
LEGAL **GUIDE**

TO DO BUSINESS IN COLOMBIA

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INTRODUCTION

Colombia is a democratic country, with a privileged and strategic location in Latin America and rich in natural resources. It is at present one of the main investment destinations in the region mainly because of its commercial opportunities and legal stability. It has been ranked by the World Bank as one of the Latin American countries with major progress in establishing an ideal environment for businesses.

In the last decade, Colombia's GDP growth rate has been significantly higher than the world average, and in recent years the country has shown great economic stability and adequately controlled its inflation rate. Recently, the principal risk rating agencies have given Colombia higher confidence indices.

ProColombia and the law firm EY, have prepared this Legal Guide to Doing Business in Colombia (the "Guide") to provide foreign investors guidelines on the main legal aspects.

The content of this document was prepared and updated in January 2018, based entirely on the current information and legislation.

Warning

The purpose of this document is purely informative. The Guide is not intended to provide legal advice. Therefore, those using this Guide shall not be entitled to bring any claim or action against ProColombia or EY, their respective directors, officers, employees, agents, advisors or consultants arising from any expense or cost incurred into or for any commitment or promise made based on the information contained in this Guide. Neither shall they be entitled to indemnifications from ProColombia nor EY, for decisions made on the basis of the contents or the information provided in this Guide.

We strongly advise that the investors and in general readers who make use of the Guide, consult their own legal advisors and professional consultants regarding investment in Colombia.

On the figures on this Guide

The figures used on this Guide have been determined as follows: (i) the figures expressed in US dollars have been calculated using an exchange rate of COP 3000 = USD 1; and (ii) for those based on the current minimum legal monthly wage (MLMW) in Colombia, the MLMW for the year 2018 is COP \$781.242 (approx. USD 260).

The foreign exchange rate changes daily with the supply and demand for currency and the MLMW is adjusted at the end of every calendar year (December) for the following year.

We hope that this Guide will be of great use for your investment in Colombia.





LEGAL **GUIDE**

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CHAPTER

1

**PROTECTION
TO FOREIGN
INVESTMENT**



PROTECTION TO FOREIGN INVESTMENT

Five things an investor should know about the protection of foreign direct investment (FDI) in Colombia:

1

1. In accordance with the Political Constitution, foreign investment receives the same treatment than local investment, except in specific cases. Consistent with the OECD regulatory restrictiveness index, Colombia ranks among the countries with the most open investment regimes; it is below both the OECD average and non OECD countries.

2

The International Investment Agreements negotiated by Colombia grants a fair and transparent legal framework for FDI, reflecting the commitment of the country and its authorities in favor of the protection and respect of the FDI.

3

FDI is admitted in all sectors, except in: national defense and security, and the processing and disposal of toxic, hazardous or radioactive waste not originated in the country. As general rule, there is no limitation on the property or control of FDI in Colombia, except in some specific cases such as television services where the FDI in the enterprise cannot exceed the 40%.

4

FDI in Colombia does not require a previous authorization by any national authority, except in some specific cases. The FDI in Colombia requires a registration in the Central Bank (Banco de la República). Such registration is required with statistics objectives only.

5

Colombia has additional instruments that complement any economic activity. Colombia has access to more than 64 countries and 1,500 million consumers through its network of FTAs. Colombia is also part of several double taxation agreements that prevent investors from being subject to double taxation.



Colombian domestic law establishes an FDI regimen based on four fundamental principles:

I. Equal treatment

La Constitución Política de Colombia establece que los extranjeros y los nacionales gozarán de los mismos derechos y garantías. Esto significa que la inversión extranjera se puede realizar en Colombia en todos los sectores de la economía, con algunas excepciones. Así mismo, bajo este principio de igualdad de trato, los inversionistas extranjeros tendrán acceso a los beneficios o incentivos para las inversiones que establezca el Gobierno. En resumen, la inversión extranjera recibe, para todos los efectos, el mismo tratamiento que la inversión nacional. No se admite, por lo tanto, la imposición de condiciones o tratamientos discriminatorios.

II. Universality

Foreign investment is admitted in all sectors of the economy, with the exception of the following: (i) activities related to defense and national security; (ii) processing and disposal of toxic, hazardous or radioactive waste not originated in the country.

There are certain legal restrictions for FDI with respect to the property in certain economic activities related with television services and fishing. For national security reasons, FDI is prohibited in the following areas: land acquisition in borders, manufacture, possession, use and commercial exploitation of nuclear, biological and chemical weapons. There is also a restriction for FDI in Private Security and Surveillance Services with weapons. Maritime transportation, journalism and radio broadcasting services maintain some restrictions related to the corporate organization and board of directors. Regarding gambling and liquors, the State maintains a public monopoly.

III. Automaticity

As a general rule, FDI in Colombia does not require prior authorization, except for investment in the insurance, finance, mining and hydrocarbon sectors, which may require, in certain cases, prior authorization or recognition by the relevant authorities (e.g. the Colombian Financial Superintendence or the Ministry of Mines and Energy). FDI in Colombia must be registered in the Central Bank (Banco de la República) for statistical purposes. Such registration grants the investor to exchange rights such as free transfer and the possibility of reinvest.

IV. Stability

The conditions which were in effect on the date of registration of foreign investment may not be modified in a manner that adversely affects the foreign investor, with respect to the repatriation of the foreign investment and the remittance of profits associated to it. Notwithstanding the above, the conditions for repatriation and remittance of profits in connection with foreign investment and the rights conferred by the proper registration of such foreign investment may be amended in a way that may affect the foreign investor, when the country's international reserves are equivalent to less than three (3) months of imports.

1.1. International Investment Agreements

In order to create and maintain a favorable investment environment for foreign investors, Colombia has implemented a policy of negotiation and ratification of international investment agreements (IIAs), (which include Bilateral Investment Treaties – BITs), as well as Free Trade Agreements (FTAs) with investment chapters.



These agreements establish a fair and transparent legal framework for the protection of FDI and outward foreign direct investment (OFDI) with clear and predictable rules. The IIA reduces the noncommercial risk of investments; in other words, reduces the political risk.

It is important to take into account that an IIA does not imply a stabilization commitment of the regulatory powers of the State. An IIA reflects an important commitment of the State and its entities for granting an adequate and respectful treatment to FDI under standards internationally accepted.

1.1.1. Content of IIA of Colombia

Under the IIA negotiated by Colombia, the following clauses grant protection to FDI:

• Scope of application of the IIA

This section establishes the conditions that the investment or the investor must observe in order to be covered under the agreement. This section establishes that the IIA shall apply to investors (natural or legal persons) who are nationals of the other State part of the IIA, considering, among other factors, the existence of double nationality and the presence of substantive business activities. It also establishes that the investment, in order to be covered under the agreement, must comply with three minimum characteristics, which are: the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk, and not be included under any of the specific exclusions contained in the IIA.

• Protection to FDI

This section includes the commitments assumed by States with regards to treatment and protection of FDI:

- National Treatment

Each State grants to foreign investors and their investments a treatment no less favorable than that granted, in like circumstances, to national investors and their investments

- Most Favored Nation Treatment

Each state grants to foreign investors and their investments, a treatment no less favorable than that granted, in like circumstances, to investors of a different country and their investments.

- Minimum Level of Treatment

Means the commitment of granting a minimum level of treatment, in accordance with international customary law, including a fair and equitable treatment and full protection and security. In general, a fair and equitable treatment means a treatment which is no arbitrary or discriminatory and in accordance with due process of law. On the other hand, full protection and security means physical protection to investment, in accordance with the police protection granted by the State to its own nationals.

- Prohibition of Expropriation Without Compensation

Under this standard of protection to FDI, expropriation only may take place for a public purpose, in a



nondiscriminatory way, in accordance with due process of law and on payment of prompt, adequate, and effective compensation. The IIAs include two kinds of expropriation: i) direct expropriation where an investment is nationalized or, otherwise, directly expropriated through formal transfer of title or outright seizure; and ii) indirect expropriation where an action or a series of actions by a state has an effect equivalent to direct expropriation, without formal transfer of title or outright seizure.

- Free Transfers

Under this provision, States grant, to the investor of the other State in the IIA, the free transfers of investments, returns and the product of the liquidation or sale of the investment and the payments made as consequence of a compensation, etc. The free transfer of capitals is granted in accordance with the domestic law and in any case, the State reserves its right to limit or restrict transfers in case of difficulties in the balance of payments, serious macroeconomic difficulties or threat thereof.

• Investor – State Dispute Settlement Mechanism in Case of Violation of the IIA

IIA includes a section for the settlement of disputes between the investors and the State. This mechanism grants the investor the possibility of claiming from the State, the violation of any of the provisions of the agreement in international arbitration.

1.2. Double Taxation Agreements

DTA are international bilateral or multilateral treaties between states addressed to establish clear rules for avoiding double taxation on income and equity, which, under the domestic governing law, may be taxable in the same way in two or more jurisdictions. The DTAs are negotiated under international public law principles and contribute to promote cooperation against tax evasion and to promote trade between countries.

DTAs also constitute an incentive for FDI and OFDI to the extent that these agreements grant the following benefits:

- I) Tax stability on the conditions for operations between tax residents from two different countries.
- II) Reduction of the effective and consolidated tax burden, via the application of reduced withholding rates.
- III) Possibility to exempt certain income, usually in the source country, to the extent there is not enough presence in such country of a taxpayer resident in the other jurisdiction.

DTAs usually only cover income and, in some cases, equity taxes. Indirect taxes such as the Value Added Tax (VAT) or municipal taxes such as the turnover tax are generally not considered under these agreements¹.

The investor, in determining whether or not a country is an opportunity for its investments, besides considering the expectation of profit and risks, shall take into account the taxation impact for its investments. For this reason, the DTAs and the tax regimen constitute key factors in the investor's decision making process.

¹ However, within the framework of the Comunidad Andina de Naciones (CAN as for its initial in Spanish), there are Decisions 599 and 600, through which it is intended to harmonize Substantial and Procedural Aspects of Value Added Tax, and selective excise taxes, in the different member countries of the CAN.



Double taxation usually arises from differences in the meaning of concepts such as residency, source of the income; or from limitations in one country to take the taxed paid in other country as tax credit, or to recognize certain foreign income as exempt. As a consequence, two different countries may tax the same income during the same period of time. For solving this, countries establish common principles regarding equality in the income distribution promoting international operations.

In this sense, an indicator of the application of such common principles between countries is the number of DTAs considering that these agreements increase the profit levels for the investor and promote the legal certainty. Thus, net of DTAs are an incentive for FDI. Additionally, DTAs allow countries access to information regarding tax regimen and operations of other countries which facilitates the control on international operations.

The DTA model of Colombia follows characteristics of the Organization for the Economic Co-operation and Development (OECD) model and the United Nations (UN) model.

1.3. Colombia and International Conventions on the Protection of Foreign Investment

Regarding multilateral international agreements related to foreign investments Colombia is party of the International Center for Settlement of Investment Disputes (ICSID) the Multilateral Investment Guarantee Agency (MIGA), and the Overseas Private Investment Corporation (OPIC). Each of these agreements constitutes an important mechanism for the protection of foreign investment.

Each of these agreements constitutes an important instrument in the international investment law system:

- The ICSID, created under the auspices of the World Bank, is an international center specialized in dispute resolution between investors and host states. It should be noted that arbitration or conciliation may be considered as dispute resolution mechanisms as long as there is a treaty into force that allows that possibility.
- MIGA is a multilateral organization that provides protection to foreign investors in member countries against noncommercial risks such as riots and civil wars, exchange transfer restrictions and discriminatory expropriations. The agency aims to provide services for foreign investors who invested in member developing countries. Additionally, MIGA provides information about developing countries, in order to support the investment process from the earlier stages.
- The main objective of OPIC is the promotion of U.S. investment in developing countries. For this purpose, OPIC provides financing and guarantees investment projects, as well as protection against risks, such as political instability and currency transfer restrictions.



1.4. Trade Agreements, Agreements on the Reciprocal Promotion and Protection of Investments, and Double Taxation Agreements Concluded or under Negotiation by Colombia

1.4.1. International Investment Agreements in Force, Signed or in Negotiation

1.4.1.1. In force²

COUNTRY	ENTRY INTO FORCE	KIND OF AGREEMENT
Mexico	In force since 1995. Law 172 of 1994. Approved by decision C-178 of 1995. Decree 2676 of 2011 and amending protocol Law 1457 of 2011. Approved by decision C-051 of 2012.	Free Trade Agreement with an investment chapter.
Chile	In force since May 8, 2009. Law 1189 of 2008. Approved by decision C-031 of 2009.	Free Trade Agreement with an investment chapter.
North Triangle (Guatemala, El Salvador and Honduras)	In force with: Guatemala since November 12, 2009; El Salvador since February 1, 2010, and Honduras since March 27, 2010. Law 1241 of 2008. Approved by decision C-446 of 2009.	Free Trade Agreement with an investment chapter.
EFTA	In force with: Switzerland and Liechtenstein since July 1, 2011. Norway since September 1, 2014. Iceland since October 1, 2014. Law 1372 of 2010. Approved by decision C-941 of 2010.	Free Trade Agreement with an investment chapter.
European Union	In force since August, 2013. Law 1669 of July 16, 2013. Approved by decision C-335 of June 4, 2014.	Free Trade Agreement.
Canada	In force since August 15, 2011. Law 1363 of 2009. Approved by decision C-608 of 2010.	Free Trade Agreement with an investment chapter.
United States	In force since May 15, 2012. Law 1143 of 2007 and Law 1166 of 2007. Approved by decisions C-750 and 751 of 2008.	Free Trade Agreement with an investment chapter.

² It is important to take into account that the agreements with EFTA and European Union do not include an investment chapter as deep as an IIA standard. Nevertheless, considering that such agreements include some provisions regarding investments are listed in this table.



Spain	In force since September 22, 2007. Law 1069 of 2006. Approved by decision C-309 of 2007.	Bilateral Investment Treaty.
Switzerland	In force since October 9, 2009. Law 1198 of 2008. Approved by decision C-150 of 2009.	Bilateral Investment Treaty.
Peru	In force since December 30, 2010. Law 1342 of 2009. Approved by decision C-377 of 2010.	Bilateral Investment Treaty.
China	In force since July 2, 2012. Law 1462 of 2011. Approved by decision C-199 of 2012.	Bilateral Investment Treaty.
India	In force since July 3, 2012. Law 1449 of 2011. Approved by decision C-123 of 2012.	Bilateral Investment Treaty.
United Kingdom and North Ireland	In force since October 10, 2014. Law 1464 of 2011. Approved by decision C-169 of 2012.	Bilateral Investment Treaty.
Japan	In force since September 11, 2015. Law 1720 of 2014. Approved by decision C - 286 of 2015.	Bilateral Investment Treaty.
South Korea	In force since July 15, 2016. Law 1747 of 2014. Decision C-184 of 2016.	Free Trade Agreement with an investment chapter.
Costa Rica	In force since August 1, 2016. Law 1763 of 2015. Decision C-157 de 2016.	Free Trade Agreement with an investment chapter.
Pacific Alliance (Additional protocol)	In force since May 1, 2016. Law 1721 of June 27 of 2014. Decision C-620 of 2015.	Commercial Protocol to the Agreement of the Pacific Alliance between Colombia, Chile, Mexico and Peru.



1.4.1.2. Signed

COUNTRY	STATUS	KIND OF AGREEMENT
Panama	Signed on September 20, 2013. Pending of internal approval.	Free Trade Agreement with an investment chapter.
Israel	Signed on September 30, 2013. Pending of internal approval.	Free Trade Agreement with an investment chapter.
France	Signed on July 10, 2014. Pending of internal approval.	Bilateral Investment Treaty.
Singapore	Signed on July 17, 2013. Pending of internal approval.	Bilateral Investment Treaty.
Turkey	Signed on July 28, 2014. Pending of internal approval.	Bilateral Investment Treaty.
Brazil	Signed on October 9, 2015. Pending of internal approval.	Agreement on Cooperation and Facilitation of Investments between Colombia and Brazil.
United Emirates Arab	Signed on November 12, 2017. Pending of internal approval.	Bilateral Investment Treaty.



1.4.1.3. Current IIA Negotiations

Colombia is in negotiations of BIT with:

- Qatar
- Kuwait: this negotiation is already closed
- Renegotiation of Spain
- Investment Chapter with Pacific Alliance and Canada, Australia, New Zealand and Singapore

1.4.2. Double Taxation Agreements in force

In addition to the DTAs listed below, Colombia has signed agreements to avoid double taxation regarding income tax and equity tax in the transport and/or maritime navigation or air transportation with Germany, Argentina, Brazil, Chile, United States, France, Italy, Panama, Turkey and Venezuela.

DTA	STATUS	KIND OF AGREEMENT
Andean Community of Nations (Peru, Ecuador and Bolivia)	In force	Decision 578 of the Commission of Andean Community
DTA with Spain	In force since October 23, 2008. Law 1082 of 2006 Constitutionality ruling C-383 of 2008.	Double Taxation Agreement
DTA with Chile	In force since December 22, 2009. Law 1261 of 2008 Constitutionality ruling C-577 of 2009.	Double Taxation Agreement
DTA with Switzerland	In force since January 1, 2012. Law 1344 of 2009 Constitutionality ruling C-460 of 2010.	Double Taxation Agreement
DTA with Canada	Law 1459 of 2011. In force since June 12, 2012. Constitutionality ruling C-295 of 2012.	Double Taxation Agreement
DTA with Mexico	In force since August 1, 2013. Law 1568 of 2012 Constitutionality ruling C-221 of 2013.	Double Taxation Agreement
DTA with South Korea	In force since July 3, 2014. Law 1667 of 2013 Constitutionality ruling C-260 of 2014.	Double Taxation Agreement
DTA with Portugal	In force since January 30, 2015. Law 1693 of 2013 Constitutionality ruling C-667 of 2014. Signed	Double Taxation Agreement
India	In force since July 7, 2014. Law 1668 of 2013. Constitutionality ruling C-238 of 2014.	Double Taxation Agreement



DTA with the Czech Republic	In force since January 30, 2015. Law 1690 of 2013 and decision C-049/15	Double Taxation Agreement
France	Signed on June 25, 2015. Pending of internal procedures for its approval.	Double Taxation Agreement
United Kingdom	Signed on November 2, 2016. Pending of internal procedures for its approval.	Double Taxation Agreement
United Arab Emirates	Signed on November 12, 2017. Pending of internal procedures for its approval	Double Taxation Agreement
Italy	Signed on January 26, 2018. Pending of internal procedures for its approval.	Double Taxation Agreement

Colombia has also entered into Tax Information Exchange Agreements (TIEA). Colombia is part of the OECD's Convention on Mutual Administrative Assistance in Tax Matters, which currently has approximately 108 jurisdictions as participants. In addition, Colombia has a TIEA with the United States, and has negotiated some TIEAs with other jurisdictions (such as Curacao and Barbados); however, such agreements are still in the approval process. In June 2017, Colombia entered into the multilateral instrument to prevent the erosion of the tax bases and the transfer of benefits promoted by the OECD (hereinafter "MLI"), which will modify the majority of the ADTs entered into by Colombia, establishing more demanding requirements to be able to access the benefits provided in these agreements.

1.4.2.1. Current ADT negotiations

Currently Colombia is in negotiations of DTA with:

- Belgium
- United States
- Panama
- Germany
- Japan
- China
- Hungary





LEGAL GUIDE

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CHAPTER

2

**FOREIGN
EXCHANGE
REGIME**



FOREIGN EXCHANGE REGIME

Five things an investor should know about the foreign exchange regime:

1

There are no restrictions for currency negotiation and there is a flexible exchange regime. Colombian foreign exchange regime has determined a serie of reporting procedures and obligations for determined exchange operations, with the popuose of having statistics regarding the entrance and outcome of foreign currencies to the country.

2

The following are considered mandatory operations to be channeled through the foreign exchange market:

- Foreign investment in Colombia and Colombian investment abroad
- Imports of goods
- Exports of goods
- Foreign loans (active and passive)
- Endorsements and warranty bonds in foreign currency
- Derivatives operations

3

Obligations resulting from transactions subject to registration may not be offset with each other or with any other type of obligations.

4

The registration of foreign investment at the Central Bank grants the holder, among others, the right to remit abroad, the amount resulting from the sale or liquidation of them as well as the right to reinvest.

5

Colombian residents may obtain loans in foreign currency from nonresidents or foreign exchange intermediaries and also may grant loans to any nonresident. Foreign loans may be agreed, disbursed and paid in local currency.



Colombia has a foreign exchange regime regulated by the Colombian Central Bank. Compliance to this regime is jointly supervised by the Superintendence of Companies and the Colombian Tax and Customs Authority (DIAN), depending on the nature of the operation, both with the power of imposition of penalties.

Foreign exchange regime is applicable to both residents in the country as well as those who do not reside in Colombia but carry out foreign exchange operations. The foreign exchange regimen is comprised by all of the currencies that enter and outcome the country, and is divided in two markets (I) foreign exchange market and (II) the non-regulated market or free market.

2.1. Foreign Exchange Market

The foreign exchange market consists of all foreign currencies or foreign exchange transactions that must be channeled through authorized foreign exchange intermediaries, or compensation accounts. Additionally, the currencies that are not mandatory to be channeled through the foreign exchange market, but are voluntarily channeled through it, are also considered part of the foreign exchange market.

All the operations that are executed through the Foreign Exchange Market have to be registered into the Central Bank, with the filing of the minimum required information (Foreign Exchange Declaration), either through an intermediary of the exchange market or by submitting directly this information to the Central Bank, if channeled through a compensation account. The requirement of registration allows the Central Bank to constantly monitor the balance of payments for statistical purposes.

Pursuant to foreign exchange regime, the following transactions must be mandatorily channeled through the foreign exchange market:

- Foreign investments in Colombia and Colombian investments abroad
- Import of goods
- Export of goods
- Foreign loans (active and passive)
- Endorsements and warranty bonds in foreign currency
- Derivatives transactions

2.2. Nonregulated Market or Free Market

The free market consists of all other operations that do not have the obligation to be channeled through the foreign exchange market, such as payments for services supply in foreign currency and transfer of foreign currency for other types of transactions, such as donations.

These types of transactions do not have to be reported to the Colombian Central Bank.

Nonetheless, they could be voluntarily channeled through the foreign exchange market reporting to the intermediary of the exchange market or the Central Bank directly, depending on the way it is channeled, the minimum required information of the services, transfers and other concepts operation (Foreign Exchange Declaration).



2.3. International Investment

International investments comprise: (i) the investment of resources from abroad in the country (foreign investments in Colombia) and (ii) investment of Colombian resources abroad (Colombian investments abroad).

In order to qualify an operation as an international investment, it shall be taken into account:

- The date of the investment
- Verify whether the investor is or not a Colombian resident
- That the assets established in the law as permitted destinations for foreign investment are acquired by virtue of an act, contract or lawful operation. Verify that the resources are effectively addressed to an investment

2.3.1 Foreign Investment in Colombia

Foreign investment in Colombia comprises foreign direct investments and portfolio investments.

Foreign investors in Colombia and Colombian investors abroad shall register their investments into the Central Bank. In the case of capital foreign investors, it is necessary that the investor assigns a representative in the country.

The registration of a capital foreign investment in the Central Bank is automatic. That means that such an investment shall be automatically registered with the submission of the minimum required information for this operation (Foreign Exchange Declaration).

For the registration of the other investment modalities, the submission of the form N° 11 “Declaración de Registro de Inversiones Internacionales”, to the Central Bank, at is required at anytime. It is important to mention that documentation supporting the operation is not required.

If the initial foreign direct investment in Colombia is derived from corporate reorganization (mergers and demerger procedures) the form N°11A “Declaración de Registro de Inversiones Internacionales por Reorganización Empresarial” shall be submitted to the Central Bank at any moment at any time.

2.3.1.1 Foreign Direct Investment

The following are considered types of direct foreign investment:

- A company’s capital contribution by means of the acquisition of shares, quotas in limited liability companies, or convertible bonds.
- The acquisition of shares registered in the stock market (RNVE per its acronym in Spanish) when acquired with intention to remain.
- The acquisition of rights in trust agreements with trust companies under the inspection and surveillance of the Colombian Financial Superintendence.
- The acquisition of real estate, directly or by means of trust agreements, or securities issued in connection with a real state securitization or real estate investments trusts (REITs).
- The contributions to joint ventures and concessions, among other type of collaboration agreements, administration services, licensing or agreements that generate technology transfer, as long as they do not represent a contribution to a company’s capital and the income obtained from such investment is related to the company’s profit.



- Assigned Capital or Supplementary investment to the assigned capital of the branches.
- Investment in local private investment funds.

Direct foreign investment could be made by virtue of any act, operation or lawful contract

2.3.1.1.1 Substitution of Direct Foreign Investment

Substitution of foreign investment can be understood as a change of ownership of the foreign investment to other foreign investors, as well as the change in the destination or the company receptor of the investment. This procedure will only apply when there is a previous registration of the investment.

The substitution of foreign investment must be registered by both the grantor and the new investor, their agents or the Legal representative of the Company before the International Exchange Department of the Colombian Central Bank, by filing simultaneously the Form N.º11 “Declaración de registro de Inversiones Internacionales” and the Form N.º 12 “Declaración de Registro de Cancelación”, within the following twelve (12) months of the relevant transaction for the operations carried out before July 26th 2017 and six (6) months for those made after said date. These terms will be counted from the date of the operation.

If the substitution is derived from a reorganization process, the filing before the Central Bank, has to be done presenting Form N.º 11A “Declaración de Registro de Inversiones Internacionales por Reorganización Empresarial”, within the following twelve (12) months of the relevant transaction for the operations carried out before July 26th 2017 and within the following six (6) months for operations carried out after July 26th 2017 .

2.3.1.1.1.2. Terms

OPERATION	FORM	TIMING
Substitution due to a change of the investor or in the investment	Form No. 11 and No. 12	<ul style="list-style-type: none">• Twelve (12) months for substitutions made before July 26, 2017 and
Substitution derived from a reorganization process	Form 11A	<ul style="list-style-type: none">• Six (6) months for those made as of the aforementioned date.



2.3.1.1.2. Cancellation of Direct Foreign Investment

The cancellation, whether total or partial, of a foreign investment must be reported by the investor or his agent to the International Exchange Department of the Colombian Central Bank through the submission of the form N° 12 “Declaración de Registro de Cancelación de Inversiones Internacionales”, within the next twelve (12) for the operations carried out before July 26th 2017 and within the following six (6) months for operations carried out after July 26th 2017 .

If the cancellation of the foreign direct investment is derived from a corporate re-organization (mergers and spin-off) the form N° 11A “Declaración de Registro de Inversiones Internacionales por Reorganización Empresarial” shall be submitted to the Central Bank. The period for submitting this form is twelve (12) months after for the operations carried out before July 26th 2017 and within the following six (6) months for operations carried out after July 26th 2017 .

Please find listed below the reasons for the cancellation of international investment in Colombia:z

- Liquidation of the Colombian company subject to the foreign investment.
- Capital reduction, that derives in the reduction of the number of shares, or that of a branch.
- Re-acquisition of shares or quotas.
- When the foreign investor becomes a resident.
- Liquidation or death of the investor.
- Total or partial termination of the agreement without any participation in the equity.
- The termination of the fiduciary business
- Total or partial liquidation of the private investment fund
- Sell the investment to a resident (transfer or allocation)
- Sell the real estate property
- Corporate reorganization (mergers or spin-off)

2.3.1.1.2.1 Registration of a cancelation of FDI in Colombia

OPERATION	FORM	TIME
Cancellation	Form No. 12	• Twelve (12) months for cancelations made before July 26, 2017 and • Six (6) months for those made after the 26th of July 2017
Cancellation derived from a reorganization process	Form No. 11A	



2.3.1.1.3. Foreign Investment Registration Update

Companies subject to foreign investment, including branches of foreign companies, which belong to the general exchange regime, and who are not obliged to transmit their annual financial statements to the Superintendence of Companies, must submit (transmit electronically) Form No. 15 to the Foreign Exchange Department of the Colombian Central Bank after the completion date of the ordinary general meeting of shareholders and no later than:

NIT (Tax ID) ending in even number (without taking into account the verification digit)	Before July 15
NIT ending in odd number (without taking into account the verification digit)	Before August 15

This term may not be extended.

The obligation of submitting Form N° 15 shall exist until the last fiscal year in which the enterprise maintains the condition of host of the foreign investment.

Form No. 15 should not be presented as of fiscal year 2017, when: i) in the fiscal year to report no changes have been presented in the foreign investment; or ii) the companies receiving the investment are in the process of voluntary or judicial liquidation, even though if they are obliged to file financial information to the Superintendence of Companies.

The obligation to file Form No. 15 will be maintained until the last fiscal year in which the company maintains the status of recipient of foreign investment.

Additionally, companies that have their shares registered in the stock market should send, electronically, after the completion date of the ordinary general meeting of shareholders, the "Report for equity compensation of companies with shares registered in the stock market." within the same periods indicated above.

Branches of foreign companies subject to the special exchange regime must submit to the Foreign Exchange Department of the Colombian Central Bank, Form No. 13 "Registration of supplementary investment to the assigned capital and update of equity accounts of branches of the special exchange regime." For these branches, the term to request the registration and to report the update of the equity accounts will be six months as of December 31 of the corresponding fiscal year.



2.3.1.1.3.1. Registration of updates of FDI in Colombia

TYPE OF INVESTMENT	FORM	TERM
Enterprises and branches of the general exchange regime.	Form No. 15	For foreign capital investment receiving companies whose NIT numbers end in an even number (without taking into account the verification digit), the term will expire on July 15 of each annuity.
Branches of foreign companies under the special exchange regime.	Form No. 13	For companies receiving foreign capital investment whose NIT numbers end in an odd number (without taking into account the verification digit), the term will expire on August 15 of each annuity.
Companies with shares registered in a stock market on June 30, of the next year.	Report of conciliation of companies with shares registered in a stock market.	<ol style="list-style-type: none">1. For foreign capital investment receiving companies whose NIT numbers end in an even number (without taking into account the verification digit), the term will expire on July 15 of each annuity.2. For companies receiving foreign capital investment whose NIT numbers end in an odd number (without taking into account the verification digit), the term will expire on August 15 of each annuity.

2.3.1.1.4. Advances for Future Capitalizations

Advances for future capitalizations, carried out by non residents in Colombian companies, are considered as foreign loans for foreign exchange purposes, that must be informed with the Form No. 6 "foreign loan information granted to residents" before an Exchange Market Intermediary, prior to or simultaneously with the disbursement, with the purpose 43 "Advances for future capitalization. Disbursement and payment of these operations will be subject to the rules of foreign loans established in the foreign exchange regime.

In the event the nonresident capitalizes the resources, a Form No. 11 must be presented before the Central Bank at any moment.

Advances for future capitalizations carried out before July 26th 2017 are to be capitalized within the twelve months following the channeling of the advance, and reported through the modification of the respective Foreign Exchange Declaration.

If the capitalization is not held through, within the term of twelve (12) month, the amounts received shall be reimbursed through an intermediary of the exchange market or through a compensation account of the company, to whom the minimum required information for this operation (Foreign Exchange Declaration) must be submitted, including the exchange number 4565 "Foreign investment not perfected".



2.3.1.2. Portfolio Investment

The foreign exchange regime regulates the registrations relating to the various forms of portfolio investments, defined as those made in securities registered with the National Securities and Issuers Registry ("RNVE" per its acronym in Spanish), the participation in collective portfolios, as well as in securities listed in the securities quotation systems abroad.

As well as for Foreign Direct Investments, the portfolio investor shall require a representative in Colombia.

The foreign exchange establishes that only can be proxies of the investment for foreign portfolio: i) the stockbroker companies, ii) trust companies or investment management companies controlled and examined by the Superintendence of Finance of Colombia.

The registration for foreign capital investment made by the currency channeling will be carried out automatically with the provision of the minimum data needed for the foreign exchange operations regarding international investments (Exchange Declaration).

The registration of foreign capital portfolio investment without currency channeling shall be understood as made with the account entry in the centralized local securities deposit, in the cases established in the exchange regimen.

2.3.1.3. Special Foreign Exchange Regime

There is a special foreign exchange regime applicable to branches of foreign companies that engage in activities related to the exploration and exploitation of oil, natural gas, carbon, ferronickel and uranium; or that provide services exclusively to the oil and gas sector.

Branches of foreign companies in the sectors above described, belong to the special regime considering the activities established under its corporate purposes. In any case, the branches of foreign companies aimed at the supply of services related to hydrocarbons only belong to the special regime once the "Certificado de dedicación exclusiva" has been issued by the Ministry of Mining and Energy which shall be renewed each year.

The special foreign exchange regime provides:

- To receive outside the country, directly by the main office, the profits of the sales
- Celebrate and make payments and contracts in foreign currency in the country provided that the money is a consequence of their operations
- The possibility to receive funds from their main office as supplementary investment of the assigned capital, as well as in-kind contributions as supplementary investment of the assigned capital

Under this special regime the branch shall not be able to complete operations in the exchange market, except in the following cases:

- a. When the branch is liquidated
- b. In the case of local sales of oil, gas or services inherent to the hydrocarbon sector
- c. Refund the money required for expenses in local currency



These operations as well as the refund of money aimed at the assigned capital or supplementary capital of branches of foreign companies in the sector of hydrocarbons and mining of the special exchange regime, shall be completed through an intermediary of the exchange market, to whom the minimum required information for this operation (Foreign Exchange Declaration) must be submitted.

Branches of foreign companies that although being admitted and having current operations within the special exchange regime, want to resign to the application of such regime, must address a written communication to the Foreign Exchange Department of the Colombian Central Bank expressing the desire to leave the special exchange regime. Once the letter has been delivered to the Colombian Central Bank, such branch office will not be admitted into the special exchange regime for the following ten (10) years and therefore, such branch must operate under the general exchange regime.

2.3.1.4. Obligations of Foreign Investors – Foreign Investment in Colombia

The foreign direct investment dully registered at the Colombian Central Bank grants the following exchange rights to the investor:

- Transfer of returns of the investments
- Reinvestment of the returns of the investment
- Transfer of the amounts received as consequence of (I) sale of the investment, (II) liquidation of the investment or (III) the reduction of the capital of the company
- Capitalization of amounts with exchange remittance rights product of obligations derived from the investment¹

2.3.2. Investments of Colombian Capital Abroad

Colombian investments abroad are defined as shares, quotas, rights or other participations in the capital of companies, branches or any type of company, in any proportion, located outside of Colombia, acquired by a resident by virtue of an act, contract or legal operation.

In general, to register the investments of Colombian residents abroad with the Colombian Central Bank, the investor must undertake the remittance of funds through an intermediary of the exchange market, to whom the minimum required information for this operation (Foreign Exchange Declaration) must be submitted by him/her to the Central Bank, or the title holder of the compensation account which receives the funds can report it on its monthly form.

In the specific case of investment through contributions in-kind or funds of compulsory repatriation through the foreign exchange market, the investor must file with the Colombian Central Bank a Form No. 11 with a certificate of the corporation's legal representative indicating the information associated to the investment, at any time.

2.3.2.1. Advances for Future Capitalizations

Advances for future capitalizations, carried out by residents in foreign companies, constitute foreign loans for foreign exchange purposes that must be informed with the Form No. 7 "foreign loan information granted to nonresidents" before the Exchange Market Intermediary, prior to or simultaneously with the disbursement, with the purpose 44 "Advances for future capitalizations". Sums of money derived from this operation will be subject to the rules applicable to foreign loans.

¹ It comprises the amounts derived from operations that compulsory must be completed through the exchange market as well as royalties derived from contracts dully registered.



In case the resources of the active foreign debt are fully or partially capitalized, the registration of the Colombian investment must be requested.

In the event that the resources are not fully or partially capitalized, the income of the currencies must be made through the foreign exchange market with the declaration of change for external indebtedness.

2.3.2.2 Substitution of Colombian Investment Abroad

Replacement of Colombian investment abroad means the change of holders by other resident investors and/or the change in the receiving company (company, branch or any type of company). The substitution of the Colombian direct investment abroad may conduct to a total or partial cancellation of the initial registration and the issuing of a new registration. For this reason, the investor shall submit simultaneously Form N°12 “Declaración de Registro de Cancelación de Inversiones Internacionales” and Form N° 11 “Declaración de Registro de Inversiones Internacionales”, to the Central Bank.

The substitutions of Colombian investments abroad, derived from corporate re-organization processes, shall be registered under form N°11A “Declaración de Registro de Inversiones Internacionales por Reorganización Empresarial”.

The time for submitting the registration of the substitution of the Colombian investment is twelve (12) months after the date of the respective operation for substitutions carried out before July 26, 2017 and within the following six (6) months for operations carried out after July 26, 2017.

In the case of substitution of the holders of the investment, the registration must be submitted by the assignor investor and the assignee and his representatives.

In the case of substitution of a financial investor registered by other national investor, the substitution must be reported to the International Exchange Department of the Central Bank by the assignee through the submission of the form “Single Registration of Financial Investment and foreign assets”². You must submit this form within one month after you have performed the substitution.

2.3.2.2.1. Substitution of Colombian Direct Investment Abroad

OPERATION	FORM NO.	TIME
Substitution	Form No.12 and 11	<ul style="list-style-type: none"> • Twelve (12) months for substitutions made before July 26, 2017 and • Six (6) months for those made after the July 26
Substitution derived from reorganizations	Form No.11A	
Substitution to another national investor	Inform the Department of International Exchange, of the Bank of the Republic, with the presentation of the form “Single Declaration of Registration of Substitution of Financial Investment and Abroad Assets ”	At the latest within the month following the substitution

² Article 7.3.5.2 of Rule DCIN 83 from the Board of Directors of Central Bank.



2.3.2.3. Cancellation of Colombian Investment Abroad

The cancellation, in whole or in part, of Colombian investment abroad must be reported by the investor or his agent to the International Exchange Department of the Colombian Central Bank through the submission of the Form N°12 “Declaración de Registro de Cancelación de Inversiones Internacionales”, within the twelve (12) months following the cancellation of the investment for operations carried out before July 26, 2017 and within the following six (6) months for operations carried out after July 26, 2017.

If the cancellation of the Colombian investment abroad is derived from corporate re-organizational processes, form N°11A, shall be submitted within the same period of time provided above.

2.3.2.4. Cancellation of Colombian Direct Investment Abroad

OPERATION	FORM NO.	TIME
Cancellation	Form No. 12	<ul style="list-style-type: none">• Twelve (12) months for cancellations made before July 26, 2017 and
Cancellation derived from a reorganization process	Form No. 11A	<ul style="list-style-type: none">• Six (6) months for those made after the 26th of July

2.3.2.5. Non performed Colombian Investment Abroad

When the Colombian investment abroad was not carried out, the Colombian investor shall re-enter to the country the amounts transferred by this concept. For these purposes, the operation has to be channeled through an intermediary of the exchange market, to whom the minimum required information for this operation (Foreign Exchange Declaration) must be submitted, unless the operation is channeled through a compensation account, in which case the Form No. 10 indicating the return and the exchange number 4580 “Inversión colombiana directa en el exterior”.

2.3.2.6. Financial Investment or in Assets Abroad

Colombian residents interested in financial investment or in assets abroad shall complete the amounts for these operations through the exchange market, except when such operations are completed abroad with currencies not subject to the exchange market. The admitted operations are: (i) purchase of securities abroad, (ii) purchase abroad with discount of the total or partial of the amount of private external obligations, external public debt and bonds, and securities of external public debt.

When financial investments and in assets abroad are done with currencies not subject to the exchange market, it will be necessary to register the investments before June 30 of the next year provided that the amount of the investments during the whole year is equal or superior than USD500,000 or its equivalent in a different currency. For this purpose, Form N°11 shall be completed.



2.3.2.7. Infringement of the International Investments Regime

The breach of any of the obligations of the international investments regime, or its extemporaneous fulfillment constitutes an infringement to the international exchange regime and may cause sanctions by the Superintendence of Societies.

2.4. Foreign Loans

Foreign loans are classified in active loans and passive loans. The first of them corresponds to loans granted by non-Colombian residents to Colombian residents and the second of them, to credits granted by residents to nonresidents.

The entrance and exit of foreign currency in connection with foreign indebtedness must be completed through the foreign exchange market and registered before the Central Bank before its disbursement. The breach of this obligation, may be considered as an infringement of the foreign exchange regime, and may cause the imposition of penalties by the Superintendence of Societies or by the Dirección de Impuestos y Aduanas Nacionales (DIAN) in case of indebtedness derived from foreign trade operations.

In cases where some situations impede to the debtors the payment of their obligations, such as fortuitous events of force majeure, inexistence among others, it is necessary to demonstrate such situations to the competent authority.

2.4.1 Loans Granted to Residents (Passive Credits)

Residents and intermediaries of the exchange market may obtain credits in foreign currency from: (i) other intermediaries of the exchange market and (ii) from nonresidents (there are some restrictions in order to grant passive loans by an "individual"). It is also possible for them to obtain other resources in foreign currency through international capital markets. These loans could be stipulated, disbursed and paid in legal or foreign currency, as agreed by the parties.

Foreign loans must be reported to the Colombian Central Bank by means of filing an exchange Form No.6 "Report of foreign debt granted to residents." Additionally, a copy of the relevant loan agreement has to be submitted. Disbursement of the loan may be registered through a Form No.6 "Report of foreign debt granted to residents" if the registration of the loan and the disbursement takes place at the same time.

On the other hand, the exit of foreign currency for the payment of capital or interests of debt must be reported to the Colombian Central Bank by means of filing the minimum required information for this operation (Foreign Exchange Declaration).

For the transmission of the foreign indebtedness report (Form No.6), when the foreign exchange loans have been granted by nonresidents which have not been previously assigned code by the Colombian Central Bank, the resident must, beforehand request the code to the foreign exchange intermediary, who will require the documentation that supports the existence, financial references and compliance of regulations for the prevention of money laundry in the nonresident's country.

Eventually, as a requirement for the disbursement and the channeling of the credits in foreign currency obtained by residents, it will be necessary, previous to each disbursement, a deposit in Central Bank through the intermediary of the exchange market involved in the credit, in the conditions and time provided by Central Bank. In May, 2015, the deposit for external indebtedness is 0%.



2.4.2. Loans Granted to Nonresidents (Active Credits)

The international exchange regime allows Colombian residents and intermediaries of the exchange market, to grant loans in foreign currency to nonresidents without taking into account the term and destination of the currencies. These credits could be stipulated, disbursed and paid in legal or foreign currency, as agreed by the parties.

