

**CONFORMED COPY**

**LOAN NUMBER 7163 - CO**

# **Loan Agreement**

**(Programmatic Fiscal and Institutional Structural Adjustment Loan)**

**between**

**REPUBLIC OF COLOMBIA**

**and**

**INTERNATIONAL BANK FOR RECONSTRUCTION  
AND DEVELOPMENT**

**Dated March 19, 2003**

**LOAN NUMBER 7163 - CO**

**LOAN AGREEMENT**

AGREEMENT, dated March 19, 2003, between the REPUBLIC OF COLOMBIA (the Borrower) and INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT (the Bank).

WHEREAS (A) the Bank has received a letter, dated January 20, 2003, from the Borrower: (i) describing its macroeconomic framework and a program of actions, objectives and policies for fiscal and institutional reform, covering fiscal sustainability, public expenditure management, institutional reform and management of public liabilities (the Program), which Program consists of actions that have already been taken as described in Schedule 3 to this Agreement (the First Phase of the Program), and actions and policies that the Borrower intends to take and adopt in the near future; (ii) declaring the Borrower's commitment to the objectives of the Program; and (iii) requesting assistance from the Bank in support of the Program during the execution thereof; and

(B) on the basis, *inter alia*, of the foregoing, the Bank has decided in support of the First Phase of the Program to provide such assistance to the Borrower by making the loan provided for in Article II of this Agreement (the Loan) as hereinafter provided;

NOW THEREFORE the parties hereto hereby agree as follows:

**ARTICLE I**

**General Conditions; Definitions**

Section 1.01. The "General Conditions Applicable to Loan and Guarantee Agreements for Fixed-Spread Loans" of the Bank dated September 1, 1999, with the modifications set forth below (the General Conditions) constitute an integral part of this Agreement:

(a) Section 2.01, paragraph 41, is modified to read:

“‘Project’ means the First Phase of the Program, referred to in the Preamble to the Loan Agreement, in support of which the Loan is made.”;

(b) Section 3.08 is modified to read:

“Each withdrawal of an amount of the Loan from the Loan Account shall be made in the Loan Currency of such amount. If the Loan Currency is not the currency of the deposit account specified in Section 2.02 of the Loan Agreement, the Bank, at the request and acting as an agent of the Borrower, shall purchase with the Loan Currency withdrawn from the Loan Account the currency of such deposit account as shall be required to deposit the withdrawn amount into such deposit account.”

- (c) Section 5.01 is modified to read:

“The Borrower shall be entitled to withdraw the proceeds of the Loan from the Loan Account in accordance with the provisions of the Loan Agreement and of these General Conditions.”;

- (d) the last sentence of Section 5.03 is deleted;

- (e) Section 9.07 (c) is modified to read:

“(c) Not later than six months after the Closing Date or such later date as may be agreed for this purpose between the Borrower and the Bank, the Borrower shall prepare and furnish to the Bank a report, of such scope and in such detail as the Bank shall reasonably request, on the execution of the First Phase of the Program referred to in the Preamble to the Loan Agreement, the performance by the Borrower and the Bank of their respective obligations under the Loan Agreement and the accomplishment of the purposes of the Loan.”; and

- (f) Section 9.05 is deleted and Sections 9.06, 9.07 (as modified above), 9.08 and 9.09 are renumbered, respectively, Sections 9.05, 9.06, 9.07 and 9.08.

Section 1.02. Unless the context otherwise requires, the several terms defined in the General Conditions and in the Preamble to this Agreement have the respective meanings therein set forth and the following additional terms have the following meanings:

- (a) “Central Bank” means *Banco de la República*, the Borrower’s central bank;

- (b) “Combined Public Sector” means the sum of the following: a) overall balances of the non-financial public sector; b) the operating cash result (quasi-fiscal

balance) of the Central Bank; c) the overall balance of FOGAFIN (as hereinafter defined); and d) the net fiscal costs borne by the central administration and the rest of the non-financial public sector related to financial sector restructuring;

(c) “DDJ” means *Dirección de Defensa Judicial del Ministerio del Interior y de Justicia*, the Borrower’s Judicial Defense Directorate at the Ministry of Interior and Justice;

(d) “Deposit Account” means the account referred to in Section 2.02 (b) of this Agreement;

(e) “DIAN” means *Dirección de Impuestos y Aduanas Nacionales*, the Borrower’s Directorate of National Taxes and Customs;

