

## **INTERNATIONAL CODE OF FAIR TREATMENT FOR FOREIGN INVESTMENTS\***

The International Code on Fair Treatment for Foreign Investments was prepared jointly by the International Chamber of Commerce's Committee on Foreign Investments and its Committee on Foreign Establishments. The Code was published in 1949. The Code was endorsed by a resolution adopted by the International Chamber of Commerce's Quebec Congress. The resolution and the Introductory Report of the International Chamber of Commerce's Committee on Foreign Investments have not been reproduced in this volume.

### **International Code of Fair Treatment for Foreign Investments**

**drawn up by the I.C.C.'s Committees  
on Foreign Investments and Foreign Establishments  
and approved by the I.C.C.'s Quebec Congress  
(June 1949)**

#### **PREAMBLE**

The High Contracting Parties, desirous of promoting an expanding world economy and convinced that an ample flow of private investments is essential to the economic and industrial growth of their countries and to the welfare of their peoples, decide to establish, by the provision of civil, legal and fiscal safeguards, conditions of fair and non-discriminatory treatment for investments made in their territories by the nationals (physical or legal persons) of the other High Contracting Parties.

#### **Article 1**

The High Contracting Parties undertake to give effect to the provisions set out hereafter within their metropolitan and overseas territories as well as within those territories where, either by treaty or by virtue of powers conferred upon them by an international authority acting within the limits of its competence, they are entitled so to do.

#### **Article 2**

---

\* *Source:* International Chamber of Commerce (1949). *Fair Treatment for Foreign Investment. International Code*, Brochure 129 (Paris: Lecraw Press) [Note added by the editor].

---

By the terms of this Treaty the High Contracting Parties agree to apply fair treatment, as hereinafter defined, to investments of any kind made in their territories by the nationals of the other High Contracting Parties, including *inter alia* the following types:

- direct investments in real property, natural resources, commercial, financial, agricultural, industrial or transport enterprises, as well as in public utilities or enterprises connected therewith;
- equity investments in company shares and similar holdings;
- credits and advances to private and public borrowers and fixed-interest investments in private and public loans.

### **Article 3**

The High Contracting Parties shall take no discriminatory political, legal or administrative measures designed to hamper investments in their territories by the nationals of the other High Contracting Parties. They shall give to investments originating with the other High Contracting Parties treatment no less favourable than to investments made by their own nationals. In the case, however, of investments immediately concerned with national defence, special conditions may, if necessary, be imposed.

### **Article 4<sup>1</sup>**

No High Contracting Party shall discriminate on grounds of nationality in its legislative or administrative treatment of investments, between the investments made by the nationals of one of the High Contracting Parties and the investments made by the nationals of any other of the High Contracting Parties.

### **Article 5**

In the territories of each of the High Contracting Parties, the treatment extended to the nationals of the other High Contracting Parties shall be not less favourable than that applied to their own nationals, in respect of the legal and judicial protection of their person, property, rights and interests, and in respect of the acquisition, purchase, sale and assignment of moveable and immoveable property of any kind.

They shall have access to the domestic courts as plaintiff or defendant under the same conditions as nationals and be entitled to appear before the competent administrative authorities for the purpose of safeguarding their rights and interests in accordance with the laws in force on the said

---

<sup>1</sup> This Article is concerned exclusively with legislative or administrative action by governments and is in no way intended to interfere with the negotiation of special terms between investor and investee for any specific investment.

territories, such laws being applied without any distinction to their own nationals and those of the other High Contracting Parties.

In all cases they shall have the right to receive reasonable prior notice of any proceedings before such domestic courts or competent administrative authorities.

Should the nationals of one of the High Contracting Parties not enjoy the full benefit of the civil rights generally recognized by the other High Contracting Parties or by international law, the nationals of the other High Contracting Parties shall be entitled to such rights and this protection shall not be denied to them on the ground that a preferential system would thus be established in their favour.

### **Article 6<sup>2</sup>**

The High Contracting Parties shall not introduce any legislative or administrative provisions of a discriminatory character placing restrictions on:

- the nationality of the shareholders;
- the composition of the board of Directors and the choice of the Directors;
- the selection or introduction into their territories of such administrative, executive and technical officers and staff, not nationals of those territories, as shall be deemed by the enterprises concerned to be requisite for their efficient operation.

In the case, however, of enterprises directly concerned with national defence, special conditions may, if necessary, be imposed.

### **Article 7**

The High Contracting Parties shall not give less favourable treatment in respect of taxation to the nationals of the other High Contracting Parties than to their own nationals.