The loan granted must be reported to the Colombian Central Bank at the same time than the disbursement by filing an exchange Form No.7 "Report of foreign debt granted to nonresidents" upon the remittance of the funds from Colombia. Additionally, a copy of the relevant loan agreement has to be submitted.

Any other movement associated to the credit (such as payment of the capital or interest of the loan) must also be reported to the Colombian Central Bank by submitting the minimum required information for this operation (Foreing Exchange Declaration).

Payments in legal currency must be made from the accounts of the non-resident debtor opened for that purpose in Colombia, to the account of the creditor or to the Exchange Market Intermediary. The foreign exchange declaration must be presented by the creditor to the Exchange Market Intermediary "IMC" within fifteen (15) business days for its transmission before the Central Bank. In cases the creditor is an IMC the foreign exchange declaration have to be submitted directly.

2.4.3 Modifications to the External Indebtedness Report

In cases of modifications to the conditions of a credit granted to residents or by residents, it will be necessary to complete, with an intermediary of the exchange market, a new Form N°6 "Report of external indebtedness granted to residents" or a Form N°7 "Report of foreign debt granted to nonresidents" ticking the box "modification." It will be necessary to include information related with the date of the modification as well as the number of identification of the credit assigned by the intermediary of the exchange market and the respective modifications.

Modifications to the conditions of a credit may be reported within the following fifteen (15) days of the operation; however, it can be done outside this time frame without constituting an infringement to the international exchange regime.

2.5. Import of Goods

Colombian residents must conduct, through the foreign exchange market, the payment of their imports. For these purposes, they must be channeled through an intermediary of the exchange market, to whom the minimum required information for this operation (Foreign Exchange Declaration) must be submitted, unless the operation is channeled through a compensation account, in which case the Form No.10 is sufficient.

Currencies for the payment of the import shall be channeled by the importer and the payment shall be done directly to the creditor, its assignee or to center or persons in charge of operations of international payments and similar, for residents and nonresidents. Residents cannot canalize payment of importations done by others.

It is important to mention that importers may channel through the exchange market, payments of amounts higher or lower to the value of the nationalized merchandise provided that there are justified reasons such as: damaged merchandise, prompt payment and discounts by concept of defects in the merchandise.



In case of situations that impede importers the observance of the obligation of payment abroad, such as fortuitous case or force majeure, inexistence etc., the channeling through the exchange market shall not be required. Without prejudice of the above mentioned, the importer shall keep the documentation supporting such facts in case those are required in the future by the competent authority.

On the other hand, it is important to mention that is possible to: (i) make early payments of imports when the currencies are channeled through the exchange market before the shipment of the merchandise, and (ii) to finance imports after the shipment without the requirement of reporting such operations to the Central Bank as external debt operations.

For the case of credits in foreign currency obtained by importers of the intermediaries of the exchange market or of nonresidents, for the payment of their obligations, it shall be necessary to report such operation to the Central Bank as an external indebtedness.

2.6. Export of Goods

Colombian residents must channel foreign currency received from their exports through the foreign exchange market, including cash received directly from the foreign buyer, within the six months following the date of receipt. This applies to payments of exports that have been executed as well as advanced payments for future exports of goods. Foreign currency payments are considered as an advanced payment of the export when they are channeled through the foreign exchange market before the shipment of the goods.

The export of goods is an operation of mandatory completion through an intermediary of the exchange market, to whom the minimum required information for this operation (Foreign Exchange Declaration) must be submitted, unless the operation is channeled through a compensation account, in which case the Form No.10 is sufficient.

Currencies must be channeled through the foreign exchange regime by the exporter and such currencies may have origin in the debtor, its assignee or to center or persons in charge of operations of international payments and similar, for residents and nonresidents.

In cases where some situations had impeded to exporters the observance of the obligation of reimbursement of currencies (force majeure, fortuitous events, inexistency, etc.) such channeling shall not be mandatory. In any case, it is necessary to have all required documentation.

It is important to mention that exporters may channel through the exchange market, payments of amounts higher or lesser to the value of the nationalized merchandise provided that there are justified reasons such as: damaged merchandise, prompt payment and discounts by concept of defects in the merchandise.

In this kind of operations, the advanced payments before the shipment of the goods are allowed, as well obtaining financing and pre-financing of exportations after the shipment.

Chapter four of this “Legal Guide to Doing Business in Colombia” on customs procedures contains a detailed explanation of the obligations relating to the export of goods.



2.7. Endorsements and warranty bonds in foreign currency

The foreign exchange regime includes endorsements and warranty bonds in foreign currency as operations of mandatory channeling, though the foreign exchange market and, in this sense, such operations must observe the exchange regulations.

2.7.1. Endorsements and warranty bonds granted by Colombian residents

Colombian residents are permitted to grant endorsements and warranties in foreign currencies to back-up any obligations abroad. These operations must be informed to the Colombian Central Bank. Only when the warranty is made effective, it shall be necessary that the resident channel the respective currencies.

It is important to take into account that:

- If the endorsed is a resident and the beneficiary is a non-resident, at the moment of making effective the warranty, the resident must channel the currencies with the exchange declaration in the same form of the principal obligation.
- If the endorsed and the beneficiary are non-residents, at the moment of making effective the warranty, the operation must be channeled through an intermediary of the exchange market, to whom the minimum required information for this operation (Exchange Declaration) must be submitted.

2.7.2. Endorsements and warranty bonds granted by non-residents

Foreign residents are allowed to endorse and guarantee the compliance of obligations related to foreign exchange transactions and domestic transactions.

These guarantees and collaterals must be registered through a foreign exchange intermediary with the Colombian Central Bank prior to the total or partial expiration of the obligation guaranteed. In order to complete the registration, an exchange Form No.8 "Registration of endorsement or warranty in foreign currency" must be filed with a copy of the document of the warranty.

Furthermore, an exchange at the moment of receipt of the disbursement of the amount guaranteed, and/or at the moment of remittance abroad of funds owed to the grantor which have to be channeled through an intermediary of the exchange market, to whom the minimum required information for this operation (Exchange Declaration) must be submitted.

For guarantees issued to support the fulfillment of transactions that must be reported to the Colombian Central Bank (e.g. external indebtedness operations for working capital or financing of imports), the guarantee will be considered informed by the non-resident, with the presentation of the document which evidences the granting of the endorsement or warranty, along with the exchange Form No.6 "External debt granted to residents". The purchase or sale of foreign currency generated by this operation will require the use of an intermediary of the exchange market, to whom the minimum required information for this operation (Exchange Declaration) must be submitted, including the number assigned by the foreign exchange intermediary to the guaranteed debt.



2.7.3. Endorsements and warranties granted and payable in foreign currency by foreign exchange intermediaries

The intermediaries of the exchange market are allowed to endorse obligations derived from operations that should be channeled through the exchange market as well to endorse operations related to: (i) the seriousness of an offer and the fulfillment of Colombian or foreign companies in government procurement or private procedures convened by residents or non-residents, (ii) obligations derived from export of goods or services (other than financial services), (iii) obligations of residents in foreign currency for the purchasing of oil and natural gas of local production to companies with foreign capital with activities of oil and gas exploration and exploitation, (iv) to endorse obligations of residents.

These funds cannot be registered as supplementary investment to the allocated capital of the branch offices of foreign companies subject to the special exchange regime (see item 2.3.6). It must be construed as supplementary investment the operation whereby a parent company transfers funds to a branch office opened in Colombia, which will be part of the branch's equity but not of its capital.

2.8. Derivatives

Transactions related to derivatives have to be completed through the foreign exchange market; therefore, such operations have to be informed and registered before the Colombian Central Bank⁴.

There are two types of authorized derivatives for Colombian residents: (I) financial derivatives that may be granted by foreign exchange intermediaries or by authorized nonresident entities, and (II) derivatives regarding the price of commodities, granted by authorized foreign agents to execute derivatives in a professional manner.

2.8.1. Authorization to Enter into Derivative Transactions

Colombian residents and foreign exchange intermediaries may enter into financial derivative transactions with other foreign exchange intermediaries and agents abroad duly authorized to execute this type of transactions in a professional manner⁵, as long as the operations relate to: (I) interest rates, (II) exchange rates, and (III) stock exchange indexes.

Delivery derivatives (DF) may be executed as long as there is an underlying transaction of a Colombian resident that corresponds to a mandatory channeling operation of the foreign exchange market. Its liquidation will take place with the compliance of the operation.

Financial derivatives or nondelivery (NDF) may be executed with foreign exchange intermediaries in which case its liquidation will be done in COP, or with foreign agents and its liquidation will be done in foreign currency.

The entities subject to the supervision of the Financial Superintendence may enter into credit default swaps with foreign agents authorized to professionally enter into derivative transactions, provided that such operations meet certain conditions which are set forth by foreign exchange regulations.

⁴ Rule DODM-144 of 2008, from the Board of Directors of Central Bank.

⁵ Section 2 of Regulation DODM – 144 of 2008, issued by the Colombian Central Bank specifically provides that foreign entities will be deemed to be professional authorized foreign agents if (a) they are registered with public entities that regulate the future markets of member countries of the Organization for the Economic Cooperation and Development (OECD) or registered with private self-regulated entities, subject to the supervision of such public entities (i.e. the National Futures Association of the United States, which operates under the supervision of the U.S. Commodity Futures Trading Commission (CFTC), and the Financial Services Authority (FSA) of Great Britain). In addition, they must have performed derivative transactions in the immediately preceding year to the date of the proposed transaction for a nominal amount exceeding USD 1 billion.



Branches of foreign companies that are part of the special exchange regime, despite not being able to carry out operations of mandatory channeling through the foreign exchange market, may perform delivery derivatives with foreign exchange intermediaries regarding foreign exchange transactions permitted for them, such as entrance of foreign currency as investment to the allocated capital or supplementary investment to the allocated capital, or the remit of funds resultant from sales or winding up of the branch.

These operations will be exclusively executed by the Colombian branch, therefore, the branch will not be allowed to execute operations in representation of the main office or the main office to celebrate operation in representation of the branch.

2.8.2. Settlement of Derivative Transactions

The method pursuant to which derivative transactions must be settled depends on the parties involved and the specific characteristics of each transaction. The following are some basic guidelines:

- Derivative operations between residents and foreign authorized agents or between intermediaries of the foreign exchange market must be financial derivatives or nondelivery (NDF) COP-currency or currency-currency. The operation shall be done with observance in currencies except in some specific cases⁶.
- Derivative operations between residents and foreign exchange intermediaries with financial derivatives or nondelivery (NDF) COP-currency or currency-currency must be, as a general rule, settled nondelivery and paid in Colombian pesos. The effective compliance of the operation can only be done in the stipulated currency or in Colombian legal tender when related to an underlying transaction of mandatory channeling through the foreign exchange market.
- Derivative transactions between foreign exchange intermediaries must be, as a general rule, settled nondelivery and paid in COP.

2.9. Compensation Accounts

Compensation accounts are savings or checking accounts opened by Colombian residents in foreign financial institutions and registered with the Colombian Central Bank. Incomes and expenditures in compensation accounts may be caused in the payment of obligations derived from exchange operations subject or not to the channeling through the exchange market as well as the observance of obligations derived from internal operations. In any case, it is important to take into account that through these accounts only their holder may conduct operations.

2.9.1. Registration of the Compensation Accounts in the Central Bank

Registration of the compensation accounts in the Central Bank shall be done as follows:

- Directly by the interested person, through the submission of Form N° 10 "registration/report of movements and/or cancellation of compensation accounts".
- At least, within the month following to the moment where the first operation through the exchange market took place or that of the payment of the first operation between residents.

⁶ Number 4 of Rule DODM-144 of 2008, from the Board of Directors of Central Bank.



2.9.2. Obligations Derived from the Registration of a Compensation Account

Once the account is registered, its holder shall inform to the Central Bank on a monthly basis, the operations done during the month immediately previous through Form N°10 which shall be sent by electronic means.

The obligation of informing the movements of the compensation account (i) shall exist until the date of cancellation of the compensation account and (ii) must be done without prejudice of the fact that the account had or not movements. The infringement of this obligation constitutes a violation of the international exchange regime and may be subject to penalties by the DIAN.

Additionally, the holder of the account shall report every three months to the DIAN, the operations which surveillance is made by this entity, done through the same with the submission of "Información Exógena Cambiaria."

The Central bank will proceed with the cancelation of the registry of the compensation account if the account does not have any movement for twelve (12) continuous months.

2.10. Payments in Foreign Currency Between Colombian Residents

As a general rule, except for some very specific cases, payments in foreign currency between residents are forbidden, except for:

- Companies carrying out exploration and extraction of oil, natural gas, carbon, ferronickel and uranium; or engaging exclusively in the provision of services related to the oil and gas sector, which are only permitted to execute payments in foreign currency among themselves with funds resulting from their operation.
- Operations done through compensation account registered in the Central Bank. In this case the compensation accounts have to be owned by both the payer and the recipient.
- Payments expressly authorized by the foreign exchange regime: purchases of goods from free trade warehouses, freight and international transport tickets, personal expenses incurred through international credit cards, premiums for insurance denominated in foreign currency as referred to in Decree 2821 of 1991 and its corresponding regulating norms and for the payment of reinsurance obligations abroad, or to make payments abroad or in the country of the value of the claims that insurance companies established in Colombia must cover in foreign currency, in accordance with the National Government in accordance with the provisions of article 14 of Law 9 of 1991.



2.11 Regulatory Framework

REGULATION	SUBJECT
Law 9 of 1991 (modified)	Law on foreign exchange
Decree 1068 of 2015 and Decree 119 of 2017	Issues foreign exchange regulations
External Resolution 8 of 2000 (modified)	Foreign exchange regime
Regulatory Circular DCIN 83 (modified)	Foreign exchange market regulation
Regulatory Circular DODM 144 (modified)	Derivatives operations
Decree 1746 of 1991	Penalty regime applicable to the Superintendence of Companies for foreign exchange operations supervised by such entity
Decree 2245 of 2011	Penalty regime applicable to the Colombian Tax Authorities for foreign exchange operations supervised by such entity
Decree 119 of 2017	Aspects related to international investments



LEGAL **GUIDE**

TO DO BUSINESS IN COLOMBIA

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CHAPTER

3

**CORPORATE
REGULATIONS**





CORPORATE REGULATIONS

Five things an investor should know about corporate regulations in Colombia:

1

Corporate Law in Colombia enjoys great stability by means of stable legislation that has progressed with time.

2

Investors who wish to engage in permanent business in Colombia must, as a general rule, channel their investments through a legal vehicle, such as a subsidiary or a branch of a foreign company.

3

Colombias' commercial law is flexible and modern with regard to subsidiaries, and it allows the creation of sole-shareholder investment vehicles, whereby the liability of the sole shareholder is limited to the amount of the corresponding contribution.

4

In order to carry out businesses in Colombia, foreign investors do not need a local partner or investor. With few exceptions, the entire equity participation of a legal entity can be foreign-owned and there are no legal restrictions on its subsequent repatriation.

5

The incorporation of a legal vehicle is, in general terms, simple and expeditious, and does not require prior government authorization.



In Colombia, constitutional principles such as the right of association, the right to equality, and the protection of free enterprise and private initiative, enable the creation of entities that receive local and foreign investments. This chapter summarizes some relevant legal aspects about the most commonly used types of legal entities in Colombia.

3.1 Common Legal Vehicles to Carry Out Permanent Activities in Colombia

The most frequently used vehicles to undertake permanent activities in Colombia are commercial companies and foreign company branches.

The most frequently used commercial companies to channel investments in Colombia are: (i) simplified stock company (S.A.S. by its acronym in Spanish); (ii) limited liability company; and (iii) corporation (S.A. by its acronym in Spanish). Its main differences are explained in this chapter.

In the last years, the S.A.S. has become the legal vehicle of choice for the business community, particularly because of its flexibility in terms of the incorporation process, administration and the ample freedom its shareholders have to establish the terms and conditions for its functioning and internal structure.

Branches are on-going concerns opened in Colombia by a foreign company for the development of its corporate purpose. This is the reason why they do not have a legal personality different from that of its main office, which is equivalent to say that the Branch and the main office are the same legal entity and, therefore, the branch does not have any legal capacity superior or different from that of its main office.

The Commercial Code establishes that in order for a foreign company to undertake permanent activities in Colombia, it must establish a branch with domicile in the national territory. The permanent activity concept which is different from the notion of permanent establishment for tax purposes) includes the following activities which have been listed in a non-exhaustive manner, as follows:

1. To open a commercial establishments and/or business offices in Colombia, even if these only provide advisory services
2. Participate as a contractor in the performance of works or in the provision of services
3. Participate in any form or activities aimed at the management, use or investment of funds from private savings
4. To devote itself to the extractive industry in any of its branches or services
5. Obtain from the Colombian Government a concession or that the concession has been assigned to any title, or that in any way participates in the exploitation of it
6. The performance of its associates assemblies, boards of directors, management or administration in the national territory

For these purposes, in addition to taking into account the aforementioned activities, it is important to note that Colombian legislation does not provide for a specific criteria nor a term of duration in order to determine whether an activity is permanent or not, and therefore its permanence will depend on the particular circumstances and of the development of the activity in Colombia, such as: the nature or scope of the activity, the infrastructure required in the country for its performance, its regularity, the recruitment of personnel in Colombia, among others.



3.1.1 Document of Incorporation

Colombian commercial companies are incorporated by means of a public deed formalized before a notary public or a notarized private document, depending on the vehicle chosen by the investor to carry out its investment in Colombia. Branches will always require their registration through a public deed.

The comparative table at the end of this chapter indicates the way in which each type of legal vehicle is incorporated as well as its requirements.

3.1.2 Commercial Registration

Commercial corporations and branches must register in the commercial registry kept by the corresponding Chamber of Commerce of the city where is to be based.

To register the company, the corporation's bylaws or for the branches the public deed, have to be submitted as well as other documents that the Chamber of Commerce may request, such as the letters of acceptance of the persons appointed as managers and statutory auditor (in the event the company requires one). The Chamber of Commerce also processes the form that is issued for the application/registration in the National Tax and Customs Office (DIAN per its acronym in Spanish) in which the provisional registration is requested, for the "National Tax Registry" (RUT per its acronym in Spanish). This form contains the general data of the taxpayer, as well as its tax and customs responsibilities. Additionally, in order to obtain the company's registration, the corresponding fees and taxes must be paid before the Chamber of Commerce, following the approximated cost described in this chapter.

3.1.3 Appointments

The appointment of directors, legal representatives, agents and statutory auditors, among others, must be registered before the commercial registry kept by the Chamber of Commerce of its domicile. For such purposes, the document deciding the appointment must be filed (in the case of general agents designated for a branch, the document has to be issued by the main office and has to be dully apostilled or legalized before the competent authority), with the letter of acceptance and a copy of the appointed person's identification document.

The managers of the company may be foreigners not domiciled in Colombia. The statutory auditors must be Colombian public accountants.

3.1.4 Registration under the National Tax Registry (RUT in Spanish)

The tax ID shall be obtained before the Chambers of Commerce, during the incorporation procedure, prior to the performance of any commercial activity, or it can be obtained directly with the tax authority (DIAN) once the company has been created and registered in the Chamber of Commerce.

Whenever said procedure is undertaken directly before DIAN, an appointment has to be requested and presented before this entity, with a copy of the identification document of the person who will be filing the request before the DIAN, for which the exhibition of the original identification card will be required. If the person who files the request is an attorney, a copy of the power of attorney must also be presented and the original copy must be exhibited as well. If the power of attorney is granted for a period that exceeds six (6) months, a certificate of its state of being in force is also requested by the authorities.



Once the corresponding RUT has been obtained, the company will receive the Tax Identification Number (NIT per its acronym in Spanish), which will have to be updated before the corresponding Chamber of Commerce.

It is important to bear in mind that the legal representative of the company or branch, as well as their substitutes, must have a Tax Identification Number (NIT) of their own and an electronic signature, regardless of whether or not they are resident. The foregoing does not imply any type of tax liability in Colombia per se, but rather seeks to demonstrate that the individual who is represented by the company has the capacity to comply with formal obligations and file tax returns on behalf of the company being represented.

3.1.5 Power of Attorney and Other Documents Issued Abroad

If the prospective partners or shareholders (or the legal representative of the main office) cannot be in the country in order to attend the incorporation procedures for the company or branch, they must grant a duly legalized written power of attorney (the person who will be appointed by the power of attorney, does not have to be a legal attorney). If the investor country is signatory to The Hague Convention, the documents issue outside the country, which have to be notarized and legalized, may be apostilled. If the country is not a part of The Hague Convention, then the document will have to be legalized before the Colombian consulate where the consular office.

For the incorporation of a company in Colombia, the following documents are required:

- 1.** A document certifying the existence and validity of the main office (if it is a company who is going to act as shareholder), issued in the corresponding country of origin.
- 2.** The documents that evidence that whoever is acting as authorized representative and signatory as shareholder, has the powers to do so.

For the registration of a branch in Colombia, the following documents are required in order to be included in the public deed:

- 1.** The incorporation documents and the bylaws of the main office
- 2.** The documents that provide evidence of the existence and validity of the main office issued in the country of origin, by the corresponding authority
- 3.** The documents that evidence that whoever is acting on behalf of the main office, has the power to do so
- 4.** The resolution in which the decision of opening a branch in Colombia, which has to be issued by the corresponding organ of the main office, has to include at least:
 - The name of the branch (which has to be related to the main office, following the criteria of the Superintendence of Companies)
 - The corporate purpose to be developed in Colombia
 - The assigned capital and funds originated in other sources, if there is
 - The domicile of the branch
 - The term of duration in the country and the grounds for termination
 - The appointment of a general agents, with one or more alternates, to represent the branch in the performance of the business in Colombia
 - The appointment of a statutory auditor, who must be a Colombian accountant

Such documents shall be apostilled or otherwise legalized.



Documents issued in a language different than Spanish must be translated by an official translator duly authorized in Colombia and whose signature is legalized by the Ministry of Foreign Affairs.¹

3.1.6. Payment of Capital and Registration of the Foreign Investment

By general rule, Colombian legislation does not require a minimum capital contribution to incorporate commercial companies nor for the registry of a branch. The capital contribution is set by the shareholders or partners, with regards to the activities that the company plans to carry out in Colombia.

The contribution regime (cash, in kind and work) for commercial companies is quite flexible and it allows great diversity for shareholders and partners, provided that the assets to be contributed are convertible into monetary value.

Depending on the legal nature of the company to be incorporated, there are rules applicable to the time of payment of the company's capital.

- For branches and limited liability companies, the capital must be paid at the time of its incorporation
- For corporations, at least one third of the value of each stock paid at the time of incorporation and 50% of the paid in capital, have to be paid. The outstanding placed capital has to be entirely paid within a year
- With respect to the simplified stock companies S.A.S., there are no capital ratios that determine the proportion in which shares have to be paid at its incorporation, yet the placed capital must be paid within a maximum period of two (2) years

Foreign currency entering the country on behalf of nonresidents, which is destined to capital contributions of a company or a branch, must be registered as foreign investment with the Colombian Central Bank, by submitting through intermediaries of the exchange market ("IMC" by its acronym in Spanish) duly authorized in Colombia for that purpose, the required information for the operation ("Declaración de Cambio") submission of the minimum required information will be sufficient to obtain the automatic registry of the foreign investment.

The transaction of funds from the main office can be channeled as a capital supplementary investment (ISCA per its acronym in Spanish) which is a direct foreign investment, and has to be registered to the Central Bank.

For more detail, please consult the Foreign Exchange Chapter of the Legal Guide.

3.1.7. Operations and Bylaws Amendments

As a general rule, Colombian companies and branches do not require permissions to operate in Colombia. However, there are exceptions for companies incorporated to carry out certain activities which can be of national interest such as: financial activities, stock brokerage activities, insurance services, provision of armed private security and surveillance services or any other activity involving the management, and investment of funds obtained from the public. These companies will require prior authorization from the competent administrative authorities to be incorporated and to operate in Colombia.

As for the bylaws amendments, which must always be approved by the governing body of the company, the general rule is that an authorization from the state authorities is not required, however there are some exceptions such as:

⁹. Article 260 of the Civil Procedure Code.



- Amendments to bylaws associated to mergers or spin-offs may require the prior authorization of the Superintendence of Companies, provided certain conditions are met, or of the corresponding supervisory entity
- On certain cases which imply an economic integration, the previous authorization or notice to the Superintendence of Industry and Commerce (antitrust authority) is required
- In some cases of voluntary wind up the prior approval of the inventory by the Superintendence of Companies is required

Bylaws amendments for companies incorporated by means of a private document, such as S.A.S. companies, are also carried out by means of private document. On the other hand, bylaws amendments of companies incorporated through public deeds must also be formalized through a public deed. Under no circumstance an amendment involving the increase of capital as a result of an asset contribution that requires to be transferred by means of a public deed may be done through a private document.

The amendments of the incorporation documents of the branches have to be legalized, as they come from outside the country, and formalized in the notary of the domicile of the branch, and registered before the Chamber of Commerce.

3.1.8. Regulation of Parent Companies, Subordinate Companies and Business Groups

A company is a subordinate or controlled when its decision-making authority is subject to the will of one or more person(s), whether individuals or legal, the latter being its parent or controlling company. This control may be economic, political or commercial and it may be exercised through a majority or controlling interest in the corporate capital of the subordinate company, or through the execution of a contract or other instrument that enables a party to exercise dominant influence over the administrative bodies of the controlled company, among others.

If the parent company exercises direct control over the subordinate company, the latter is considered an affiliate; if on the contrary, the parent company exercises control with assistance of the subordinate company or through it, that is, indirectly, called a subsidiary. In this regard, it is important to highlight the following:

- The law recognizes that an entity may exercise control over another entity without any capital participation in it
- Likewise, it is recognized that corporate control can be exercised by individuals or non-corporate legal entities. Nonetheless, the controlled company may only have a corporate nature

Likewise, it is recognized that corporate control can be exercised by more than one person or entities.

In order to determine the existence of a corporate group, in addition to the relationship of subordination or control, a common purpose and direction among all the entities comprised in the group must exist.

The law establishes that common purpose and direction exist when the activities of all the entities are designed to achieve an objective defined by the parent or controlling company by virtue of the direction that it exercises over the group, notwithstanding the ability of each member to pursue its corporate purpose individually.

The existence of a situation of control and/or corporate group must be registered, by the controller, before the commercial registry of each one of the related companies, meaning before the commercial registry of the controlling company and of the controlled one, in order for such situation to be disclosed to third parties. Registration



must be completed within thirty (30) days after the date the control situation or corporate group became existent. In this extent, the situation of control and/or business group produces other obligations with regard to accountability and preparation of consolidated information under the company administrator's responsibility.

3.1.9. Financial Statements

Commercial companies and branches must close their books and issue certified² and audited³ general purpose financial statements at least once a year, on December 31. For mergers, spin-off, conversion or capital reduction with effective reimbursement of capital contributions, financial statements for special purposes have to be issued.⁴

General purpose financial statements are those prepared at the end of a specific period to provide information to undetermined users interested in evaluating the capacity of an economic entity to generate positive cash flows. The financial statements include: the financial situation, the income statement and other results for the period (ORI per its acronym in Spanish), the statement of changes in equity of the period, the statement of changes and the cash flow statement.

The financial statements shall be annually deposited in the Chamber of Commerce of the company's domicile, if the company is not under the obligation to submit them before the Superintendence of Companies.

For tax control purposes, corporate groups that are registered in the commercial registry of the Chambers of Commerce must submit before the DIAN their consolidated financial statements on magnetic media, no later than June 30 of each year.

3.1.10. Profits

Profits are distributed on the basis of true and reliable financial statements prepared in accordance with generally accepted accounting principles, after setting aside the legal, statutory and occasional reserves, as well as the appropriations for the payment of taxes, in proportion to the paid portion of the value of the stocks, shares or equity stake of each partner or shareholder, if the bylaws do not provide otherwise. It must be noted that for the S.A.S., the legal reserve is not mandatory, provided such reserve is not contemplated in the company's bylaws.

Clauses which deprive any shareholder or partner of full participation in the profits will be disregarded.

Under Colombian tax rules, it is not possible to distribute dividends based on the results accounted for in the ORI account.

For tax treatment of the distribution of dividends, please refer to the Tax Regime Chapter.

19. Certified financial statements are those for which the legal representative and the accountant of the company declare that the contents of the financial statements have been previously verified according to the regulations, and that said contents have been drawn directly from the company's records.
20. Audited financial statements are certified financial statements that are accompanied by the auditor's professional judgment or of the independent accountant that elaborated them, regarding the fact that all the information provided is in accordance with generally accepted auditing standards.
21. Article 29, Decree 2649/1993.



3.1.11. Dissolution and Winding Up

The extinction of a company or a branch occurs as a consequence of the dissolution and subsequent liquidation. Therefore, the dissolution marks the initiation of the winding up process, which ends with the actual liquidation of the entity and the cancellation of the commercial registration of the company.

The dissolution of the commercial companies can derive from:

1. Expiration of the term provided for its duration, if it is not validly extended before its expiration.
2. The impossibility of developing the social enterprise, by the termination of the same or by the extinction of the thing(s) whose exploitation constitutes its object.
3. By reduction of the number of associates to less than the required by law for their formation or operation or by an increase that exceeds the maximum limit fixed in the same law.
4. Reasons express and clearly stipulate the bylaws of the company.
5. By decision of the partners/shareholders, taken in accordance with the laws and the bylaws
6. For not reestablishing the paid-in capital, in case of losses that reduce the equity below 50% of the share capital.
7. By decision of the competent authority in the cases provided by laws.

Branches of foreign companies, since they are an extension of their main office and depend on it to survive, can be liquidated in accordance to the causes that, for that case, have been agreed for the main office. In addition, the general grounds for dissolution of Colombian commercial companies, due to their assimilation to them, provided that they are compatible with their legal nature.

When the company or branch has been dissolved and is in process of liquidation will have to include in its name the expression "in liquidation"; otherwise, should have to respond over the damages that can be caused for its omission.

In the same sense, its corporate purpose is restricted to the single objective of liquidating the assets to pay any outstanding liabilities. However, once initiated the winding up process, there are certain mechanisms that allow termination of such process for the company or the branch to continue performing its social purpose. These mechanisms correspond to the reactivation, the improper merger and the reconstitution of the company, each of which provide for different conditions and times to be viable.

Within the winding up process and provided form and time requirements are met, creditors are entitled to present themselves to file their claims and obtain payment of their credits in the order and with the priority and preferences established by law.

Once the final liquidation statement is registered in the commercial registry kept by the Chamber of Commerce, the company must also file income tax return for the corresponding portion of the year and proceed to cancel the RUT before the DIAN. Foreign investors must request the cancellation of the foreign investment before the Colombian Central Bank, and the cancellation of its investor RUT before the DIAN (if the operations or investments in Colombia will not continue).



Steps and Related Costs of Setting up the Legal Vehicles

The steps and associated costs of setting up the vehicles are the following:

Simplified Stock Company (S.A.S.):

NO.	ACTIVITY AND/OR DOCUMENT	LEGAL COST FOR ITS IMPLEMENTATION
1	Personal appearance of the attorney in fact or the shareholder before a notary public to formalize the incorporation through a private document.	Notary fees COP2,142 (approx. USD1)
2	Registration of the private incorporation document (bylaws) in the Chamber of Commerce of the city where the company is to be based. Bylaws must be accompanied by all documents required by the Chamber of Commerce. Registration duties and taxes must be paid.	Up to 0.7% of the subscribed capital value of the company (registration tax) + applicable fee in accordance with the assets of the company (mercantile registration) + COP41,000 (approx. USD142) (registration fees)
3	Pre-Rut request	No charge
4	Processing the RUT before DIAN.	No charge
5	Updating request of the certificate of incorporation and legal representation of the company before the Chamber of Commerce to include the definitive tax identification number (NIT in Spanish). A copy of RUT issued by DIAN must be attached.	No charge
6	Request of the certificate of incorporation and legal representation issued by the Chamber of Commerce.	COP5.500 (approx. USD2)

Corporations and Limited Liability Company

NO.	ACTIVIDAD Y/O DOCUMENTO	COSTOS LEGALES DE IMPLEMENTACIÓN
1	The bylaws must be formalized by means of a public deed.	0.3% over the social capital or subscribed capital (notarial fees) + 19% VAT over notarial fees, in the event of the public deed. In the case of notarization of a private document of incorporation, COP2,142 (approx. USD1)
2	Registration of the public deed before the chamber of commerce of the jurisdiction where the company is to be based. Bylaws must be accompanied by all documents required by the Chamber of Commerce. Registration duties and taxes must be paid.	Up to 0.7% of the subscribed capital value of the company (registration tax) + applicable fee in accordance with the assets of the company (mercantile registration) + COP41,000 (approx. USD14) (registration fees)
3	Pre-Rut request	No charge
4	Processing the RUT before the DIAN	No charge
5	Request update of the certificate of incorporation and legal representation of the company before the Chamber of Commerce in order to include the definitive NIT. A copy of the RUT issued by DIAN must be attached.	No charge
6	Request of the certificate of incorporation and legal representation issued by the Chamber of Commerce.	COP 5.500 (approx. USD2)




Foreign Company Branch

NO.	ACTIVITY AND/OR DOCUMENT	COST
1	The bylaws of the main office and any other document required by the Colombian Code of Commerce must be formalized by means of a public deed.	0.3% over the assigned capital to the branch (notarial fees) + 19% VAT over such notarial fees.
2	Registration in the Chamber of Commerce of the public deed indicated above.	Up to 0.7% of the subscribed capital value of the company (registration tax) + applicable fee in accordance with the assets of the company (mercantile registration) + COP41,000 (approx. USD14) (registration fees).
3	Pre-Rut request	No charge
4	Processing the RUT before the DIAN.	No charge
5	Request update of the certificate of incorporation and legal representation of the company before the Chamber of Commerce to include the definitive NIT. A copy of RUT issued by DIAN must be attached.	No charge
6	Request of the certificate of incorporation and legal representation issued by the Chamber of Commerce.	COP5.500 (approx. USD2).

✓ Time for the Incorporation of Legal Vehicles in Colombia

As a result of the procedures and requirements for the incorporation of the different vehicles analyzed above, please find below an estimate of the time required for the incorporation of such vehicles. The days are expressed in working days.

	Día 0	Día 2	Día 6	Día 10	Día 15
Preparation and legalization/ apostille of corporate documents: I) power of attorney; II) Bylaws; III) for branches bylaws of its main office and resolution to incorporate the branch	Receipt of documents for the establishment or incorporation of the company or branch	Excution of the private document/ public deed for the incorporation of the company or branch	Registration before the Chamber of Commerce of the private document/ public deed of incorporation of the company or branch	Processing of NIT for the company or branch before the DIAN	Channel of foreign currency comes pending to the contributions
			Registration of te appointments (legal representatives, board of director's members, external audit, if applicable)	From this ponit on, the company or branch has full legal capacity to execute agreements, and file registration, etc.	Automatic registration of foreign investment before the Colombian Central Bank



3.6. Steps and Costs for the Voluntary Winding up of Vehicles

The steps and costs to dissolve and liquidate the vehicles are as follows:

Simplified Stock Corporation (S.A.S. in Spanish)

NO.	ACTIVITY AND/OR DOCUMENT ⁱ	LEGAL IMPLEMENTATION COST ⁱⁱ
1	Shareholder's meeting approving the dissolution of the company. This corresponds to an amendment to the company's bylaws; therefore, it should be done by means of a private document with personal appearance before a notary public and registered with the Chamber of Commerce. ⁱ	Notary fees COP1,800 (approx. USD1) + 19% VAT. ⁱⁱ Registration tax at nominal value: COP104,165 (approx. USD35) + COP41,000 (approx. USD14) (registration fees).
2	Appointment of liquidator and registration of this appointment with the Chamber of Commerce	Registration tax: COP 41,000 (approx. USD 14) (registration fee).
3	Written submission to the DIAN and the local tax authority notifying the beginning of the liquidation process. Notification to creditors of the company and third parties about the liquidation by means of a published notification in a newspaper of the company's domicile.	Depends on the fee charged by the newspaper in which the publication is made. Approximately COP500,000 (approx. USD170).
4	Elaboration of the company's inventory and determination of external liabilities.	No charge
5	Sale of corporate assets and payment of external liabilities.	No charge
6	Approval of the final liquidation account by the shareholders' meeting. Determination of the liquidation surplus.	No charge
7	Registration in the Chamber of Commerce of the final settlement account and cancellation request to mercantile registry.	If there is a liquidation surplus: 0.7% of the liquidation surplus. Value + COP41,000 (approx. USD14) (entry fee). In case there is no liquidation surplus, COP104,165 (approx. USD30) + COP10,900 (approx. USD) (cancellation request).
8	In case of liquidation surplus, it should be distributed to shareholders.	No charge
9	Filing of income tax return for the corresponding fraction of the year.	Value of taxes according to the tax return.
10	Filing of the cancellation of the foreign investment before the Colombian Central Bank.	No charge
11	Filing of NIT cancellation request before the DIAN	No charge



Foreign Company Branch

NO.	ACTIVITY AND/OR DOCUMENT	LEGAL IMPLEMENTATION COST
1	Resolution of the main office providing the dissolution of the branch; incorporation of such resolution in a public deed and registration before the Chamber of Commerce.	Notary fees, COP57,600 (approx. USD20) + 19% VAT. Chamber of Commerce Registration: COP104,165 (approx. USD35) + COP41,000 (approx. USD14) (entry fee).
2	Appointment of liquidator and registration of this appointment before the Chamber of Commerce.	Registration tax: COP104,165 (approx. USD30) + COP41,000 (approx. USD14) (entry fee).
3	Written submission to the DIAN and the local tax authority notifying the beginning of the liquidation process. Notification to creditors and third parties about the liquidation by notice published in a newspaper of the branch's domicile.	Depends on the fee charged by the newspaper in which the publication is made. Approximately COP500,000 (approx. USD170) (publication).
4	Elaboration of the inventory of the branch and determination of external liabilities to pay.	No charge
5	Sale of corporate assets and payment of external liabilities.	No charge
6	Approval of the final liquidation account by the main office. Determination of the liquidation surplus.	No charge
7	Registration of the final settlement account before the Chamber of Commerce and cancellation of the mercantile registry.	With surplus: 0.7% of the remaining value + COP41,000 (approx. USD14) (entry fee). If there is no surplus: COP104,165 (approx. USD35) + COP10,900 (approx. USD4) for the cancellation request.
8	In case of liquidation surplus, it should be remitted to the main office.	No charge
9	Filing of income tax return for the corresponding fraction of the year.	Value of taxes according to the tax return.
10	Filing of the cancellation of the foreign investment before the Colombian Central Bank.	No tiene costos legales de implementación.
11	Solicitud de cancelación del NIT en la oficina de la Dirección de Impuestos y Aduanas Nacionales DIAN.	No charge
11	Request of the cancellation of the tax registration (NIT) of the company and of the investor before the tax authority (DIAN).	No charge




Corporation and Limited Liability Company

NO.	ACTIVITY AND/OR DOCUMENT	LEGAL IMPLEMENTATION COST
1	Shareholder's meeting or partnership board approving the company's dissolution. This corresponds to an amendment to the company's bylaws; therefore, it should be done by means of a public deed or notarized private document if the company has less than 10 workers or assets lower than 500 minimum wages equivalent to COP390'621.000 (approx. USD130,000). Such document should be registered before the Chamber of Commerce.	Notarial fees at nominal value + 19% VAT notarial charges, COP1,800 (about USD1) Registration tax at nominal value: COP104,165 (approx. USD30) + COP41,000 (approx. USD12) (entry fee).
2	Appointment of liquidator and registration of this with the Chamber of Commerce.	Notary fees, COP57,600 (approx. USD20) + 19% VAT Chamber of Commerce Registration: COP104,165 (approx. USD35) + COP41,000 (approx. USD14) (entry fee).
3	Written submission to the DIAN and the local tax authority notifying the beginning of the liquidation process. Notification to creditors of the company and third parties about the liquidation by notice published in a newspaper of the company's domicile.	Depends on the fee charged by the newspaper in which the publication is made. Approximately COP500,000 (approx. USD170) (publication).
4	Development of the inventory of the company and determination of external liabilities to pay.	No charge
5	Sale of corporate assets and payment of external liabilities.	No charge
6	Approval of the final liquidation account by the shareholders' meeting or board of directors meeting, determination of the liquidation surplus.	No charge
7	Registering the liquidation surplus before the Chamber of Commerce and request of the cancellation of the mercantile registry.	With liquidation surplus: 0.7% of the liquidation surplus + COP41,000 approx. USD14) (entry fee). With no liquidation surplus: COP104,165 (approx. USD35) + COP10,900 (approx. USD4) (cancellation request).
8	In case there is a liquidation surplus, it must be distributed among the shareholders.	No charge
9	Filing of income tax return for the corresponding fraction of the year.	Value of taxes according to the tax return.
10	Filing the cancellation of the foreign investment before the Colombian Central Bank.	No charge
11	Request the cancellation of the tax registration (NIT) of the company and of the investor before the tax authority (DIAN).	No charge



✔ Time for Dissolution and Winding up of Legal Vehicles

Following the procedures and requirements for dissolution and voluntary winding up of different vehicles analyzed above, the following is an estimate of the steps and the term to fulfill them. The days are expressed in working days.

 Day 0	Day 0	Day 2	Day 6	Day 8
Notarize by public deed the determination of the liquidation of the company or branch by private document if applicable. Registry at the Chamber of Commerce	Notify DAN, creditors and third parties about the settlement	Preparation of the inventory of the company and determination of external liabilities. Sale of social assets and payment of external liabilities	Approval of the final liquidation account and determination of the remnant Delivery of remnants to partners or main office	Request for cancellation of the NIT to the DIAN

✔ Control Upon Corporate Integrations

Colombian competitive governance establishes that corporate integration or concentrations processes that fulfill certain obligations must be reported before the Superintendence of Industry and Commerce (SIC) which is the national authority on this matter.

The term “corporate integration” includes mergers, acquisitions, partnerships, cooperation agreements, joint ventures, and/or any other type of agreement or transaction in which one company takes control upon other, eliminating competition through the consolidation of two market players into one.

Corporate integrations must be reported before the SIC, if the following conditions are met:

I. Subjective conditions

- If the companies involved in the operation perform the same activity (horizontal integration) or;
- If the companies involved in the operation are part of the same value chain (vertical integration).