(f) “DNP” means *Departamento Nacional de Planeación*, the Borrower’s National Planning Department;

(g) “FOGAFIN” means *Fondo de Garantías de Instituciones Financieras*, the Borrower’s Guarantee Fund for Financial Institutions;

(h) “FY” means the Borrower’s fiscal year commencing on January 1 and ending on December 31;

(i) “ICBF” means *Instituto Colombiano de Bienestar Familiar*, the Borrower’s Family Welfare Institute;

(j) “MH” means *Ministerio de Hacienda y Crédito Público*, the Borrower’s Ministry of Finance and Public Credit;

(k) “Peso” or “P\$” means the lawful currency of the Borrower; and

(l) “SENA” means *Servicio Nacional de Aprendizaje*, the Borrower’s Learning National Service.

## ARTICLE II

### The Loan

Section 2.01. The Bank agrees to lend to the Borrower, on the terms and conditions set forth or referred to in this Agreement, an amount equal to three hundred

million Dollars (\$300,000,000), as such amount may be converted from time to time through a Currency Conversion in accordance with the provisions of Section 2.09 of this Agreement.

Section 2.02. (a) Subject to the provisions of paragraphs (b) and (c) of this Section, the Borrower shall be entitled to withdraw the amount of two hundred ninety seven million Dollars (\$297,000,000) from the Loan Account in support of the First Phase of the Program.

(b) The Borrower shall open, prior to furnishing to the Bank the first request for withdrawal from the Loan Account, and thereafter maintain in the Central Bank, a deposit account in Dollars on terms and conditions satisfactory to the Bank. All withdrawals of the amount referred to in paragraph (a) above shall be deposited by the Bank into the Deposit Account.

(c) The Borrower undertakes that the proceeds of the Loan shall not be used to finance expenditures excluded pursuant to the provisions of Schedule 1 to this Agreement. If the Bank shall have determined at any time that any proceeds of the Loan shall have been used to make a payment for an expenditure so excluded, the Borrower shall, promptly upon notice from the Bank, (i) deposit into the Deposit Account an amount equal to the amount of said payment, or (ii) if the Bank shall so request, refund such amount to the Bank. Amounts refunded to the Bank upon such request shall be credited to the Loan Account for cancellation.

Section 2.03. The Closing Date shall be April 30, 2003 or such later date as the Bank shall establish. The Bank shall promptly notify the Borrower of such later date.

Section 2.04. The Borrower shall pay to the Bank a front-end fee in an amount equal to one percent (1%) of the amount of the Loan. On or promptly after the Effective Date, the Bank shall, on behalf of the Borrower, withdraw from the Loan Account and pay to itself the amount of said fee.

Section 2.05. The Borrower shall pay to the Bank a commitment charge on the principal amount of the Loan not withdrawn from time to time, at a rate equal to: (a) eighty five one-hundredths of one per cent (0.85%) per annum from the date on which such charge commences to accrue in accordance with the provisions of Section 3.02 of the General Conditions to but not including the fourth anniversary of such date; and (b) seventy five one-hundredths of one per cent (0.75%) per annum thereafter.

Section 2.06. The Borrower shall pay interest on the principal amount of the Loan withdrawn and outstanding from time to time, in respect of each Interest Period at the Variable Rate; provided, that upon a Conversion of all or any portion of the principal

amount of the Loan, the Borrower shall, during the Conversion Period, pay interest on such amount in accordance with the relevant provisions of Article IV of the General Conditions.

Section 2.07. Interest and commitment charges shall be payable semiannually in arrears on May 15 and November 15 in each year.

Section 2.08. The Borrower shall repay the principal amount of the Loan in accordance with the provisions of Schedule 2 to this Agreement.

Section 2.09. (a) The Borrower may at any time request any of the following Conversions of the terms of the Loan in order to facilitate prudent debt management:

- (i) a change of the Loan Currency of all or any portion of the principal amount of the Loan, withdrawn or unwithdrawn, to an Approved Currency;
- (ii) a change of the interest rate basis applicable to all or any portion of the principal amount of the Loan from a Variable Rate to a Fixed Rate, or vice versa; and
- (iii) the setting of limits on the Variable Rate applicable to all or any portion of the principal amount of the Loan withdrawn and outstanding by the establishment of an Interest Rate Cap or Interest Rate Collar on said Variable Rate.

