

Recent Legal Developments Provide Exciting Opportunities for Canadian Companies in Colombia

September 9, 2010

Macleod Dixon

Edificio K2, Piso 7
Calle 97A, No. 9A-50
Bogotá DC, Colombia
Tel: +57 300 285 1562
+57 318 661 4337
www.macleoddixon.com

Canadians have been asking their government for years to supply two items missing from the Colombian foreign investor toolkit. It seems those requests were heard in November 2008, when the Canadian and Colombian governments signed:

- a treaty to avoid double taxation (the Canada/Colombia Double Tax Treaty¹), and
- a foreign investment protection agreement (FIPA), in the form of the Investment Chapter (Chapter 8) of the Canada-Colombia Free Trade Agreement (CCFTA).

Both countries' legislatures have made substantial progress in ratifying the Canada/Colombia Double Tax Treaty, but there are a number of formal steps left and it is unclear when the treaty will come into force.

Nearly two years later, there has also been significant progress towards fulfilling the Canadian investors' wish list. On June 29, 2010, Bill C-2 (an Act to Implement the Free Trade Agreement between Canada and the Republic of Colombia) became law in Canada, after a controversial passage through the House of Commons. The CCFTA was also overwhelmingly approved in the Colombian House of Representatives, and is now pending only final procedural approvals.

Once effective, the Canada-Colombia Free Trade Agreement will represent a significant benefit for Canadian investors. And that benefit is available to few other international investors, since Colombia has FIPAs with only a few other states, mostly in Latin America. Notably, US investors still have no near-term expectations that the US Congress will take up consideration of the long dormant US-Colombia Free Trade Agreement.

Of particular importance to Canadian investors are the CCFTA provisions for national treatment, for most-favored nation treatment, to restrict performance requirements (often used to impose local content rules), to grant free market access and to protect against expropriation of investments without compensation. Perhaps most importantly, the Investment Chapter provides Canadian investors access to investor-state arbitration to resolve investment disputes. This guarantee of an impartial transparent international process for resolution and compensation of expropriation claims is absent from many jurisdictions that compete with Colombia for Canadian investment. For example, the governmental policy in neighbouring Venezuela is explicitly against international arbitration.

Ratification by Canada of the CCFTA is among the many steps marking Colombia's successful efforts to broaden and deepen an economic liberalization made possible by the impressive security gains in Bogotá and throughout the country during the recently-ended eight year presidency of

¹ technically, the Convention Between Canada and the Republic of Colombia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital

Alvaro Uribe. There is every reason to believe that his successor, Juan Manuel Santos, will continue those outward-looking policies.

It is therefore no coincidence that the last few months have seen major new Canadian investments in Colombia:

- In August, in the largest petroleum investment in Colombia in recent years, Ecopetrol (the Colombian state oil company) and Talisman Energy (of Calgary, Alberta) acquired BP's Colombian Subsidiary for approximately US\$1.9 billion.
- In August, Colombia's largest gold producer, the Frontino mine, was acquired by Gran Colombia and Medoro Resources (both Canadian) in a \$200 million transaction.

Macleod Dixon represented the purchasers in both transactions, and is proud to now announce the establishment of its successful Colombian practice in our Bogotá office from mid-October 2010.