II. Objective conditions

- If the companies that fulfill any of the subjective conditions have had, together or individually considered, operational revenues exceeding 60,000 minimum monthly legal wages (for 2018, COP46,874,520,000, USD15.6 millions approximately)⁵ the fiscal year prior to the projected operation or;
- If the companies that fulfill any of the subjective conditions have had, together or individually considered, assets exceeding 60,000 minimum monthly legal wages (for 2018, COP46,874,520,000, USD15.6 million approximately) the fiscal year prior to the projected operation.

⁵ Resolution 88920 of 2017 of SIC established the amount of inputs and assets for informing operations of corporate merges during 2018.



If the companies involved in the operation have related companies in Colombia due to a situation of corporate control, the operational revenues and assets of those related companies will be considered when evaluating the objective conditions of the operation.

For determining the operating revenues and total assets of a company with participation in the Colombian market only through exportations, only the revenues and total assets of such company shall take into account, as well the revenues and assets of linked to the company by a corporate control situation in Colombia or abroad.

For determining the operating revenues and total assets of a company with local presence in Colombia through a permanent establishment (as defined in the Tax Code) without the existence of a juridical person constituted in Colombia, the Colombian revenues and assets shall be take into account, as well those from companies linked to the first under control situation in Colombia.

Depending on the market share of the involved companies, the operation must be either informed to the SIC or an authorization must be requested as follows:

- I. If the involved companies have jointly a relevant market share lower than 20%, the operation is automatically authorized, but it must be informed before the SIC before carrying it out. The authority may require further information to the parties to determine if the relevant market share is lower than 20%;
- II. When the companies jointly considered have a relevant market share higher than 20%, the operation requires a previous authorization to be completed

When referring to horizontal integrations, the “relevant market” will be that in which all the companies involved in the operation offer products and/or services. On the other hand, when referring to vertical integrations, the “relevant market” will be that in which the companies involved in the operation are part of the same chain value and offer their products and/or services. Therefore, the relevant market involves both the market of the products/ services and the geographical market involved in the operation. One operation may affect one or more relevant markets, either because there are several product markets or more affected geographical markets⁶.

When the projected operation must be authorized by the SIC, the parties must present a request for prior evaluation, in which the documents referred in Annex 1 of Resolution 10930 of 2015, must be presented. The SIC must provide an answer within the next 30 working days of the date in which this request is filed. If in the study of prior evaluation, the SIC concludes that the projected operation requires further analysis, additional information may be requested in order to determine the risks to the competition arising from the operation. In such case, the parties must provide the information referred in Annex 2 of Resolution 10930 of 2015, and the SIC must approve, condition, or deny the authorization to carry out the projected operation. If the authority does not provide a response within this term, the operation will be automatically authorized.

In case the companies do not report an operation when obliged to, or complete the transaction before the expiration of the term the SIC has to provide a response, Law 1340 of 2009 establishes that the companies may face penalties up to 100,000 minimum wages (for 2018: COP78,124,200,000, USD26 millions approximately), or the equivalent to 150% of the profits obtained with the transaction. Individuals involved may be fined up to 2,000 minimum wages (for 2018: COL1.562.484.000, USD520 thousand approximately). In addition, if the SIC finds out that the operation produces an illegal restriction to free competition, the integration may be reversed.

38. Guide for Corporate Integrations by the Superintendence of Industry and Commerce.



Comparative Analysis of the Different Vehicles from a Legal Perspective

The following summary table shows the main characteristics of the most commonly used vehicles to channel foreign investment, indicating similarities and differences.

SUMMARY TABLE OF TYPES OF COMMERCIAL COMPANIES AND FOREIGN COMPANY BRANCH

	LIMITED LIABILITY COMPANY	CORPORATION	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
INCORPORATION	Usually, by means of a public deed.	Usually, by means of a public deed.	Usually by means of a private document. Nonetheless, if the contributions include assets that, according to the applicable law require public deed (e.x. real estate property) for its assignment, incorporation must be formalized by means of a public deed.	Resolution from the main office must be formalized by means of a public deed.
NUMBER OF PARTNERS/SHAREHOLDERS	Minimum two partners. Maximum 25.	Minimum five shareholders, none of which may have 95% or more of the outstanding capital stocks of the company.	Minimum one shareholder, no maximum limitation provided by law.	Does not apply, since the branch is considered as commercial establishment of the foreign company.
LIABILITY OF PARTNERS/SHAREHOLDERS	Limited to the amount of the capital contribution for any obligation, unless the bylaws stipulate a greater responsibility for all or some of the partners. Partners are not liable for payment of any debt, except for tax obligations or labor liabilities, for which they are severally and jointly liable with the company.	The shareholders liability is limited to the amount of the shareholders equity. By general rule, shareholders are not liable for credit obligations, unless a specific guarantee has been provided. Shareholders shall be liable beyond the value of their contributions for fraud, or the parent or controlling company is liable in a subsidiary manner with regards to the company it controls when the latter is insolvent or undergoing judicial liquidation due to actions of the parent or controlling company.	The company's liability for any obligation is limited to the amount of its equity. By general rule, shareholders are not liable for any debt incurred into by the company. Shareholders are jointly and severally liable only when the company is used to violate the law or cause damage to third parties. Controlling companies may be jointly liable for the obligations of their controlled company when the latter starts a winding up process due to directions of the controlling company.	The foreign main office is liable for the activities in Colombia. Accordingly, if the branch's equity is not enough, the main office may be liable.



	LIMITED LIABILITY COMPANY	CORPORATION	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
CAPITAL	Partner contributions shall be paid in full when the company is incorporated as well as when any increase is agreed.	At the moment of incorporation, the shareholders must subscribe at least 50% of the authorized capital and pay at least 1/3 of the subscribed capital. The remaining 2/3 must be paid within a year.	The subscription and payment of capital can be made under the conditions, in the proportion and terms established by the shareholders. In any case, shareholders have a term of two years to pay for the subscribed shares.	Once the branch is incorporated, all the assigned capital must be paid. Additional capital may be assigned by means of a supplementary investment to the assigned capital.
ASSIGNMENT OF SHARES/ STOCK	Sale or assignment of the limited partnership shares implies that the company's bylaws must be amended. The decision to sell or assign shares must be legalized by means of a public deed duly registered with the Chamber of Commerce.	Initially, shares are freely transferable and no bylaws reform is required for their negotiation. Share assignment may be carried out by endorsing the certificates and registering them in the stock ledger. The transfer of shares may be limited by the bylaws establishing a lien in favor of the company and the shareholders at the time of negotiation.	Initially, shares are freely transferable and no bylaws reform is required for their negotiation. Share assignment may be carried out by endorsing the certificates and registering them in the stock ledger. Assignment can be limited up to ten years and be subject to authorization of a shareholders' meeting or any other corporate body or to preferential subscription rights.	Does not apply.
RESERVES	The mandatory legal reserve is equivalent to 10% of the annual net gains up to an equivalent of 50% of the company's equity.	The mandatory legal reserve for a corporation is equivalent to 10% of the annual net gains up to an equivalent of 50% of the subscribed capital.	No legal reserve is mandatory, unless otherwise contemplated in the company's bylaws.	The mandatory legal reserve for a branch is equivalent to 10% of the annual net gains up to an equivalent of 50% of the assigned capital.
SOCIAL PURPOSE	Social purpose shall be determined, and the company's legal capacity will be restricted to activities contemplated under such social purpose.	Social purpose shall be determined, and the company's legal capacity will be restricted to activities contemplated under such social purpose.	Social purpose may be determined, allowing the company to perform any licit act of commerce.	Social purpose shall be determined, and the branch's legal capacity will be restricted to the main office's social purpose.
TERM OF DURATION	Defined (with the possibility to be extended by the partners).	Defined (with the possibility to be extended by the shareholders).	May be indefinite.	Defined (with the possibility to be extended by the main office depending on the term of duration of such entity).
FOREIGN INVESTMENT	Investment of capital in money is automatically registered into the Colombian Central Bank when the corresponding required information of the exchange operation is submitted by an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank.	Investment of capital in money is automatically registered with the Colombian Central Bank when the corresponding required information of the exchange operation is submitted by an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank.	Investment of capital in money is automatically registered with the Colombian Central Bank when corresponding required information of the exchange operation is submitted by an exchange market intermediary (commercial bank), or through a compensation account registered into the Colombian Central Bank.	Investment of capital in money is automatically registered with the Colombian Central Bank when corresponding required information of the exchange operation is submitted by an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank. If the main office forwards additional funds as supplementary investment to the assigned capital, such foreign currency shall be channeled through the foreign exchange market.



	LIMITED LIABILITY COMPANY	CORPORATION	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
TAX LIABILITY	<p>The partners and the company are severally liable towards the tax authorities for the nonpayment of taxes, in proportion to their participation and the period of time during which they have been acting as partners.</p> <p>In the event a tax abuse is committed or if the company is used with the purpose of defrauding the tax administration or unfairly as a mechanism of tax evasion, the tax authority may pierce the corporate veil, and partners will be jointly and severally liable before the DIAN for the company's obligations resulting from such acts and for the damages caused.</p>	<p>In the event a tax abuse is committed or if the company is used with the purpose of defrauding the tax administration or unfairly as a mechanism of tax evasion, the tax authority may remove the corporate veil, and shareholders will be jointly and severally liable before the DIAN for the company's obligations resulting from such acts and for the damages caused.</p>	<p>In the event a tax abuse is committed or if the company is used with the purpose of defrauding the tax administration or unfairly as a mechanism of tax evasion, the tax authority may pierce the corporate veil, and shareholders will be jointly and severally liable before the DIAN for the company's obligations resulting from such acts and for the damages caused.</p>	<p>The main office and the branch are severally liable for the branch's tax payments.</p>
TAX AUDITOR	<p>Not required, except when (i) the value of the gross assets is equivalent to or greater than 5,000 times the current minimum legal monthly wage equivalent to COP3.906.210.000 (approx. USD1,300,000), or (ii) the gross income for the immediately preceding year are equivalent or greater than 3,000 times the current minimum legal monthly wage equivalent to COP2.343.726.000 (approx. USD782,000).</p>	<p>Mandatory for stock companies.</p>	<p>Not required, except when (i) the value of the gross assets is equivalent to or greater than 5,000 times the current minimum legal monthly wage equivalent to COP3.906.210.000 (approx. USD1,300,000) or (ii) the gross income for the immediately preceding year is equivalent or greater than 3,000 times the current minimum legal monthly wage equivalent to COP2.343.726.000 (approx. USD782,000).</p>	<p>Mandatory for branches.</p>
DIVIDEND REMITTANCES	<p>If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to pay dividends based on real and reliable financial statements.</p>	<p>If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to pay dividends based on real and reliable financial statements.</p>	<p>If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to pay dividends based on real and reliable financial statements.</p>	<p>If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have exchange rights to pay profits based on real and reliable financial statements.</p>
BOARD OF DIRECTORS	<p>The company is not required to have a board of directors. This body is optional.</p>	<p>he board of directors is a mandatory corporate body.</p>	<p>The company is not required to have a board of directors. This body is optional.</p>	<p>Does not apply.</p>



	LIMITED LIABILITY COMPANY	CORPORATION	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
GOVERNMENT CONTROLS	Limited liability companies are supervised by the Superintendence of Companies only if their assets or revenues are equal to or greater than 30,000 times the current minimum legal monthly wage (approx. USD7,000,000). Government control is exercised over financial aspects and requires that the annual financial statements are submitted to the Superintendence. Additionally, some changes to the bylaws require prior authorization from this entity.	Stock companies are controlled by the Superintendence of Companies only if their assets or revenues are equal to or greater than 30,000 times the current minimum legal monthly wage (approx. USD7,000,000). Government control is exercised over financial aspects and requires that the annual financial statements are submitted to the Superintendence. Additionally, some changes to the bylaws require prior authorization from this entity.	Simplified stock companies are controlled by the Superintendence of Companies only if their assets or revenues are equal to or greater than 30,000 times the current minimum legal monthly wage (approx. USD7,000,000). Government control is exercised over financial aspects and requires that the annual financial statements are submitted to the Superintendence. Additionally, some changes to the bylaws require prior authorization from this entity.	Branches are supervised by the Superintendence of Companies when (i) the amount of their assets or revenues is equal to or greater than 30,000 times the current minimum legal monthly wage (approximately USD7,000,000, (ii) when it is within a process of reorganization or restructuring and (iii) if the main office which established the branch is under control situation or is part of a corporate group registered in Colombia.
REPATRIATION OF CAPITAL	If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to repatriate the invested capital after liquidation of the company or capital reduction provided certain requirements are met.	If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to repatriate the invested capital after liquidation of the company or capital reduction provided certain requirements are met.	If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to repatriate the invested capital after liquidation of the company or capital reduction provided certain requirements are met.	If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to repatriate the invested capital after liquidation of the branch or capital reduction (both for assigned capital and supplementary investments to the assigned capital) provided it meets certain requirements.



Regulatory Framework

REGULATION	SUBJECT
Code of Commerce	General and specific regulation on corporations and foreign company branch.
Law 222 of 1995	Amends the Code of Commerce in matters pertaining to corporations and regulates aspects such as spin-offs, corporate groups, duties of managers, preferred stocks with dividends and without voting rights, majority required for the stock corporation and one-person business.
Law 1258 of 2008	The simplified stock company (S.A.S.) is created and the applicable norm for this kind of corporation is set forth.
Regulatory Circular DCIN 83 issued by the Colombian Central Bank - Chapter 7	Foreign investment in Colombia.
Law 1429 of 2010	Law on formalization of employment and job creation.
Decree 19 of 2012	Whereby provisions for the elimination and reform of procedures in the public administration are set forth.
Law 1607 of 2012	Whereby regulation in tax matters are set forth.
Law 1739 of 2014	Whereby the Colombian tax code and Law 1607 is modified.
Resolution 200-004850 of 2012, by the Superintendence of Companies	Whereby the general authorization regime is established for the reduction of equity of a company.
Statutory Law 1581 of 2012	Whereby the provision for the protection of the data privacy is issued.
Basic Legal Circular – 100-000005 of 2017	Whereby Basic Legal Circular 100-000003 of 2015 is modified.





LEGAL **GUIDE**

TO DO BUSINESS IN COLOMBIA

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CHAPTER **4**

**FOREIGN TRADE
AND CUSTOMS**



FOREIGN TRADE AND CUSTOMS

Four things an investor should know about the Colombian customs and foreign trade regime:

1

Colombia has a special system for import and export that allows temporary imports, with a total or partial suspension of import duties (VAT and customs duty) or with VAT deferral, of raw materials, inputs, capital goods and replacements for manufacturing goods or providing services to be sold in foreign markets. This system, known as Plan Vallejo, provides exporters an important level of competitiveness for different sectors, such as manufacturing, agriculture and services.

2

The Colombian government has signed 18 trade agreements with more than 64 countries; 16 of them which are currently in force. The trade agreements signed by Colombia provide a broad spectrum of potential markets for Colombian companies.

4

The country has developed a free trade zone regime which allows companies established therein, to benefit from special tax, customs and foreign trade regulation.

3

Colombia has different importation regimes designed to satisfy most of the needs of companies established in the country.



Colombia enjoys a strategic and privileged geographic location to access international markets by means of Commercial Agreements that grant preferential treatment that guarantee the best competitive conditions to sell Colombian products in foreign markets. Additionally, Colombia grants flexible, efficient and modern customs procedures controlled by the Colombian Tax and Customs Authority (DIAN, per its Spanish acronym).

4.1. Foreign Trade Procedures

In 2004, the Single Window for Foreign Trade (Ventanilla Única de Comercio Exterior “VUCE”,¹ per its Spanish acronym) was created aiming to harmonize requirements, procedures and documents required by entities involved in the import/export operations. This single window contributes to reducing the timeline of the procedures and its costs, increasing the competitiveness of Colombian enterprises. The VUCE is managed by the Ministry of Commerce, Industry and Tourism, has 21 attached entities and 2 associated entities, 62,000 registered users, 4.5 million of operations and the following procedures:

Imports section: Online procedures of import registries and licenses of products or raw materials which require permits, authorizations or previous requirements for their importation. Additionally, this section covers the management of import quotas (E.g. hybrid vehicles, steel wire, oils, among others).

Exports section: Online procedures for previous authorizations required for exportations by the competent authorities for specific goods. It also provides the authorizations for exportation quotas (E.g. raw leather and wet-blue, unrefined whole sugarcane, unrefined sugar, –WTO, sugar and goods with sugar–Trade Promotion Agreement between Colombia and the United States).

Registry of National Producers of Goods: Record of National Goods Producers, and its term of validity is of one (1) year and it must be renewed one (1) month before the expiring term.

Certificate of National Production Existence: Record of these certificates for machinery and equipment destined to basic industries, raw material transformation and environment.

Qualification and verification in the incorporation of national production material in motorbikes assembly: Procedures for national parts qualification which are incorporated in motorbikes assembled in Colombia. This qualification has a validity term of one (1) year and may be updated upon request, every time it's necessary.

Transformation and Assembly Regime: The Direction of Foreign Commerce of the Ministry of Commerce, Industry and Tourism grants, through an administrative act, authorizations, cessions, renewals, additions (addendums), brand changes and ending of the request authorization for transformation and assembly regime filed by companies destined to assemble auto parts and vehicles. Therefore, assembles companies have the obligation to file to the Group of National Good Producers, semi-annual reports and annual reports of production and sales, which are sent to the Andean Community in order to check the Sub Regional Added Value (VAS per its Spanish acronym) and the percentage of Sub Regional Integration (IS per its Spanish acronym).

Simultaneous Operation System Section (Módulo Sistema de Inspección Simultánea “SIIS”, per its Spanish acronym): Facilitates the organization of simultaneous inspections for containerized cargo for exportation in maritime ports. Such inspection is executed by control authorities (DIAN, ICA, INVIMA, Antinarcotics Police).

¹ www.vuce.gov.co



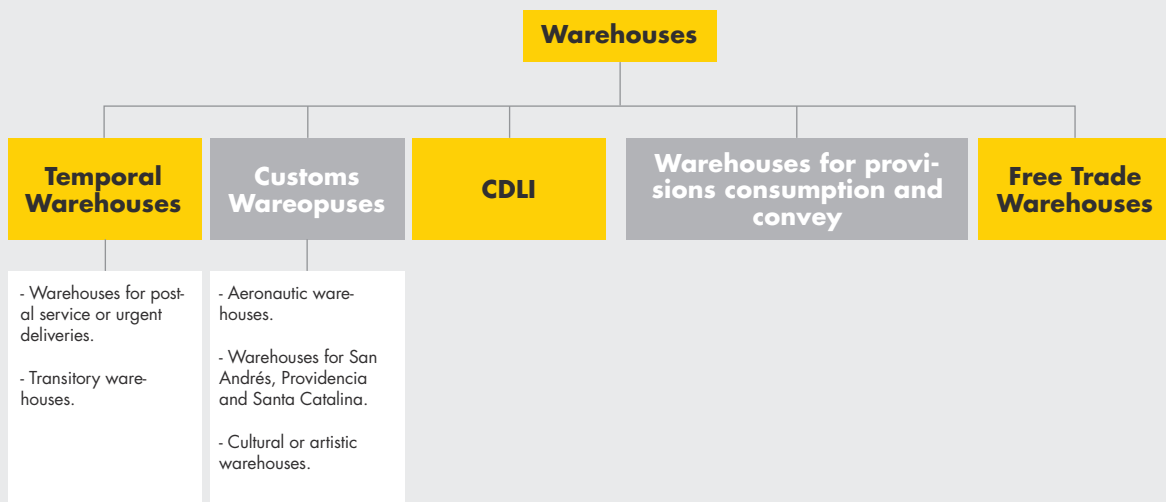
4.2. Authorized Customs Warehouses

Public or privately owned spaces approved by the Customs Authority (DIAN) for the storage of goods under customs control. While procedures are carried out to obtain their customs clearance, goods may remain temporarily stored in the authorized customs warehouses, without payment of import duties (VAT and customs duty), for the duration established by law, which varies according to the type of warehouse, while their customs situation is determined.

Among the privately-owned customs warehouses are:

- Private warehouses for transformation or assembly
- Private warehouses for industrial processing
- Private warehouses for international distribution
- Private aeronautic warehouses
- Transitory private warehouses
- Warehouses for urgent deliveries
- Warehouses for provisions on board for consumption and convey
- Free Trade Warehouses
- International Logistics Distribution Centers ("CDLI", per its Spanish acronym), which replaced Public Warehouses for International Logistical Support.

Article 88 et seq. of Decree 390 of 2016, which regulation for its entry into force is pending, amends the provisions on customs warehouses. Once these provisions become effective, the classification and terminology of some of the aforementioned warehouses will change, as follows:





4.3. Customs declarants

Customs declarants are natural persons or legal entities that make a Declaration of goods in their own name or in the name of the established persons in the declaration. Declaring Parties are: (i) the importer; (ii) the exporter; (iii) postal service operators; (iv) fast delivery operators, and (v) the shipper in transfer and coasting. The aforementioned regulation, the reporting entities where the customs broker or the authorized persons to act directly before Customs Authority.

4.3.1. Highly Exporting Users

Companies recognized by DIAN as Highly Exporting Users (ALTEX, per its Spanish acronym), before entering into force the newest customs regulation (Decree 390 of 2016), enjoy a series of tax and administrative benefits.

To be recognized as ALTEX, they had to meet the following requirements:

- To have exported during the twelve months prior to the filing of the request, an amount FOB equal to or higher than USD2,000,000.
- The value of exports, directly or through an international marketing agent, must represent at least 30% of the amount of its total sales in the same period.
- If the conditions established above are not met, the entity seeking ALTEX recognition must certify that prior to the filing of the request for recognition as ALTEX, such entity exported directly or indirectly FOB amounts of at least USD21,000,000, without regard to the percentage of exports against domestic sales.

Among the benefits for ALTEX are:

- Submitting the application for global boarding for partial cargo in accordance with Article 272 of Decree 2685 of 1999.
- Elimination of the fiscal customs inspection, with no prejudice of the power of the customs authority to inspect in any moment
- Global and permanent authorization for customs inspection of goods to export in the user's installation
- Global guarantee
- Possibility of importing supplies and raw materials under temporal importation for industrial processing
- No VAT is imposed for regular imports of industrial machinery that is not produced in the country and is used to transform raw materials
- Possibility of obtaining authorization from the DIAN to operate an industrial processing warehouse that allows the import of supplies and raw materials with suspension of customs duties and of VAT, as long as such supplies and materials are used in the production of export products

According to Decree 390 of 2016, companies recognized as ALTEX are going to keep this quality until March 22, 2020 and, in consequence, request to obtain recognition as ALTEX may be filed until March 21, 2016. After this date no request will be receive.



4.3.2. Permanent Customs Users (UAP in Spanish)

Companies that upon previous fulfillment of requirement were recognized by the Custom Authority (DIAN) as Permanent Custom User (UAP), after entry into force of the new customs regulation (Decree 390 of 2016), have a series of obligations and benefits in tax and administrative matters.

Are recognized as such by the Custom Authority (DIAN) they have either carried out foreign trade operations in the previous twelve (12) months for a FOB value equal to USD5,000,000 or they have reported such value as a yearly average during the past three (3) years and have filed at least one hundred (100) import or export declarations in the past twelve (12) months. The value of USD5,000,000 may be reduced by 60% if the taxpayer is already classified as a major taxpayer.

Organizations that may have been recognized as UAP for using Plan Vallejo, as will be explained further on in this chapter, and within the previous three (3) years from the filing date and show exports of at least USD2,000,000 in the previous twelve (12) months, will also be considered permanent customs users.

Once recognized and registered, UAP have the following benefits:

- Automatic imported merchandise release
- Possibility of importing raw materials or inputs as temporary imports for industrial processing regimes without paying custom duties when those raw materials or supplies are used to manufacture goods to be exported
- Possibility of providing a single global guarantee that covers all the foreign trade operations before the DIAN
- Access to the benefits established for ALTEX, once the requirements for ALTEX are complied
- Submission of payments declaration through the Customs Informatics System, within the first five (5) days, for the goods which obtained the release during the previous immediate month.

According to Decree No. 390 of 2016, companies recognized as UAP will maintain this qualification until March 22, 2020 and, in consequence, request to obtain recognition as UAP may be filed until March 21, 2016. After this date no request will be receive.

4.3.3. Authorized Economic Operators

The Authorized Economic Operator (AEO) is the status granted by the National Customs Authority (DIAN), to individuals or legal entities in Colombia that, being part of the international supply chain, fulfills the minimum conditions set forth by the national government, and consequently, guarantees safe and reliable foreign trade operations. The following are the advantages of being an AEO.

In general, AEO status grants the following benefits:

Cash flow

Time reduction in the logistics chain

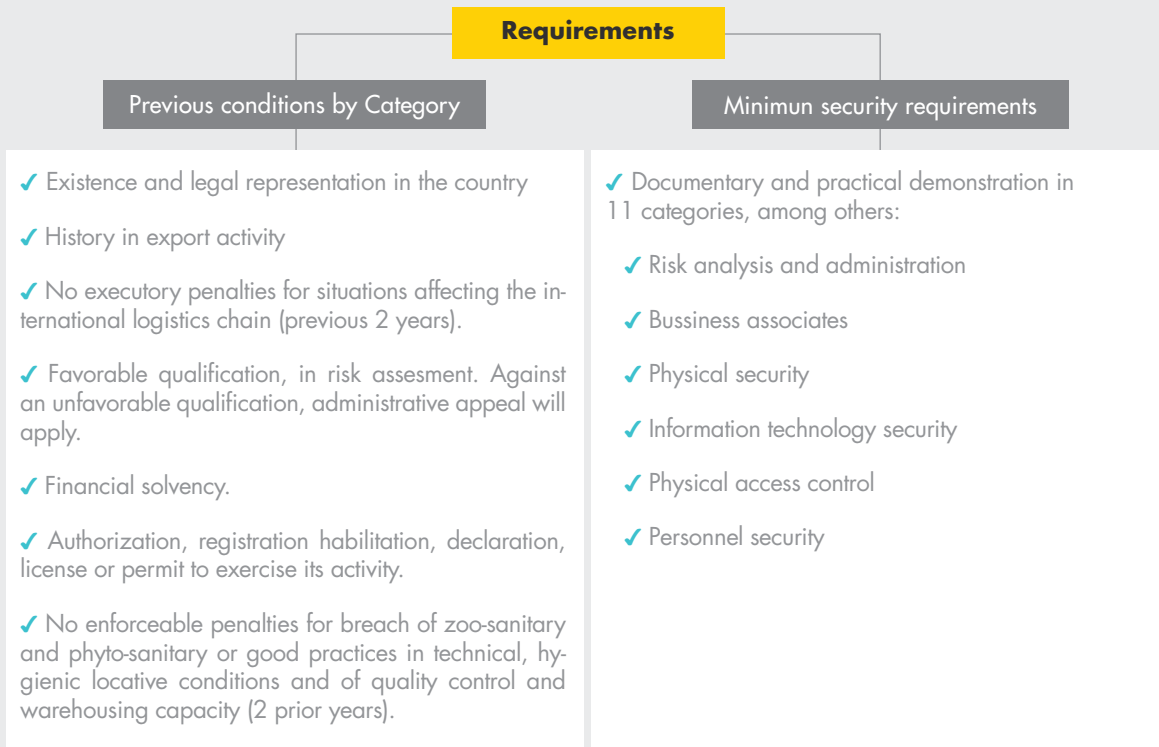
Competitiveness and security in the chain



In particular, AEO have the following benefits in Colombia:

No obligation to constitute a guarantee to ensure compliance with customs obligations	Clearance of goods at the declarer's facilities	Shipping authorization request presentation at shipping point
No early filing of customs declaration, when mandatory	Cargo consolidation and deconsolidation, cargo transportation or customs agency by authorized warehouses	Submission of goods to the customs warehousing regime, once completed the OTM transit or combined transport
Consolidated and deferred payment	Reduction to 50% of the rescue value of certain goods	Re-shipping of goods at the time of customs intervention in the previous and simultaneous control

The application to be recognized as AEO must be filed by the foreign trade user before the DIAN, and should be granted upon the fulfillment of previous and conditions:





The authorization has an indefinite validity, provided the conditions and requirements under which the acknowledgment was granted are maintained and demonstrated before the customs authority. Currently, it is possible for exporters and importers of any branch of the economy to access the authorized economic operators figure. It is expected that the same figure is extended to other parties of foreign trade (transporters, ports, etc.).

4.4. Customs Planning

On March 7, 2016, the Colombian government issued the Decree 390 of 2016, by means of which the customs regulation was modified. The Title XXIV of this decree establishes that it will entry into force in a staggered manner, in accordance with the following:

- Within fifteen (15) calendar days following its publication, this is March 22, 2016, some articles, among them, the provisions regarding the scope, general principles, definitions, representation before customs authorities, customs declarants and previous inspection of goods, among other provisions.
- The other articles will come into force once they are regulated by the DIAN, for which a term of one hundred and eighty (180) days after the publication of the Decree was initially contemplated. Notwithstanding the aforementioned, at the date of preparation of this document, Resolutions 41, 42, 64 and 72 of 2016 have been issued, which do not regulate all of these articles. For this reason, some of these articles have not yet entered into force.
- The rules which depend on the incorporation of adjustments to the computer system of the DIAN or the implementation of a new model of computerization systematization, will enter into force once the new model of computerization systematization comes into operation.

Accordingly, the regulation mentioned throughout this chapter corresponds to that in force at the date of preparation of this document (February, 2018). For this reason, it is relevant to observe the new regulation, once it is issued.

4.4.1. Imports

Imports are defined as the entry of goods of foreign origin into the national customs territory, with the fulfillment of customs formalities to remain in it permanently or temporarily. The introduction of goods from a free trade warehouse to the national customs territory is considered also an import.

From a foreign trade perspective, there are two regimens: free importation regime and previous license regime.

Under the first regime, an importation registry is required as supporting document of the import declaration, when the same is free of importation and needs a requirement, permit or authorization as per example, fishing or agriculture goods, vigilance equipment; products subject to sanitary control or to technical regulations fulfillment.

Under the previous license regime, the import license is required in cases such as import of products in special market conditions (used goods, imperfect, repaired, re manufactured, low quality, etc.) and the import of goods requesting customs duty exemptions under special regulations



The provisions regarding imports on Decree 390 of 2016 are pending regulation and, thus have not yet entered into force. This Decree establishes the following import regimes

- Final importation
 - Import for consumption
 - Duty free importation
 - Import under warrant
 - Re-importation in the same state
 - Re-importation through outward processing
- Suspensive regimes
 - Temporary admission for re-export in the same state
 - Temporary admission for inward processing
- Special regimes
 - Temporary importation of leased goods or with lease agreement with purchase option "leasing"
 - Postal traffic
 - Fast delivery
 - Travelers
 - Household items
 - Temporary importation of means of transport of private use
 - Temporary importation of recreational craft of private use that are suitable for navigation in height
 - Import by pipeline networks
 - Provisions for consumption

4.4.2. Import duties

The ten (10) digit custom subtariff codes are listed in the Colombian customs tariff schedule set out in Decree 2153 of 2016. This schedule lists the applicable customs duty tariffs with respect to each subheading. The value added tax (VAT or IVA in Spanish) which is also part of the customs duties is regulated in the Colombian Tax Code.



The applicable customs duty tariff was partially amended, among others, by means of Decree 1625 of August 14 of 2015, which provides for a zero (0) customs duty tariff rate for the importation of raw materials and locally produced goods, with effect until August, 2016. This decree was modified by Decrees 1084, 1230, 1287 of 2016 including new goods under the benefit of 0% customs duty tariff and excluding such benefit for others.

Finally, the Ministry of Commerce, Industry and Tourism, through Decree 272 of February 13, 2018, partially amended Decree 2153 of 2016, authorizing the reduction of the customs duty tariff to zero percent (0%) for the importation of some capital goods and raw materials not produced in the country.

Regarding customs duty tariffs, Colombia has different types of rates that, in general, range between 0%, 5% and 10% (In certain specific cases, generally for agricultural products, these rates may be higher).

The following considerations are elaborated under Decree 2685 of 1999, currently in force:

4.4.3. Ordinary Imports

The majority of imports into Colombia are ordinary imports. Once the importer has completed all customs procedures, under this type of importation, the importer in Colombia obtains customs clearance of the goods cleared for their use.

Import returns may be subject to revisions three years after the filing and acceptance date, and constitute the document that evidences the legal entry of goods to the national customs territory.

4.4.4. Temporary Imports

(a) Temporary imports for subsequent re-export under the same conditions

Corresponds to the import of certain goods that must be exported in the same conditions as they entered the national customs territory within a specific period of time, that is, without having undergone any modifications, except for the normal depreciation originated in their use. Under this type of import, applicable customs duties (tariffs and VAT) are suspended or deferred. Taking into account that under this regime, goods are in a restrictive disposition.

The temporary imports to be re-exported in the same condition may be of two (2) subtypes:

(I) Short-term

Applicable for the importation of merchandise to meet specific needs, such as goods intended to be exhibited at exhibitions, fairs or cultural events, capital goods listed in Decree 2394 of 2002 and parts and spare parts necessary for their operation, among others. The maximum term of the import will be six months, extendable for up to three additional months, and in exceptional cases for up to three more months, with the authorization of the customs authority, for a total of one (1) year maximum. In this kind of temporary importation, no import duties (customs duty and VAT) are paid, for the duration of the temporary importation.



(II) Long-term

Applicable for the importation of capital goods, their accessories, parts and spare parts, which are in a list of subheadings contained in Decree 2394 of 2002 and its modifications. The maximum term of this import is of five (5) years. In this case, import duties are distributed in equal semiannual installments for the term of permanence of the merchandise in Colombia and are paid half-yearly, taking into account the current exchange rate for customs purposes at the time of payment of each installment.

(b) Temporary imports for inward processing

Pursuant to the Customs Statute, the permitted types of temporary imports for inward processing are the following:

(I) Temporary import for inward processing of capital goods

Customs duties will be suspended to allow the temporary imports of capital goods, their spare and repair parts, for repair and reconditioning for a term of no more than six (6) months, which can be extended for an additional six-month term, after which, the goods must be re-exported.

(II) Temporary import for inward processing

Allows the temporary imports of raw materials and supplies that will be subject to transformation, processing or industrial manufacture by industries recognized as "Highly Exporting Users" (ALTEX in Spanish) or "Permanent Customs Users" (UAP in Spanish). Under this type of importation, it is allowed not to pay import duties on such raw materials and supplies provided they are used as added value in goods for exportation. The local sale of such goods will be restricted according to the customs provisions in force.

(III) Temporary import under a special system of importation (Plan Vallejo)

In order to promote foreign trade operations, Colombia has included in its customs legislation special importation-exportation programs, also known as "Plan Vallejo". Through these programs, goods such as capital goods, raw materials, supplies and parts may be imported with certain tax benefits. These benefits are subject to compliance with certain export undertaking of finished goods or services made by the beneficiary of the special program.

Benefits of Plan Vallejo are granted to:

- Under a direct operation, to the importer of capital goods, raw materials, inputs and parts, that, using these goods, produces and exports final goods without the intervention of third parties, or assumes in its own name the provision of services destined to be exported.
- Under an indirect operation, to the importer of capital goods, raw materials, inputs and parts, that does not directly produce or exports, or does not assume in its own name the provision of services destined to be exported.



The following are among the current applicable Plan Vallejo modalities:

a. Plan Vallejo for raw materials and supplies

This modality allows receiving within the national customs territory, with total or partial suspension of import duties, raw materials and inputs that will be used exclusively and in its entirety, deducting the residues and waste, in the production of goods destined to be exported in whole or in part within a specified period, or goods, which are not intended for export to third countries, but which are used by third parties in the production of exported goods.

b. Plan Vallejo for capital goods and replacements

This modality allows importing capital goods and spare parts with total or partial exemption of tariff and deferring the payment of the VAT. This capital goods should be destined to installation, widening or replaced the respective units that will be used in the production process or export, or that may be destined to the render of services straight attached to its productions.

Under article 173 paragraph c) of Decree-Law 444 of 1967, only goods of agricultural sector shall be produced or manufactured.

c. Plan Vallejo for services export

Allows the temporary import of capital goods and its spare parts, with total or partial suspension of tariffs and deferment of the VAT payment, for the provision of exportable services.

Those having access to this program must export services for an amount equivalent to 1.5 times the Free On Board (FOB) value of the imported capital goods and spare parts, constitute a bank guarantee or insurance company equivalent to the 20% of the FOB value of the import quota assuring the proper use of the capital goods and spare parts temporarily imported, and may not sell them or give them a use different from that authorized, while the goods are under the program restrictions. Usually this type of Plan Vallejo is applicable to the export of services provided by companies whose main activity consists of one of the following:

- Services of transmission, distribution and commercialization of electric energy
- Special design services, value-added telecommunications and software exports
- Lodging services
- Human health
- Transportation services (air, maritime, of passengers, by train)
- Research and development
- Consulting and management
- Engineering



- Services provided to companies (informatics and related services, research and development services, etc.)
- Tourism services and services related with traveling

d. Junior Plan Vallejo

This plan grants the exporter of national goods the right to replace, through a new import, free of customs duties, equivalent to the raw materials or inputs that have been used in the production of such goods, when all customs duties were originally paid (customs duty and VAT). This reposition right must be requested within a term of twelve months after the shipment of the exported products.

(c) International leasing

The concept of international leasing may be applied to financing long-term temporary import of capital goods, which may remain in the national customs territory for more than five (5) years. In addition, the DIAN may allow the long-term temporary imports of accessories, parts and spares that do not arrive as part of the same shipment, if they are imported within the five-year term.

Payment of import duties (customs duty and VAT) is carried out in biannual payments. The maximum term for deferment is five years, even though the goods may remain for a longer period in Colombia. When the agreement's duration term exceeds five years, with the last payment corresponding to such period, all customs duties that have not been paid must be attended.

4.4.5. Other types of imports

There are different kinds of imports in Colombia, some granting considerable benefits such as:

- Imports with franchise
- Re-imports after repair or alteration
- Re-imports in the same condition
- Imports for warranty compliance
- Imports for transformation or assembly
- Imports through postal traffic and urgent deliveries
- Travelers
- Samples with no commercial value



4.5. Trade Defense Measures

In Colombia, there are mechanisms for avoiding unfair trade practices by producers or exporter companies from a specific country such as anti-dumping duties and subsidies and countervailing measures.

It is understood that a good is under “dumping” when it is exported to the Colombian market at a lower price than its regular price in the origin market in regular commercial transactions. The existence of injury and causal link between injury and imports at dumping prices must be demonstrated. The imposition of anti-dumping duties, seeks to apply a customs duty on imports of the product under investigation, in order to restore the conditions of competition distorted by dumping.

This procedure is regulated by Decree 1750 of 2015. Without prejudice of the Agreement on Subsidies and Countervailing Measures of the World Trade Organization –WTO–, approved in Colombia through means of Law 170 of December of 1994, the Decree 299 of 1995 establishes that it is understood that an importation had been under a subvention when the production, transportation or exportation of the good imported or its raw materials and inputs had received directly or indirectly, any financial favor, incentive or prize from the government of the country of origin of the exportation, or from its public or private-public owned agencies. Article 11 of this Decree sets out that the use of multiple exchange rates in the country of origin of the exportation, as well the existence of any form of financial support or price support when it implies an advantage shall be considered a subvention.

In the same way, it is possible to adopt safeguard measures in order to protect a specific sector of national production for its economic balance in case of an increase of the importations of a good, in such a way that causes or threatens to cause serious damage to the sector.

Under the rules governing World Trade Organization member countries, there are different types of safeguard: general safeguard, and special safeguard for agricultural products. Each of them has specificities in its application, which are regulated by Decree 152 of 1998. On the other hand, a special procedure is established for the application of a safeguard measure without exceeding the bound customs duty tariff level in the WTO, in accordance with the provisions set forth in Decree 1407 of 1999. For the imposition of a bilateral safeguard measure, which applies to countries with which Colombia has a commercial agreement in force, the procedure is established in Decree 1820 of 2010.

On the other hand, special rules that allow safeguarding national producers interests in the local and foreign market are included in international trade agreements through safeguard measures and remedies for unfair trade practices of dumping and subsidies.

4.6. Tariff Preferences

4.6.1. Free Trade Agreements

(a) Andean Community (CAN)

One of the most strategic integration plans for Colombia is the CAN. By virtue of this agreement, Colombia is part of a free trade zone for goods exempt of tariffs and the commitment of not establishing restrictions for the trade of goods and services in the CAN. This economic regional integration constitutes a free trade zone with Bolivia and Ecuador since 1993, and with Peru since 2006.



Even though on April 22 of 2006, Venezuela denounced the Cartagena Agreement, the provisional agreement negotiated with Venezuela on November 28, 2011, is in force since October 19, 2012. By means of this agreement, Colombia and Venezuela agreed to incorporate custom duties benefits.

Currently, the CAN is in process of reviewing the Andean System of Integration (SAI in Spanish) with the aim of strengthening and renewing the dynamics of the integration process in accordance with the international trade challenges.

(b) Colombia–Mexico Free Trade Agreement

It was established as the group of three treaty (G3), established by Mexico, Colombia and Venezuela. It was signed on June 13, 1994, and entered into force on January 1, 1995.

In May 2006, Venezuela formally denounced the treaty and for this reason since November 19 of 2006, in the G3 free trade agreement, now G2, Colombia and Mexico were the only participants.

In August 2009, after two years of negotiations, Colombia and Mexico finally finished the implementation of the agreement and signed five decisions that were included in a modifying protocol regarding market access, rules of origin adequacy, regional committee on inputs, extraordinary faculties for the administrative committee and the change in the name of the treaty. This protocol has been in force since August 2 of 2011, allowing free access to the 97% of the goods of Colombia and Mexico. The remaining 3% of goods corresponds to agro goods excluded from the FTA, some of them were included in the negotiations of the Pacific Alliance.

(c) Economic Complementary Agreement CAN–MERCOSUR

(I) Economic Complementarity Agreement No. 59 signed between the Governments of Argentine, Brazil, Paraguay and Uruguay, Mercosur State Parties, and the Governments of Colombia, Ecuador and Venezuela, member countries of the CAN

The economic complementary agreement No. 59 (ACE 59) was signed on October 18, 2004, and entered into force since 2005. Under this agreement a free trade zone was established through a liberalization trade program applicable with bilateral progressive and automatic tariff reduction for goods of origin and proceeding from the territories of the contracting parties (member of the CAN and members of Mercosur).

The Ace 59 takes into account the asymmetries derived from the different levels of economic development of the parties, and as a consequence, determined subitems for immediate tariff elimination and periods for gradual tariff elimination as well as special rules of origin. A big part of the trade between CAN-MERCOSUR is currently free of tariffs and the liberalization program of this agreement shall end in 2018.