(b) Any conversion requested pursuant to paragraph (a) of this Section that is accepted by the Bank shall be considered a "Conversion", as defined in Section 2.01(7) of the General Conditions, and shall be effected in accordance with the provisions of Article IV of the General Conditions and of the Conversion Guidelines.

Section 2.10. Without limitation upon the provisions of paragraph (a) of Section 2.09 of this Agreement and unless otherwise notified by the Borrower to the Bank in accordance with the provisions of the Conversion Guidelines, the interest rate basis applicable to the aggregate principal amount of the Loan withdrawn during each Interest Period shall be changed from the initial Variable Rate to a Fixed Rate for the full maturity of such amount in accordance with the provisions of Article IV of the General Conditions and of the Conversion Guidelines.

### **ARTICLE III**

#### **Particular Covenants**

Section 3.01. (a) The Borrower and the Bank shall from time to time, at the request of either party, exchange views on the progress achieved in carrying out the Program.

(b) Prior to each such exchange of views, the Borrower shall furnish to the Bank for its review and comment a report on the progress achieved in carrying out the Program, in such detail as the Bank shall reasonably request.

(c) Without limitation upon the provisions of paragraph (a) of this Section, the Borrower shall exchange views with the Bank on any proposed action to be taken after the disbursement of the Loan which would have the effect of materially reversing the objectives of the Program, or any action taken under the Program (including any action specified in Schedule 3 to this Agreement).

Section 3.02. Upon the Bank's request, the Borrower shall:

(a) have the Deposit Account audited in accordance with appropriate auditing principles consistently applied, by independent auditors acceptable to the Bank;

(b) furnish to the Bank as soon as available, but in any case not later than four months after the date of the Bank's request for such audit, a certified copy of the report of such audit by said auditors, of such scope and in such detail as the Bank shall have reasonably requested; and

(c) furnish to the Bank such other information concerning the Deposit Account and the audit thereof as the Bank shall have reasonably requested.

### **ARTICLE IV**

#### **Additional Events of Suspension**

Section 4.01. Pursuant to Section 6.02 (p) of the General Conditions, the following additional events are specified:

(a) a situation has arisen which shall make it improbable that the Program, or a significant part thereof, will be carried out;

(b) the Borrower's macroeconomic policy framework has become inconsistent with the objectives of the Program;

(c) an action has been taken or a policy has been adopted to reverse any action or policy under the Program in a manner that would, in the opinion of the Bank, adversely affect the achievement of the objectives of the Program; and

(d) An action has been taken or a policy has been adopted to reverse any action listed in Schedule 3 to this Agreement.

## **ARTICLE V**

### **Termination**

Section 5.01. The date June 19, 2003 is hereby specified for the purposes of Section 12.04 of the General Conditions.

## **ARTICLE VI**

### **Representative of the Borrower; Addresses**

Section 6.01. The Minister of Finance and Public Credit of the Borrower is designated as representative of the Borrower for the purposes of Section 11.03 of the General Conditions.

Section 6.02. The following addresses are specified for the purposes of Section 11.01 of the General Conditions:

For the Borrower:

Ministry of Finance and Public Credit  
Palacio de los Misterios  
Plaza San Agustín  
Carrera 7ª. No. 6-45, Piso 3  
Bogotá, Colombia

Cable address:	Telex:	Facsimile:
MINHACIENDA	43289 MHAC CO	57-1-350-9344



For the Bank:

International Bank for  
Reconstruction and Development  
1818 H Street, N.W.  
Washington, D.C. 20433  
United States of America

Cable address:

Telex:

Facsimile:

INTBAFRAD  
Washington, D.C.

248423 (MCI) or  
64145 (MCI)

(202) 477-6391

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have caused this Agreement to be signed in their respective names in the city of the District of Columbia, U.S.A., as of the day and year first above written.

REPUBLIC OF COLOMBIA

By /s/ Alberto Moreno  
Authorized Representative

INTERNATIONAL BANK FOR  
RECONSTRUCTION AND DEVELOPMENT

By /s/ David de Ferranti  
Regional Vice President  
Latin America and the Caribbean

## SCHEDULE 1

### Excluded Expenditures

For purposes of Section 2.02 (c) of this Agreement, the proceeds of the Loan shall not be used to finance any of the following expenditures:

