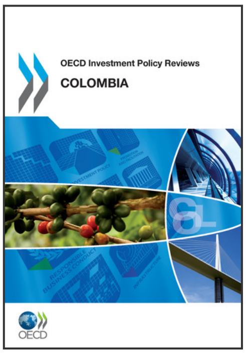
The instrument on *International Investment Incentives and Disincentives* of the OECD Declaration recognises that adhering countries may be affected by this type of measure and stresses the need to strengthen international co-operation in this area. Colombia maintains a number of investment incentives, most of them in form of exemptions from income tax and other taxes. All incentives, without exception, are granted to domestic and foreign investors alike.

In recent years, Colombia has intensified its trade diplomacy both in a multilateral context, by actively participating in ongoing international trade negotiations, and in bilateral trade relations, especially with its main trading partners – the United States and the European Union. Recent FTAs cover a large range of trade and investment-related issues, establish strong protection for investment, expand market access for services, and provide for improved transparency and dispute settlement mechanisms. They contain provisions aimed at improving intellectual property rights protection, enhancing transparency on subsidies and reducing harmful anticompetitive practices. They also refer to sustainable development with mutual guarantees of preserving and promoting high labour and environmental protection standards.

Investment in infrastructure is one of the pillars of Colombia's economic growth and a key element in the country's National Development Plan for 2010-14. The government relies heavily on private participation in infrastructure investment and has taken measures to ensure that key investment principles, such as transparency and procedural fairness, apply to investors bidding for infrastructure contracts. However, private sector participation in infrastructure remains low, compared to other emerging economies, including in Latin America. The government has thus intensified its efforts to mobilise private funding for infrastructure projects by improving the institutional and regulatory framework for private investment, seeking notably to enhance the quality of feasibility studies, increase certainty regarding the pricing and other relevant terms of the projects, and improve standardisation of bidding conditions.

Investment framework in support of green growth

The government is determined to ensure that, in Colombia, economic growth and environmental protection are mutually supportive. To this end, it is strengthening the institutional capacity of environmental authorities, enhancing the framework for investment in support of green growth, and putting in place "green" investment incentives. Biodiversity being one of the main natural assets of Colombia, the government has developed a framework to both protect and derive economic benefits from it. The government is currently developing a Low Carbon Development Strategy, with the objective of, *inter alia*, promoting economic growth in sectors associated with lower greenhouse gas emissions. The Strategy also seeks to draw on international financing options, including market mechanisms to attract resources that facilitate low-carbon development, promote the transfer of clean technologies, and enhance Colombia's competitiveness in a global economy increasingly influenced by carbon-intensity standards. A range of incentives is available to companies that voluntarily make investments to improve their environmental performance.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