This agreement also includes a chapter on rules of origin, safeguards, dispute settlement, technical requirements, sanitary and phytosanitary measures, as well as a chapter on special measures including an agro safeguard and a deepening protocol on services is being negotiated by the Parties.

(II) Economic Complementarity Agreement No. 72 signed between the Governments of Argentine, Brazil, Paraguay and Uruguay, Mercosur State Parties, and the Government of Colombia



The economic complementary agreement No. 72 (ACE 72) was signed on July 21, 2017. Regarding its entry into force, it should be noted that the ACE 72 between Colombia and Argentina, and between Colombia and Brazil, entered into force on December 20, 2017. On the other hand, ACE 72 between Colombia and Paraguay, and Colombia and Uruguay, has not yet entered into force.

ACE 72 is an agreement of economic complementation that pursues the same objectives of ACE-59 and was also signed within the framework of the Montevideo Agreement of 1980. Whenever the tariff preferences granted by the signatory parties in the ACE 59 are still valid, the access conditions for the originating goods of the parties to the agreement were not renegotiated. Industrial products such as textiles, apparel, metalworking and vehicles dispositions were incorporated in the ACE 72

(d) Colombia–Chile Free Trade Agreement

The free trade agreement develops the economic complementation agreement ACE 24, which provides commercial advantages for Colombian economic agents as it sets specific and clear rules for the development of the trade of goods and services, including the promotion and protection of investments, and an adequate international cooperation as well as the creation of new and better business and job opportunities. The free trade agreement was signed on November 27, 2006, and entered into force on May 8, 2009.

The agreement is based on the schedule of concessions that were negotiated under the ACE 24 and signed on December 6, 1993, and entered into force on January 1, 1994. This schedule was established upon five negotiation programs. These long-term programs ended on December 31, 2011.

Since January 1, 2012, 99% of the tariffs were and the 1% left had a fixed tariff reduction. Currently the price band system is still applicable.

(e) Colombia–European Free Trade Association (EFTA) Free Trade Agreement

All industrial products coming from Colombia and exported to any country within EFTA (Switzerland, Liechtenstein and Norway, as Iceland is pending of approval) are subject to zero tariff. In the same way, 85.7% of imports to Colombia from such countries are liberalized as of July 1, 2011. The treaty also addresses, agricultural commerce, public purchases, and intellectual property, among others.

Switzerland ratified the Treaty on 29 October and Liechtenstein on 26 November, 2009. The Treaty entered into force with Norway on September 2, 2014 and with Iceland on October 1, 2014.

(f) Colombia-Canada Free Trade Agreement

This agreement includes three separate agreements which are interrelated. These are: the free trade agreement, the labor cooperation agreement and the environment agreement. This agreement represents an advantage for Colombia, since it enables access to a market of 33 million consumers with high level income.

By virtue of this agreement, 91.9% of the industrial trade coming from Canada is liberalized, as well as the 98.8% of the Colombian industrial products exported to the northern country. The treaty also includes agricultural trade, public procurement, investment and services liberalization, including telecommunications and financial services chapters, among others.



(g) Colombia-Northern Triangle Free Trade Agreement

The free trade agreement between the Republic of Colombia and the Republics of El Salvador, Guatemala and Honduras (Northern Central American triangle) was signed in Medellin on August 9, 2007, and entered into force with Guatemala on November 12, 2009, with El Salvador on February 1, 2010, and with Honduras on March 27, 2010.

This agreement allows Colombia to have a legal framework to access a market of approximately 29 million of people in relation to goods and services. Additionally, it regulates many other important subjects such as investment, agreement with public entities, technical rules, sanitary and phytosanitary measures, among others.

The objectives of this free trade agreement are to eliminate trade barriers and to facilitate cross border transit of goods within the free trade area, to promote conditions for fair competition, protect, promote and substantially increase the investment in each country, among others.

Due to the tariff reduction process (between three and twenty years), Colombia is currently providing to the country members of the Northern Triangle a tariff free application to the 53% of the subheadings and a 1% have fixed tariff preferences.

(h) Colombia-Venezuela Economic Complementary Agreement

Colombia signed an agreement with Venezuela on November 28, 2011, and its annexes on April 15, 2012. The agreement entered into force on October 19, 2012.

From the items contained in the agreement, the following should be noted:

- The agreement determines a preferential treatment in tariffs based upon the historical trade of the parties during the years 2006 and 2010
- Colombia provides custom duty preferences for approximately 4,921 headings while Venezuela provides for 4,731 headings. Furthermore, 100% preferences were granted to certain products, for both countries sensible products were defined, which have a preferential rate between 40% and 80%
- The customs duty preferences will apply to new and unused products of origin
- Specific rules for the importation of agricultural and livestock products are applied since they are considered as sensitive products

(i) Caribbean Community (CARICOM)

The Partial Scope Agreement No. 31, on trade, economic and technical cooperation adopted within the frame of Article 25 of the ALADI, was signed in Cartagena on July 24, 1994. According to the agreement, on May 21, 1998, in Georgetown (Guyana) the first protocol that modifies the rules of origin was adopted, and includes for the first time immediate custom preferences in favor of Colombia since July 1, 1998, and a gradual preference (25% each year) starting as of January 1, 1999.



The CARICOM members that participate as signatories of the partial agreement are: Trinidad and Tobago, Jamaica, Barbados, Guyana, Antigua and Barbuda, Belize, Dominica, Grenada, Montserrat, St. Kitts and Nevis, Saint Lucia, and Saint Vincent and the Grenadines. Most developed countries part of the agreement (Jamaica, Trinidad and Tobago, Barbados and Guyana) put in force their tariff concession commitments in favor of Colombia as of January 1, 1998, and January 1, 1999.

Colombia grants tariff preferences to developing countries in 1128 nandina nomenclature subheadings for products and receives tariff reductions in 1074 subheadings from Trinidad and Tobago, Jamaica, Barbados and Guyana. Currently, the negotiated preferences for products are of 100%.

(j) Colombia-Cuba Economic Complementary Agreement

Trade relations between Colombia and Cuba are regulated under the Economic Complementary Agreement #49 signed in 2000, in the framework of the ALADI and is in force since July 10, 2001. The trade relations with Cuba were strengthened through the negotiations of two protocols, the first one allowed a deepening on the existent tariff preferences and the second one included some issues in the chapters of dispute settlement, rules of origin, market access, etc.

The agreement covers 1,138 goods with preferences in favor of Colombia and 813 in favor of Cuba. The agreement is based on fixed tariffs granted between the parties among the 40% and the 100% on the MFN tariff of each country for third parties.

(k) Colombia-Nicaragua Economic Complementary Agreement

This agreement takes place under Article 25 of Montevideo Agreement, which allows the negotiation of partial economic agreements between ALADI member states and Latin American integration areas such as Nicaragua. The agreement is aimed to strengthen the trade exchange through the establishment of tariff and nontariff preferences. Currently, Colombia grants preferences in favor of Nicaragua (25 subheadings) and in the future, when the conditions allow it, Nicaragua will grant preferences to Colombia.

(l) Colombia-United States Trade Promotion Agreement

The 99% of the exportable Colombian portfolio is considered to be at zero duty in the United States under this agreement. More than 80% of American exports related to industrial and purchase products are considered to be duty free within the scope of this free trade agreement. Protection mechanisms were established for certain products (i.e. products in the agricultural sector), such as automatic safeguards, high base tariffs, long tariffs, tariff quotas and grace periods.

This free trade agreement also includes chapters of investments, financial services, communications, public purchases and e-commerce, among others.

This agreement has fostered growth in the automotive, medicine and construction sectors, among others. Currently, the Colombian Government remains committed to the implementation of obligations related to trade facilitation, intellectual property and services. Likewise, efforts have been made to eliminate non-tariff barriers (mainly sanitary and phytosanitary barriers for agricultural products) so that Colombian products and services have real access to the United States market.



(m) Colombia, Peru and Ecuador (accession)-European Union Free Trade Agreement

By means of Ruling C-335 of June 4, 2014 of the Constitutional Court, this Free Trade Agreement entered into force. This agreement allowed the immediate entry without the payment of customs duties for the 99.9% of the products and industrial goods that Colombia currently exports to the European Union such as fishing goods, plastic, manufactures, leather, textile, clothing and footwear among others.

The European Union is the world's biggest trading partner with a market of more than 509 million consumers with a consumption capacity of approximately USD34,000.

(n) Pacific Alliance

The 28 of April of 2011, leaders of Chile, Colombia, Mexico and Peru launched in Lima an initiative for the establishment of the Pacific Alliance. The main goal of this initiative was to progressively reach towards the free movement of goods, services, capital and people, and to contribute in this way to the development of the countries and a better quality of life of citizens. The legal instrument that establishes the Pacific Alliance is the Framework Agreement signed on June 6, 2012.

According to the Doing Business 2016 of the World Bank, in Latin America and the Caribbean Pacific Alliance member countries rank first in the business ease ranking: Mexico (1st), Chile (2nd), Peru (3rd) and Colombia (4th). On the other hand, the Gross Domestic Product (GDP) of the countries of the Pacific Alliance accounts for 39% of total GDP in Latin America and the Caribbean. The countries of the Pacific Alliance account for approximately 50% of Latin America's foreign trade. They also account for 44% of total Foreign Direct Investment flows in Latin America and the Caribbean.

In February 2014, the members of the Pacific Alliance signed a trade additional protocol which contains 19 chapters, the majority of them already regulated under the bilateral agreements existing between the Pacific Alliance countries with different levels of depth. The objective of the trade protocol is to strength the free trade existent between the members and also to harmonize and update the bilateral agreements including some new fields of interest of Colombia.

Considering the high level of tariff liberalization in the Pacific Alliance through the already existing bilateral agreements, the major goal of the PA, is the inclusion of a key element for the completion in a world of globalized production: The possibility of accumulating the origin of goods between the four members. The Pacific Alliance allows the incorporation of intermediate goods and supplies from any country of the Pacific Alliance in the final good for export to any of the member countries. This is a real extended market responding to the modern schemes of production and facilitates the inclusion of Colombia in the regional and global value chains.

Beyond the progress in the trade aspects, the Pacific Alliance must be seen as an integral strategy. The economic and commercial commitments complements with the activities and actions developed in support areas for SMEs, innovation promotion, cooperation, education, facilitation of movement of persons, reduction of regulatory obstacles, joint promotion of exportations, investment and tourism, among others.

The regional integration of the Pacific Alliance is of interest in the international community; currently, the Pacific Alliance has 32 observer states, with them, activities and action related with the objectives of the Pacific Alliance such as free movement of people, goods, services and capital, as well as cooperation, infrastructure, environ-



ment, education and SME's are implemented. This initiatives respond to the shared interest in positioning the Pacific Alliance as a platform for the world with a special interest in the Asia Pacific region.

The Framework Agreement of the Pacific Alliance is in force and the Trade Protocol entered into force on May 1, 2016.

The Members of Pacific Alliance are negotiating a Free Trade Agreement with its potential "associate members" (Australia, Canada, New Zealand and Singapore).

(o) Colombia-Republic of Korea Free Trade Agreement

The FTA between Colombia and South Korea was signed in February 2013. The main objective of this Agreement is to create new alternative markets for exports, new investment opportunities and strengthen the bilateral relation between the countries. It is important to highlight that several memorandums of understanding were signed on industrial, energetic cooperation, information and telecommunications technologies.

This agreement shall allow Colombia an immediate access to Korea with zero tariffs for the 98% of the subheadings for industrial goods. The remaining 2% will be liberalized in five years.

This agreement entered into force on July 15, 2016.

(p) Colombia-Costa Rica Free Trade Agreement

This agreement reflects the interest of Colombia in creating new markets for our exportations. Costa Rica is an important market for Colombian foreign trade considering its economic importance and the cultural and commercial proximity with our country. The FTA with Costa Rica creates opportunities for the exportation of Colombian industrial and agro-industrial goods. This agreement entered into force on August 1, 2016.

(q) Colombia-Israel Free Trade Agreement

This is an agreement between Colombia and a country from the Middle East negotiated with the aim of increasing the trade and investment Colombian flows, improving the economic bilateral cooperation, reducing the technical barriers to trade and the promotion of diplomatic relations. The FTA with Israel shall allow a preferential access to Israel and an increase of the trade with this country as a result of the reduction of transaction costs and the improvement of customs procedures. Also, this FTA shall promote investment flows between the countries and shall promote the creation of new businesses. This agreement was subscribed on September 30, 2013 and is currently undergoing internal procedures for its approval and entry into force.

(r) Colombia-Panama Free Trade Agreement

With this FTA Colombia looks for strengthening the trade relations with one of the most important natural trade partners considering its geographic proximity and the complementary character of its economies. The economic growth of Panama has been very dynamic in the last years and the country is consolidating as a business center for the region, which represents important opportunities for Colombian industry. This agreement was subscribed on September 20, 2013 and is currently undergoing internal procedures for its approval and entry into force



4.7. Colombia and the World Trade Organization (WTO)

Colombia has been a member of the WTO since April 30, 1995 and a member of the GATT since October 3, 1981. It is therefore obliged to ensure the transparency of its trade policies and the proper implementation of the WTO. Likewise, as a member of the WTO, the Colombian Government is subject to periodic reviews, with the purpose of evaluating the country's trade policies and practices.

It should be noted that the WTO Agreements contain special provisions for developing countries, allowing the inclusion of longer terms for the implementation and execution of the Agreements and commitments under them. As a result, Colombia has had the possibility to design compliance schedules that fit the country's reality, guaranteeing the achievement of the WTO objectives in terms of increasing trade opportunities and increasing trade capacity.

4.8. International Trade Companies

The international trade companies (ITC) are intended to trade and sell Colombian products abroad. These products are purchased in the domestic market or may be manufactured by partners of the ITC.

The most important benefits of these companies are:

- Exemption from VAT on their purchases of movable tangible goods, as long as these are effectively exported or transformed
- Additionally, the intermediary production services that these companies may provide are equally exempt from VAT, as long as the final product is effectively exported
- Purchases of goods intended for exportation are not subject to tax withholding

4.9. Free Trade Zones

They are territorial areas located within Colombia, in which industrial activities for goods and services, or commercial activities are developed under a special customs, tax and foreign trade regime. Merchandise that enters a free trade zone is considered to be outside Colombia for customs purposes only. The objective of these zones is to promote new jobs, new investment in fixed real assets and the creation of scale economies.

The main benefits of operating under a free trade zone are:

- Application of a special income tax rate of 20% for industrial users and the operator user. Commercial users (storage work) are taxed at the general rate
- Users on free trade zones created in Cucuta municipality between January 2016 and December 2019, will apply a special tariff of 15% when the following characteristics apply: (I) count on more than eighty (80) acres and (II) it is guaranteed that will have forty (40) users between national and foreign companies
- No paying of customs duties on goods entering from abroad to the free zone as long as they remain there



- VAT exemption for sales from the national customs territory to the industrial users of the free trade zone, or among them. This exemption is not applicable to food, cleaning products, among others, that are not essential for the execution and development of the social purpose of the industrial user
- Exportation from a free trade zone can benefit from the free trade agreements signed by Colombia

It is worth noting that free trade zones can be developed under three (3) schemes: (i) the industrial park (permanent zones) in which various companies operate in a same physical space; (ii) as single company located anywhere in the country (special permanent zones); or (iii) as fairs, expositions, congresses and seminars of national or international nature that entitle importance for country's economy or foreign commerce (transitory free trade zones).

According to the statistical report prepared by the Technical Secretariat of the Intersectorial Commission of Free Trade Zones, as of November 2017 there were a total of 111 free trade zones, of which 11 had been declared before Law 1004 of 2005, 31 permanent free trade zones and 69 special permanent free trade zones.

Finally, it should be noted that the Colombian Government issued Decree No. 2147 of December 23, 2016, whereby some modifications to the free trade zones regime were agreed. Although there are several provisions of Decree 2147 that are now in force, the rest of the provisions contained in the Decree will enter into force on March 8, 2018.

4.10. Exports

Exports constitute foreign trade operations through which goods exit the national customs territory and are sent to the rest of the world or to a free trade zone in Colombia. As well it is considered export the exit of goods from free trade warehouses.

The process of exporting a product or service from Colombia starts with the filing and acceptance of an authorization of shipment through the procedures set forth in the customs regulations. Once the shipment has been authorized, the goods are loaded and the certificate of shipment has been issued by the transporter, the application for authorization of shipment is considered, for all purposes, as the respective return.

In Colombia, exports are not subject to any customs duties and may enjoy special treatments such as:

- Special export and import programs (Plan Vallejo)
- International marketing agents (Comercializadoras Internacionales in Spanish), which are businesses specifically incorporated to purchase national products for export. The manufacturers and the suppliers of the goods acquired by these businesses receive the same benefits as if they were exporters of goods
- Special export programs for tax reimbursements.

The provisions regarding exports on Decree 390 of 2016 are pending regulation and, thus have not yet entered into force. This Decree establishes the following import regimes:

- Temporary export



- Temporary export for re-importation in the same state
- Temporary export for outward processing
- Definitive export
 - Definitive export
 - Export of samples with no commercial value
 - Export of coffee
- Special export regimes
 - Postal traffic
 - Fast delivery or express delivery
 - Temporary export made by travelers
 - Export of household goods
 - Export b pipelines.

Following, will present some of the exports regime from custom's point of view, under Decree 2685 of 1999, currently in force:

4.10.1. Definitive export

It allows the existence of national merchandise (goods) or in free circulation within national territory, for its definite use or consume in another country, or within the national customs or a free trade warehouse.

4.10.2. Temporary exportation for passive improvement

It allows the temporary exit of national merchandise or in free circulation from national customs territory, in order to be subject of transformation, elaboration, repair abroad or in a free trade zone. This merchandise will be subject to a re- importation regimen within the term filed in the exports declaration.

4.10.3 Temporary exportation for re-importation in same stage

It allows the definitive exit from national customs territory of the merchandise (goods) that were subject of temporary exportation or to transformation or assembly.

4.10.4 Re-export

It allows the definitive exit from the national customs territory, of goods that were subject to a temporary importation regime or to the transformation or assembly regime.



Regulatory Framework

REGULATION	SUBJECT
Decree 299 of 1995	Compensatory rights.
Decree 152 of 1998	Procedures and criteria for the application of general safeguard measures, transitional safeguard measures for clothing and special safeguard measures for agro-goods.
Decree 1407 of 1999	Procedure for special safeguard measures– consolidated level in WTO.
Decree 2685 of 1999* amended	Customs Statute.
Decree 624 of 1989 amended	Tax Statute
Decree 4149 of 2004	Facilitation of foreign trade procedures and creation of VUCE.
Resolution 4240 of 2000 partially amended	Customs Statute Regulation.
Law 1004 of 2005	Provides for basic conditions and procedures in order to access the free trade zone regime
Decree 1820 of 2010	Bilateral safeguard–international agreements.
Decree 1750 of 2015	Antidumping.
Decree 1446 of 2011	Incorporates new articles to Decree 2685 of 1999.
Decree 1142 of 2010	Indicates which departments may declare free trade zones.
Decree 2129 of 2011	Establishes the conditions for declaring the existence of a special permanent free trade zone for the departments of Putumayo, Nariño, Huila, Caqueta and Cauca.
Decree 3568 of 2011	Creation of the figure of authorized economic operator (OEA).
Decree 1625 of 2016	Which provides for a zero (0) tariff rate for the importation of a series of products.
Decree 0925 of 2013	Rules applicable to importations register and licenses.
Decree 1289 of 2015	Which modifies the structure of the Ministry of Commerce, Industry and Tourism.
Decree 390 of 2016	New Customs Statute
Resolution 1649 of 2016	Dispositions in relation to Special Systems of Exports and Imports (Plan Vallejo)
Decree 2153 of 2016	Customs Duty Tariffs
Decree 2147 of 2016	Free Trade Zone Regime
Decree 349 of 2018	Amend to Customs Regime



(*) This Guide is prepared based on the regulations in force at the time of its publication. It should be noted that Decree 390 of 2016, by which the customs regulation was modified, has not come into full force, due to the failure to issue the corresponding regulations. Likewise, some provisions of Decree 2147 of 2016, which amended the free trade zone regime, have not come into full force. It is expected that the remaining provisions will come into force on March 8, 2018, under the terms of article 139 of this regulation.





LEGAL **GUIDE**

TO DO BUSINESS IN COLOMBIA

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CHAPTER **5**

**LABOR
REGIME**



LABOR REGIME

Five things an investor should know about labor matters in Colombia:

1

Employment contracts executed in Colombia, regardless of the nationality of the parties, are governed by Colombian law.

2

Every year the amount of the monthly legal minimum wage (MLMW) is set either by agreement in the commission comprising representatives of employees, employers and government, or if there is no agreement, unilaterally by the Government.

3

Under Colombian labor law, there are payments that must be considered as being part of the salary base, regardless of the willingness of the parties, such as commissions or bonuses for meeting individual targets. Even if the salary payment is agreed in foreign currency payment shall be made in Colombian pesos.

4

Both national and foreign employees, resident in Colombia and legally bound by an employment agreement are required to join and contribute to the Integral Social Security System, except for the affiliation to the pension system of foreign employees which is voluntary.

5

In addition to the employee's monthly salary, the parties can agree on non-salary extralegal benefits, which are not considered part of the base to calculate payroll taxes. Additionally, such extralegal benefits will not be part of the base to calculate contributions to the Integral Social Security System, in the portion that does not exceed 40% of the employee's total remuneration.



Work relationships are regulated by the Labor Law frame as follows:

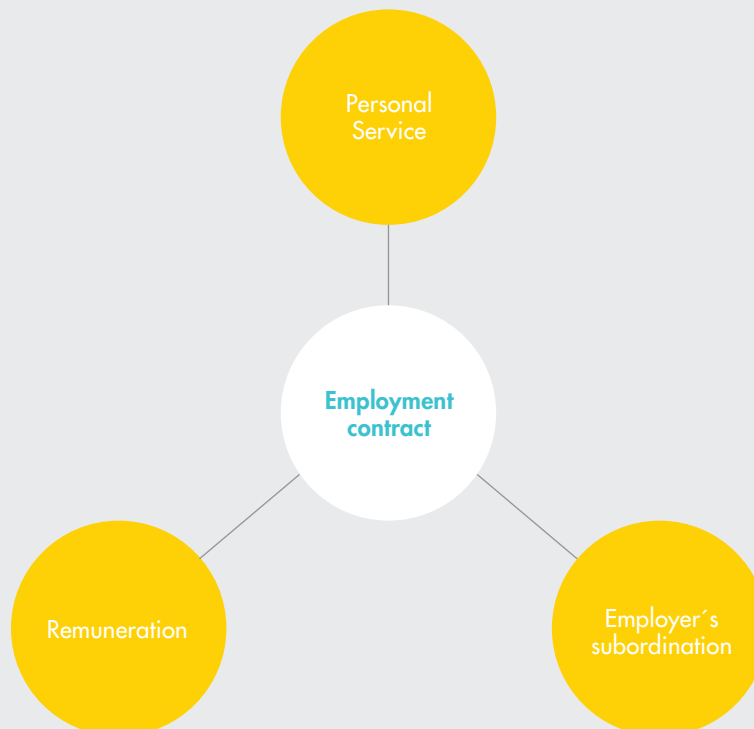
LABOR LAW		
Individual	Collective	Social Security
* Regulates relationships between employers and employees.	* Regulates relationships between employers and employees associated to Unions or when non-unionized employees negotiate collective agreements.	*Covers contingencies regarding life, health and loss of working capacity to which employees are exposed.

Labor law rules employment relationships, covering the areas of individual labor law, collective labor law and integral social security. Individual labor law regulates the relationships between the employer and individual employees, and collective labor law regulates the relationship between the employer and employees associated with unions or when negotiating collective bargaining agreements with unionized or not unionized employees. Social security covers the contingencies related to health, death and loss of the working capacity that may arise for an employee during the employment contract.

Labor law is applicable to all labor relationships developed in Colombia, regardless of the nationality of the parties (employer or employee) or the place where the contract is executed.

5.1. Overview

An employment contract does not require special formalization and only three conditions must be met:





5.2. Employment Contracts

5.2.1. Types of Contracts by Duration

Employment contracts can be classified according to their duration, as follows:

TYPES OF LABOR CONTRACTS DEPENDING ON THEIR DURATION			
Indefinite/non-fixed term	Fixed	For the duration of the work or hired service	Occasional, casual or temporary
<ul style="list-style-type: none"> * Non-fixed duration. * It is not determined by any term or condition. * Verbal contracts are considered to be indefinite term contracts, regardless of whether the parties have agreed otherwise. 	<ul style="list-style-type: none"> * The parties establish a term for the duration of the contract, without exceeding three (3) years. * This type of contract must be written or at least there should be other regular evidence methods to prove its existence and conditions. * Fixed term employment contracts with a term of less than one (1) year can be renewed for three (3) equal or shorter terms, after which any further renewal shall be for one (1) year. * Fixed term contracts of one year (1) to three (3) years duration may be renewed indefinitely. Fixed term employment contracts do not become ever indefinite term contract, unless the parties decide so. * If a renewal is not desired, a prior notice of at least thirty (30) calendar days, must be given to the other party, before the expiration date of the contract; however, the fixed term employment contracts with a term equal or less than thirty (30) days does not require a prior notice. 	<ul style="list-style-type: none"> * The term of the contract depends on the duration of the work for which the person has been hired. * It is necessary to describe in detail the duties or work object of the contract and for this reason it must be a written contract. * Contracts for the duration of the work cannot be renewed. 	<ul style="list-style-type: none"> * This type of contract is celebrated for tasks that are not part of the regular activities of a company. * Its term is of less than one month.

5.2.2. Trial Period

During the trial period, both the employer and the employee have the opportunity to evaluate the convenience of the relationship and the conditions and abilities required for the required services.

The duration of the trial period must be stated in writing. During this time either party may terminate the employment contract without prior notice and the employer is not obligated to pay an indemnification. In order for the



employer to terminate the contract during the trial period, the termination shall be based on an objective reason, and it shall be notified to the employee in the letter that terminates the contract. The duration of the trial period depends on the type of employment contract, but in any case it cannot exceed two (2) months. For the fixed term employment contracts the trial period cannot exceed the fifth (1/5) part of the agreed fixed term, never exceeding two (2) months.

5.2.3. Foreign Employees

Foreign employees have the same rights and obligations as Colombian employees. However, when foreign nationals celebrate an employment contract in Colombia, both the employer and the employee must also meet additional requirements relating to immigration procedures and the control of foreign nationals during their stay in Colombia (i.e. requesting a visa). For visa information and procedure please consult Immigration Chapter of this Guide.

Natural or legal persons with a labor contract or a contract for the supply of a personal service with foreigners, must report such relation to the Migration Colombia office, through the Foreign Report Information System (Sistema de Información para el Reporte de Extranjeros –SIRE– in Spanish). Through this system, the company shall provide information regarding the hiring, employment, termination of contract of the foreigner employee; must be informed within the 15 days after the initiation or termination of the labor relation.

Foreign employees hired through employment contract in Colombia are voluntary affiliates to the Pension System according to the second (2) paragraph of the Article 15 of the Law 100 of 1993 provided that such employees are not covered under a pension regime in its country of origin or any other.

5.3. Payments Arising from the Labor Relationship

5.3.1. Salary

The salary is the direct compensation that the employee receives for the services rendered to the employer.

(a) Type of salaries

TYPE	DESCRIPTION	MINIMUM AMOUNT
Ordinary	An ordinary salary remunerates the regular work. In addition to the regular pay, the employee may receive, when applicable: (i) overtime pay; (ii) pay for work on mandatory rest days; (iii) percentage on sales and commissions; (iv) habitual bonuses such as the ones determined by the employee's individual performance; (v) permanent travel expenses for employee's meals and lodging, and (vi) in general, any payment made as direct compensation of the employee's services.	2018 COP781.242 (approx. USD260)
	At the end of each year, the Government determines the minimum legal monthly wage. The employees that earn one ordinary salary will have the right to earn the social payments proscribed by the law, as explained below.	



TYPE	DESCRIPTION	MINIMUM AMOUNT
Integral/All inclusive	<p>Under this modality, the salary covers the regular work hours, and it also remunerates beforehand all surcharges and benefits such as severance and their corresponding interests, service bonuses, extra-legal premiums, overtime pay, pay for work on mandatory rest days, provisions in kind and generally all fringe benefits; except vacations. The employee only receives twelve (12) monthly salary payments per year.</p> <p>An integral salary arrangement must be stated in writing. Additionally, this modality can only be adopted for those employees earning more than ten (10) times the current MLMW plus a payroll benefits factor that cannot be of less than 30% of the total salary. In this system, social security contributions are calculated over the 70% of the integral salary. Vacations shall be calculated taking into account the 100% of the all-inclusive salary.</p>	<p>2018 COP10.156.146 (approx. USD3.385)</p>

(b) Wage exclusion pacts

Employees and employers can agree on payments or benefits which are not considered to be part of the salary, such as alimentation, clothing, and extralegal premiums, and thus are excluded from the base over which contributions to the social security system, payroll taxes, vacations, fringe benefits and indemnities are calculated. However, this kind of agreement is restricted to the extent that some payments cannot be excluded from the salary, since they remunerate directly the employee's personal services.

The excluded payment benefits shall be exempted from contributions to the Integral Social Security System in the portion that does not exceed forty percent (40%) of the employee's total remuneration. The portion that exceeds such limit shall be subject to contributions to the Integral Social Security System (health, pension, labor risks)

(c) Traveling expenses (per diem)

Traveling expenses include both travel costs, and meals, and other expenses when the employee is traveling for the benefit of the employer to perform a particular task. Regardless of how a company agrees, treats and manages them (advance payment, reimbursement, travel expenses, corporate credit card, etc.) they are considered travel expenses. The portion of permanent per diem payments destined to lodging and meals constitute part of the salary. The occasional per diem payments, and/or those habitually granted but not intended to lodging and meals are not considered salary under any circumstances.

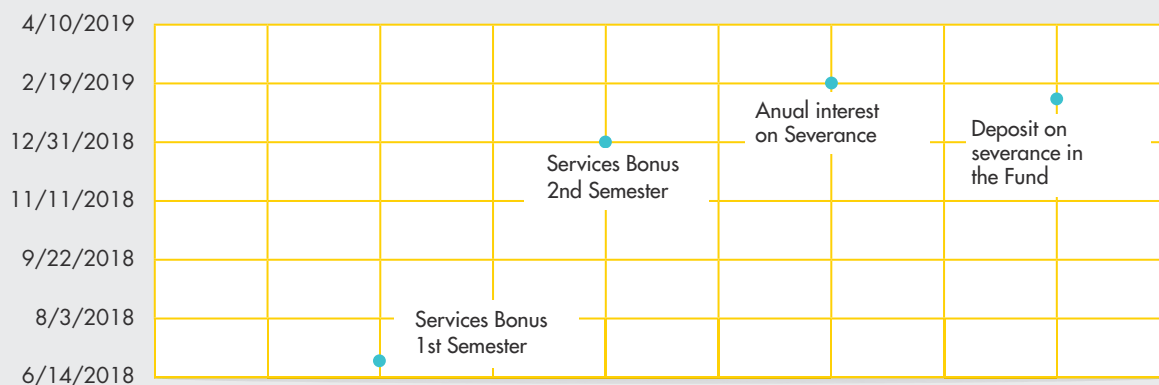
5.3.2. Fringe benefits

Employers have the obligation to pay their employees who earn an ordinary salary, regardless of the duration of their contract, the following fringe benefits:



ITEM	PAY PERIOD	DESCRIPTION
Severance	Annual	<p>Employers must make an annual direct deposit to a severance fund on behalf of every employee, equivalent to one (1) monthly salary for every year of service and proportionally for a fraction thereof. This deposit must be made in the corresponding fund chosen by the employee, before February 15 of the following year.</p> <p>Upon termination of the employment contract, the employer must pay the employee the accrued severance until the date of termination. The employer may request an advance payment of the severance fund if the intention is to use it for housing, when the modality of salary changes from ordinary salary to integral salary, or when there is an employer substitution.</p> <p>Failure to make the deposits on time generates a penalty of one day of salary for each day of delay on the payment during the term of employment contract until the payment is made.</p>
Interest on severance	Annual	Equivalent to 12% per annum on the balance of each year's severance owed to the employee as of December 31 of the preceding year, which must be paid no later than the following month after the severance's liquidation. In the case of the annual regime, the employer will have until January 31 of each year to pay them.
Services bonus	Semiannual	Equivalent to fifteen (15) days of salary for each semester of service, and must be paid no later than June 30 and December 20 of each year. Since July 7, 2016 it is applicable to employees who render domestic services.
Dress and footwear	Every four (4) months	It is an endowment of one (1) pair of shoes and one (1) work outfit to be provided at least three (3) times per year to every employee, in accordance with the task to be performed (no later than April 30, August 31 and December 20). Employees entitled to this benefit are those who earn up to two (2) times the el S.M.M.L.V. -- COP1.562.484 (approx. USD520) and that have been employed for at least three (3) months.

Maximun payment dates





5.3.3. Transportation Aid

The employer must pay to employees with a salary of no more than two (2) times the MLMW (COP1.562.484 – USD520) monthly aid for transportation expenses, as long as the employee lives on a distance of at least one (1) kilometer from their workplaces (the aid is of at least COP88.211 (approx. USD30 in 2018).

In the events of illnesses leaves, holidays and licenses, there is no obligation for the employer to pay the transportation aid. This aid shall be included in the base to calculate and pay fringe benefits

5.3.4. Contributions to the Integral Social Security System

The Integrated System for Social Security was created by Law 100 of 1993. The Social Security System integrates the general pensions subsystem (Pensions), the general health subsystem (Health) and the general labor risks subsystem (Labor Risks).

Every employer is under the obligation to enroll his employees to the Social Security System and to make the corresponding monthly contributions on time. Foreign employees are voluntary affiliates to the Pension System, according to the second paragraph of the Article 15 of the Law 100 of 1993. The percentages that the employer and employee must pay to the Social Security System are the following:

SYSTEM	CONTRIBUTIONS (% OF SALARY)	
	EMPLOYEE	EMPLOYER
Pensions	4%	12%
Health	4%	8,5%**
Labor risks***	-	Between 0.348% and 8.7%
Pension solidarity und****	Between 1% and 2%	-

*The non-salary benefits or payments shall be exempt from contributions to the Integral Social Security System in the portion that does not exceed forty percent (40%) of the employee's total remuneration. The portion that exceeds such limit shall be subject to contributions to the Integral Social Security System

** The following employers are exempted from paying the 8.5% of contributions to the health system: 1) Income taxpayers for employees that earn less than ten (10) MLMW; 2) physical employers for the employees that earn less than ten (10) MLMW; 3) Temporary Unions, Consortiums, autonomous patrimonies, which are employers for those employees who earn less than ten (10) MLMW 4) Free Trade Zones users.

This exemption does not apply for employers regarding their employees who earn ten (10) Monthly Legal Minimum Wages or more, entities that belong to the Special Tax Regime and physical employers who hire less than two (2) employees.

***The percentage of the contributions for Labor Risks varies in accordance with the insured risk, which is defined by the kind of activity to be carried out.



**** The percentage of the contribution to the pension solidarity fund varies according to the employee's salary. If the monthly salary of the employee exceeds 4 MLMW (COP3.124.968 – USD1042) it will have to make an additional 1% contribution. If the monthly salary of the employee exceeds 16 MLMW (COP12.499.872 – USD4167) it will have to make an additional contribution according to the salary amount, which can oscillate between 0.2% and 1% additional to the contribution.

In case the employee earns an all-inclusive/integral salary, Social Security contributions will be calculated over the 70% of the salary and not over the 100%.

It is important to mention that the maximum basis for the contributions to the Social Security System (health, pensions and labor risks) is twenty-five (25) MLMW. (COP19.531.050 – USD6510)

Colombia has entered into bilateral social security agreements with Chile, Argentina, Uruguay, Ecuador and Spain; however, the only ones operating are the ones with Chile and Spain. The purpose of these agreements is to guarantee that citizens of both countries have their contributions to a pensions system acknowledged in any of the other countries, (depending on the bilateral agreement) so that the old-age, disability and survivors' pensions are recognized under the conditions and characteristics of the country of residence of the employee by the time he/she requests the relevant pension.

5.3.5. Voluntary Affiliates to Pensions

Applies to the following individuals: Independent employees and in general all individuals residing in Colombia or abroad, who are not classified as mandatory affiliates or expressly excluded by Law 100, 1993, or any other amending legislation, and foreigners who remain in the country under a labor contract and who are not covered by another regime in their country or other are voluntary affiliates as it is mentioned in the second paragraph of the Article 15 of the Law 100 of 1993.

5.3.6. Payroll Taxes

Employers who have more than one permanent employee are required to make additional payments to the Colombian Institute of Family Welfare (ICBF in Spanish), to the National Apprenticeship Service (SENA in Spanish) and to the Family Compensation Funds (CCF in Spanish). The following table shows the payroll percentages to be paid to each of these entities:

ENTITY	% OF PAYROLL	
	< 10 MLMW*	> 10 MLMW
CCF**	4%	4%
SENA	0%	2%
ICBF	0%	3%

*The following employers are exempted from paying payroll taxes regarding SENA and ICBF: (I) Income taxpayers, for employees who earn less than 10 MLMW; (II) physical employers for the employees that earn less than ten (10) Monthly Legal Minimum Wages; (III) Temporary Unions, Consortiums, autonomous patrimonies that are employers for those employees who earn less than ten (10) Monthly Legal Minimum Wages; (IV) Free Trade Zones users.



This exemption does not apply for employers regarding their employees that earn ten (10) Monthly Legal Minimum Wages or more, entities that belong to the Special Tax Regime and physical employers that hire less than two (2) employees.

** Employers who hire new staff from 18 to 28 years of age, will not have to contribute to Family Compensation Funds by such affiliated workers during the first year of employment. To access the benefit, the employer must increase the number of employees compared to those who had on the payroll of the previous year; and increase the total value of the payroll of the immediately preceding taxable year. The National Government will regulate the conditions that companies must meet to access the benefit. It only applies to new personnel, without considering new personnel after the merger of companies. It does not apply to employees under 28 years of age who are linked to replace personnel.

The CCF grants the employees whose remuneration does not exceed four (4) MLMWs (COP3.124.968 – USD1041) an aid for goods or services. Its fundamental purpose is to alleviate the economic burdens represented in the support of the family as the basic nucleus of society.

5.3.7. Social Security Authority

Although Social Security entities and Payroll Taxes entities are able to begin audit and payment litigations regarding inconsistencies on the Social Security Contributions and Payroll Taxes, The Management Unit for Pension and Payroll Contributions (UGPP for its acronym in Spanish) is the one with the prevailing power to verify the correct liquidation of Social Security Contributions and Payroll Taxes.

In consideration of the audit processes, the entity may impose the following sanctions, depending on the stage of the administrative process:

ACTION	REQUIREMENT TO DECLARE AND/OR AMEND	OFFICIAL LIQUIDATION
Omission and late payment	Penalty of 5% over the non-liquidated amounts and amounts left to pay per month or in proportion, without exceeding the 100% of the contribution in charge, without prejudice of the corresponding interests over late payment.	Penalty of 10% over the non-liquidated amounts and amounts left to pay per month or in proportion, without exceeding the 200% of the contribution in charge, without prejudice of the corresponding interests over late payment.
Inexactitude	Penalty of 35% of the difference between the contributions declared and the ones left to declare, without prejudice of the corresponding interests over late payment.	Penalty of 60% of the difference between the contributions declared and the ones left to declare, without prejudice of the corresponding interests over late payment.

The UGPP can also impose penalties up to 15.000 Tax Unit Values – UVT¹ (COP497.340.000, approx. USD165.780) for the information and/or proves that are not supplied in time or that are incomplete or inaccurate.

¹The UVT for 2018 is COP 33.156 USD 12.



5.4. Working Hours

It is the time during which the employee is working for the company. The ordinary maximum working hours is of eight (8) hours per day and forty-eight (48) per week, distributed from Monday to Friday or from Monday to Saturday, as agreed between the parties. The working hours must be distributed during the day into at least two (2) periods, with a rest break in between, that rationally responds to the nature of the job and the needs of the employees. The law also allows for flexible working hours, in arrangement with the employees.

The limits regarding maximum legal working hours do not apply for employees holding direction, trust and handling positions. If the job requires it, employees holding said positions shall implement the required time to perform their duties without overtime pay.

Night work is defined as the work performed in the period between 09:00 pm and 6:00 am, which is compensated by a surcharge of 35% of the ordinary hour value. Also, overtime during the day shall be paid with a surcharge equivalent to 25% of the ordinary hour value. Overtime pay for night work is equivalent to 75% of the ordinary hour value.

5.4.1. Statutory Paid Rest Entitlements

(a) Mandatory paid weekly rest and public holidays

Employers are obligated to pay their employees the time off on Sundays, as well as on national and religious holidays. This payment is included in the monthly salary.

For occasional Sunday work (defined as two Sundays in a calendar month) the employee is entitled to an extra pay equivalent to 75% of the regular salary, calculated pro rata for the hours worked on a Sunday, or a compensatory day off paid in money or enjoyed in the following week, as the employee prefers. For regular Sunday work (defined as three (3) Sundays in a calendar month), the employee is entitled to both an extra pay equivalent to 75% of the regular salary, calculated pro rata for the hours worked on a Sunday, and additionally a compensatory day off in the following week.

(b) Annual vacations with pay

All employees are entitled to a paid annual leave equivalent to fifteen (15) working days for each year of service and proportionally for any portion thereof. Every employee must enjoy at least six (6) continuous days of holidays per year. According to Article 190 of the Colombian Labor Code, employees may only accumulate the remaining days of up to two (2) years, and in some special and concrete cases accumulate and carry over the time for up to four (4) years.

Pay for annual leave not taken is permitted only at the prior request of the employee that half of the leave is compensated in money, provided that the employees enjoy immediately the remaining half, and the agreement between the employer and the employee must be in writing. At the termination of the employment contract, untaken vacation entitlement must be paid.



5.5. Special Obligations of the Employer

5.5.1. Apprenticeship Contracts

Employers who employ more than twenty (20) employees must hire apprentices, in a proportion of one apprentice for every twenty (20) employees and one more for each ten (10) employees or fraction less than twenty (20) employees. This obligation also applies to employers who employ more than fifteen (15) but less than twenty (20) employees. If the employer does not wish to take on apprentices as required by law, the employer may instead pay the National Apprenticeship Service (SENA) an amount that shall not exceed one MLMW for each apprentice that should have been hired and was not.