1. expenditures in the currency of the Borrower or for goods or services supplied from the territory of the Borrower;
2. expenditures for goods or services supplied under a contract which any national or international financing institution or agency other than the Bank or the Association shall have financed or agreed to finance, or which the Bank or the Association shall have financed or agreed to finance under another loan or a credit;
3. expenditures for goods included in the following groups or subgroups of the Standard International Trade Classification, Revision 3 (SITC, Rev.3), published by the United Nations in Statistical Papers, Series M, No. 34/Rev.3 (1986) (the SITC), or any successor groups or subgroups under future revisions to the SITC, as designated by the Bank by notice to the Borrower:

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
112	-	Alcoholic beverages
121	-	Tobacco, unmanufactured, tobacco refuse
122	-	Tobacco, manufactured (whether or not containing tobacco substitutes)
525	-	Radioactive and associated materials
667	-	Pearls, precious and semiprecious stones, unworked or worked

<u>Group</u>	<u>Subgroup</u>	<u>Description of Items</u>
718	718.7	Nuclear reactors, and parts thereof; fuel elements (cartridges), non-irradiated, for nuclear reactors
728	728.43	Tobacco processing machinery
897	897.3	Jewelry of gold, silver or platinum group metals (except watches and watch cases) and goldsmiths' or silversmiths' wares (including set gems)
971	-	Gold, non-monetary (excluding gold ores and concentrates)

4. expenditures for goods intended for a military or paramilitary purpose or for luxury consumption;

5. expenditures for environmentally hazardous goods (for purposes of this paragraph the term "environmentally hazardous goods" means goods, the manufacture, use or import of which is prohibited under the laws of the Borrower or international agreements to which the Borrower is a party);

6. expenditures (a) in the territories of any country which is not a member of the Bank or for goods procured in, or services supplied from, such territories or (b) on account of any payment to persons or entities, or any import of goods, if such payment or import is prohibited by a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations; and

7. expenditures under a contract in respect of which the Bank determines that corrupt or fraudulent practices were engaged in by representatives of the Borrower or of a beneficiary of the Loan during the procurement or execution of such contract, without the Borrower having taken timely and appropriate action satisfactory to the Bank to remedy the situation.

**SCHEDULE 2**

**Amortization Schedule**

1. The following table sets forth the Principal Payment Dates of the Loan and the percentage of the total principal amount of the Loan payable on each Principal Payment Date (Installment Share). If the proceeds of the Loan shall have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined by the Bank by multiplying: (a) the total principal amount of the Loan withdrawn and outstanding as of the first Principal Payment Date; by (b) the Installment Share for each Principal Payment Date, such repayment amount to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

<u>Payment Date</u>	<u>Installment Share (Expressed as a %)</u>
On each May 15 and November 15 Beginning May 15, 2010 through November 15, 2010	14%
On May 15, 2011 through November 15, 2013	0%
On May 15, 2014 through November 15, 2015	14%
On May 15, 2016	16%

2. If the proceeds of the Loan shall not have been fully withdrawn as of the first Principal Payment Date, the principal amount of the Loan repayable by the Borrower on each Principal Payment Date shall be determined as follows:

(a) To the extent that any proceeds of the Loan shall have been withdrawn as of the first Principal Payment Date, the Borrower shall repay the amount withdrawn and outstanding as of such date in accordance with paragraph 1 of this Schedule.

(b) Any withdrawal made after the first Principal Payment Date shall be repaid on each Principal Payment Date falling after the date of such withdrawal in amounts determined by the Bank by multiplying the amount of each such withdrawal by a fraction, the numerator of which shall be the original Installment Share specified in the table in paragraph 1 of this Schedule for said Principal Payment Date (the Original Installment Share) and the denominator of which shall be the sum of all remaining

Original Installment Shares for Principal Payment Dates falling on or after such date, such repayment amounts to be adjusted, as necessary, to deduct any amounts referred to in paragraph 4 of this Schedule, to which a Currency Conversion applies.

3. (a) Withdrawals made within two (2) calendar months prior to any Principal Payment Date shall, for the purposes solely of calculating the principal amounts payable on any Principal Payment Date, be treated as withdrawn and outstanding on the second Principal Payment Date following the date of withdrawal and shall be repayable on each Principal Payment Date commencing with the second Principal Payment Date following the date of withdrawal.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph 3, if at any time the Bank shall adopt a due date billing system under which invoices are issued on or after the respective Principal Payment Date, the provisions of such sub-paragraph shall no longer apply to any withdrawals made after the adoption of such billing system.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Schedule, upon a Currency Conversion of all or any portion of the withdrawn principal amount of the Loan to an Approved Currency, the amount so converted in said Approved Currency that shall be repayable on any Principal Payment Date occurring during the Conversion Period, shall be determined by the Bank by multiplying such amount in its currency of denomination immediately prior to said Conversion by either: (i) the exchange rate that reflects the amounts of principal in said Approved Currency payable by the Bank under the Currency Hedge Transaction relating to said Conversion; or (ii) if the Bank so determines in accordance with the Conversion Guidelines, the exchange rate component of the Screen Rate.