### **Article 8**

In order to eliminate the serious deterrents to the development of foreign investments resulting from double taxation, the High Contracting Parties shall seek to conclude bilateral agreements for the prevention of the double taxation of income, and of capital, estates and

---

<sup>2</sup> This Article is necessary and important, because before investors are willing to transfer capital to another country for the purpose of establishing and developing an enterprise, they desire to know that the administrative, financial and technical management will be under the direction of those whom they consider to be most suitably qualified without regard to nationality. In addition to the obligation on the High Contracting Parties not to introduce new discriminatory legislation, it is also necessary that the High Contracting Parties endeavour as soon as practicable to withdraw or modify any existing legislative or administrative restrictions of the kind referred to in the Article, which deter the investment of foreign capital.

successions on the basis of the two Model Bilateral Conventions of London drawn up for that purpose by the League of Nations.

### Article 9

Subject to such restrictions and exceptions as may be authorized under the Agreement of the International Monetary Fund, the High Contracting Parties in whose territories sums have been invested by nationals of the other High Contracting Parties shall allow to such nationals freedom of transfer:

- a) of current payments arising out of their investments including *inter-alia* interest, dividends, profits, royalties (derived from enterprises in the case of direct investment);
- b) of payments of principal, payments in respect of redeemable shares, loan certificates and like securities, as well as payments in respect of amortization of loans and, in the case of direct investments, depreciation;
- c) of all payments necessary for the upkeep and renewal of assets maintained in such territories.

A national of one of the High Contracting Parties owning shares or having interests in the territory of another High Contracting Party shall, in the event of his surrendering for a consideration the rights vested by him in such shares or interests, or in the event of liquidation or reduction of capital, be entitled to transfer, within a reasonable period, the proceeds of such surrender, liquidation or reduction.

All such transfers shall be authorized either in the currency of the creditor or in some other currency agreed upon by the creditor and debtor.

### Article 10

The conditions of transfer defined in Article 9 shall also apply to investments in any public loan or loan guaranteed by a public authority, which shall have been issued in the territory of one of the High Contracting Parties:

- a) by another High Contracting Party;
- b) by a public body situated in the territory of another High Contracting Party;
- c) by any other person or body, with the guarantee of another High Contracting Party or of one of its agencies or of the International Bank for Reconstruction and Development.

In the case of such international loans, bondholders of creditor High Contracting Parties

---

shall have the right to appoint representatives in the territories of the debtor High Contracting Parties to defend their interests and endeavour to reach settlement of difficulties that may arise through default of payment or measures of alleged discrimination by private or public bodies. These representatives shall likewise have the right to apply to the competent courts in the event of disputes and, if the courts fail to act within a reasonable period or in the case of unfair treatment not amenable to the jurisdiction of a court, to carry the matter before the International Court of Arbitration for which provision is made in Article 13 and 14 below.

### **Article 11**

High Contracting Parties who may decide to take measures for the expropriation or dispossession of private property, involving the transfer of the ownership or management of property belonging in whole or in part to nationals of the other High Contracting Parties either to governmental authorities or to their own nationals, shall apply the following principles:

- a) the property of investors who are nationals of the other High Contracting Parties shall in no circumstances be liable to measures of expropriation or dispossession except in accordance with the appropriate legal procedure and with fair compensation according to international law;
- b) any national law enacting expropriation or dispossession of the property of the nationals of another High Contracting Party shall state explicitly the purpose and conditions of such expropriation or dispossession;
- c) the introduction in the territory of one of the High Contracting Parties of a system of exchange control shall not exempt the said High Contracting Party from its obligation to carry out the transfer of the compensation due for expropriation or dispossession;
- d) the basis of the compensation shall be determined before expropriation or dispossession takes place. The compensation shall be payable in cash or in readily marketable securities of an equivalent value. The cash or the proceeds of the sale of the securities shall be freely transferable forthwith at the rates of exchange prevailing at the time of expropriation or dispossession. The transfer shall be in the currency of the foreign creditor, unless otherwise agreed.

### **Article 12**

The High Contracting Parties shall afford all reasonable facilities to the investors of the other High Contracting Parties to obtain the information required for a correct estimate of economic conditions within their territories as well as information concerning their law and their legal, political and administrative systems.

### **Article 13**

The High Contracting Parties agree that any differences that may arise between them respecting the interpretation or application of this Convention shall, unless settled within a short and reasonable period by direct negotiation or by any other form of conciliation, be submitted for decision to the International Court of Arbitration in accordance with the procedure laid down in Article 14.

#### **Article 14**

(This Article should contain detailed provisions for the composition and working of the International Court of Arbitration to which all disputes and differences are to be referred under Article 13. The details are, however, left to be worked out by the negotiating governments).

#### **Article 15**

(This Article should contain detailed provisions governing the interpretation of the word "nationals" so as to ensure that that expression shall include not only physical persons but also incorporated or unincorporated associations).

#### **Article 16**

(This Article would contain the customary provisions for entry into force and ratification, the details of which are left to the negotiating governments).

\* \* \*