5.5.2. Statutory Leaves

(a) Maternity leave

Every pregnant or adoptive mother is entitled to eighteen (18) weeks of paid leave which can begin two (2) weeks prior to the anticipated date of birth. Of the eighteen (18) weeks of paid leave, the week prior to the anticipated date of birth is mandatory. For multiple pregnancies, the paid leave entitlement is of twenty (20) weeks. Maternity leave is paid by the Social Security System, provided that the employee has been enrolled during the time of the pregnancy or a proportion thereof. Employment cannot be terminated on the ground of pregnancy or breastfeeding. A pregnant woman may be dismissed for just cause, if it has been approved by a labor inspector. This protection has been extended by the Constitutional Court to spouses or permanent companions of a dependent pregnant woman. To dismiss a pregnant employee or her spouse or permanent companion, it is necessary to have a fair cause qualified by the Ministry of Labor. It is prohibited to ask for pregnancy tests to job candidates.

Private entities with capitals above 1.500 MLMW (COP1.171.863.000, approx. USD390.621) or those with less than 1.500 MLMW but with more than 50 employees, and public entities, must assign a physical space to women in order to extract and conserve milk during the lactation period. Also, the employer must grant to these employees (2) rests of 30 minutes during the work shift, during the first six (6) months of age of the child.

(b) Paternity leave

The husband or partner of the pregnant employee is entitled to eight (8) working days of paid paternity leave, provided he contributed to the Health Social Security System.

(c) Bereavement leave

Employees are entitled to five (5) working days of paid bereavement leave on the death of a spouse, partner, a relative to the second degree of kinship, first degree of affinity, first degree of civil relationship (grandparent, parent, child, sibling, spouse, in laws, partner), regardless of the modality of employment.

Regarding kinship through adoption, relatives to the second degree are included, that is, the adoptive parent to the adoptive child and vice versa, siblings and grandparents.

5.6. Regulations

Employers are required to issue the following regulations:



5.6.1 Internal Work Regulations

Any business with more than five (5) permanent employees for commercial businesses, or more than ten (10) employees for industrial businesses, or more than twenty (20) employees for agricultural, livestock or forestry businesses must issue internal work regulations.

5.6.2. Industrial Health and Safety Regulations

Companies that have ten (10) permanent employees or more must establish an industrial health and safety regulations.

5.7. Termination of the Employment Contract

In general, with some legal and constitutional exceptions (e.g. pregnant and lactating women; unionized employees; employees who are in a vulnerable health condition, or employees entitled to be rehired in the event of dismissal), employment agreements may be terminated without prior notice by any of the parties. However, the effects of the termination vary depending on the type of contract and whether the contract is terminated with or without just cause.

5.7.1. Indemnification

Indemnification payments become payable in the event of the employer's failure to comply with any legal or contractual obligation, or for the failure to comply with any obligations that the labor law imposes on employers. Indemnifications are integrated by damage and loss of profits and their determination depends on the type of contract, as follows:

(a) Indemnification for the termination of the employment agreement without just cause.

TYPE OF EMPLOYMENT CONTRACT	INDEMNIFICATION
Fixed term	The indemnification is equivalent to the salaries corresponding to the remaining period of the contract.
For the duration of the work	The indemnification is equivalent to the salaries corresponding to the remaining period of the duration of the work, but in no event less than 15 days of salary.
Indefinite Term	<p>For employees earning a salary of less than ten (10) times the <i>MLMW</i> COP7.812.420 for year 2018 – USD2.604):</p> <ul style="list-style-type: none"> - Thirty (30) days of salary for the first year of employment plus twenty (20) additional days of salary for each subsequent year and pro rata for fractions. <p>For employees that earn a salary equal, or above, ten (10) <i>MLMW</i>; twenty (20) days of salary for the first year of their services and fifteen (15) days of salary for each following year(s) and proportionally for each fraction.</p> <p>The law provides for a special indemnification for employees who as of December 27, 2002, had ten (10) or more years of continuous work, whereby they are entitled to an indemnification equivalent to forty-five (45) days for the first year of employment and forty days (40) for each subsequent year and pro rata for fractions.</p> <p>Another additional indemnification for those employees that by January 1, 1991, had 10 or more years of services, consisting of forty-five (45) days for the first year and thirty (30) days for each subsequent year and pro rata for fractions. In this event the employees cannot make effective their right to be rehired.</p>



(b) Indemnification for failure to pay wages and/or benefits

If at the time of termination of employment, the employer fails to pay the employee the sums owed for salary or additional benefits in due time and manner, the employee is entitled to indemnification pay of one day of salary for every day of delay in payment for the first 24 months. From the 25th month onwards, default interests begin to accrue at the maximum legal interest rate until the payment is completed. This indemnification does not operate as a full right, to be applicable, the interested party shall obtain a court order.

5.8. Employment Stability

Pursuant to constitutional and legal provisions, some employees cannot be terminated unless authorized by a labor authority. The employees covered by these provisions include: (i) pregnant and lactating women; (ii) spouses or permanent companions of a dependent pregnant women; (iii) unionized employees; (iv) employees who are in a vulnerable health condition, and (v) employees who will reach their age of retirement in less than three years.

5.9. Prevention of workplace bullying mechanism

Employers have the obligation of establishing in the workplace regulations, mechanism addressed to avoid workplace bullying conducts. All employers shall establish a confidential and conciliatory mechanism which shall apply in case of such conducts.

It is understood that workplace bullying means any persistent and demonstrable conduct of the employer, or a superior on an employee, or a co-worker, subordinate, etc., addressed to cause fear, intimidation, anguish, panic, labor damages, demotivation or the resignation.

5.9.1. Working environment Committee

Public and private employers must create working environment committees which receive and process the complaints submitted regarding possible workplace bullying situations. This committee shall be bipartite, shall meet every three months and extraordinary when required.

5.10. Management of work safety and health system (SG-SST for its acronym in Spanish)

Public and private employees have the obligation of establishing a Management of work safety and health system, which must be implemented in five phases:

1. Initial evaluation: identification of the company needs in order to determine the work plan.
2. Improvement plan according to the initial evaluation: adjust the SG-SST plan in relation to the background done to the initial plan.
3. Execution: ongoing test of preventive surveillance of the execution, development and implementation of the SG-SST. This phase must be carried out during 2018.
4. Monitoring and improvement plan: preventive monitoring of the execution, development and implementation of the SG-SST. From January to March, 2019, the Ministry of Labor and the Labor Risks Administrator will be verifying the SG-SST implementation and compliance based on the improvement plan carried out by the Company.



5. Inspection, monitoring and control: verification of SG-SST's regulation compliance executed in 2018, and incorporated in the management system plan that will be established during the year 2019. This phase will be executed by the Ministry of Labor since April, 2019.

The management of work safety and health system, is a process logically developed by stages, based on the permanent improvement including, policies, organization, planning, implementation, evaluation, audit and improvement actions with the purpose of recognizing, evaluating and controlling the risks that may affect the safety and the health in the workplace.

I. Work health and safety Joint Committee

Any company with ten (10) workers or more, have the obligation of establishing a Joint Committee for safety and health in the workplace (COPASST for its acronym in Spanish).

b. Collective Labor Law

It regulates relationships between employers and employees' organizations, collective bargaining, as well as the defense of common interests, both of employers and employees during collective labor dispute.

I. Right of Association in Trade Unions

Colombian employees are entitled to unionize as part of their enjoyment of labor rights. This constitutional right aims to protect the creation and development of unions, as well as to guarantee the enjoyment on the part of the employees of the defense of their labor and union interests.

II. Trade Unions

Unions are employees' organizations legally constituted with the purpose of obtaining, improving and consolidating common rights vis-à-vis their employers. The employees' associations are also responsible for the defense of the individual and collective interests of their members. Pursuant to Colombian Labor Law, a group of twenty-five (25) or more employees may constitute a trade union.

III. Collective Bargaining and Collective Agreements

It is a fundamental right for unionized and nonunionized employees. The procedure for unionized employees is a collective agreement. Nonunionized employees subscribe a collective agreement with their employers, provided that no trade union exists in the company that assembles at least one third of the employees. Additionally, if the collective agreement provides better conditions to nonunion employees, for those conditions agreed in collective agreements with unionized employees of the same company, it can give rise to a criminal offense.

5.11.4. Strike

It is the temporary collective and peaceful work stoppage of the workers of a company. It is only legitimate and possible within the process of collective bargaining as an option for employees, if they work for an employer in the private sector that does not carry out activities that are considered under the law as an essential public service.



c. Other Special Employment Forms

Colombian law allows other employment forms for permanent personnel, with particular regulation. In each case, it is important to verify the adjustment to the law, to avoid contingencies.

I. Services Agreements

Individuals or legal entities can execute services agreements as independent contractors (individuals or legal entities). However, these contracts can only be executed when the provider enjoys full technical, administrative and financial independence and autonomy, such as practitioners of liberal professions. Under these agreements, no relationship of subordination between the company and the contractor is created.

If the contracting party and the contractor develop similar or related activities, the contracting party will be liable for wages, benefits and indemnifications that the contractor fails to comply regarding their own employees that have been contracted, to develop the services in favor of the contracting party.

II. Temporary Services Companies (TSCs)

These are companies that provide collaborative temporary services in missionary activities of the user company providing missionary employers. The employees are directly hired by the TSC, which for all legal purposes is the actual employer. Companies using these services may only employ temporary employees as provided by law: i) in case of occasional, incidental or casual labor; ii) when it is required to replace an employer that is on vacations, license or sick leave, and iii) to meet increase in production, transportation, sales, seasonal harvest periods and in the provision of service, provided that in such cases does not exceed a period of six (6) months, renewable for other six (6) months.

III. Associated Labour Cooperatives (CTAs)

These are nonprofit organizations which bring together individuals who participate in management and make economic contributions to the cooperative. The aim of cooperatives is to produce goods, carry out works or provide services in common, through processes or sub-processes. Likewise, cooperatives have ownership of all the means of production and/or labor, such as the facilities, equipment, machines and technology. Associated work is ruled by its own statutes and thus, the regulations provided by the Colombian Labor Code are not applicable to them.

CTAs are explicitly prohibited from acting as labor intermediaries or to provide employees, under penalty of sanctions which may be of up to 5,000 times the MLMW (COP3.906.210.000 approx. USD1.302.070).

5.12.4. Labour intermediation/outsourcing parameters

The Ministry of Labour is able to impose 5.000 MLMW (COP3.906.210.000 approx., USD1.302.070), for beneficiaries and suppliers that develop illegal intermediation, this is: (i) when personnel is hired through a supplier in order to develop permanent missional activities and, (ii) when constitutional, legal and labor rights are affected.



REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
Article 37 of the Labor Code	Verbal contracts
Article 39 of the Labor Code	Written contracts
Article 46 of the Labor Code, Article 1, Decree 1127 of 1991	Fixed term contracts
Article 45 of the Labor Code	Contract for the duration of the work
Article 47 of the Labor Code	Indefinite term contracts
Article 6 of the Labor Code	Temporary contracts
Article 76-80 of the Labor Code	Probation period
Article 127 of the Labor Code	Wages
Article 128 of the Labor Code	Payments not equivalent to wages
Article 249 of the Labor Code	Severance assistance
Article 1 of Law 52 of 1975	Interests on severance
Article 306-308 of the Labor Code	Legal bonus
Article 2 Law 15 of 1959	Transport allowance
Article 230-235 of the Labor Code	Dress and footwear for employees
Law 21 of 1982, Law 100 of 1993, Law 797 of 2003, Law 1393 of 2010, Law 1438 of 2011, Law 1607 of 2012, Law 1819 of 2016.	Contributions to the Social Security System and Payroll Taxes
Article 172 -178 of the Labor Code	Paid holidays
Article 186 of the Labor Code	Paid annual vacation
Article 32-42, Law 789 of 2002 30-41 of the Labor Code	Apprenticeships
Article 236 of the Labor Code, Law 1822 of 2017, Law 1823 of 2017	Maternity leave
Article 236 of the Labor Code, Law 1280, 2009.	Paternity leave
Article 57, Section 10 of the Labor Code, complemented by Law 1280 of 2009	Bereavement leave
Article 104 of the Labor Code	Internal labor regulations
Article 249, 250 of the Labor Code	Industrial health and safety regulations
Article 61-66 of the Labor Code	Termination of employment agreement- indemnifications
Law 1010 of 2006, resolution 652 of 2012 and resolution 1356 of 2012	Prevention of bullying in the workplace mechanism
Decree 52 of 2017, Decree 1443 of 2014 and Resolution 2013 of 1986	Management of safety and health System
Article 353, 354 of the Labor Code	Right of association in trade unions



Article 432 -475 of the Labor Code, Law 1453, 2011	Collective negotiations and collective agreements
Article 444 of the Labor Code	Right to strike
Article 34 of the Labor Code	Independent contractors
Articles 71 to 94 of law 50 of 1990, Decree 4369 of 2006, Article 34 of the Labor Code.	Temporary services companies
Law 79 of 1988, Decree 4588 of 2006, Law 1233 of 2008, Law 1429 of 2010 and Decree 2025 of 2011.	Associated labor cooperatives
Decree 583 of 2016	Inspection, vigilance and control over the labor inter- mediation/outsourcing
Resolution 1111, 2017	SG-SST implementation process



LEGAL **GUIDE**

TO DO BUSINESS IN COLOMBIA

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CHAPTER

6

IMMIGRATION



IMMIGRATION

Four things an investor should know about Colombian immigration law:

1

All foreigners who enter Colombia must show their passport or travel document before the immigration authority with the corresponding Colombian visa, if required.

2

In those cases, in which a foreigner does not need to apply for a visa in order to enter Colombia, the immigration authority, may grant entry and permanence permits to foreign visitors who have no intention to reside in the Country.

3

The migration policy promotes the entry of those foreigners with technical, professional or intellectual qualifications and experience who can contribute to the development of economic, scientific, cultural or educational activities that may benefit the country. Likewise, promotes the entry of foreigners who can contribute with capital to be invested in the incorporation of new companies or in lawful activities that may generate employment, increase exports and are considered of national interest.

4

Colombia currently has three (3) types of visa, each granted according to the nature of the visit and the permanency intention in the country.



Through immigration laws, Colombia controls and regulates the entry, residency and departure of foreigners.

Natural or legal persons who hire, link, contract or admit a foreigner by generating any benefit, must report such relation to the Migration Colombia office, through the Sistema de Información para el Reporte de Extranjeros –SIRE–. Through this system, the information regarding the admission or hiring, employment, or/and firing of the foreigner employee, must be informed within the fifteen (15) days after the initiation or termination of the activity.

This chapter summarizes the Colombian legal framework with respect to immigration, including permits and the main categories of visas that may be requested by a foreigner intending to establish relationships, provide services, trade or engage in investment activities in Colombia. Thanks to the agreements executed by Colombia, citizens of more than ninety countries, considered as foreigners of non-conditioned nationalities do not require a visitor visa nor have to carry out previous procedures before the Colombian authorities. Among them are:

Andorra	Dominican Republic	Japan	Poland	United States of America
Antigua and Barbuda	Ecuador	Kazakhstan	Portugal	Uruguay
Argentina	El Salvador	Latvia	Republic of Korea	Venezuela
Australia	Estonia	Liechtenstein	Romania	
Austria	Fiji	Lithuania	Russian Federation	
Azerbaijan	Finland	Luxembourg	Saint Kitts and Nevis	
Bahamas	France	Malaysia	Saint Lucia	
Barbados	Georgia	Malta	Saint Vincent and the Grenadines	
Belize	Germany	Marshall Islands	Solomon Islands	
Bhutan	Greece	Mexico	Samoa	
Bolivia	Grenada	Micronesia	San Marino	
Brazil	Guatemala	Monaco	Singapore	
Brunei Darussalam	Guyana	Montenegro	Slovakia	
Bulgaria	Holy See	Netherlands	Slovenia	
Canada	Honduras	New Zealand	Spain	
Chile	Hungary	Norway	Suriname	
Costa Rica	Iceland	Palau	Sweedden	
Croatia	Indonesia	Panama	Trinidad and Tobago	
Cyprus	Ireland	Papua New Guinea	Turkey	
Czech Republic	Israel	Paraguay	United Arab Emirates	
Denmark	Italy	Peru	United Kingdom	
Dominica	Jamaica	Philippines		



The Foreign Affairs Ministry has established that the nationals of Cambodia, India, Myanmar, Republic of China, Thailand and Vietnam may enter the country with an Entry Permit, instead of a visa, when the national of said countries is the holder of a Residence Permit in a state that is member of the Schengen Space or the United States of America. The same condition is also applicable when the national of said countries is a holder of a Type C or D Schengen visa or a United States of America visa different than a Class C-1 visa.

Additionally, the passport holders of Hong Kong-SARG China, Sovereign Military Order of Malta and Taiwan-China, and the nationals of the Republic of Nicaragua who prove to be natives of the Autonomous Region of the North Caribbean Coast and of the Autonomous Region of the South Caribbean Coast will also be exempt from visa.

6.1 6.1. Government Entities Responsible for Immigration Affairs

6.1.1 Ministry of Foreign Affairs and Colombian Consulate Offices Abroad

It assembles coordinating units or divisions covering several specialized areas, such as apostille, legalization, passport renewals and the granting of visas. The Visa and Immigration Division of the Ministry of Foreign Affairs and the Colombian consulates abroad have the discretionary authority to issue, deny or cancel visas. The Ministry of Foreign Affairs and the Consulates have up to five (5) working days after the application has been filed to issue, comment on, or deny a visa.

6.1.2 Special Administrative Unit Migration Colombia

This entity belongs to the Ministry of Foreign Affairs, and is responsible for the migratory control and supervision in Colombia.

Some of the functions of this entity are: (a) to perform migratory control and supervision of nationals and foreigners in the Country; (b) to keep the identification record of foreigners, such as immigration verification; (c) to issue documents such as foreign identity cards, safe passage, permanence and extension permits, permits to leave the country, certificates of migratory movements, entry permits, foreigners' register, and all other required procedures regarding migration and the status of foreigners; (d) to handle and collect the penalties and sanctions for the noncompliance of immigration law; (e) to cancel a visa and/or permit at any time, this decision must be written in a document against which no appeal proceeds; (f) to verify that the foreigner is performing the occupation, trade or activity which was stated in the visa application form, or the one stated in the correspondent permit.

The costs for the year 2018, for the different procedures before the immigration entities are the following:



PROCEDURE	COST	
	USD (APPROX. COST)	COP
Foreign identification card	63	190.000
Entry and permanence permit PIP	Free of charge*	Free of charge*
Temporary permanence permit PTP	32	96.000
Permanence or departure safe passage	19	58.000
Certificate of migratory movements	19	58.000

*Canadian citizens entering to Colombia under an Entry and Permanence Permit (PIP), must pay COP201.000 (approx. USD 70) due to "Tiquete Platinum".

6.1.3 Professional Councils

Regulate and supervise professional activities in Colombia, for nationals and foreigners. In relation with strictly regulated professions and/or activities such as medicine, law, accountancy, psychology, business administration, engineering and others, the approval from the corresponding professional council is required to practice said professions in Colombian territory. The authorization to practice the profession and/or activity is obtained through a license, professional card or a temporary permit, issued by the competent professional council depending on the profession or activity that the foreigner intends to practice or perform in the country. Nevertheless, the approbation of the visa is not conditioned to obtain the authorization of the corresponding professional council.

6.1.4 Ministry of National Education

It is the authority that grants recognition of foreign degrees or professional diplomas by means of a validation procedure. This procedure may take from two (2) to four (4) months. Once the recognition resolution is issued by the Ministry of National Education, the foreigner must register his/her degree before the correspondent professional council in order to obtain a professional permanent permit.

6.2. Entry and Permanence Permits

The entry and permanence permit are special authorizations issued by the Special Administrative Unit Migration Colombia to foreigners who pretend to enter the Country without the intention to stay in Colombia and that do not require a visa for having a non-restricted nationality according to Colombian regulations. To obtain any of these permits, the migration authority must stamp a visitor's seal in the foreigner's passport upon the arrival to Colombia. The stamp must indicate the number of days the visitor can remain in the country, except in the case of an entry and permanence permit PIP-7, which requires an application prior the entry to the country before the Special Administrative Unit Migration Colombia.



The following are the permits to enter or to stay in Colombia under the current immigration laws:

(a) Entry and Permanence Permit (PIP for its Spanish acronym)

The PIP will be issued by the Special Administrative Unit Migration Colombia to those foreigners that do not require visa, for a period of ninety (90) calendar days, except for the permit to entry and stay as technical visitor (PIP-7) which will be granted only for thirty (30) calendar days and the permit granted to the foreigner who wish to enter to the national territory as crew or member of an international transportation (PIP-8) which involves a 72 hours permit. These are the PIP categories:

(I) PIP-1: This permit will be issued to those foreigners that intend to enter the country and whose presence is important for the Colombian Government, or when the nature of the entry is related with the development and implementation of international agreements or treaties and it will be granted for ninety (90) calendar days.

(II) PIP-2: This permit will be issued to those foreigners that intend to enter the Country in order to develop non-regular academic programs that do not exceed one academic semester, given by education or training centers in the Country, or under an agreement of academic exchange, as well as student practices. Likewise, when the foreigner is entering the Country to be trained in a skill and it will be granted for ninety (90) calendar days.

(III) PIP-3: This permit will be issued to those foreigners that intend to enter the Country to receive medical treatment and it will be granted for ninety (90) calendar days.

(IV) PIP-4: This permit will be issued to those foreigners that intend to enter the Country to clarify personal, juridical or administrative situations and it will be granted for ninety (90) calendar days.

(V) PIP-5: This permit will be issued to those foreigners that intend to enter the Country for leisure and recreation activities and it will be granted for ninety (90) calendar days.

(VI) PIP-6: This permit will be issued to those foreigners that intend to enter the Country to attend or participate, without an employment relationship, in academic, scientific, artistic, cultural, sports events, to present interview at a recruitment process on public or private entities, business training, business negotiations or business contacts and journalistic coverage and it will be granted for ninety (90) calendar days.

(VII) PIP-7: This permit will be issued to those foreigners that intend to enter the Country urgently, in order to provide specialized technical assistance to public or private entities and it is granted for thirty calendar days per year. If the specialized technical assistance involves an additional time and the foreigner has applied for this kind of permit during the calendar year, then the interested person must apply for the appropriate type of visa.

(VIII) PIP-8: This permit will be issued to those foreigners that intend to enter into the Country as a crew member of an international transport company; this permit will be granted for 72 hours.

(IX) PIP-9: This permit will be issued to those foreigners, regardless of their nationality, that must enter the country in order to make transit to a third country. Said permit will be granted for twelve (12) hours since the person has entered Colombian territory.



(b) Temporary Permanence Permit (PTP for its acronym in Spanish)

The PTP will be granted to those foreigners that intend to remain in the country after having made use of an entry and permanence permit (PIP); or for the foreigners who have entered the country as visitors and that have to clarify in the Colombian territory any administrative or judicial situation. In the two conditions mentioned above, the permit will be granted for ninety (90) calendar days and it may be extended in accordance with the provisions of the immigration authorities for those foreigners that entered the country to clarify any administrative or judicial situation. These are the PTP categories:

(I) PTP-1: This permit will be issued to those foreigners that have applied for a PIP-1 permit and want to stay in the country for an additional period of time. This permit will be granted for ninety (90) calendar days and shall be requested prior to the expiration of the initial PIP-1.

(II) PTP-2: This permit will be issued to those foreigners that have applied for a PIP-2 permit and want to stay in the country for an additional period of time. This permit will be granted for ninety (90) calendar days and shall be requested prior to the expiration of the initial PIP-2.

(III) PTP-3: This permit will be issued to those foreigners that have applied for a PIP-3 permit and want to stay in the country for an additional period of time. This permit will be granted for ninety (90) calendar days and shall be requested prior to the expiration of the initial PIP-3.

(IV) PTP-4: This permit will be issued to those foreigners that have applied for a PIP-4 permit and want to stay in the country for an additional period of time. This permit will be granted for ninety (90) calendar days which could be extended according to an administrative act issued by the immigration authorities, this permit shall be requested before the expiration of the initial PIP-4.

(V) PTP-5: This permit will be issued to those foreigners that have applied for a PIP-5 permit and want to stay in the country for an additional period of time. This permit will be granted for ninety (90) calendar days and shall be requested prior to the expiration of the initial PIP-5.

(VI) PTP-6: This permit will be issued to those foreigners that have applied for a PIP-6 permit, and want to stay in the country for an additional period of time. This permit will be granted for ninety (90) calendar days and shall be requested prior to the expiration of the initial PIP-6.

(c) Transit Group Permit (PGT for its Spanish acronym)

The PGT will apply to those foreigners that are passengers of tourist cruise ships, that are visiting Colombian ports and that will stay on the same ship, and that have a non-restricted nationality according to Colombian laws. In this case, they will not require a visa or immigration card to be filled out by the passengers and it will not be necessary to print an entry or exit stamp in their passports or travel documents. The Immigration Authorities will control each cruise ship that intends to visit Colombian ports and to travel to another Country. Those foreigners from countries that require a visa to enter the Country must have it stamped on their passports and must show it to the immigration authorities at the Immigration Office.

The Special Administrative Unit Migration Colombia will control and register the number of days that each foreigner is allowed to stay in Colombia with PIP or PTP permits, in order to verify that each foreigner is not exceeding the term of 180, continuous or discontinuous, calendar days per year.



It can also grant PIP and PTP permits, to the same foreigner, if he/she does not exceed a period of 180 calendar days within the same calendar year; or make changes to PIP and PTP permits, recognizing it as extensions of stay as the following:

(I) To grant a new PIP permit to the foreigner who enters the country using one of the PIP permits aforementioned, and during his/her stay in the country requires a change in the condition that originated that kind of permit, only if the foreigner has not exceeded the maximum duration term.

(II) To grant a new PTP permit with a different condition that the one that originated the PIP permit.

(III) To grant a new PTP permit to the foreigner who enters the country, and that during his/her stay requires a change in the condition that originated that kind of permit, only if the foreigner has not exceeded the maximum duration term.

When there has been made a change on those permits, the initial terms will not be modified by the new permit, and the foreigner will be authorized to stay in the country only for 180 days in the calendar year, except for PIP-7 and PTP-4 permits.

(d) Cancellation of Permits

The Special Administrative Unit Migration Colombia may cancel a PIP or PTP permit at any time, for which must be stated on a document. There is no appeal against said document.

In addition, permits will be canceled in case of deportation or expulsion and when there is evidence of the existence of fraudulent or intentional acts by the applicant to evade, the compliance of legal requirements that may mislead the granting of the permit and the incident will be reported to the appropriate authorities. After the notification of the cancellation of the permit the foreigner must leave the country within the next five calendar days. Otherwise, the foreigner could be deported.

6.3 Visas

Visas are the authorization granted to a foreigner in order to approve his entrance or permanence for a period of time in Colombia. The responsible authority for granting visas is the Visa and Immigration Division of the Ministry of Foreign Affairs in Bogota or through the Colombian Consulate offices abroad. There are about 130 Colombian Consulates around the world in which foreigners may apply for a Colombian visa, regardless of their nationality. Visa applications can be processed directly abroad by the foreigner who wants to travel to Colombia, or through a representative. It is also possible to request a visa throughout the Ministry of Foreign Affairs webpage. The foreigner has to pay USD52 (USD16 for students) for the study of the visa application. Once it is approved, an additional fee according to the visa must be paid.

6.3.1 Types of Visa

To request any type of visa, the foreigner must submit the required documents pursuant to each kind of visa. It is important to consider that documents issued abroad in languages other than Spanish must be translated into Spanish by an official translator authorized by the Ministry of Foreign Affairs of Colombia. All translations shall be legalized before the Foreign Affairs Ministry. Official documents must be apostilled or legalized by the Colombian Consulate or the responsible entity in the issuance Country.



Currently, there are three types of visa (i) Visitor visa; (ii) Migrant visa and (iii) Resident visa. Visas can be granted without a work permit, with a work permit closed exclusively for the activity for which it was granted or with a work permit open for the development of any legal activity in Colombia. Also, with the exception of the visa granted in the category of tourist or to perform airport transit, any visa with validity equal to or greater than 180 days will allow its holder to conduct studies during the validity or permanence authorized

The main visas and categories that a foreigner may apply for are the following:

(I) Visitor Visa (V)

The Visitor Visa (V) will be granted for a maximum period of 2 years, to the foreigner who wishes to visit the national territory once or several times, or to remain temporarily in it without establishing himself.

Activities without work permit:

- Transit
- Tourism
- Business visits
- Academic exchange or non-formal studies
- Medical treatment
- Legal procedures
- Unforeseen cases

Activities with a closed work permit (only for the specific activity):

- Crewmember
- Conferences
- Internship
- Volunteering
- Audiovisual production
- Journalistic coverage
- Provide temporary services
- Intra-corporate transfer
- Official or commercial representative of foreign government
- Courtesy

Activities with an open work permit (for the development of any legal activity):

- Vacation-work program

(II) Migrant Visa (M)

The Migrant visa will be granted for a maximum period of 3 years, renewable, to the foreigner who intends to settle in the country and does not meet the conditions to apply for an R type visa.



Activities without work permit:

- Religious
- Student
- Investor in property or retired

Activities with a closed work permit (only for the specific activity):

- Employee
- Businessman (Business owner)
- Independent

Activities with an open work permit (for the development of any legal activity):

- Spouse of Colombian
- Father or mother of Colombian by adoption
- MERCOSUR
- Refugee

(III) Resident Visa (R)

The Resident Visa (R) will be granted to the foreigner who wishes to establish permanently or establish a domicile in the country and if he/she satisfies any of the following conditions:

- Having been a Colombian national, and having renounced this nationality
- Being the father or mother of a Colombian national by birth
- Remain in the national territory continuous and uninterrupted for two (2) years as the main holder of type M visa under the following conditions:
 - Spouse of Colombian
 - Colombian father or mother by adoption
 - Mercosur
- Remain in the national territory continuously and uninterrupted for five (5) years in any of the following conditions:
 - As a beneficiary of the R type visa
 - As the main holder of type M visa under the conditions:
 - Religious
 - Student
 - Investor in property or retired
 - Worker
 - Businessman
 - Independent
 - Refugee



The validity of the R Visa will be indefinite, however the visa label will be valid for 5 years, which can be updated every 5 years with a visa transfer.

The foreigner with Resident Visa may exercise any legal activity in Colombia.

If the holder of an R Visa leaves the Country for more than two (2) or more continuous years, he/she will lose his right.

6.3.2. Beneficiary

It could be granted visa as beneficiary to the members of the family group, economic dependents of the main holder of an M or R type visa or of the main holder of a V type visa only when it has been granted for the activities: journalistic coverage, rendering temporary services, intra-corporate or official transfer or commercial representative of foreign government.

The spouse, permanent companion, parents and children under the age of twenty-five will be understood as members of the family nucleus of the main holder of a visa.

When a son/daughter over the age of twenty-five has a disability and cannot stand on his/her own, he/she may apply for a visa as a beneficiary.

The validity of a beneficiary visa cannot exceed the period that has been granted to the holder of the original visa and shall expire at the same time without needing an express decision of the competent authority.

If the beneficiary ceases to be economically dependent of the holder of the original visa or he/she loses his/her quality of spouse or permanent partner, or changes of activity, he/she must apply for the appropriate type of visa, after fulfilling the requirements for this purpose. When the visa holder gets the Colombian citizenship by adoption or dies, his/her beneficiaries may request the appropriate visa in order to stay in the country.

6.4. General Requirements for Any Kind of Visa

The following are the general requirements for the most common visa applications.



Requirements / Type of Visa	V Business	V Internship	V Provide temporary services	V Intra-corporate transfer	M Spouse of a Co- lombian	M Worker	M Mercosur	M Businessman or Independent	Residente	Beneficiary
Visa online application form duly filled	X	X	X	X	X	X	X	X	X	X
Valid passport or travel document, in good condition	X	X	X	X	X	X	X	X	X	X
Recent front 3x4 centimeters photograph, in color and white background	X	X	X	X	X	X	X	X	X	X
Copy of the biographical page of the passport, as well as a copy of the page where the last Colombian visa (in case the foreigner has had one), or the copy of the last departure or entrance seal (if it is applicable) was stamped	X	X	X	X	X	X	X	X	X	X
Documents that confirm the foreigner's economic solvency to remain in Colombia during his/her stay								X		
Letter or document that specifies the activities that the foreigner will undertake in Colombia and confirming the foreigner's economic solvency to remain in Colombia during his/her stay	X	X	X	X		X		X		
Copy of the electronic information on the respective ticket of entrance and departure			X							
Certificate of existence and legal representation or a valid document that evidences the legal corporate existence. When the contracting party or employer is a legal person, the certificate must be issued within three months prior to the visa application	X	X	X	X		X		X		
Company's bank statements, for the last six months, which shows a minimum average of one hundred legal minimum salaries (approx. USD 21,214)			X			X				



Requirements / Type of Visa	V Business	V Internship	V Provide temporary services	V Intra-corporate transfer	M Spouse of a Co- lombian	M Worker	M Mercosur	M Businessman or Independent	Residente	Beneficiary
Company's last income tax return with the seal of the tax authorities			X			X				
Contract summary form, duly filed and signed by the parties Written communication given by the International Exchange Department of the Colombian Central Bank which certifies the registry of the direct foreigner investment on behalf of the visa holder, in a higher amount than: Visa M: 100 minimum legal salaries (aprox. USD 26.216), Visa R: 650 minimum legal salaries (approx. USD 170.405)			X			X		Apply for Visa M as Businessman	Applies for resident visa of capital investment.	
Copy of the temporary visas that demonstrate five continuous and interrupted years in Colombian territory									Applies for resident visa For continuous permanency	
Certificate of migratory movements issued by the Special Administrative Unit Migration Colombia									Applies for resident visa For continuous permanency	
Copy of the resignation to Colombian nationality									Applies for resident visa for the one who has renounced to the Colombian nationality.	



Requirements / Type of Visa	V Business	V Internship	V Provide temporary services	V Intra-corporate transfer	M Spouse of a Colombian	M Worker	M Mercosur	M Businessman or Independent	Residente	Beneficiary
Certificate of Criminal Records of the place where the foreigner have been domiciled for the last 3 years	*It could be requested by the authority	*It could be requested by the authority	*It could be requested by the authority	*It could be requested by the authority	*It could be requested by the authority	*It could be requested by the authority	X	*It could be requested by the authority	*It could be requested by the authority	*It could be requested by the authority
Letter from the visa holder requesting the beneficiary's visa. In case of minors, parents must request the visa										X
Cost of the visa study in USD	52	52	52	52	52	52	52	52	52	52
Cost of the visa in USD	245	170	170	245	230	230	230	230	391	The same value of the holder's visa.

The civil records of birth and marriage or similar, diplomas and transcripts and other public documents issued abroad must be officially translated into Spanish, authenticated by the respective Consulate and legalized by the Colombian Ministry of Foreign Affairs of Colombia, pursuant to the Civil Procedure Code, or apostilled as the case may be.

Ecuador citizens are exempt from visas fees. Ecuadorian nationals will only have to pay the visa study, equivalent to USD30.

In order to know the specific requirements of each type of visa, it is advisable to contact the Colombian Consulate of your best convenience.

6.5. Cases for a visa cancellation

Visas may be cancelled on the following situations:





The Ministry of Foreign Affairs or the Special Administrative Unit Migration Colombia, may cancel a visa at any time, for which it shall subscribe a written document, against which no appeal proceeds; for this, the decision adopted in the use of the discretionary power will be understood adjusted to the social, demographic, economic, scientific, cultural, security, public order, sanitary and other interests of the Colombian State and a respective record will be drawn up.

After the notification of the cancellation of the visa, the foreigner must leave the country within the next thirty (30) calendar days. Otherwise, the foreigner may be deported. The foreigner whose visa has been canceled may only submit a new application, as established by the resolution that will be subscribed by the Ministry of Foreign Affairs.

6.6 Migratory Register and Control

All foreigners' holders of a valid visa for more than three (3) months must register the visa before the Special Administrative Unit Migration Colombia within the following fifteen (15) calendar days to the date in which the visa is granted and/or the foreigner enters the country with the granted visa. Once the person has registered his/her status, the visa holder will receive a foreign identification card (Cédula de Extranjería) as identification in the country. Registration is required every time the foreigner has a new visa or if there is a change in the visa status. Foreigners must notify any change of address to the Special Administrative Unit Migration Colombia within fifteen (15) days after moving to the new address. Likewise, it is the obligation of every company to inform to the Special Administrative Unit Migration Colombia the foreigner's initiation or finalization of activities that generate any kind of benefit to the company, within fifteen (15) calendar days as from the occurrence. For foreigners who exercise a regulated profession or activity, the company must accompany the permit/license/registration/ concept issued by the competent Professional Council, to the report of initiation of activities.

The Special Administrative Unit Migration Colombia will begin issuing foreign identification cards to minors between seven to seventeen years old. Minors also have to apply for this identification card. All children under seven years of age must be identified with their passport. The Special Administrative Unit Migration Colombia will enable the visa registration electronically. However, the application of the foreign identification card will remain to be done in its offices and will have to be made up within three working days of such electronic registration.

The Special Administrative Unit Migration Colombia may impose financial penalties to foreign companies that breach their obligations pursuant to immigration regulations. The amount of the economic sanctions varies according to the severity of the breach, but can go from half a minimum legal monthly wage (COP 390.621 - approx. USD 131) to fifteen times its value (COP 11.718.630 - approx. USD 3,932) Likewise, foreigners according to the seriousness of the offense may be subject to deportation or expulsion from the Country as set forth in a motivated decision.



REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
Decree 1067 of 2015	Regulatory Decree of the Administrative Sector of Foreign Affairs.
Resolution 439 of 2016, modified by the Resolution 6671 of 2017	Lists of countries that do not require visa for the three types of visitors.
Resolution 6045 of 2017	Requirements for each type of visa.
Decree 019 of 2012	Rules to suppress or reform unnecessary regulations, procedures, or proceedings.
Resolution 1241 of 2015	By which they modify and suppress certain requirements for the formalities of foreigners.
Resolution 714 of 2015	Establishes the criteria for the compliance of the immigration obligations and the sanctioning procedure of the Special Administrative Unit Migration Colombia.



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CHAPTER

7

**COLOMBIAN
TAX REGIME**



COLOMBIAN TAX REGIME

Seven things investors should know about the Colombian tax system:

1

The income tax rate for 2018 is 33%.

2

An income tax surcharge of 4% is applicable for 2018 for taxpayers with a tax basis higher than COP 800,000,000 (approx. USD 275.862). This surcharge is subject to an advance of 100% of its value.

3

VAT rate is 19%.

4

Accounting conducted under Colombian financial reporting principles becomes the basis and starting point for the determination of tax basis on income tax.

5

†The business profits generated as of taxable year 2017 will be taxed at 5%, except those distributed among national companies.

6

†Corporate income tax rate for free trade zone industrial users of goods and services is 20%

7

Tax regulations have incorporated several tax benefits (tax exemptions, tax credits, special deductions, among others) which seek to encourage priority sectors for the national economy, improve infrastructure and assets of the country's companies, as well of others that aim to generate more formal employment.



The following chart provides a general overview of the main attributes of the Colombian tax system:

TYPE OF TAX	MAIN ASPECTS								
NATIONAL TAXES									
Income tax	<ul style="list-style-type: none"> · General rate: · 33% for 2018 and following. · Free trade zones users (with the exception of commercial users): 20% 								
Surcharge to the income tax	For 2018 on companies with incomes higher than COP800,000,000 (USD275.862 approximately) will be subject to an additional 4% surcharge. After that year, the surcharge will be eliminated.								
Dividend taxation	<p>Profits are taxed at the level of the company or permanent establishment. This tax will only apply for distributions of dividends obtained as of 2017. Dividends that are paid to foreign companies and/or non-resident natural persons will be taxed at a rate of 5%. Dividends that are paid to natural resident person will be taxed at the following rate:</p> <table border="1" style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th>Amount of dividend to be distributed (USD)</th> <th>Tax rate</th> </tr> </thead> <tbody> <tr> <td>0-6,372</td> <td>0%</td> </tr> <tr> <td>6,372-10,560</td> <td>5%</td> </tr> <tr> <td>Más de 10,560</td> <td>10%</td> </tr> </tbody> </table> <p>Dividends paid to foreign legal entities arising from profits that were not subject to taxes at the level of the company distributing them, would be first subject to a 35% withholding tax, and then subject to a 5% withholding tax on the amount to be distributed, net of the 35% withholding tax.</p>	Amount of dividend to be distributed (USD)	Tax rate	0-6,372	0%	6,372-10,560	5%	Más de 10,560	10%
Amount of dividend to be distributed (USD)	Tax rate								
0-6,372	0%								
6,372-10,560	5%								
Más de 10,560	10%								
Surcharge on income tax	For 2018, companies with revenues above COP800,000 (approximately USD275,862) must pay a surcharge of 4%. As of taxable year 2019, this surtax will be eliminated.								
Capital gains	Levies certain specific incomes such as profits obtained as a result of sale of fixed assets, inheritances and lotteries. Rate: 10%								
Debit tax (GMF)	Levies financial transactions at a 0.4% rate.								
Value added tax - VAT	<p>VAT generating events are: Sales of movable and immovable tangible goods that have not been expressly excluded. Sale or transfer of rights in intangible assets, solely associated with industrial property. Render of services in Colombia or abroad, unless expressly excluded. The import of movable tangible goods that have not been expressly excluded. The circulation, sale or operation of games of chance, with the exception of lotteries and games of chance operated exclusively through internet. General rate: 19% Special rates: 0% - 5%</p>								



TYPE OF TAX	MAIN ASPECTS																					
Consumption tax	Levies the provision of mobile telephone services, internet and mobile navigation and data service, the sale and importation of vehicles, and the service of selling food and drinks prepared in restaurants, cafeterias, self-services, ice cream parlors, fruit shops, bakeries for consumption on the same spot, to be carried by the buyer or delivered at home, food services under contract, and service of selling food and alcoholic beverages for consumption in bars, taverns and nightclubs. Rates: 4%, 8% and 16%.																					
Green tax/carbon national tax	<p>Levy the sale, withdrawal, import for own consumption or importation for the sale of fossil fuels (including all oil derivatives and all kind of fossil gas) that are used with energy purposes, provided that they are used for combustion.</p> <p>The rate is determined depending on the emission factor of carbon dioxide (CO₂) for each given fuel, expressed in unit volume (kilogram of CO₂) per unit of energy (Terajoules) according to the volume or weight of the fuel:</p> <table border="1"> <thead> <tr> <th>Fossil Fuel</th> <th>Unit of measure</th> <th>Rate/unity</th> </tr> </thead> <tbody> <tr> <td>Natural gas</td> <td>Cubic meter</td> <td>\$29</td> </tr> <tr> <td>Oil liquified gas</td> <td>Galon</td> <td>\$95</td> </tr> <tr> <td>Gasoline</td> <td>Galon</td> <td>\$135</td> </tr> <tr> <td>Kerosene and Jet Fuel</td> <td>Galon</td> <td>\$148</td> </tr> <tr> <td>Diesel</td> <td>Galon</td> <td>\$152</td> </tr> <tr> <td>Fuel Oil</td> <td>Galon</td> <td>\$177</td> </tr> </tbody> </table>	Fossil Fuel	Unit of measure	Rate/unity	Natural gas	Cubic meter	\$29	Oil liquified gas	Galon	\$95	Gasoline	Galon	\$135	Kerosene and Jet Fuel	Galon	\$148	Diesel	Galon	\$152	Fuel Oil	Galon	\$177
Fossil Fuel	Unit of measure	Rate/unity																				
Natural gas	Cubic meter	\$29																				
Oil liquified gas	Galon	\$95																				
Gasoline	Galon	\$135																				
Kerosene and Jet Fuel	Galon	\$148																				
Diesel	Galon	\$152																				
Fuel Oil	Galon	\$177																				
LOCAL TAXES																						
Industry and commerce tax (ICA)	<p>It is triggered by the development of industrial, service or commercial activities within a municipality or district.</p> <p>Applicable rate to the revenues of the company will depend on the municipality in which it develops its operations, which may vary between:</p> <p>Industrial activities, is 0.2% to 0.7%. Commercial and service activities, is 0.2% to 1%.</p>																					
Real estate tax	From 0.5% to 1.6% of the value of the property, depending on the municipality in which the property is located.																					
Registration tax	According to the act, between 0.1% and 1%.																					
TAX MECHANISMS																						
Offset of excess of presumptive income over net income	Offsetting is permitted within the following five years.																					