5. If the principal amount of the Loan withdrawn and outstanding from time to time shall be denominated in more than one Loan Currency, the provisions of this Schedule shall apply separately to the amount denominated in each Loan Currency, so as to produce a separate amortization schedule for each such amount.

### SCHEDULE 3

#### First Phase of the Program

1. The Borrower has attained, for the period covered by any three (3) continuous months among the twelve (12) months preceding withdrawals from the Loan Account, an overall deficit of the Combined Public Sector of no more than US\$1,352,000,000 equivalent to P\$3,864,000,000,000.
2. The Borrower has promulgated a tax reform law (Law 788 of 2002) to regulate, *inter alia*: a) the reduction of exemptions and expansion of the tax base for the value added tax; b) the reduction of the monthly wage tax exemption from 30% to 25% with a ceiling in the amount of P\$16,000,000 per tax payer; c) the reduction of tax exemptions, tax credits and non-taxed income for personal income tax; and d) the phasing out of the corporate income tax exemption for capital gains from sales of stock, mutual funds and real estate, as well as for profits from corporations exempted under former tax law.
3. MH, through DIAN, has enacted new rules for tax administration to regulate, *inter alia*:
  - (a) the obligation of financial institutions to withhold, at the source, taxes generated by daily interest payments higher than P\$900;
  - (b) the obligation of financial institutions to report to DIAN information on taxpayers' accounts that are credited with annual interest of at least P\$5,000,000 and/or have total annual deposits equal to or higher than P\$50,000,000;
  - (c) the obligation of DIAN to prepare a list of tax receivables due as of December 30 of 2002;
  - (d) the obligation of DIAN to design a plan and set up a schedule to collect at least 20% of said tax receivables; and
  - (e) the obligation of DIAN to establish indicators for customs clearance, as well as schedules and procedures to select shipments for inspection (based on a risk-management system), all for the customs offices in Bogotá and Medellín.
4. The Borrower's Executive Branch has submitted to the Borrower's Congress and said Congress has approved, in a first round of debate, and as a prelude to potential final approval, a constitutional reform that enables the Borrower's Executive Branch to enhance its management of the national budget within certain pre-established fiscal targets.



5. The Borrower has promulgated a law to enable a constitutional referendum (Law 796 of 2003) for, *inter alia*, the transfer of royalties, collected by the relevant public entity to be used for educational services.

6. The Borrower has promulgated a law to enhance the judicial defense of the state (Law 790 of 2002) to regulate, *inter alia*:

(a) enhancement of DDJ's capacity to represent Borrower's public entities in litigation activities in Borrower's courts of law;

(b) obligation of the Borrower's civil servants –in charge of the judicial defense of the state- to compensate the state for malpractice, bad faith and/or negligence in the performance of their judicial defense activities; and

(c) training of the Borrower's civil servants in charge of the judicial defense of the state.

7. The Borrower's Executive Branch has issued a Decree (Decree Number 2170, dated September 30, 2002) that strengthens transparency and objectivity in public sector procurement.

8. Bill of Law 018/2002 (proposed to modify the current public sector procurement legal framework) has been introduced into and is being discussed at the Borrower's Congress.

9. The Borrower has initiated a process to create a commission for public asset management, in charge of, *inter alia*: a) preparing draft government policy in public asset management activities; b) defining the scope of work of said commission; and c) elaborating an operational plan to define accounting systems and inventories in public agencies.

10. The Borrower's Executive Branch has selected ICBF and SENA as the two government agencies that will be subjected to a performance audit of its FYs 2003-2006 pilot management contracts.

11. The Borrower has: (a) published its strategy of state reform; (b) established a high level commission for state reform and a task team for technical coordination of these matters; (c) formed task teams in each participating agency with coordination mechanisms with DNP; and (d) developed a concept for public marketing of public sector reform activities.

12. The Borrower's Executive Branch has submitted to the Borrower's Congress a bill of law for enhancing fiscal responsibility.