TYPE OF TAX	MAIN ASPECTS
Offset of tax losses	Tax losses generated as of taxable year 2017 may be offset against the ordinary net income obtained within the next twelve (12) taxable years, without prejudice to the presumptive income for the year. Tax losses generated up to taxable year 2016 may be offset by retaining the current tax regime up to that year.
Tax credits	Tax credits are permitted for certain operations. We highlight the followings: i) Taxes paid abroad ii) Payroll taxes in the generation of new formal jobs iii) Tax credit for investments made in control, conservation and improvement of the environment iv) Tax credit for investments made in research, technological development or innovation v) Tax credit for donations to non-profit entities belonging to the special regime
Agreements to avoid double taxation (DTA) with: Spain, Chile, Switzerland, Canada, Mexico, South Korea, India, Portugal, Czech Republic and the Andean Community (Bolivia, Ecuador and Peru).	Please refer to chapter 1 of this "Legal Guide to Doing Business in Colombia 2018," on protection of foreign investment.
Transfer pricing	Applies to taxpayers that perform transactions with foreign related parties, including branches and permanent establishments, related parties located in free trade zones, and companies (related or unrelated) established in tax havens or benefiting from harmful preferential regimes.

The Colombian tax system includes national, regional and municipal taxes.

The main national taxes are the income tax, the value added tax (VAT), the consumption tax and the debit tax (GMF) mentioned above. The main municipal and regional taxes are the industry and commerce tax (ICA), the real estate tax and the registration tax.

7.1. Income and capital gains tax

Income tax is a levy on revenues, realized within the taxable year, that have the potential to increase taxpayer's net equity and are not expressly excluded.

Income tax is a national tax and is applied to corporate profits derived from ordinary and extraordinary corporate transactions.

Capital gain is a national tax, supplementary to income tax, that levies revenues from certain extraordinary income of companies, which are: income from disposal of fixed assets owned for more than two years, donations and similar acts, inheritances, profits derived from the liquidation of companies with two or more years of existence and those from raffles, games, bets and similar.



Through Law 1819 of 2016, a new formal obligation called “fiscal conciliation” was incorporated into the national order for taxpayers of income tax, whose purpose is to control the differences that may arise between the new accounting frameworks and the provisions of the Tax Code (hereinafter TC). On this matter, Decree 1998 of 2017 points out the following aspects:

a. Expressly states that without prejudice to the information resulting from the control of differences between the new accounting frameworks and the rules of the TC, the latter will determine the tax bases.

b. For those taxpayers who have a functional currency different from the Colombian peso, it reiterates that for tax purposes the accounting in Colombian pesos must be kept and that the term “conversion” used in the Decree does not refer to IAS 21 nor section 30 of the IFRS for small and medium companies (Pymes per its Spanish acronym). In other words, accounting should reflect transactions at historical rates.

c. Tax conciliation has two (2) elements; namely: the detail control (difference control tool) and the fiscal conciliation report (consolidated balance report).

d. The formal obligation requires the need to have a tool that allows controlling the differences (control of detail), which reflects in a “consistent” way the fiscal treatment of the operations that generate differences.

e. It is generally defined that the control of differences must guarantee not only the identification and detail of the same but also the accounting book to which it is associated. Therefore, it is necessary to determine what will be the procedure to be followed in the case of deductions or transactions that are recognized for tax purposes that are not booked in the accounts, as well as the manner in which such differences will be supported.

f. The possibility of not having the control of detail when the differences can be explained and identified through the fiscal conciliation report is raised.

g. It is pointed out that this control can be used (at the taxpayer’s discretion) to control the differences that could arise between the bookings under the new accounting framework and the provisions for other taxes in the tax regulations.

h. It clarifies that any reference made in the tax regulation to the form in which an operation must be booked in the accounting, must be done in the detail control of the fiscal conciliation. This, as long as said reference does not correspond to what has been foreseen in the accounting standards.

i. It establishes that the obligated subjects are all the taxpayers of the income tax who are obliged to keep accounts, as well as those who have voluntarily decided to use it.

Excludes those taxpayers whom in the taxable year for which the information will be prepared have obtained gross tax revenues lower than 45,000 UVT (\$ 1.433.655.000 (USD 477.885) for taxable year 2017 and \$ 1.492.020.000 (USD 497.340) for taxable year 2018).

j. It is also specified that all “non-taxpayers” of the income tax are not required. It is clarified that this applies unless the non-taxpayer is taxed with the income tax for any of its operations by express legal provision; this situation should be reviewed case by case to validate its practical application.



k. Both the taxpayers required to keep accounts and those who decide to do so voluntarily must update the National Tax Registry (RUT per its Spanish acronym) with the accounting group to which they belong. Failure to do so will result in the imposition of the sanction for not updating the RUT established by the TC (Article 658-3).

l. The possibility that the fiscal conciliation should not be transmitted simultaneously with the income tax return but at a later time it is left open. This will depend on the capacity of the IT systems of the DIAN and the technological developments that are available at that moment.

m. Regarding the terms in which the Government must pronounce on the form of the fiscal conciliation report, it is stated:

- That, in general, the format must be defined at least two (2) months before the fiscal period in which the format should be used begins.
- That in the event that a new format is not issued, it will be understood that the format of the previous year is still valid.
- That particularly for the taxable year 2017, the fiscal conciliation report format should be defined no later than December 29, 2017 and the technical specifications and filing dates, before March 31, 2018. Additionally, regarding this taxable period it is clarified that the detail control will not be applied (only the fiscal conciliation report applies).
- That the detail control will be applicable and enforceable from the taxable year 2018.

7.1.1. Tax general information

In order to determine income tax, on the value of assets, liabilities, equity, income, costs and expenses, taxpayers that are required to maintain accounting records shall apply the recognition and measurement systems, in accordance with the normative technical accounting frameworks in force in Colombia.

The assets, liabilities, equity, income, costs and expenses must take into account the accrual accounting basis.

Tax revenues are made of the receipt of resources (cash or assets) capable of increasing the taxpayer's net equity.

The Colombian peso is defined as the functional currency for tax purposes.

Generally, income, costs and expenses are realized when are deemed accrued, with certain exceptions.

Domestic companies and individual residents in Colombia are taxed on their revenues, assets and capital gains obtained in the country or abroad.

It is deemed a domestic company those that are: (i) incorporated in Colombia; (ii) have its main place of business in Colombia; or (iii) have its effective place of management in Colombia.



It is deemed as resident the individual that:

i) Remains in Colombia for more than 183 continuous or discontinuous days, including the days of entry and exit the country, during any period of 365 consecutive days, being understood that wherever the stay in the country, continuous or not, lapses during more than one taxable year or period, the individual shall be deemed a resident during the year in which he/she reaches the mentioned 183 days.

ii) Nationals that have their vital, financial or business center in Colombia during the corresponding taxable year or period, unless most of the income arises from another jurisdiction or most of its assets are located outside Colombia.

Foreign companies are income taxpayers as regarding revenues and equity held in Colombia, either directly or through branches or permanent establishments.

The income tax is liquidated on an annual basis for the period between January 1st and December 31st of the relevant year. The tax may be liquidated for a fraction of a year in particular cases such as a company liquidation, as well as transactional periods as in the case of disposal of shares owned in Colombia by foreign investors.

7.1.2. Domestic-source income

As a general rule, Colombian law provides that the following revenues are domestic sourced:

- Those arising from the exploitation of tangible and intangible assets within the Colombian territory.
- Those arising from services rendered in Colombian territory.
- Those arising from the disposal of tangible and intangible assets located in the country when disposed of.

There are other cases deemed as revenues obtained from a Colombian source:

- Financial yields arising from foreign indebtedness granted to residents in the country, as well as the financial cost of rental installments originated in international leasing agreements.
- Revenues from the provision of technical services, technical assistance, consultancy services, provided by foreign companies in favor of a resident in Colombia, regardless they are provided in the country or from abroad.
- Revenues from the provision of management services provided by related companies in favor of a resident in Colombia, regardless they are provided in the country or from abroad.

7.1.3. Revenues not deemed of domestic source

The following events do not trigger domestic-sourced revenues, among others:

- Loans arising from the import of goods provided the term thereof does not exceed 24 months.
- Revenues arising from technical services of repair and maintenance rendered abroad for equipment.
- Revenues arising from the disposal of titles, bonds or other titles of debt issued by a Colombian issuer which are traded abroad.
- Loans obtained abroad by financial institutions, financial cooperatives, financing companies, Colombian Foreign Trade Bank (BANCOLDEX), FINAGRO and FINDETER and the banks incorporated pursuant to Colombian regulations in force.
- Revenues arising from the training of staff provided abroad to public entities.



- Revenues arising from the disposal of foreign goods owned by foreign companies or individuals not resident in the country, entered from abroad to international logistic distribution centers located at sea ports and inland ports authorized by the National Tax and Customs Authorities (DIAN), located only in the departments of Guainia, Vaupes, Putumayo and Amazonas.

7.1.4. Tax rate and taxable base

General income tax rate applicable to national companies and similar entities, permanent establishments of foreign entities and foreign companies or non-resident legal entities required to file the annual income tax return, shall be 33% for 2018 and following years.

In addition, an income tax surcharge of 4% is applicable for 2018 for taxpayers with a tax basis higher than COP800,000,000 (approx. USD275.862).

For legal entities that are users of free trade zones (with exception of commercial users), the applicable income tax rate is 20%.

Current legislation dictates that revenues arising from some services and activities performed in the Archipelago of San Andres, Providencia and Santa Catalina department will be exempt for income tax purposes.

Pursuant to the Colombian tax system, the taxable base for the income tax may be determined in one of three ways: the ordinary system, the presumptive income system and the equity comparison system.

7.1.4.1. Ordinary system

This system includes all revenues, whether ordinary or extraordinary, obtained during the taxable year or period, capable of resulting in a net increase in equity upon receipt, which are not expressly exempt. Returns, rebates and discounts are subtracted from revenues to obtain net revenues. Costs incurred and attributable to such revenues are subtracted from net revenues to obtain gross income. Deductions allowed are subtracted from the gross income to obtain the net income. Except legal exceptions, the net income shall be the taxable income and the tax rate set by law, shall be applied thereon.



Find below how ordinary income is assessed:

Ordinary and extraordinary revenues
(-) Revenues not deemed income or capital gains
(-) Returns, rebates and discounts

Net revenues
(-) Costs

Gross income
(-) Deductions

Net income
=====†

7.1.4.2. Presumptive income system

Under this system, it is assumed that the taxpayer's net ordinary income will never be less than 3.5% of his/her net equity held on the last day of the immediately previous taxable year. Should the net income be lower than presumptive income, the income tax is assessed on the latter.

This presumptive income system is neither applicable to companies with the following corporate purposes or to those that are under the mentioned situations:

- Domiciliary utility services
- Investment fund, security fund, common fund, pension or severance fund services
- Passenger massive urban public transportation service
- Utilities supplementary to electric power generation
- Official entities operating waste water treatment and cleaning services
- Companies under a debtor reorganization plan
- Companies under liquidation during the first three years
- Entities subjected to control and supervision by the Financial Superintendence that have been authorized to be liquidated or subject matter of possession taking.
- Land banks of district and municipalities, regarding land devoted to become urban with social interest housing
- The event and convention centers in which the chambers of commerce have a major interest and those incorporated as industrial and commercial companies of the State or as partially Government-owned corporation in which the Government participation in the company's capital exceeds 51%, provided that they are duly authorized by the Ministry of Commerce, Industry and Tourism
- Public corporations whose main object is the procurement, alienation and administration of nonproductive assets belonging to them, or acquired from credit establishments of same nature
- Assets linked to entities entirely devoted to mining activities (excluding hydrocarbons)
- Health, education, sports and research activities, among others, performed by non-for-profit foundations, corporations and associations
- Hotel services rendered in new hotels or in hotels that have been remodeled or enlarged
- Ecotourism services certified by the Ministry of Environment



Find below how presumptive income is assessed:

Net equity as of December 31st of the previous year.

Net equity value of contributions and shares in domestic companies.

(-) Net equity value of assets affected by events of force majeure or fortuitous event.

(-) Net equity value of assets attached to companies undergoing nonproductive stages.

*3.5%

= Initial presumptive income

(+)Taxable income arising from exempted assets

Presumptive income

=====

When the tax to be paid has been determined based on the presumptive income, taxpayers are entitled to offset, during the five following years, the equivalent of the excess of presumptive income over ordinary net income.

7.1.4.3. Equity comparison system

The assessment of the income tax on the grounds of the equity comparison system assumes that the variation of the equity included in the tax return, as compared to the previous year is not properly supported, so it will be subject to tax as a special net income, that is to say, in principle costs of expenses incurred shall not be subtracted.

7.1.5. Revenues not deemed income for tax purposes

The law establishes some special tax treatments that allow excluding certain income for the determination of taxable base. Among these revenues are: insurance indemnities for damages; for damages by destruction or renewal of crops, and pest control; donations to political parties, movements and campaigns.

Notwithstanding the above, revenues not deemed as ordinary income or capital gains should be analyzed on a case by case basis to determine whether such tax treatment is applicable or not.

7.1.6. Costs, deductible expenses and other deductions

Costs are expenditures directly related with the acquisition or manufacturing of goods or the provision of services, and shall be deductible from the income tax, provided they are necessary, proportionate and accrued or paid during the relevant taxable year.

Expenses are all expenditures that contribute to the development of the taxpayer's taxed activities, such as administration, research and financing of an economic entity. Expenses must fulfill the same criteria set for costs regarding causality, proportionality and necessity. They are recognized upon accrual.



As from January 1st, 2018, deductibility of expenses and expenditures paid in cash will be limited to the lower amount among the following reference values: (i) a percentage of the payments made in cash in the corresponding tax year; (ii) a determined value expressed in Tax Value Units, and (iii) a percentage of the total costs and expenses incurred by the tax payer in the relevant tax year. These limitations are not applicable to other type of deductions which may involve payment of obligations through other means (payment in kind, offsetting, among others).

YEART	LIMIT: IT IS ACCEPTED THE LOWER OF ...
2018	a. Eighty five percent (85%) of what was paid, which in any case may not exceed 100,000 UVT (2018: COP3,315,600,000, approximately USD1,143,310), and b. Fifty percent (50%) of the costs and total deductions.
2019	a. Seventy percent (70%) of what was paid, which in any case may not exceed 80,000 UVT, and b. Forty-five percent (45%) of the total costs and deductions.
2020	a. Fifty-five (55%) of what was paid, which in any case may not exceed 60,000 UVT, and b. Forty percent (40%) of the costs and total deductions.
From 2021	a. Forty percent (40%) of the amount paid, which in any case may not exceed 40,000 UVT, and b. Thirty-five percent (35%) of the costs and total deductions.

The tax system foresees particular rules applicable to certain costs and expenses, among which we highlight the following:

7.1.7. Salaries and payroll taxes

Salaries paid or accrued to employees are deductible, provided the employer has applied the relevant withholdings and has paid all payroll taxes (ICBF, SENA, family welfare) and social security.

Will be deductible expenses accrued for welfare benefits and payroll taxes in the taxable year or period in which are accrued, provided that payroll taxes and taxes are actually paid prior to the filing of the initial income tax return.

7.1.8. Taxes paid

- Of all taxes payable by a taxpayer at the national, regional or municipal levels, only are deductible on income tax: 100% of the industry and commerce tax and real estate tax paid and accrued during the relevant taxable year.
- 50% of the debit tax paid during the relevant year.
- VAT paid in the acquisition or importation of capital goods taxed at general rate of 19%, may be deducted in the year in which it is paid.

7.1.9. Interests

Interest accrued in favor of third parties will be deductible in the part that does not exceed the highest rate that has been authorized to be charged by the banking establishments, during the respective taxable year or period, which will be certified annually by the Financial Superintendence.



In any event and except for the funding of utilities infrastructure and housing projects, income taxpayers may only deduct the interests arising from obligations which average, during the relevant taxable year, does not exceed three times the taxpayer's net equity as of December 31st of the immediately preceding taxable year.

For the calculation of the debt, the principal value of the debt and the number of days during the respective taxable period will be taken into account. The limitation will not apply during the year of constitution of legal persons since in that case there will be no equity in the year prior to its constitution.

7.1.10. Expenses incurred abroad

Costs and expenses incurred abroad are deductible as long as they comply with the general requirements already mentioned and the relevant withholdings have been applied.

The following expenses incurred abroad are deductible without the requirement of withholdings:

- Costs and expenses incurred abroad arising from transactions with residents in jurisdictions with which Colombia has entered DTAs containing nondiscrimination clause.
- Costs and expenses incurred abroad related with foreign-source taxable income for Colombian taxpayers.
- The purchase of movable tangible goods abroad.

Notwithstanding the rules mentioned, costs or deductions on the grounds of expenses incurred abroad to obtain domestic-source income on which no withholdings were applied (not required), shall not exceed 15% of the taxpayer's net income estimated prior to subtracting such costs or deductions.

The deduction of payments for royalties to foreign related parties, or to free trade zones, will not be allowed for the exploitation of an intangible formed in Colombian territory. Neither will the royalty payments associated with the acquisition of finished products be deductible.

A specific term of 6 months is established, from the signing of technology import contracts, so that these are registered before tax authorities. In case it is a modification to a contract, the registration must be made within 3 months after its modification. Registration is a requirement to be able to deduct payments derived from technology import contracts.

7.1.11. Offset of tax losses

following twelve (12) taxable periods, without affecting the presumptive income for the period. Such tax losses cannot be transferred to the partners or shareholders.

Tax losses generated up to the taxable year 2016 may be offset by keeping the regime in force in that year (unlimited offset term).

Regarding mergers and spin-offs, the acquiring company or the surviving company may offset, with ordinary net income, the tax losses incurred by the absorbed or spun-off companies up to a limit equal to the percentage of participation of the equity of the absorbed or spun-off companies within the equity of the surviving company or the beneficiary company resulting from the merger or spin-off, provided the entities carry out the same economic activity.



7.1.12. Amortization of investments

The Act 1819 of 2016 contemplates a transition regime for the amortization of investments, noting that the balances of assets pending to be amortized at the entry into force of said law, January 2017, where there is no special rule of amortization, will be amortized over the remaining amortization period in accordance with the provisions of paragraph 1 of section 143 of the Colombian Tax Code before its amendment, applying the straight line system, in equal proportions.

7.1.13. Deduction of investments

The expenses paid in advance will be deducted periodically as long as the services are received.

Settlement disbursements will be deducted by the straight-line method, in equal proportions, for the duration of the contract, from the taxpayer's income generation and in no case may exceed an annual tax rate of 20%.

Consequently, non-deductible expenses that exceed the 20% limit in the taxable year or period will generate a difference that will be deductible in the following periods, without exceeding 20% of the fiscal cost per year or taxable period.

7.1.14. Deduction for amortization of intangible assets

It is understood as investments required in intangible assets: The disbursements made or accrued for the purposes of the business or activity that may be susceptible to impairment and which, according to the accounting technique, must be recognized as assets for amortization. Within this category are intangible assets acquired separately, as part of a business combination, originated by State subsidies, arising from the improvement of goods subject to operating leases and those formed internally.

The amortization will be carried out in the proportion indicated below, as long as there are no special rules for its amortization:

- The amortization base will be the cost of the intangible assets determined in accordance with the Colombian Tax Code.
- The method for the amortization of the intangible shall be determined in accordance with the accounting technique, provided that the annual rate does not exceed 20% of the fiscal cost.
- In the event that the intangible is acquired by contract and the latter establishes a term, its amortization will be made in a straight line, in equal proportions, for the time of the same. In any case, the annual rate may not exceed 20% of the fiscal cost.
- Non-deductible amortization expenses since exceed the 20% limit in the taxable year or period, will generate a difference that will be deductible in the periods following the end of the useful life of the intangible asset, without exceeding 20% of the fiscal cost of the asset.
- Intangibles from business combinations, in general terms, may have limitations for their amortization. Goodwill shall in no case be amortized for tax purposes.



- When a legal or assimilated entity (branches) is liquidated, the remaining fiscal cost of the depreciable intangible asset will be deductible.
- Real estate investments are not amortizable.

7.1.15. Depreciation

For income tax purposes, those required to keep accounts may deduct reasonable amounts for the depreciation caused by attrition of goods used in business or income-producing activities, provided that those have rendered service in the taxable year or period.

The fiscal cost of property, plant and equipment, and investment property will be the acquisition price plus costs directly attributable until the asset is available for use.

For income tax purposes, a taxpayer will depreciate the fiscal cost of depreciable assets, less its residual value over its useful life.

The methods of depreciation of depreciable assets will be those established in the accounting technique.

The annual depreciation rate will be the lowest between the one determined for accounting purposes and the one established by the National Government (maximum annual depreciation rates will vary between 2,22% and 33%).

In the absence of regulations (which so far do not exist), the maximum value will be

CONCEPTS OF GOODS TO DEPRECIATE	ANNUAL FISCAL DEPRECIATION RATE%
Constructions and buildings	2,22%
Aqueduct, plant and networks	2,50%
Communication routes	2,50%
Fleet and air equipment	3,33%
Fleet and ferrous equipment	5,00%
Fleet and fluvial equipment	6,67%
Arming and surveillance equipment	10,00%
Electric equipment	10,00%
Fleet and land transport equipment	10,00%
Machinery, equipment	10,00%
Furniture and fixtures	10,00%
Scientific medical equipment	12,50%
Packaging & tools	20,00%
Computer equipment	20,00%
Data processing networks	20,00%
Communication equipment	20,00%



7.1.16. Exchange difference

The exchange rate difference will only have tax implications when effectively realized. Specific transition rules are included for the value of assets and liabilities in foreign currency as of December 31, 2016 and investments in shares in foreign currency.

7.1.17. Tax exempt income

Income arising from the following activities is tax exempt:

- Those coming from Decision 578 of the CAN
- The use of new forest plantations, sale of energy
- Services provided in new hotels, remodeled and/or extended, in municipalities of up to 200,000 inhabitants, within ten (10) years after 2016, for a term of 20 years

7.1.18. Tax discounts

Certain items may be directly subtracted from the income tax. The scope of the discount should be checked for each item; additionally, the total to be discounted cannot exceed 75% of the taxpayer's tax as estimated using the presumptive income system.

Some of the main discounts applicable are:

- Discount for taxes paid abroad (tax credits). Residents in Colombia and domestic companies and entities that are income tax taxpayers, who receive income from a foreign source subject to income tax in the country of origin, are entitled to deduct from the Colombian income tax, the tax paid abroad, no matter its designation, estimated on such income, under certain conditions and applying the mathematical rule established in law.
- In the event of income arising from dividends perceived abroad, the tax to be discounted is the result of multiplying the tax rate to which those profits have been subjected at the level of the distributing entity or its subsidiaries when the distributing entity in turn have received dividends from these (indirect credit), by the amount of dividends or profits at the moment of its distribution (direct credit), subsequently applying the mathematical rule established in law, under certain conditions. Taxpayers must evidence their direct participation in the company or entity from which they receive the dividends and, as regards the indirect credit, must have an indirect participation that is a fixed asset owned as part of their equity for more than two years.
- The tax credit that cannot be used in a given taxable year may be used within the four following years.
- Taxpayers shall evidence taxes paid abroad by means of a tax payment certificate or other valid evidence.
- In any event, the tax credit shall not exceed the income tax payable by the taxpayer in Colombia over the same income.
- Donations made to non-profit entities that have been qualified, as part of the income tax special regime and to the non-taxpayers of sections 22 and 23 of the Colombian Tax Code, will grant a discount for income tax purposes of 25% of the value donated in the year or taxable period. In these cases, these donations may not be used as a deduction.



- For tax discount purposes, at least within the month following the end of the taxable year in which the donation is received, the recipient entity should issue a certification to the donor, signed by the legal representative and public accountant or tax auditor. Certification has to point out: (a) the date of the donation; (b) type of entity; (c) kind of donated goods; (d) value; (e) the way in which the donation was made, and (f) the destination of the donation.
- Discount for investments made in research, technological development or innovation. These should be projects qualified by the National Tax Benefits Council (CNBT) in accordance with the criteria and conditions defined by CONPES. They entitle to credit 25% of the value invested in the taxable year or period. Investments can be made through researchers, groups or research centers, among others. For the discount to proceed, the project qualification must comply with environmental impact criteria. Additionally, the company may deduce 100% of the investment made in research, technological development or innovation.
- Additionally, companies may credit from their income tax 25% of the value invested in research, technological development and innovation in the taxable period in which they are carried out. This tax credit added to other tax credits may not exceed 25% of the income tax charged to the taxpayer in the respective taxable year. The excess not credited in the year, may be taken within the four (4) taxable periods following the one in which the investment was made.
- Investment in control and improvement of the environment. Legal entities that directly make investments in the control, conservation and improvement of the environment shall be entitled to deduct 25% of the investments they have made in the respective taxable year from their income tax. The investments that have been demanded by the environmental authorities are not acceptable for the benefit.
- Other discounts applicable are: discount to Colombian air or sea transportation companies; discounts on the grounds of tree growing in reforestation areas; deduction of the VAT paid upon the import and acquisition of heavy machinery for basic industries and discount for companies in the agriculture industry quoted on stock exchanges.

7.1.19. Controlled foreign companies (CFC) (ECE for its acronyms in Spanish)

Regime applicable to individuals and legal entities resident in Colombia that hold, directly or indirectly, a stake equal to or greater than 10% in the capital of the foreign controlled entity (CFC) or in its profits.

CFCs include investment vehicles, such as corporations, trusts, collective investments funds, among others, which comply the conditions to be considered a related party for transfer pricing purposes and are not residents in Colombia.

For income tax purposes, Colombian taxpayers subject to the CFC regime should immediately recognize the net profits of the CFC derived from passive income obtained by the CFC, in proportion to their participation in the CFC's capital or profits, and without the need to wait to receive a distribution of profits to Colombia.

For purposes of this regime are deemed passive income: (i) dividend and profit distributions from a company or investment vehicle, to the extent the entity or investment vehicle making the distribution is indirectly controlled by Colombian tax residents; (ii) Interest; (iii) income derived from the exploration of intangibles; (iv) income originated from the sale of assets that generates passive income; (v) income from the sale or lease of immovable property; (vi) income derived from the sale or purchase of tangible goods acquired from (or sold to) a related party, when



their manufacturing and consumption occurs in a jurisdiction different to where the CFC is located or it is a tax resident; (vii) income from the performance of technical services, technical assistance, administrative, engineer, architecture, qualified scientist, industrial and commercial services in a jurisdiction different to where the CFC is located or it is a tax resident.

The Colombian tax resident that must recognize the taxable income under the application of the CFC regime may request a tax credit for taxes paid abroad in relation to the passive income. Dividends and benefits that are distributed by a CFC, which have been already taxed in Colombia, should be considered as non-taxable income at the moment of being received in the country.

7.1.20T. Transfer Pricing

Income taxpayers who: (i) carry out transactions with foreign related parties; (ii) are domiciled in the national customs territory (Territorio Aduanero Nacional - TAN in Spanish) and carry out transactions with related parties located in free trade zones; or (iii) carry out transactions with people, partnerships, entities or companies located, resident or domiciled in non-cooperating jurisdictions with low or no taxation, or benefiting from harmful preferential tax regimes, are required to comply with the transfer pricing regime.

In addition, permanent establishments of non-resident individuals or legal entities or of foreign entities as well as branches and agencies of foreign partnerships, subject to income tax in Colombia, that carry out transactions with (i) related parties abroad; (ii) related parties in free trade zones; or (iii) people, partnerships, entities or companies located, resident or domiciled in tax havens or benefiting from harmful preferential regimes, are also required.

As a consequence, taxpayers obliged to comply with the transfer pricing regime must determine their income, costs, deductions, assets and liabilities considering the conditions that would have been agreed in comparable transactions with, or between, independent parties, i.e., their transactions should comply with the arm's length principle.

For income tax purposes, and particularly for the application of transfer pricing rules, the law considers that a party is related to another under the following scenarios: (i) subsidiaries; (ii) branches; (iii) agencies; (iv) permanent establishments, and (v) other situations, including cases when the transactions are carried out between related parties through third parties, whenever more than 50% of the gross revenues arise individually or jointly from their partners or shareholders, or when consortiums, temporary unions, participation agreements and other association models that do not give origin to the establishment of legal entities exist, among others.

Colombian transfer pricing regulations, in force since taxable year 2004, follow the guidelines of the Organization for Cooperation and Economic Development (Organización para la Cooperación y el Desarrollo Económico - OCDE in Spanish); nevertheless, such guidelines are an ancillary source of interpretation and do not have a binding effect.



7.1.20.1. Transfer pricing obligations

7.1.20.1.1. Transfer pricing return, local file and master file

Income taxpayers, including individuals, legal entities and permanent establishments, that on the last day of the taxable year register either: (i) gross equity (assets) equal to or higher than 100,000 tax value units (Unidades de Valor Tributario - UVT in Spanish) (approximately USD1,096,000 for taxable year 2017) or (ii) gross revenues equal to or higher than 61,000 UVT (approximately USD668,000 for taxable year 2017) are required to present a transfer pricing return.

On the other hand, a transfer pricing report must be prepared and filed, and such document must contain a master file including relevant information of the multinational group, and a local file, containing information related to the specific transactions carried out by the Colombian entity. The transfer pricing report must be prepared by companies that perform transactions that exceed 45,000 UVT (approx. USD493,000 for taxable year 2017), per transaction type.

In the event taxpayers register transactions with individuals, partnerships, entities or companies located, resident or domiciled in tax havens or benefiting from harmful preferential regimes, the transfer pricing report should solely be prepared for those transactions that surpass 10,000 UVT (approx. USD110,000 for taxable year 2017).

The transfer pricing documentation (local file and master file) shall be kept (i) during five years, which will be counted starting on January 1st of the following taxable year or (ii) for as long as the tax return's statute of limitation is open; whichever covers the longest span of time.

7.1.20.1.2. Country by country report

As of taxable year 2016, taxpayers of the income tax who fulfill any of the following conditions, shall present a country by country report, containing information related to the global multinational group's allocation of income and taxes. The conditions are:

- Controlling entities of multinational groups that fulfil the following:
 - I. Are considered residents in Colombia
 - II. Own subsidiaries, branches or permanent establishments, residing or located abroad, accordingly
 - III. Are not subsidiaries of other companies domiciled abroad
 - IV. Are required to prepare, present and disclose consolidated financial statements
 - V. Registered consolidated revenues, for accounting purposes, equal to or greater than 81,000,000 UVT (approx. USD887.407.000 for taxable year 2017).
- Entities residing in the national customs territory or residing abroad that possess permanent establishments in Colombia, and that have been designated by the controlling entity of the multinational group, domiciled abroad, as the responsible entity to file the country by country report.
- One or more entities or permanent establishments domiciled in the national customs territory that belong to the same multinational group, whose ultimate parent company is located abroad and that fulfill the following conditions:



I. When assessed as a whole, the Colombian entities contribute 20% or more of the consolidated revenues of the multinational group

II. The ultimate parent company has not filed the country by country report in its jurisdiction

III. The consolidated revenue of the multinational group is equal to or greater than 81,000,000 UVT (approx. USD887.407.000 for taxable year 2017).

Entities that belong to multinational groups and are tax residents in Colombia must notify Tax Authorities about the identity and tax jurisdiction of the reporting entity of the group, in the means, formats, terms and conditions established by the National Government.

7.1.20.2. Methods and comparability criteria

Colombian legislation establishes that taxpayers shall use any of the following methods to determine the price or profit margin in transactions carried out with related parties:

- Comparable uncontrolled price
- Resale price
- Cost plus
- Transactional net margin method
- Profit split

In order to determine which of the previous methods is the most appropriate for the analysis, taxpayers shall consider the following criteria: (i) facts and circumstances related to the controlled transactions, which shall be identified through a detailed functional analysis; (ii) availability of accurate information, especially related to transactions performed between third parties; (iii) degree of comparability between controlled and uncontrolled transactions, and (iv) accuracy of potential comparability adjustments to be performed in order to eliminate differences between controlled and uncontrolled transactions.

Notwithstanding the aforementioned, Colombian legislation has established particular applications of the transfer pricing methods for specific transactions such as the purchase of used fixed assets, purchase or sale of shares not quoted in stock, and transactions involving commodities.

a) Colombian law establishes that the application of the comparable uncontrolled price method in order to assess purchases of used assets must be carried out using the invoice issued by the third party when the asset was first purchased and the calculation should consider the depreciation up until the date of the transaction. The calculation shall take into account the accounting principles generally accepted in Colombia. In cases where the invoice is not available, and under the assumption that it is an asset being disposed in a different state than the one that was originally purchased, a technical valuation performed by an independent expert might be presented.

b) In transactions involving the purchase or sale of shares that are not quoted on stock exchange markets or transactions involving other assets that impose restrictions in terms of their comparability, the Colombian legislation



establishes that common valuation methods shall be used, especially those that calculate market values based on the present value of future incomes. It is forbidden to use equity values as appropriate valuation methods.

c) Starting on 2017, the most appropriate method to analyze transactions involving commodities is the comparable uncontrolled price method and some criteria were defined for its application. Transactions carried out between independent parties or prices quoted in national or international sources shall be used taking into account essential elements such as the date or quoting period agreed between the parties. The date used to agree the price must be supported with documents such as agreements, offers and acceptance or any other related proofs and their terms must be consistent with the actual behavior of independent parties under similar circumstances. These documents shall be registered in the electronic services provided by Tax Authorities. In the event the taxpayer does not provide such proof or if the date used is not consistent with the market behavior, Tax Authorities might consider the date set in the bill of lading as the most appropriate pricing date.

To determine the level of comparability between controlled and uncontrolled transactions that allows the application of the transfer pricing methods, the following attributes must be taken into consideration:

- Characteristics of the transactions
- Economic activities or functions
- Contractual terms
- Market and economic circumstances
- Business strategies

Nevertheless, Colombian legislation has established further requisites regarding transfer pricing analysis for specific transaction types.

a) For financing transactions, the law has established that the following comparability elements shall be taken into account: principal amount, term, credit rating of the debtor, collaterals, solvency and interest rate. In addition, the law establishes that, regardless of the interest rate set, interest payments shall not be deducted if the comparability elements are not met. If the terms and conditions of the financing transactions are not similar to market behaviors, the transactions might not be considered as loans but rather as capital contributions and, thus, interest payments shall be treated as dividends.

It is important to mention that the Colombian legislation establishes that the taxpayers shall give priority to internal comparables whenever they exist.

With regard to costs or expenses for intragroup services, Colombian taxpayers must demonstrate that the services were in fact received and an analysis of the benefits perceived shall be performed, considering main aspects such as: (i) cost of the service, (ii) amount that a third party would be willing to pay, (iii) costs registered by the service provider and (iv) identification of the agreements, forms or methods used to support the invoices.



7.1.20.3. Penalties

Regarding penalties the transfer pricing regime establishes sanctions related to the formal transfer pricing obligations of filing transfer pricing return, local file and master file.

In regard to the transfer pricing documentation (local file and master file), penalties are applied on the grounds of: (i) late submission; (ii) lack of consistency (mistakes, content not related to that requested or which does not allow to verify the application of the transfer pricing regime); (iii) not filing; (iv) omission of information, and (v) amendments.

As to the transfer pricing return, penalties are applied on the grounds of: (i) late submission; (ii) lack of consistency; (iii) omission of information, and (iv) not filing.

Finally, breaches associated with the country-by-country report and its notification will be punishable in accordance with the provisions of article 651 of the Colombian Tax Code in relation to the non-submission of information within the established deadlines or the presentation of information whose content has errors or does not correspond to what was requested.

7.1.20.4. Scope of the Transfer Pricing Model

The transfer pricing regime is also applied to other activities carried out by income taxpayers in Colombia. Some of these cases are: (i) the contribution of intangible assets, which shall be included in the transfer pricing return, regardless of the contribution amount; (ii) the attribution of income and capital gains associated with permanent establishment, on the grounds of functions, assets, risks and personnel; (iii) evidence to contradict tax abuse, where the price or consideration agreed upon must lay in the market range, according to the transfer pricing methodology; (iv) business restructurings, and (v) in-kind contributions to partnerships and foreign entities.

7.1.21. Capital gains tax

As supplementary to the income tax, the capital gains tax levies some revenues obtained from certain transactions expressly defined by law.

Capital gains are a different group from the ordinary income, and consequently deductions are applied independently, which means that no costs and deductions can be deducted from other concepts nor such income can be offset against tax losses, unless they are capital losses arising during the same taxable year.

Most relevant transactions subject to the capital gains system include:

- Gains (difference between the price of disposal and the tax cost of the asset) arising from the disposal of taxpayer's fixed assets owned during two or more years.
- Gains arising from the liquidation of a company, of whatever nature, on the excess over invested capital, wherever the gain realized is not income, reserves or commercial profits capable of being distributed as untaxed dividends, provided that the company has two or more years of existence at the time of liquidation.
- Gains arising from inheritance, legacies or donations, as well as the ones received as participation in the marital community property.
- Gains from lotteries, prizes, raffles and similar.
- Gains from any other gratuitous agreement.



General rate on capital gains is 10%, regardless of the origin of the capital gain or type of asset, except those obtained in lotteries, prizes, raffles and similar that are taxed at 20%.

7.1.22. Withholding tax

Colombian tax law defines withholdings as an early tax collection mechanism. This means that withholdings are only applicable as long as the activity is subject to the tax.

Withholding agents are, among others, the legal entities that on the grounds of their functions take part in acts or transactions where, by express legal mandate, they must apply tax withholdings.

Main obligations of withholding agents are: applying the relevant withholdings; depositing the amounts withheld at the places and within the terms set by the Government; submitting the monthly withholding tax returns and issuing the relevant withholding certificates.

Income tax withholdings range from 1% to 20% for transactions between domestic companies or between Colombian residents.

The main income tax withholdings applicable for payments abroad of Colombian-sourced income to entities not domiciled in Colombia, on the most significant transactions are as follows:

TRANSACTION	INCOME TAX WITHHOLDING RATE
Payment for technical services, technical assistance or consultancy services (rendered in Colombia or abroad).	15%
Payments for services rendered by an entity or person domiciled or resident in one of the jurisdictions considered as non-cooperative jurisdictions, low or non-tax and preferential tax regimes for tax purposes in Colombia.	2018 and following: 33%
Administration fees (overhead expenses) for general services (rendered in Colombia or abroad).	15%
Other services rendered in Colombia	15%
Royalties ² on the acquisition and exploitation of intangible assets.	15%
Software licensing	26,4%
Interests	15% 8% (*)
International transport	5%

(*) Financing of infrastructure projects that meet certain requirements

(**) Effective rate

² Payments made for royalties will not be deductible when they are related to the acquisition of finished products.



It is important to highlight that the withholding rate applicable to a certain transaction depends on its nature, if conducted between States covered by a Double Tax Treaty – DTT, so its analysis should be made on a case by case basis. Also, there may exist additional formal requirements to be met to gain entitlement to deduct the payment abroad (e.g. registering certain contracts with the Tax Authority (DIAN) or complying with foreign exchange rules; as well as there may be limitations to deductibility if payments were not subject to withholding tax.t

7.1.23. Self-withholding for purposes of income tax

As of January 1, 2017, taxpayers have the status of self-withholding agents for purposes of income tax provided they meet the following conditions:

1. To be a national company, foreign company or permanent establishments
 2. To be exempt from the payment of social security contributions and payroll taxes with respect to their workers who earn a wage less than 10 SMMLV
- This self-withholding must be settled on each payment or credit entry to income tax taxpayers, and the rate may range from 0.4% to 1.6% according to each type of economic activity.

Those responsible for self-withholding must file and pay self-withholdings performed each month, within the deadlines set for the effect by the national government.

The self-withholding will be applied regardless the tax withholding indicated in the immediately preceding section.

7.2. Value added tax - VAT

7.2.1. Overall

The value added tax (VAT) is an indirect tax levied on:

- Sales of movable and immovable tangible goods that have not been expressly excluded
- Sale or transfer of rights in intangible assets, solely associated with industrial property
- Render of services in Colombia or abroad, unless expressly excluded
- The import of movable tangible goods that have not been expressly excluded
- The circulation, sale or operation of games of chance, with the exception of lotteries and games of chance operated exclusively through internet.

It is important to note that the services provided from abroad are taxed with VAT, when the recipient and/or beneficiary is in the national territory. There are specific rules to determine when the beneficiary is in the national territory.

The disposal at any title of fixed assets is not taxed with VAT, except for residential real estate, motor vehicles and other fixed assets that are usually sold on behalf of third parties. However, the first sale of housing whose value exceeds 26,800 UVT (COP888.580.800 approx. USD306.407) is taxed at the rate of 5%.

Other transactions are qualified as exempt (rate 0%) or excluded (not taxed with VAT but the VAT paid for inputs will be a higher cost of the corresponding input).



7.2.2. Parties responsible of paying the VAT

Entities or individuals carrying out sales, rendering services or importing goods are responsible of paying the VAT, as follows:

- Sellers of goods either distributors or manufacturers
- Services providers not excluded from this tax
- Importers of moving tangible assets not expressly excluded from the tax
- Service providers from abroad defined by resolution by the Tax Administration

There are two VAT models: (i) common VAT regime, applied to all taxpayers not included in the simplified regime, and (ii) the simplified regime, applicable only to individuals who are traders, farmers, artisans and providers of services complying with the conditions of revenues, equity and operation as set forth in the regulation.

7.2.3. Taxable base

The taxable base corresponds to the total value of the transaction, including goods and services required for the provision thereof. Additionally, there are particular taxable bases for certain sale or service transactions.

7.2.4. Tax rate

The general VAT rate is 19%, but there are reduced rates of 5% and 0% for certain goods and services.

7.2.5. VAT recovery

VAT taxpayers may take as creditable against VAT generated, VAT paid on the purchase of goods, services and imports other than fixed assets (input VAT) that allow for recognition of costs and/or expenses in the estimation of income tax.

VAT paid may be treated as creditable:

- In the case of those responsible for reporting every two months, deductibles and creditable taxes may only be booked in the fiscal period corresponding to the date of their accrued, or in one of the three immediately following two-months periods, and be requested in the return of the period in which has been booked.
- In the case of those responsible who must file VAT returns every four months, deductibles and creditable taxes may only be booked in the fiscal period corresponding to the date of their accrual, or in the immediately following four-month period, and be requested in the return of the period in which has been booked.

VAT credit balances for excess of credit taxes arising from rate differences, not applied to the VAT during the taxable year or period of accrual, may be requested in compensation or refund upon compliance with the formal obligation of filing the income tax return for the income taxable period during which the excess was originated.

In the case of taxpayers carrying out exempt transactions (0% rate), the reimbursement of credit balances included in the VAT return may be requested every two months.



VAT at the general rate for the acquisition or importation of capital goods may be taken as a deduction on the income tax in the period of acquisition or importation, provided that such benefit is not used concurrently with what is established in section 258-2 of the Colombian Tax Code. It also applies to the assets acquired under the financial leasing modality with exercise of the purchase option at the end of the contract.

The party responsible before the tax authority in Colombia of collecting and paying this tax is who performs any taxable event, even if it is the final consumer who finally supports economically the VAT.

7.2.6. Goods and services excluded from VAT

The following transactions are not levied with this tax, nonetheless, they do not give the right to credit VAT from purchases.

(a) Excluded goods

- Most of live animals of species used for human consumption, vegetables, seeds, fruits and other farmed products, fresh or frozen
- Products such as cereals, flour, cacao, handmade products, salt, natural gas, vitamins
- Certain machinery for use in the primary sector, some medical articles, among others
- Personal computers of less than 50 UVT (USD531 approx.) and smart mobile devices (cell phones, tablets) not exceeding 22 UVT (USD234 approx.)
- The national and imported equipment and elements that are intended for the construction, installation, assembly and operation of control and monitoring systems, necessary for compliance with the current environmental regulations, regulations and standards, for which such condition must be accredited to the Ministry of Environment and Sustainable Development
- Foodstuffs for human and animal consumption imported from the countries adjacent to the departments of Vichada, Guajira, Guainia and Vaupes, provided that they are exclusively used for local consumption in those departments
- Food for human consumption donated to the legally constituted food banks, in accordance with the regulations issued by the national government
- Vehicles, self-propelled, intended for public passenger transport, intended only for replacement. Smallholders who own less than 3 vehicles will be entitled to this benefit and only for the purpose of replacing one and only once. This benefit will be valid until 2019
- Objects of artistic, cultural and historical interest purchased by the museums that make up the National Museum Network and the public entities that own or manage these goods will be exempt from VAT collection
- Food for human and animal consumption, clothing, toiletries and medicines for human or veterinary use, building materials; bicycles and parts thereof; motorcycles and their parts, and motorbikes and parts thereof that are introduced and marketed to the departments of Amazonas, Guainia and Vaupes, provided that they are exclusively destined for consumption within the same department and motorcycles and motorbikes are registered in the department. The national government will regulate the matter to ensure that the exclusion of VAT applies to sales to the final consumer
- Aviation fuel supplied for the national air transportation of passengers and cargo to and from the departments of Guainia, Amazonas, Vaupés, San Andres Islands and Providencia, Arauca and Vichada
- Products purchased or introduced to the department of Amazonas under the Colombo-Peruvian agreement and the agreement with the Federative Republic of Brazil.



(b) Services excluded from VAT payment

- Sale of food and beverages, with exception of institutional or business feeding, provision of food to education institutions and such activities carried out under franchise, authorization, royalties or any other means involving the exploitation of intangible assets
- Public or private transportation, domestic and international freight
- Land, sea or river public transport of passengers in the national territory
- Agriculture activities associated with the preparation of lands for farming or stock breeding, or those associated with the production and commercialization or derivative products there from
- National air passenger transportations to domestic destinations where there is no organized land transportation
- Transport of gas and hydrocarbons
- Interests and financial yields on credit transactions and financial leasing
- Medical, dental, hospital, clinic and laboratory services for human health
- Electric power, water and sewerage, street cleaning, garbage collection and domiciliary gas services
- Home internet access for social levels one, two and three
- Education services provided by preschool, primary, high school, higher, special or non-formal institutions, recognized as such by the Government, and education services provided by individuals to such institutions
- Virtual education services for the development of digital content, in accordance with the regulations issued by the TIC Ministry, provided in Colombia or abroad
- Provision of web pages, servers (hosting), cloud computing and remote maintenance of programs and equipment
- Acquisition of software licenses for the commercial development of digital content, in accordance with the regulations issued by the TIC Ministry
- Repair and maintenance services for ships and naval vessels, both maritime and fluvial, with a Colombian flag

(c) Imports excluded from VAT payment

Imports excluded from this tax are specifically defined by law. Among imports excluded from VAT are those not intended for nationalization (temporary import), the temporary import of heavy machinery for basic industries, the import of machinery for the treatment of garbage and environmental control and monitoring, imports into the special customs regime zones, guns and ammunition for national defense, and the goods provided in section a) abovementioned.

7.2.7. Exempt transactions

There are transactions with a 0% VAT and consequently they grant the right to credit VAT in the acquisition of taxed goods and services directly associated with such exempt transactions. The most significant are:

- Export of goods and services, under the conditions set by the law and the regulations, including goods sold to international commercialization companies
- Touristic services provided to residents abroad used in Colombia, sold by travel agencies and hotels registered with the National Tourism Register
- Raw materials, spare parts, consumables and finished products sold from the domestic customs territory to industrial free trade zone users of goods or services, or among them, provided they are necessary for the development of the corporate purpose of said users
- Services or connection and access to the Internet from fixed networks of home subscribers of social levels one and two
- The sale of beef, pork, sheep and goat meat; certain poultry, shrimp, eggs, milk, fish, fresh, cooled, by the producers of such goods



Also, services provided in Colombia to be used or consumed exclusively abroad by companies or individuals without businesses or activities in the country are VAT exempt. Certain substantive and formal requirements must be met in order to have right to the exemption.

7.2.8. Estimation of the payable tax

The payable tax is estimated as the difference between the tax generated by taxed transactions and the legally authorized deductible taxes, as follows:

VAT ESTIMATION
Taxed transaction revenues by tax rate
Tax generated (limited at the same rate of the generated VAT)
(-) Minus: creditable taxes
Due tax

7.3. National consumption tax

A national consumption tax is levied on the following activities:

- The provision of mobile phone services; Internet and mobile browsing, and data services
- The sales of certain movable tangible goods, either locally manufactured or imported (vehicles)
- The sale of food and beverages at restaurants, coffee shops, self-services, ice cream saloons, fruit stores, pastry shops and bakeries for consumption at the premises, take away or delivered; food services under contract, and the service of food and alcohol beverages for consumption in bars, taverns and discos

The tax is accrued upon nationalization of the asset imported by the final consumer, the actual delivery of the asset, the provision of the service or the issuance of the relevant bill, cash register ticket, invoice or equivalent document by the responsible party to the final consumer.

Parties liable for the consumption tax are the provider of mobile phone services, the provider of the service of food and beverages, the importer as final user, the seller of goods subject to the consumption tax, and as regards the professional intermediary for sale of second-hand vehicles.

The national consumption tax does not give rise to creditable taxes for VAT purposes.

Rates range from 4%, 8% and 16%, depending on the relevant activity.

7.4. Debit tax

The debit tax (GMF by its acronym in Spanish) is an indirect tax on the carrying out of financial transactions by means of which the funds deposited in current or savings accounts, as well as deposit accounts with the Central Bank, are disposed of, and also the issue of cashier's checks. Being an immediate tax, it is accrued upon disposal of the resources under the financial transaction.



Tax rate is 0.4% of the total value of the financial transactions by means of which resources are disposed of. Up to 50% of the GMF is deductible from the taxpayer's income tax, estimated on the amounts paid as GMF, regardless of the relation of cause and effect with the taxpayer's income producing activity.

This tax is collected via withholdings, which is in charged by the Central Bank and the entities under the control of the Colombian Financial Superintendence or the Superintendence of Solidarity Economy, where the relevant current or savings accounts and collective portfolios are deposited, or where the accounting entries involving the transfer or disposal of resources are booked.

The law sets forth a series of transactions exempt from this tax, reason why they should be analyzed on a case by case basis.

7.5. Industry and commerce tax and billboard tax

7.5.1. Industry and commerce tax

It is a municipal tax on gross revenues obtained from the performance of industrial, commercial and service activities carried out, directly or indirectly, by individuals, legal entities or unincorporated companies in the relevant municipal jurisdiction.

Taxable base is the gross amount received by the taxpayer, minus authorized deductions, exemptions and non-taxed operation to which there is the right.

In this regard it is appropriate to review the changes introduced by law 1819 of 2016. Thus, in article 342 a modification to the taxable base of the tax was established. In Paragraph 3° of the mentioned article, the following is indicated:

"the rules provided for the Tax Code in article 28, will be applied as pertinent for purposes of determining the income from the industry and commerce tax"

In this sense, article 28 of the TC establishes that, as a general rule, tax income realized are the income accrued in the year or taxable period.

Tax rate is defined by each of the municipalities within the following ranges set by law:

- For industrial activities, from 0.2% to 0.7%
- For commercial and service activities, from 0.2% to 1%

This tax is 100% deductible provided it has a relation of cause with the taxpayer's income generating activity and is duly paid.

7.5.2. Tax on billboard advertising

This is a municipal tax which taxable event is the placement of advertising boards on public spaces. This tax is assessed on and collected from all individuals, legal entities or unincorporated companies carrying out industrial, commercial and/or service activities at the relevant municipal jurisdictions, which use public space to advertise their business or trade name through advertising boards.



Taxable base is the amount payable as industry and commerce tax, and the rate is 15%.

7.6. Real estate tax

The real estate tax is a levy on the property, possession or exploitation of lands or real estate located in urban, suburban or rural areas, with or without constructions.

All owners, holders or beneficial owners of real estate at the relevant municipal jurisdiction must pay this tax.

The taxable base for this tax is determined by: (i) the outstanding cadastral appraisal, which may be generally updated by the relevant municipality as a consequence of the review of new conditions, or through the urban and rural real estate valuation index (IVIUR in Spanish); or (ii) the self-appraisal made by the taxpayer.

Applicable rate depends on the condition of the property, which in turn, depends on facts such as floor space, location and destination. The rate ranges from 0.5% to 1.6%, considering the economical destination of each property.

This tax is 100% deductible as long as it has a relation of cause and effect with taxpayer's income producing activity.

7.7. Registration tax

7.7.1. General considerations

The registration tax is levied on all documentary acts, contracts or legal business to be registered with the chambers of commerce or with the public instrument registration offices.

7.7.2. Taxable base

The taxable base is the value included in the document containing the act or contract. When the levied act refers to the incorporation of companies, bylaws amendments, or acts involving an increase of corporate capital or subscribed capital, the taxable base is the total value of the relevant contribution, including the corporate capital and the subscribed capital, as well as the premium on the placement of shares or social quotas.

As regards documents without a specified amount, the taxable base is determined case by case depending on its nature.

For the purposes of estimation and payment of the registration tax, the mergers, spin-offs, and transformation of companies, and the consolidation of branches of foreign companies are deemed acts without a specified amount provided they do not involve capital increases or assignment of quotas or part-interest.

Wherever the act, contract or legal business refers to real estate, the amount shall not be less than the value of the cadastral appraisal, the self-appraisal, the auction or awarding price, as the case may be.



7.7.3. Tax rates

- Acts or contracts with a specified amount to be registered with the public instrument registration offices, between 0.5% and 1%
- Acts or contracts with a specified amount to be registered with the chambers of commerce, between 0.3% and 0.7%
- Acts, contracts or legal business with a specified amount to be registered before the chambers of commerce involving the incorporation with and/or the increase of premium on the placement of shares or social quotas of companies, between 0.1% and 0.3%
- Acts or contracts without a specified amount to be registered with the public instrument registration offices or chambers of commerce, between two and four legal daily minimum wages (between USD22 and USD44 approximately).

Whenever the act, contract or legal business is subject to both registration at the public instrument registration office and the Chamber of Commerce, the tax is to be rated and paid only at the public instrument registration office.



Marco Normativo

NORM	SUBJECT
Colombian Tax Code (Decree 624 of 1989)	<p>Defines tax elements (tax authorities, person liable to pay the tax, taxable event, taxable base, tax rate, tax exemptions).</p> <p>Income tax: Rules authorized deductions, tax residence, the transfer pricing model, capital gains, among others.</p> <p>Value added tax: Defines who are liable to pay the VAT, the rate applicable to certain goods and services, exemptions and exclusions, requirements to request deductions, common regime, simplified regime, import and export of goods regime, estimation of proportionality, among others.</p> <p>Debit tax: Defines the taxable events, applicable exemptions and withholding agents.</p> <p>It also sets the main formal (procedural) aspects associated with compliance with tax obligations:</p> <ul style="list-style-type: none">- Tax withholdings- Tax procedure- Penalties upon failure to comply with tax obligations
Law 223 of 1995	<p>Contains the most significant regulations associated with tax rationalization, among others:</p> <ul style="list-style-type: none">(i) Goods that do not trigger VAT(ii) Goods exempt from VAT(iii) Imports exempt from VAT
Law 14 of 1983	<p>Defines detailed rules regarding the core elements of the most significant territorial taxes such as:</p> <ul style="list-style-type: none">- Real estate tax- Industry and commerce tax (ICA)- Consumption tax on alcoholic beverages- Tax on cigarettes
Law 84 of 1915	<p>Sets the regulation on the powers vested in municipal councils and departmental assemblies, as regards the management or territorial taxes.</p>
Law 633 of 2000	<p>Modifies national taxes (income tax, VAT, GMF).</p>
Law 788 of 2002	<p>Modifies the procedural tax regime (tax regimes, penalty imposing procedures, goods exempt from VAT, tax rates, among others).</p>
Law 1430 of 2010	<p>Modifies the taxable event and exemptions from GMF. Modifies aspects associated with persons liable to pay territorial taxes.</p>
Law 1607 of 2012	<p>Introduces several changes to the Colombian Tax Code. Amends the registration tax; enacts the consumption tax and modifies the tax on gasoline and fuel oil, among others.</p>
Decree 3026 of 2013	<p>Introduces permanent establishment regulations in Colombia.</p>
Decree 3028 of 2013	<p>Introduces thin capitalization rules in Colombia.</p>
Decreto 3028 de 2013	<p>Introduces regulations concerning tax residence for foreign individuals and entities deemed as nationals for having their effective place of management in Colombia.</p>



Decree 3030 of 2013	Introduces changes to transfer pricing regime in Colombia.	
Law 1739 of 2014	Introduces some modifications to GMF, creates wealth tax; introduces some modifications to the income tax.	
Law 1753 of 2015	By which the National Development Plan 2014 – 2018 “Todos por un Nuevo País” is issued.	
Decree 1123 of 2015	Establishes a regulation for application of articles 35, 55, 56, 57 and 58 of law 1739 of 2014.	
Decree 2452 of 2015	Establishes a regulation for application of articles 53 and 54 of Law 1739 of 2014	
Decreto 2452 de 2015	Por el cual se reglamentan los artículos 53 y 54 de la Ley 1739 de 2014.	
	Single regulatory decree on tax matters (it has been amended by about of 27 decrees)	
	Some relevant amendment decrees are:	
	Decree	Matter
Decree 1625 of 2016	2201 of 2016	Self-withholding for purposes of income tax.
	1998 of 2017	Regulates the fiscal conciliation, whose purpose is to control the differences that may arise between the new accounting frameworks and the provisions of the Colombian Tax Code.
	2150 of 2017	Special tax regime and tax benefit for donations.
Law 1819 of 2016	By means of which a structural tax reform is adopted, the mechanisms for the fight against tax evasion and avoidance are strengthened and other provisions are regulated.	
FREE TRADE ZONES		
Law 1004 of 2005	Defines the core elements, requirements and procedures to gain access to the free trade zone regime	
Decree 4051 of 2007	Sets the special procedures applicable to users of the free trade zones.	
Decree 383 of 2007	Defines the requirements to declare a free trade zone, among other provisions.	
Decree 780 of 2008	Sets the regulations applicable to the industrial users and operators, among other provisions.	
Decree 2147 of 2016	The Ministry of Commerce, Industry and Tourism issued Decree No. 2147 of December 23, 2016, through which the free trade zone regime is modified and other provisions in customs matters are issued. This new regulation eliminates Decrees 1767 of 2013, 753 of 2014, 2682 of 2014, 1300 of 2015, 2129 of 2015, 1275 of 2016 and 1689 of 2016, as well as several articles of Decree 2685 of 1999.	





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CHAPTER

8

**COLOMBIAN
ENVIRONMENTAL
REGIME**



COLOMBIAN ENVIRONMENTAL REGIME

Four things an investor should know about the environmental regime:

1

In Colombia, there is a National Environmental System (SINA in Spanish), which consists mainly of: (a) Ministry of Environment and Sustainable Development (MADS in Spanish) as the national environmental authority; (B) Regional Autonomous Corporations (CARs in Spanish) and Urban Environmental Authorities (AAU in Spanish); (C) National Environmental Licensing Authority (ANLA in Spanish), and (D) others.

2

Likewise, there is a National System of Protected Areas (SINAP in Spanish), which is a set of protected areas, social actors and management strategies and instruments that articulate them, to contribute as a whole to the fulfillment of the country's conservation objectives. In such protected areas, the development of projects, works or industrial activities is prohibited or restricted.

3

Projects, works or activities that may cause a deterioration of the environment, or introduce significant or notorious modifications to the landscape, must obtain an environmental license. These projects, works or activities, are exhaustively established in the law. The environmental license will imply all the permits, authorizations and/or concessions for the use and/or affectation of the renewable natural resources that are necessary for the useful life of the project, work or activity.

4

When planning to develop a project in territories classified as ancestral territories, where indigenous, gypsy (ROM in Spanish), raizal and/or afro-Colombian communities are located, prior consultation with those communities should be carried out, with the purpose to present and analyze the impact of the project from an economic, environmental, social and cultural point of view.

Source: <http://www.parquesnacionales.gov.co/portal/es/sistema-nacional-de-areas-protegidas-sinap/> on February 2018.



Colombia has a broad environmental legislation and international instruments, which guarantee, as a duty of the State and of the people, the protection of:

- (I) The natural wealth of the Nation, with which we have the right to enjoy a healthy environment
- (II) The existence of ecological balance and the rational management and use of natural resources
- (III) Public safety and health
- (IV) Disaster prevention

With the above, it seeks to ensure:

- Sustainable development
- The diversity preservation and environment integrity
- Natural resources, landscape and human health protection
- Areas of special ecological importance preservation
- Planning, management and rational use of natural resources

The following is a brief summary of the most relevant aspects, for a foreign investor, of environmental regulations and institutions in Colombia.

8.1. Environmental Licensing Regime

Works execution, industries establishment or the development of activities that can generate impacts to the environment, produce deterioration of renewable natural resources or introduce significant or notorious modifications to the landscape, will require an environmental license, which may be granted by the National Authority for Environmental Licenses (ANLA), Regional Autonomous Corporations (CARs) and some municipalities and districts, in accordance with the provisions of the law, and depending on the competence of the project.

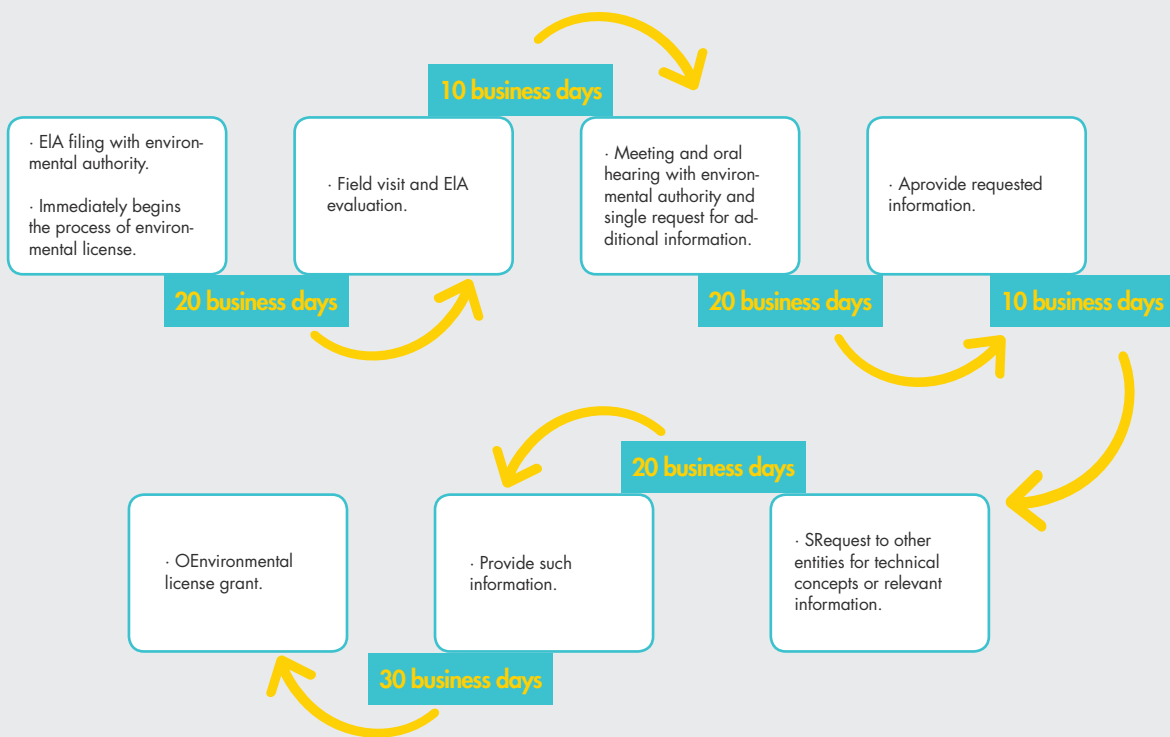
Through the environmental license, the execution of a project, work or activity is authorized, and is subject to the implementation of prevention, mitigation, correction, compensation and management of the environmental measures for the generated effects. As a general rule, only the works, projects or activities expressly indicated in the current regulations require an environmental license, which must be granted prior to the development of the same.

The environmental license must be obtained through an administrative procedure, which starts with the presentation of an Environmental Diagnosis of Alternatives (DAA in Spanish), (unless the competent environmental authority certifies that the study is not required), in which the information required to evaluate and compare the different alternatives under which it is possible to develop the project, work or activity is presented. In addition to the DAA, the applicant for the environmental license must submit an Environmental Impact Assessment (EIA in Spanish), which includes the respective Environmental Management Plans (PMA in Spanish), which must be prepared based on the general terms of reference published by the ANLA, or terms of reference developed for a specific project or activity. See Figure 1.

The exhaustive list of activities, industries and works that require an environmental license is contained in Decree 2041 of 2014, articles 08 and 09. In addition, there are some exceptions to the express consecration as certain mining activities that require an environmental license under the Mines Code.



Figura 1. Environmental licensing process



Total Time: **110 business days**

Source: EY, 2017



In no event, the same project, work or activity will require more than one environmental license. For the development of projects, works and activities related to mining and hydrocarbons, the competent environmental authority will grant a global environmental license covering the entire area of exploitation requested. The validity of the environmental license will be equal to the duration of the project.

According to the law, the environmental licensing process could take approximately 110 working days, plus the terms established to correct any shortcomings that may arise.

Decree 2041 of 2014, includes an oral hearing meeting with the competent environmental authority, where the project that is planned to develop is presented. At that hearing, the quality criteria applicable to environmental studies should be established. In addition, it seeks to bring the interested parties closer: environmental authority and license applicant, which expedites the process of environmental licenses in Colombia.

The interested party must pay for the requests of environmental procedures evaluation services according to tariffs set by the Government and submit semiannual reports of environmental compliance, which are used by the environmental authority to monitor them.

8.2. Environmental permits

Independently of obtaining an environmental license, some projects, works or activities, require specific environmental permits as established by the law, based on the characteristics of each and their environment impacts.

These permits are granted by regional or municipal environmental authorities with jurisdiction over the project area and may be as follows:

ASPECT	PERMIT	DESCRIPTION	VALIDITY
Air	Atmospheric emissions permit	The emission of gases to the atmosphere, either by stationary or mobile sources, is regulated as well as the emission of noise and offensive odors. In some cases, the permit for atmospheric emissions will be required. In general, the project, work or activity that emits gases into the atmosphere, must comply with the permissible limits established in the law for the type of industry or activity. The permit must identify the type of project to be carried out, the authorized emission and the quantity and quality that characterize it.	Maximum 5 years.



ASPECT	PERMIT	DESCRIPTION	VALIDITY
Water	Concessions	Grants the right to use and take water from surface bodies and/or underground wells. In general terms, the validity of these permits will be of ten years, and exceptionally up to fifty years for works destined to the provision of public services or services necessary for the construction of works of social interest.	Maximum 10 years Maximum 50 years
	Dump permits	Grants the right to carry out verifications in water bodies. The permit will be granted according to the project characteristics, but in no case may exceed ten years.	Maximum 10 years
	Infiltration permits	The infiltration of liquid waste into the soil associated with an aquifer requires discharge permits.	Maximum 10 years
	Channels occupation	In the event that it is necessary to intervene a channel, it will be required the permission of occupation. It will be necessary to advance the construction and operation of hydraulic works for the defense and conservation of lands, riverbeds and marginal slopes of rivers, streams and other bodies of water.	Not established
	Prospecting and Exploration	It will be necessary to obtain a permit for exploration of wells and groundwater exploration in the event that it is intended to explore the subsoil in search of groundwater.	Maximum 1 year
	Exploitation of trawling and quarrying materials	Any activity that requires the exploitation of trawling material from the channels or beds of water streams or reservoirs is subject to the respective permit to exploit trawls.	Maximum 6 months
Waste and hazardous waste	Generation register	There must be a register with the environmental authority as a generator of hazardous waste and present characterizations of your waste.	Does not apply
Forest utilization	Forest utilization	It requires the permission of forest advantage in the event in which it is tried to extract products of a forest for the accomplishment of any activity, or when it is wanted to take advantage of isolated trees.	It will be set according to specific characteristics
	Deforestation and pruning permit	Permission will be required for the cutting or pruning of trees and for the management and transportation of extracted species.	Not established
	Forest industries and companies register	All forest companies must obtain permission to use natural resources.	Does not apply
	Safe passage	It must have a unique national pass for the mobilization of flora specimens.	Only 1 time
	Natural forests study	A permit is required for the natural forests and wild flora study; whose purpose is to project works or works for their future use.	Maximum 2 years
Wildlife (fauna)	Wildlife (fauna) harnessing	Any project that involves the use of wildlife and its products can only be done by permission, authorization or license.	Maximum 1 year
	Scientific Research in Diversity	Any scientific research project on biological diversity, collection, capture, hunting, fishing, manipulation of the biological resource and its mobilization in the national territory, must obtain study permits.	Maximum 2 years



ASPECT	PERMIT	DESCRIPTION	VALIDITY
Soil	Intervention on the archaeological heritage authorization	In order to carry out actions in which the archaeological heritage of the Nation is involved or can intervene, authorization for exploration and/or archaeological excavation must be requested.	During the intervention

8.3. Consultations with indigenous, raizal, gypsy and Afro-Colombian communities

In the event that any projects, works or activities are going to be done in the territories of indigenous, afro-Colombian, raizal or gypsy communities or in ancestral territories of these communities, it will be necessary to carry out a prior consultation process, through which the economic, environmental, social and cultural impacts, are evaluated, in order to guarantee the participation of communities in the use, management and conservation of natural resources. This consultation is an essential requirement in the environmental licensing process.

The Directorate of Prior Consultation of the Ministry of the Interior is the authority responsible for matters relating to prior consultations with ethnic communities. According to the jurisprudence, the fundamental and constitutional right of the indigenous communities to be consulted is susceptible of being protected by means of a special and preferred judicial action denominated the guardianship action.

It is important to clarify that the consent of the communities is not obligatory for the project to be viable. However, there must be evidence of a good faith effort on the part of the interested party in the environmental licensing, of wanting to reach an agreement with these communities..

8.4. Protected areas

Colombia has a National System of Protected Areas (SINAP in Spanish), which guarantees the conservation of the most valuable resources of the country and contributes to the environmental and territorial ordering. This system is made up of different kinds of environmentally protected areas, including natural parks and moors. In addition, there are forest reserve areas declared with the aim of protecting, preserving and restoring forests.

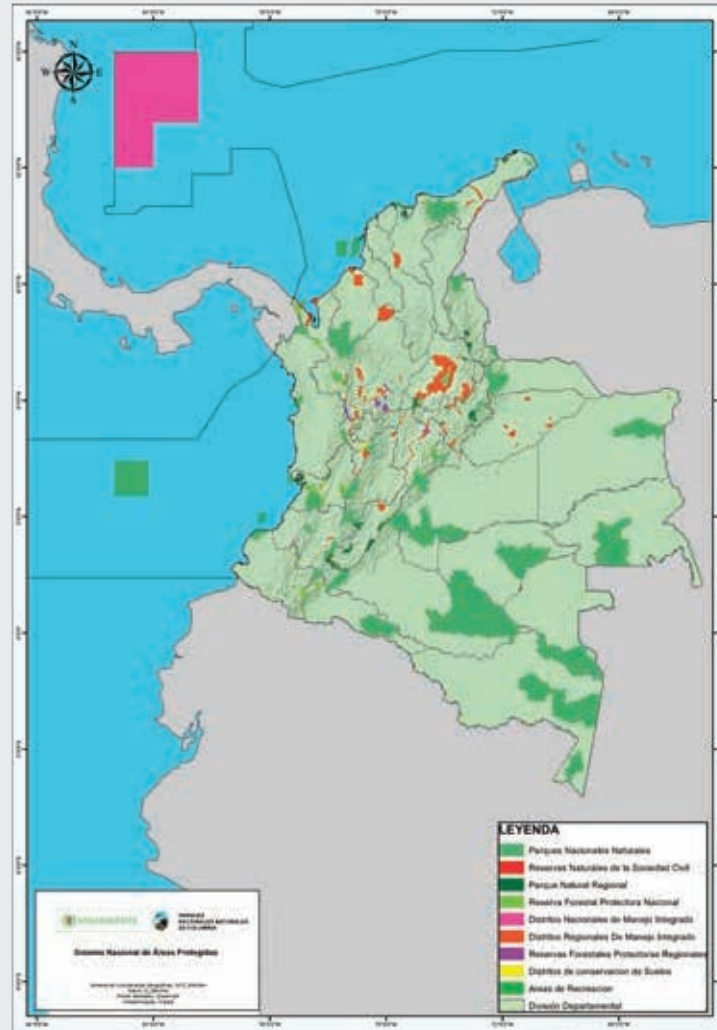
The SINAP and the forest reserves cover more than 10% of Colombia's land area. That is why it is important to take into account the protection regime of these areas, especially for the extractive industry, because they provide restrictions or prohibitions for these activities.

As a general rule, all extractive activities are prohibited in natural parks (national and regional), which are one of SINAP's most stringent conservation categories. Likewise, they are prohibited in forest reserves, but some of these reserves (those created by Law 2 of 1959) may be subject to the removal of a temporary or definitive area, to allow activities considered to be of public or social interest, such as Mining and oil industry.

Due to the above mentioned, it is important to perform due diligence in the areas in which projects will be executed, so the investment that is intended to be done would not be in risk. See Figure 2.



Figure 2. Protected areas in Colombia



Adapted from: SINAP, 2018

8.5. Main environmental regulatory and control institutions

8.5.1. Environment and Sustainable Development Ministry (MADS in Spanish)

It is the entity in charge of managing the country's environmental policy and promoting the conservation of renewable natural resources in a sustainable development framework. This entity defines the programs for the recovery, conservation, protection, management and use of renewable natural resources and the environment, and is in charge of the National Environmental System coordination.



8.5.2. National Authority for Environmental Licenses (ANLA in Spanish)

It is a special administrative unit, of the national order, in charge of granting and monitoring the environmental licenses for projects, works or activities subject to licensing, permits or environmental procedures.

8.5.3. Regional Autonomous Corporations and Sustainable Development (CAR in Spanish) and Urban Environmental Authorities (AAU in Spanish)

They are public entities integrated by the territorial entities, of areas that constitute the same ecosystem or form a geopolitical, biogeographic or hydro geographic unit. They are in charge of managing, within the area of their jurisdiction, the environment and renewable natural resources and their sustainable development. See Figure 3.

Figure 3. Regional Autonomous Corporations Jurisdiction



Tomado de: Asocar, 2017



8.5.4 Hydrology, Meteorology and Environmental Studies Institute (IDEAM in Spanish)

It is responsible for the collection and management of specialized information on the different ecosystems found in the country. Sets the technical parameters to promote the proper land use within the context of land use planning. It is responsible for collecting, processing, interpreting and making public hydrological, meteorological and geographic data on biophysical aspects, geomorphology, soils and vegetation cover, for the proper management and rational use of the natural resources of the country.

8.6 Administrative liability and environmental sanctioning regime

Any violation or omission in an environmental matter is considered to be an infraction that:

- Constitutes a violation of the rules contained in the Renewable Natural Resources Code
- Constitutes a violation in the other existing legal environmental provisions
- Constitutes a violation of administrative acts from the competent environmental authority
- Constitutes damage to the environment (whenever there is damage, a generative event with guilt or fraud and a causal link between them).

The guilt of the alleged offender is presumed, and it corresponds to him, to prove that he did not act with guilt or fraud. In addition to the administrative sanction, the offender may respond civilly to third parties for the damages that the act or omission would have caused.

The environmental authority can:

- Impose daily fines of up to 5,000 MMLW. (COP3.906.210.000, approx. USD1,302,070).
- Generate revocation or expiration of the environmental license or permit
- Temporary or permanent closure of the establishment, and demolition of works as a preventive measure
- Deprivation of liberty for up to ten (10) years

These and other preventive measures can be imposed by an administrative act.

8.7. Regulatory framework

STANDARD	REGULATED TOPIC
	PRINCIPLES AND INSTITUTIONAL FRAMEWORK
Political constitution	Right of all people to a healthy environment.
Law 99 of 1993	Contains the basic principles and creates the environmental institutionalism through the National Environmental System (SINA in Spanish).
Law 753 of 2015	National Development Plan (2014 - 2018): establishes mechanisms of integral intervention in rural territories.
Decree Law 2811 of 1974	Code of Renewable Natural Resources: establishes detailed rules on the management of certain renewable natural resources such as forests, soils, water and the atmosphere. Right of all people to a healthy environment.
Decree 1076 of 2015	Single Regulatory Decree of the Environment Sector and Sustainable Development: compiles all the Colombian environmental regulations 2015.



STANDARD	REGULATED TOPIC
Decree 1299 of 2008	Creates the obligation, under certain circumstances, to have an Environmental Management Department in certain companies at an industrial level.
Decree 2372 of 2010	Regulates the SINAP.
Resolution 415 of 2010	Regulates the Single Registry of Environmental Offenders (RUIA in Spanish).
Resolution 870 of 2017	Establishes the Payment for Environmental Services (PES in Spanish) and other incentives for conservation.
Resolution 097 of 2017	Creates the Single Registry of Ecosystems and Environmental Areas (REAA in Spanish), whose objective is to identify and prioritize ecosystems and environmental areas of the national territory, in which PES and other conservation incentives may be implemented, that are not registered in the Single Registry of National Protected Areas (RUNAP in Spanish).
ENVIRONMENTAL LICENSING	
Decree 1753 of 1994, Decree 1728 of 2002, Decree 1180 of 2003, Decree 1220 of 2005, Decree 2820 of 2010 and Decree 2041 of 2014 (currently in force)	Environmental licensing regime according to the time in which the activity began.
WATER	
Law 373 of 1997	Establishes the program for the efficient use and saving of the water.
Decree 1541 of 1978	Use of non-marine waters-concessions.
Decree 155 of 2004	Regulates the rates for use of water and other provisions.
Decree 1545 of 2007	Establishes the system for the protection and control of the quality of water for human consumption.
Decree 3930 of 2010	Use of water and liquid waste - discharge permits.
Decree 2667 of 2012	Regulates the rates of remuneration for the direct and indirect use of water as a receiver of specific discharges.
Resolution 2115 of 2007	Characteristics, basic instruments and frequencies of the control and monitoring system for the quality of water for human consumption are indicated.
Resolution 0631 of 2015	Establishes the maximum permissible parameters and limit values in the specific discharges to surface water bodies and public sewer systems.
AIR	
Decree 948 of 1995	Prevention and control of air pollution and protection of air quality.
Resolution 619 of 1997	Partly establishes the factors from which emission permit is required for stationary sources.
Resolution 909 of 2008	Establishes the norms and admissible emission standards of pollutants to the atmosphere for stationary sources.
Resolution 910 of 2008	Regulates the permissible emission levels of pollutants to be met by land mobile sources.
Resolution 935 of 2011	Establishes methods for the evaluation of pollutant emissions by stationary sources and determines the number of tests or runs for the contaminants measurement for stationary sources.
SCENTS	
Resolution 1541 of 2013	Permissible levels of emission and the evaluation of offensive odor emissions.
NOISE	
Resolution 629 of 2006	Establishes the national standard of noise emission and environmental noise.
SOIL	
Law 388 of 1997	Territorial development, which includes the environmental component as a basis for land management.



STANDARD	REGULATED TOPIC
FOREST UTILIZATION	
Decree 1791 of 1996	Regime of forest use.
WILDLIFE (FAUNA)	
Decree 1608 of 1978	Regulates the National code of the Natural Resources and the Law 23 of 1973 in matter of wildlife (fauna).
Decree 309 of 2000	Regulates scientific research on biological diversity.
WASTE AND HAZARDOUS WASTE	
Law 9 of 1979	Dictates sanitary measures.
Law 142 of 1994	Establishes the regime of public utilities.
Law 1252 of 2008	Prohibitive environmental regulations concerning to hazardous waste.
Decree 4741 of 2005	Waste and hazardous waste management.
Decree 2981 of 2013	Provision of the public service.
Resolution 1362 of 2007	Establishes the requirements and procedures for the "generators of hazardous wastes or wastes" registration.
CHEMICAL SUBSTANCES	
Law 55 of 1993	Safety use of chemicals at work.
Decree 1609 of 2002.	Regulates the handling and land transportation of dangerous substances by road.
ENERGY	
Law 697 of 2001	Rational and efficient use of energy, promotes the use of alternative energy.
Decree 3450 of 2008	Describes measures regarding rational and efficient use of electric energy.
ENVIRONMENTAL SANCTIONS	
Penal Code	Contemplates crimes against the environment.
Law 1259 de 2008	Sets in the national territory the application of the environmental fines to the violators of the rules of debris cleaning and collection.
Law 1333 of 2009	Establishes the environmental sanction procedure.
Law 1453 of 2011	Reforms the Penal Code, the Criminal Procedure Code, the Children and Adolescents Code and the rules on extinction of dominion.
Resolution 2086 of 2010	Methodology for the appraisal of fines set forth in article 40 of Law 1333.



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CHAPTER

9

**INTELLECTUAL
PROPERTY**

PROPERTY INTELLECTUAL

Five things an investor should know about intellectual property:

1

Colombia has developed and implemented a very strong intellectual property regime with the aim of promoting the competitiveness and growth of the country. Such regime follows standards internationally recognized regarding the protection and management of these rights.

2

The mere use of a trademark does not confer exclusive rights over it. The corresponding registration must be obtained in order to acquire protection. A trademark registration can be cancelled on the grounds of lack of use at the request of an interested party, if the registration of the corresponding trademark has been in force for more than three consecutive years.

3

Colombian legislation provides the assignment of author's economic rights and industrial property rights, by means of an employment or service agreement. In fact, there is a legal assumption according to which, unless indicated otherwise, said rights are assigned to the employer or the commissioner.

4

The contracts by means of which copyrights are negotiated, such as an exclusive license of a cession, as well as contracts which provide the disposal of any patent right must be registered before the competent national authority in order for its provisions to be enforceable against third parties. It is not required the registration of a trademark license to be enforceable against third parties.

5

In the case of research and development projects for science, technology and innovation, as well for information and technology, undertaken by private entities with public funding, the Colombian Government may assign, with no right for compensation, the intellectual property rights and may authorize their transfer, commercialization and exploitation. In consideration, the Colombian Government reserves the right to obtain a non-exclusive and free license of these intellectual property rights.



Intellectual Property Rights may be divided in three big categories:

INDUSTRIAL PROPERTY	COPYRIGHTS AND RELATED RIGHTS	OTHER SUI GENERIS RIGHTS
Distinctive Signs	Literary and artistic works	Plant breeder's rights
Trademarks I. Collective Trademark . II. Certification Trademark	Economic rights Moral rights	Biotechnology
Trade Names and Trade Emblems		
Slogans		
Geographical Indications		
New Creations		
Patents: I. Patents on inventions II. Patents on utility models		
Industrial Designs		
Layout-designs of integrated circuits		

Most of the intellectual property regulations in Colombia are issued by the Andean Community (CAN in Spanish) leaving certain aspects for the regulation under local legislation. Even though regulations issued by the CAN are common and prevail over national legislation, each member country (Colombia, Peru, Bolivia and Ecuador) has independent and autonomous authorities and registration systems.

Consequently, although CAN member countries have a common intellectual property regime (Decision 485 of 2000, for industrial property and Decision 351 of 1993, for copyrights and 345 of 1994, for plant breeder's rights), there is no common registration system providing protection in all countries. Thus, applications must be filed in each CAN member country to ensure adequate protection of intellectual property rights (except in the case of copyright and related rights).

9.1. Industrial Property

9.1.1. Generals Aspects

Industrial Property in Colombia includes: distinctive signs (which include trademarks, slogans, trade names, trade emblems and geographical indications) and new creations (including patents, industrial designs and layout designs of integrated circuits).



9.1.2. 9.1.2. Legal Framework

In Colombia the applicable regulation in the matter of industrial property is the Andean Community Decision 486 of 2000.

9.1.3. Distinctive Signs

A distinctive sign is that with the ability of identifying or distinguishing goods and services in the market, as well as its geographical or commercial origin. As a general rule, in CAN member countries protection and rights may only be obtained through registration before the competent agency which in Colombia is the Superintendence of Industry and Commerce (SIC in Spanish). Trade names and emblems are excluded from the registration requirement provided that these rights derive from their proven, public and continuous use. Geographical indications do not require a registration for its use.

Exclusive right to the use of a distinctive sign is granted by means of its registration, as well as the prerogative to prevent third parties from using identical or similar distinctive signs, provided that such use generates likelihood of confusion or likelihood of association.

(a) Trademarks

Trademarks are distinctive signs that distinguish goods and services in the market. Trademarks are registered in Colombia following the Nice International Classification of Goods and Services. The application for registration of the trademark may cover several different classes in accordance with the international classification of Nice, without requiring the filing of an independent application for registration for each class.

Trademarks may be nominative, graphic, word and design, or tridimensional. Additionally, Andean Decision 486 foresees the possibility of registering certain sounds, odors, a combination of colors or colors delimited by a given shape, the shape of a product, and its packaging or wrappings, as trademarks, provided that they are perceptible by the senses.

The exclusive right to use a trademark becomes effective once the final decision of registration is granted, for an initial term of ten years, which may be renewed indefinitely for subsequent ten years' terms.

In addition, pursuant to trademark applicable regulations in Colombia, the following provisions should be taken into consideration:

I. Anticipated registration

At the moment of filling the application for the registration of a trademark or a slogan before the SIC, it is possible to request the acceleration of the registration procedure in order to achieve the final decision before six months. For this benefit, the applicant in its application must authorize the SIC, the revocation of the decision registering the trademark or the slogan, in the event that a third party submits an identical or similar sign, claiming the priority under the Paris Convention. In any case, the applicant may appeal the decision denying the registration.



II. Andean opposition

The holder of a trademark registration or application filed in any CAN member country may file an opposition against trademark applications filed in another member country. In order to prove its legitimate interest in the local market, the opponent must simultaneously file an application for registration in the country where the opposition is being filed.

III. Cancellation of a registration on the grounds of lack of use

Any interested party may seek the cancellation of a trademark which has been registered for more than three years, provided that its titleholder cannot evidence any significant use in any of the CAN countries during the three-year period prior to the date when the cancellation was requested. The titleholder of a trademark is under the obligation to supply evidence of use, failure to submit evidence leads to total cancellation of the registration. In case evidence of adequate use for some goods or services is submitted, partial cancellation will be ordered. In this case, the registration of the trademark will be limited to cover exclusively the goods or services that are being used.

Use of the trademark by an authorized third party (through franchise, distribution agreements, license agreement, etc.), is considered valid to prove use in the event of lack of use cancellation procedure. It is however advisable to register the corresponding agreement for the use and exploitation of the trademark before the SIC.

Whoever obtains a favorable decision in a lack of use cancellation action in a CAN member country, will acquire the preferential right to register an identical trademark as the cancelled one. The application must be filed within the following three (3) months after the notification date of the cancellation decision.

IV. International trademark application

Colombia is part of the Madrid Protocol which entered into force on August 29, 2012. Under the provisions of this Protocol, it is possible to obtain registration of a trademark independently in multiple states, with the filing of a single international application before the competent national agency (SIC for Colombia) and the payment of a standardized rate. This application system represents for the applicant considerable advantages, particularly in terms of costs, time and resource optimization for trademark management.

Thus, under the Madrid Protocol, it is possible to file a single international application in order to obtain the registration of the trademark in the member countries of this international treaty. However, the trademark registration and protection itself will be granted or denied independently by each of the states indicated in the application.

(b) Slogans

A slogan is the word, phrase, or wording which is used together with a trademark. Slogan registration applications must indicate the trademark registration or registered trademark to which they are associated, and its validity is subject to such trademark's registration validity.

The title of Decision 486 regulating trademarks, including the provisions for non-registrability, is applicable to slogans.



(c) Trade Names and Trade Emblems

Trade names protect the designation of the economic activity of an entrepreneur which is known by consumers and competitors. In some cases, the trade name may not correspond to the denomination on the good standing certificate. On the other hand, trade emblems identify commercial establishments, defined as the set of goods and assets that have been organized together in order to attain the objectives of a company.

The rights on trade names and trade emblems are acquired by their first use in the market and end when no longer used. Consequently, the registration of trade names and trade emblems (known as “deposit”) only has a declaratory value and no rights arise from it. Thus, its purpose is to introduce a legal presumption regarding the date in which the trade name or emblem began to be used, which for all intents and purposes is the date of the application for registration.

(d) Geographical Indications

Geographical indications are appellations of origin and indications of origin. Appellations of origin refer to a geographical indication consisting of the name of a specific country, region, or of a denomination which refers to a specific geographical area, whose name is used to identify a product originating therein, the quality, reputation and other characteristics of which are exclusively or essentially attributable to the geographical environment in which it is produced, including natural and human factors.

An indication of origin consists of a name, expression, image, or sign that indicates or evokes a particular country, region, locality, or place, for the purpose of indicating that certain products or services come from that place. The appellations of origin cannot be recognized in favor of an individual or legal entity. An appellation of origin is a sign that represents the geographical origin of a good or a service, provided that such good or service comes from the geographical area represented by the indication of origin.

The appellation of origin does grant an exclusive right to its holder or persons authorized, for the use and disposal in the market of such appellation with respect to the goods or services covered under the declaration of the appellation of origin. The SIC’s declaration of protection grants the exclusive right of use of the appellation of origin to the producers/providers in such geographic region, and includes the possibility to prevent unauthorized third persons from using the distinctive sign, or similar signs for associated goods that may lead to confusion. Likewise, the authorization of use of a protected appellation of origin may be requested for a term of ten years, renewable for equal periods. The validity of the declaration of protection of an appellation of origin depends on the existence of the special conditions described in the declaration in the respective good or service.

Likewise, titleholders of appellations of origin may oppose the registration of a trademark or a slogan that reproduces, contains, or imitates their protected appellation of origin.

9.1.4. New Creations

New creations protected by means of: patents for inventions, utility models, industrial designs and layout designs of integrated circuits. The registrations granted by the Government confer to their holders an exclusive right of enjoyment and to prevent others from manufacturing, selling and/or using their protected inventions for a certain period of time. Due to their importance for the technological development of Colombia and in order to guarantee their proper use, Colombian legislation grants new creations a paramount position.



(a) Patents

In general terms, patents grant the titleholder the right to exclusively exploit the object of creation, as well as the right to prevent third parties from manufacturing, using, selling, or commercializing the object of protection. In accordance with the Andean regulations and domestic law, Colombia recognizes two kinds of patents: (i) patents on inventions, and (ii) patents on utility models.

I. Patents on inventions

Patents on inventions are granted with respect to goods or processes that are new, involve an inventive step, and are industrially applicable. The exclusive right on a patent is granted for twenty years from the filing date of the application.

CAN legislation states that the following shall not be considered inventions: discoveries, scientific theories and mathematical methods; biological or genetic processes isolated from their natural environment, copyright protected works, software and any forms of conveying information. Likewise, therapeutic and surgical methods to treat humans and animals and uses or secondary uses of already patented goods and procedures, among others, are not considered patentable.

II. Patents on utility models

Patents on utility models are granted to any new form, configuration or composition of elements of any device, tool, instrument, mechanism or other object, or part thereof, which allows an improved or different utilization of the object, or which enables any utility, advantage or technical effect which it did not have before. The exclusivity right of use is granted for ten years from the filing date of the application.

III. International patent registration

Under the patent cooperation treaty (PCT) from which Colombia is part of, it is possible to apply for the protection of a patent in multiple states before the WIPO simultaneously with the filing of a single application for registration before the competent national agency in each country (SIC in the Colombian case). This allows greater speed and optimization of resources.

IV. Compulsory licenses

There are certain state powers under which it is possible to temporarily limit exclusive rights of the titleholder of a patent (on inventions and utility models) by granting compulsory licenses to third parties.



TYPE OF COMPULSORY LICENSE	FACTUAL SITUATION
Compulsory license due to lack of use	Granted if the patent had not been exploited in the terms of the law or if it has been suspended for over a year.
Compulsory license for reasons of public interest	Granted after declaring the existence of public interest, emergency or national security grounds as long as such circumstances remain.
Compulsory license to preserve antitrust market conditions	Granted upon performance of anticompetitive (antitrust) acts, particularly the abuse of dominant position by the titleholder of the patent.
Compulsory license for dependency patents	Granted upon request when it is demonstrated that for the exploitation of a patent, it is required the use of another one.

(b) Industrial Designs

Industrial designs refer to the particular appearance of a product resulting from any arrangement of lines, or combination of colors, or of any two-dimensional or three-dimensional form, line, outline, configuration, texture or material, without changing the function or purpose of the product. Thus, through the qualification as an industrial design, creations that are innovative, that have a unique character and that can be applied on an industrial scale are protected. The exclusivity right of use is granted for ten years from the date of filing of the application.

9.1.5. 9.1.5. Right to Claim Priority on the Application for Trademarks, Patents and Industrial Designs

Decision 486 provides the possibility of “claiming priority,” case in which, as with trademarks, the holder of a patent application and industrial design is entitled to file subsequent identical applications in other countries and claim priority for the initial application date. Consequently, patent, trademark and industrial design applications originated in other member countries of the Paris Convention are covered by the right to claim the earliest filing date. The term to claim priority is of one year for patents and six months for industrial designs and trademarks.¹

9.1.6. Negotiability

The rights conferred by the registration of distinctive signs and new creations are negotiable and assignable. Accordingly, their holders will be able to make use of their rights through different means, such as assignment by sale, license of use, or use them as encumbrances and the granting of guarantees.

Bearing in mind that rights over trademarks and patents derive from their registration, any act of disposal or assignment, such as those mentioned above, must be recorded before the competent agency so as to become enforceable against third parties, except trademark licenses of use.²

15. Currently there are 176 countries part of Paris Convention. The country list may be available in: http://www.wipo.int/treaties/es/ShowResults.jsp?lang=es&treaty_id=2
16. Article 5, Decree 729/2012.

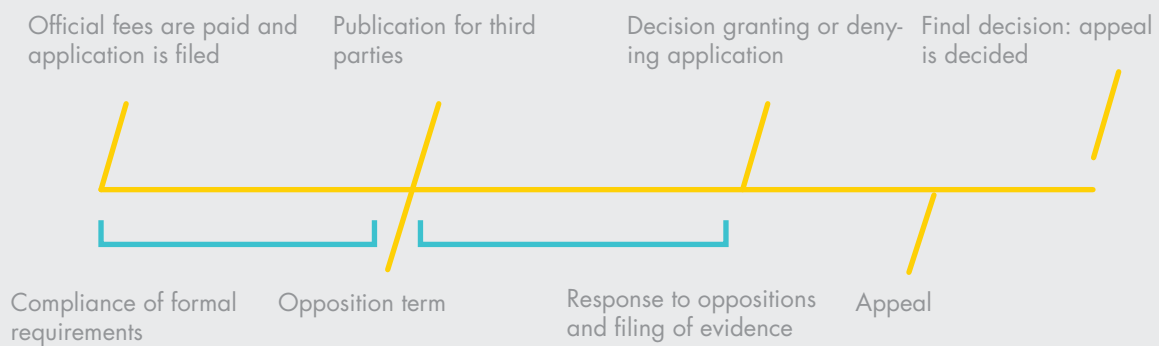


Colombian legislation allows the assignment of author's economic rights and industrial property rights by means of employment or service agreements. In fact, the transfer of said rights is presumed unless stated otherwise. In order for this presumption to operate, the contract must be written as opposed to a verbal agreement.

Under Colombian legislation the registration of the industrial property as a movable guarantee should be registered through the virtual office of the SIC.

9.1.7. Applicable Proceeding and Fees

The nature of proceedings to register trademarks and patents is administrative and not judicial. Such proceedings are to be carried out with the SIC following these steps:



For distinctive signs, the process may take between four (4) months and two (2) years approximately until a final decision is rendered. Regarding new creations, the process may take between two (2) and four (4) years approximately.

Applicable fees for 2018, can be found in Resolution 61034 of September 27, 2017 or in the SIC's webpage: www.sic.gov.co

It is important to take into account that there is a discount on registration fees for on-line filings, when those requesting registrations have attended the courses or forums given by the SIC related to industrial property, or are SME (MiPymes), public or private universities, local or foreign.



9.1.8. Confidential Information

9.1.8.1. Trade Secrets

Information possessed by an individual or company that could be used for any productive, industrial or commercial activity and that is likely to be transmitted, can be protected through a commercial secret for an indefinite period of time, provided it complies with the following requirements:

- Being secret information
- Having a commercial value
- Having been subject to reasonable measures by its rightful owner to keep such information as secret.

9.1.6.2. Undisclosed Information – Data Protection

In accordance with Article 266 of CAN, Decision 486, member countries, when requiring, as a condition for approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, member countries shall protect such data against disclosure, except where necessary to protect the public, or unless, steps are taken to ensure that the data is protected against unfair commercial use.

The undisclosed information or data protection constitutes a particular type of confidential information. Notwithstanding the above mentioned, the reason of the protection of this kind of information is the fair competition provided that the protection is limited to prevent the unfair use in the market of such information. The protection is not exclusive provided, so a competitor may request a marketing approval based on its own data.

The main requirements established in the legislation for granting the data protection are:

- There must be a new chemic entity.
- The information must be "undisclosed."
- The information must involve a considerable effort.

With the fulfillment of the requirements established in Colombian law, such data shall be protected during 5 years for pharmaceuticals and 10 years for agricultural chemical products.

9.2. Copyright and Related Rights

9.2.1. General Aspects

Copyright protection is granted to artistic and literary creations, as well as software. Copyright protection is granted on the way ideas are expressed, not on the ideas themselves.

Colombia has a protection system based on the concept of *droit d'auteur*, which stems from the tradition of civil law that rules in the country, in contrast to the copyright framework that exists in common law countries. Hence, the legislation protects the author of the work, that is, the individual who creates it, granting such individual moral and economic rights.



MORAL RIGHTS	ECONOMIC RIGHTS
<ul style="list-style-type: none"> • Perpetual rights claiming the authorship of the work. 	<ul style="list-style-type: none"> • Exclusive rights of the owner of the work to authorize or prohibit its use or exploitation thereof.
<ul style="list-style-type: none"> • Such rights are not assignable and may not be acquired by means of statute of limitation. 	<ul style="list-style-type: none"> • The holder is entitled to receive a payment for the exploitation and use of the work.
<ul style="list-style-type: none"> • The author is entitled to prevent the transformation, mutilation or deformation of the work and to keep it anonymously, in order to maintain his/her honor and reputation. 	<ul style="list-style-type: none"> • They are triggered once the work or production has been disclosed by any means.
	<ul style="list-style-type: none"> • There is an assumption of transfer of the economic rights in favor of the employer or commissioner, under a written employment or service agreement.

The author has the exclusive right of exploitation and use of its protected work and has the right of preventing third parties from such use and exploitation. The author may transfer his rights through any kind of legal agreement (sale) or may authorize the use or the partial exploitation of his rights (license or any other legal vehicle) receiving a royalty or not at decision of the author or the right's holder.

Copyright exist since the creation exists without any formal requirement for its protection.

There is an assumption of transfer of rights in favor of the employer in case of works or creation developed under a labor agreement or an agreement for the supply of a service provided that such agreement is in writing.

Registration of protected works before the National Copyright Office related to the Ministry of the Interior only has declaratory value. Therefore, the registration does not grant any rights to the holder, and it only serves the purpose of making the creation public, enforceable against third parties, and it is an appropriate means to evidence ownership, originality and the time of creation of the work.

Registration of transfer agreements or any other that implies exclusivity is a requirement for its validity against third parties.

In Colombia, protection of author's economic rights endures throughout the author's life plus eighty years after the author's death. When the owner of the copyright is a legal entity, protection is granted for fifty years from the date the work is published or disclosed.

The related rights are those rights granted to performers on their performance, to producers of phonograms on their phonograms and to broadcasting organizations on their broadcastings. The duration of this protection shall vary if the person is a natural or legal entity.

9.2.2. Applicable Law

Regulations on copyright law are laid down mostly in Decision 351 of 1993, of the CAN, Law 23 of 1982, and Law 44 of 1993. In the event of discrepancy between the CAN provisions and local legislation, the CAN provisions prevail, in accordance with the Colombian Political Constitution.



Furthermore, are applicable in Colombia both the Berne Convention, the Trade Related aspects of Intellectual Property Agreement of the WTO, the WIPO Copyright Treaty (WCT), the WIPO of performers and producers of phonograms treaty (WPPT). For related rights it is also applicable the Roma Convention of 1961.

9.2.3. Negotiability

Due to their economic nature, author's economic rights may be subject to contractual arrangements for the benefit of the author or titleholder. Since these rights are freely transferable, they may be assigned through donations, purchase, sale, inheritance, etc. These rights may likewise be assigned by virtue of law and upon the death of the copyright holder. Additionally, there is an assumption of the transfer of author's economic rights to the employer or commissioner within employment or service agreements, provided that they are in writing.

Author's economic rights or associated rights may be assigned, whereby this assignment is limited to the foreseen modalities of use or to the time and territory determined by the contract. If no period of time is stated, the assignment is limited to five years, and the territory to the country where the assignment takes place.

The assignment of author's economic rights will only be valid if the corresponding document is in writing. The latter must be filed before the National Copyright Office (DNDA in Spanish) in order for it to be enforceable against third parties.

9.2.4. 9.2.4. Applicable Proceeding and Fees

To register copyrights before the DNDA the form provided by this agency must be filled out and submitted. However, no rights arise from the registration, but it can serve as evidence in case of litigation.

The registration before the DNDA is free of charge. Nevertheless, the applicant must assume certain costs, which may be found at www.derechodeautor.gov.co.

9.3. Plant Breeder's Rights

Plant breeder's rights are intellectual property rights granted on new plant varieties developed by an individual or a legal entity through crossover, hybrid or biotechnology procedures or any other.

Breeding is an activity which requires an investment of time, money and knowledge and considering the need of promoting the development of new plant varieties in order to face current and future food difficulties, plagues and climate change, a system for the protection of the plant breeder's rights was established recognizing that the intellectual property rights system is the appropriate way to protect such creations granting to breeder's or rights holders, the exclusive right to use or exploit its new variety and the power to authorize or not to third parties such rights, In Colombia according to the CAN Decision No 345, Colombia has the obligation to have a system for the protection of the rights of plant breeders. This protection has been reinforced since 2012, when the Colombian Government enacted Law 1518 by means of which the International Convention for the Protection of Plant Varieties of December 2, 1961 and its subsequent revisions was adopted in the internal legislation.



9.3.1. Requirements for Acceding to the Protection

a. The new plant variety must be new

The variety shall be deemed to be new if, at the date of filing of the application for a breeder's right, propagating or harvested material of the variety has not been sold or otherwise disposed of to others, by or with the consent of the breeder, for purposes of exploitation of the variety.

As well as in industrial property rights, the right of claiming priority is applicable in this case provided that no more than one year after the first application has elapsed.

b. Distinctiveness

The variety shall be deemed to be distinct, if it is clearly distinguishable from any other variety whose existence is a matter of common knowledge at the time of the filing of the application. In particular, the filing of an application for the granting of a breeder's right or for the entering of another variety in an official register of varieties, in any country, shall be deemed to render that other variety a matter of common knowledge from the date of the application, provided that the application leads to the granting of a breeder's right or to the entering of the said other variety in the official register of varieties, as the case may be.

c. Uniformity

The variety shall be deemed to be uniform if, subject to the variation that may be expected from the particular features of its propagation, it is sufficiently uniform in its relevant characteristics.

d. Stability

The variety shall be deemed to be stable, if its relevant characteristics remain unchanged after repeated propagation or, in the case of a particular cycle of propagation, at the end of each such cycle.

e. Plant denomination

The aim of this requirement is to identify the variety without prejudice of the rights of third parties.

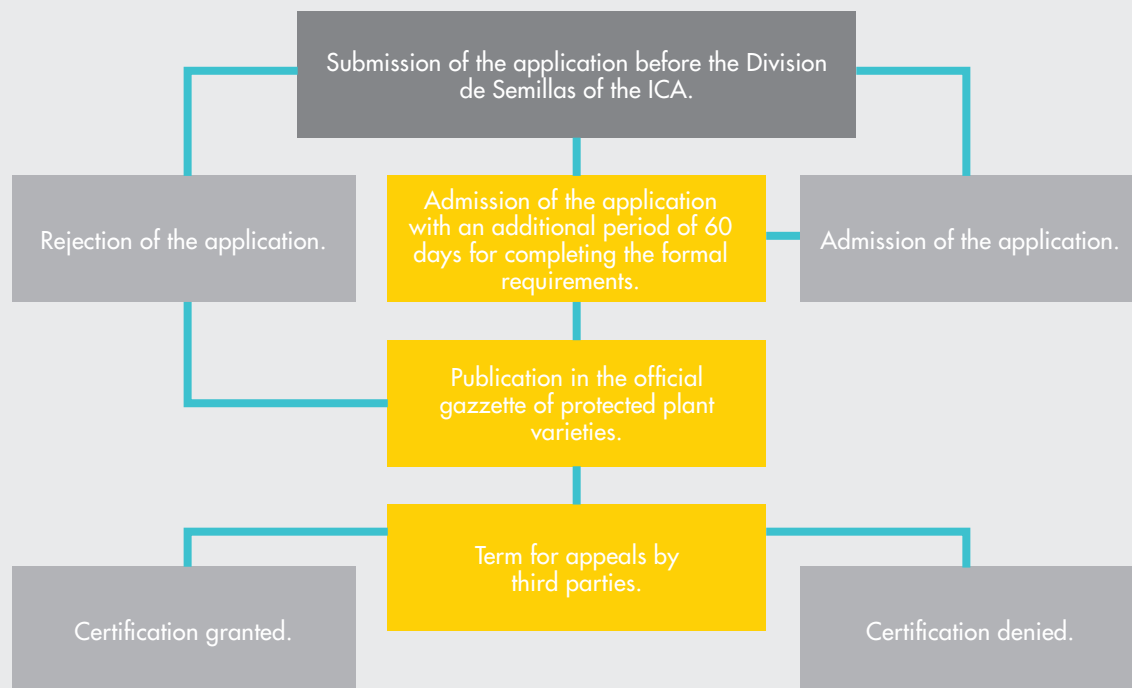
9.3.2. Rights Granted

The plant breeder's right grants to its owner the power of deciding the use and exploitation of the propagating material of the protected variety including the production with commercial objectives, the sale and commercialization of such material. The protection may cover the harvested material, including entire plants and parts of plants, obtained through the unauthorized use of propagating material of the protected variety, unless the breeder has had reasonable opportunity to exercise his right in relation to the said propagating material.

In Colombia, the protection has a duration of 20 years. For trees and vines, the protection shall be granted for 25 years.



9.3.3. Procedure:



The application for a Plant Breeder's Rights certificate must be submitted with all necessary documentation before the División de Semillas of the Instituto Colombiano Agropecuario (ICA) which is the national competent authority for this type of registration. The studies of uniformity, stability and distinctness (DHE studies) may be developed in Colombia. It is also possible to request to the ICA the homologation of studies developed abroad. Currently in Colombia, it is possible to develop DHE studies for tobacco, sugarcane, African palm, soy, passion flower, rice, brachiaria, garlic and corn.



REGULATORY FRAMEWORK

NORM	SUBJECT
Colombian Political Constitution	Articles 58, 61, 78, 88, 150 and 189 – regulation on intellectual property.
Paris Convention of 1883	For the protection of industrial property.
Rome Convention of 1961	For the protection of performers, producers of phonograms and broadcasting organizations.
General Inter-American Convention for Trade Mark and Commercial Protection of 1929	Trademark and commercial protection.
Locarno Agreement of 1968	International classification for industrial designs.
UPOV Conventions, 1978 and 1991 acts (not into force).	Plant Breeder's Rights.
Nice Agreement of 1979	International classification of goods and services for the purposes of the registration of trademarks.
Berne Convention of 1979	For the protection of literary and artistic works.
Law 23 of 1982	On copyright.
Law 26 of 1992	Treaty on the international registration of audiovisual works.
Law 44 of 1993	Modifies and complements Law 23 of 1982 on copyrights.
Decision 351 of 1993 of the CAN	Common provisions on copyright and related rights.
Decision 345 of 1993 of the CAN	Common provisions on Plant Breeder's Rights.
Strasbourg Agreement of 1994	International patent classification.
Law 178 of 1994	By means of which the International Paris Convention for the protection of industrial property was approved.
WIPO Treaty of 1996 WPPT	On performances and phonograms.
WIPO Treaty of 1996 WCT	On copyright.
Law 463 of 1998	Patent Cooperation Treaty (PCT).
Decision 486 of 2000 of the CAN	Common Intellectual Property Regime.
Decree 43 of 2008.	Compulsory licenses to third parties procedure.
PCT of 2001	Patent Cooperation Treaty.
Decision 689 of 2000 of the CAN	Adjustments to Decision 486 of 2000.
Law 1199 of 2008	TRIPs.
Law 1343 of 2009	TLT and its regulation.
Law 1403 of 2010	Fanny Mickey Law regarding copyright.
Law 1437 of 2011	Administrative procedure code
Law 1450 of 2011	Issuing the National Development Plan 2010-2014.
Law 1455 of 2011	Madrid Protocol.
Decree 19 of 2012	Paperwork reduction.



NORM	SUBJECT
Law 1518 of 2012	By means of which the International Convention for the Protection of Plant Varieties of December 2, 1961 and its subsequent revisions was approved.
Resolution 42847 of SIC	Procedure for distinctive signs and new creations.
Law 1753 of 2015	Issue of the National Development Plan 2014-2018
Resolution 61034 of 2017 issued by the SIC	Registration fees for the year 2018.
Resolution 90555 of 2016	Implementation of the International Nice Classification as of January 1st, 2017.
Law 1676 of 2013	Movable Guarantees
Resolution 103590 of 2015	Registration of movable guarantees.
Decree 1074 of 2015	Decree for the industry, commerce and tourism sectors
Decree 670 of 2017	By means of which intersectoral technical committee.
Resolution 61034 of September 27, 2017 of the SIC	Compulsory licenses in an interinstitutional technical committee with participation of the SIC.



LEGAL **GUIDE**

TO DO BUSINESS IN COLOMBIA

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CHAPTER **10**

**REAL
ESTATE**



REAL ESTATE

Three things investors should know about the real estate regime in Colombia:

1

The Colombian Government protects private property

2

Colombian nationals and foreigners have equal obligations and rights regarding the purchase of real estate property. Real estate transactions do not imply for foreign investors any additional tax, legal, or financial burdens.

3

Land use in Colombia must comply with a regulation referring to the territorial order of each municipality and to the corresponding urban legislation.



10.1. Real Estate Acquisition in Colombia

10.1.1. Due Diligence

Before acquiring real estate property in Colombia, it is advisable to review the following documents in order to have a complete overview of the legal situation of the property at the time of the transaction:

- (I) The most recent chain of title and no-lien certificate (Certificado de libertad y tradición, in Spanish), issued ideally in the past ten days
- (II) Public deeds evidencing acquisition and any other legal acts concerning the property over the past twenty years
- (III) Tax payment certificates
- (IV) And the land use certificate

The following aspects must be taken into account:

(I) Titles research: This analysis is carried out by an expert lawyer in order to determine if there are any conditions or circumstances that actually or potentially affect or limit the right of ownership over the property. Basically, this analysis ensures that there are no legal risks entailed in the transaction, as well as in the chain of title, and to verify the quality of the “sellers” of the actual owners:

- The ownership of the property (that the seller is indeed the owner of the property) and the viability of the real estate titleholder to carry out the transfer of the ownership
- The existence of charges such as a dwelling family house, embargoes, mortgages, etc., auction or inheritance allocations, partial sales, among other limitations
- The existence of any resolutive or conditional obligation express or implied
- Fulfillment of any tax obligations related to the property
- Possible discrepancies in areas of the property (the property file corresponds to the real estate registration sheet)
- The existence of mining titles and/or environmental restrictions on the property

(II) Analysis of integrity of former titleholders of the property: It is an analysis made by experts in the field, about information available in public and business databases, magazines business, web sites, industry publications, media, etc.), with regards to the background of sellers and former titleholders of the property, which identifies potential incidents that may affect the chain of tradition of the property or its future ownership, or the reputation of the acquirers. These tests include the search of key information, among others:



- Disciplinary and judicial history of the owner and previous titleholders.
- Links with activities of money laundering and financing of terrorism, corruption and bribery. The foregoing in order to avoid any future actions of domain extinction that may affect the property right of the acquirer.

(III) Analysis of land use: This analysis is carried out by a lawyer or technical expert to determine what type of construction (including elevation) or development activities are permitted on the property that is being acquired (in accordance with the corresponding Urban Developing Plan (by its acronym in Spanish "POT"). The purpose of this analysis is to ascertain the possibilities of developing on the property in question the investor's plans, according to the technical specifications of the design.

(IV) For the acquisition of rural land, please note that there are special regulations that impose certain limitations on acquisition and development of this type of real estate property (i.e. Article 72.9 of Law 160 issued in 1994¹, forbids the acquisition of vacant and uncultivated land (i.e. Baldíos) if such land exceeds one or more Family Agricultural Unit (UAF). (This unit deemed as a basic undertaken of agricultural, livestock production, aquaculture or forest, which extension allow the families get payments for their work and get capital surplus which contributes to the formation of their heritage). The size of the UAF varies according to the region.

Also, it will be necessary study of special titles must be carried out in order to establish the original title of ownership under the terms of Article 48 of Law 160 of 1994.

10.1.2. Contracts

For the acquisition of real estate property, it is common to start by executing a promise to purchase agreement before concluding the actual purchase of the real estate property. In the promise to purchase agreement, the future buyer and seller agree upon the essential elements of the purchase agreement (the specified object and the price). This type of agreement is usually signed when the parties have satisfied all the conditions of the business and only the legal formalities are missing.

The promise to purchase agreement does not require any specific formality and its celebration has no extra costs for the parties. It is usual that in these agreements the parties agree payment of earnest money (in Spanish "arras") in order to reserve the property and as a down payment

For the purchase of the real estate property, the agreement must be formalized by means of a public deed. The cost of this procedure is approximately 0.3% of the purchase price. This price is usually paid equally between buyer and seller.

10.1.3. Registration Procedure and Effects of the Registration

Property rights over real estate are transferred by means of the registration of the acquisition title in the corresponding public instruments registry office (Oficina de registro de instrumentos públicos, in Spanish). The registration of the public deed accrues a registration tax on this procedure which varies between 0.5% and 1% of the value of the purchase agreement contained in the public deed, as well as the registration fee equivalent to 0.5% of the value of the sale. The registration taxes and fees must be paid by the purchaser.

1. Art. 675 of the Civil Code, Baldíos, land within the limits of the Colombian territory without an owner.



10.2. Use of Real Estate Properties

It is not necessary to be the holder of the property rights of a real estate to be able to enjoy and use it. Among other instruments, a lease agreement grants these rights to a tenant in return for the payment of a rent.

10.3. Lease Agreements

Lease agreements can be executed verbally or in writing and all that is required for their enforceability is an agreement between the landlord and the tenant regarding the following essential elements: (i) value of the rent; and (ii) the property subject to lease. Additionally, even if they are not essential for the legal formalization of the lease agreement, it is advisable that the parties agree upon the following elements: (i) payment method; (ii) date and delivery of the real state subject to the agreement; (iii) agreement of the utilities, objects or associated uses; (iv) duration, and (v) designation of the party responsible for the payment of public utilities. It is recommended that this type of agreement is executed in writing.

10.3.1. Landlord's Obligations

The landlord's main obligations are to: (i) deliver the real estate property to the tenant; (ii) maintain the property in a state that allows its use accordingly with the purpose for which it was leased; (iii) address any contingency which prevents the tenant from using the real estate for the purpose for which it was leased, and (iv) make any necessary repairs.

10.3.2. Tenant's Obligations

The main obligations of the tenant are to: (i) pay the lease; (ii) use the property in accordance with the provisions of the lease agreement; (iii) ensure the preservation of the real estate property; (iv) return the real estate property upon termination of the lease agreement in the same conditions as received; (v) make repairs related to minor upkeep, esthetic reparations, and regular maintenance (reparaciones locativas in Spanish) during the term of the lease; (vi) pay on time the expenses derived from the use of the relevant property and, and (vii) comply with the condominium governing rules (Régimen de Propiedad Horizontal in Spanish).

10.3.3. Sublease and Assignment

Unless there is an express authorization from the lessor, the lessee is not allowed to assign the lease or sublease. When there is authorization the transferee will be the titleholder of all rights and obligations of the lessee..

10.3.4. Rent

Is the price that the tenant must pay to the landlord for the use of the real estate property. The rent can be stipulated in the lease agreement in any foreign currency, but it must be paid in Colombian pesos (COP) at the market representative exchange rate established on the agreed date or the foreign exchange rate agreed between the parties.

In the case of lease of urban housing assets, the price may not exceed 1% of the market value of the property or the part that is leased. Every twelve months after the signing of the contract, the lessor can increase the rent; however, the increment cannot exceed 100% of the Consumer Price Index (IPC) increment in the prior year. In all cases, this increase must be notified in advance to the lessee.



10.3.5. Contract Renewal

Regarding the renewal of lease contracts, it is important to bear in mind, that involved parties have the right to freely determine the conditions under which the relevant contract is renewed. On the other hand, the lease of real estate properties that are part of an ongoing concern, the tenant who has leased such property for two years or more has the right to a renewal of the contract at the time of its expiration; nonetheless, certain legal exceptions may apply.

Colombian regulations, set forth on the Commercial Code, are keen on the protection of the tenant in the lease of the so called commercial establishments (*establecimientos de comercio* in Spanish). Please see below an example of such rules:

- **Right to Renewal:** Once certain conditions, set forth in Article 518 of the Commercial Code are fulfilled, the lessee is entitled to extend the term of the contract under the same conditions as initially agreed, and the landlord has the obligation to respect that right. This measure ensures the tenant to have enough time to position his business (e.g. position a name and attract customers, etc.). This period of time is considered an essential factor to achieve these purposes.
- **Eviction Law:** In accordance with the above mentioned, commercial law provides that the landlord must give an eviction or termination notice to the tenant not less than six months prior to the ending of the contract, when the landlord needs the relevant premises for his living or business domicile, as well as to rebuild or repair.

The eviction notice is considered a period of time ample enough (i.e. 6 months) and constitutes a protection measure for the tenant as it provides him enough time to reorganize his business in another venue.

- **Preemptive Rights:** Article 521 of the Commercial Code establishes the right for the tenant to be preferred against a third party interested in leasing the premises, provided that the tenant and the interested party have equal conditions.
- **Compensation Right:** If at the termination of the lease agreement, the owner of the landlord does not use the property for one of the purposes established in the law, or if the relevant repairs are not initiated within 3 months from the date the tenant returns the property subject to lease, the tenant is entitled to the special compensation set forth in Article 522 of the Commercial Code.

10.4. Real Estate Investment Trusts

The growing importance of trust agreements in real estate transactions in Colombia must be highlighted because this mechanism offers trustworthiness and transparency to all parties; currently, it is used in most real estate transactions. One of the types of trust agreements is provided for the development of real estate projects, whereby the real estate property is transferred to an equity trust managed by a trust company under surveillance by the Colombian Financial Superintendency, which is set up independently from the owner's and the trust company's equity, thus, enabling the use of the trusted assets exclusively for development of the real estate project. Furthermore, as trust property is not considered neither part of the trustee's or the beneficiary's patrimony, it is protected from possible creditors.



The purpose of a trust agreement includes: (i) the development of the real estate project by a builder which is not the owner of the project; (ii) a transparent administration of the resources of third parties that have contributed towards the acquisition of one of the units, and (iii) once the works are completed, the trust shall transfer the property of the units to the purchasers.¹⁰

10.5. Urban Regulations

Municipalities have the authority to establish zoning regulations pertaining to their territories, the rational and equitable use of land, and the preservation and protection of environmental and cultural heritage located in such territories. Therefore, municipalities are required to establish a territorial zoning plan (Plan de Ordenamiento Territorial, POT) for the regulation of potential developments and land use of the district or municipality territory pursuant to the Colombian Political Constitution and the Organic Law for land zoning, among others.

10.5.1. General Aspects of the Territorial Zoning Plan (POT in Spanish)

The POT¹¹ is a document issued by the municipality administration that contains and describes the objectives, guidelines, policies, strategies, goals, programs, actions and regulations adopted to guide and manage the physical development of land and land use.

The territories of the municipalities and districts are classified as urban land, rural land or land for urban expansion. This classification should be taken into account by the investors in order to establish whether according to the environmental aspects and the zoning and land use regulations the contemplated uses are permitted on the real estate property.

The main objectives of the implementation of the POT are the following:

- To improve the life quality of the inhabitants offering benefits that develops a city
- To ensure citizens access to common services: roads, parks, schools, hospitals, etc.
- To ensure rational use of land, to promote environmental sustainability and preservation of the heritage.
- Protect the community against natural hazards

10.6. Regulation for the Development of Property in Any Territory

In general, the required planning instruments are: The POT, special plans of management and protection, partial plans (Planes parciales in Spanish), rural planning units (Unidades de planeación rural, in Spanish), urbanization or parceling permissions (Licencias de urbanización o parcelación, in Spanish) and building of subdivision of parcels and intervention and occupation of public space).

10.6.1. Partial Plans

Partial plans develop and complement the provisions of the POT for specific areas of urban land, the areas in-

10. Financial Superintendence of Colombia, Authorized Officer's Opinion No 2010023725-002, May 21, 2010.

11. For smaller municipalities the urban development instrument will be the PBOT (Basic plan) and the EOT (ordering scheme).



cluded in the territories earmarked for urban expansion and other areas that are to be developed through urban planning units (Unidades de actuación urbanística, in Spanish), macro-projects or other special urban interventions. By means of partial plans the use of private spaces is defined, as well as specific uses of land, intensity of uses and buildings, as well as the obligations for the transfer and construction, provision of equipments, spaces and public utilities that allow the execution of specific projects of urbanization and construction in the terrains included in the planning.

In these partial plans, the urban regulations contained in the POT are developed for the portion of land within the scope of the POT. These instruments are approved by means of an administrative act issued by the relevant municipal or district administration.

10.6.2. Rural Planning Units

Rural Planning Units (UPR in Spanish) are intermediate planning instruments for rural land that complement the POT. Through the UPRs, issues such as environmental management, activities that take place outside of city limits, decisions on occupancy and uses, management strategies and instruments and agricultural technical assistance strategies are provided.

10.6.3. Parceling Permissions

Parceling permissions allow the creation of public and private spaces in one or several properties located in rural and suburban land. They are required also for the construction of roads and the building of infrastructure to ensure the self-provision of residential services, which will enable the use of the resulting properties for the purposes authorized by the relevant POT.

To build on the resulting land parcel, the corresponding building permit will be required.

10.6.4. Urbanization Permits

Urbanization permits are the prior authorization required to create, on one or several properties located on urban land, public and private spaces, build roads and infrastructure, and provide public services that enable the adaptation, allocation and subdivision of these lands for future construction of buildings destined for urban uses, according to the POT. Licenses are granted by an urban curator or the competent municipal authority

Urbanization permits lay down the regulations regarding uses, elevation, volume, accessibility and other technical aspects based on which the building permits will be issued for new buildings in such urbanized properties. With the urbanization permission, an urban map (Plano urbanístico in Spanish) is approved, and such map will contain a graphical representation of the urbanization, identifying all its parts to facilitate its understanding, such as transfers to the planning authorities for the construction of public parks, facilities and local roads or useful areas, among others. The urbanization permits on lands earmarked for urban expansion can only be issued after the adoption of the corresponding partial plan.



10.6.5. Building Permits

A building permit is the prior authorization required to develop buildings, circulation areas and communal areas in one or several properties, in accordance with the provisions of the POT, the special management and protection plans of cultural interest and other rules that govern such matters. Building permits determine specific uses, elevation, volume, accessibility and other technical aspects approved for the corresponding construction.

10.7. Special Duties that Affect Real Estate Property

10.7.1. Real Estate Tax

The real estate tax is a duty levied on real estate located in Colombia. It must be paid once a year or in installments by owners, users or usufructuaries, depending on the municipality or district where the real estate property is located. For most of the municipalities of the country, the tax is invoiced directly by the territorial entity, while in other municipalities the taxpayer must liquidate the tax.

The taxable base is determined by: (I) the current appraisal value which can be updated by the municipality as a consequence of new conditions, or through the urban and rural real estate valuation index (IVIUR in Spanish); or (II) a self-appraisal value made by the taxpayer, and cannot be less to the cadastral appraisal.

The applicable tax rate depends upon the conditions of the real estate, which also depends upon elements such as constructed area, location and destination of the real estate property. The tax rate varies between 0.1% and 3.3% considering the economical destination and appraisal of the real estate.

Real estate tax is 100% deductible for income tax purposes, considering that a cause-effect relation exists with the income producing activity of the taxpayer.

10.7.2. Surplus Value

The surplus value (plusvalía in Spanish) is a contribution derived from zoning actions and specific authorizations destined to improve land use or to give the property a more profitable use.

Surplus value acts:

- The incorporation of rural land to land of urban expansion
- The establishment or modification of the regime or the zoning of land uses
- The authorization of a greater use of land in building, raising either the occupancy rate or the construction index, or both at the same time.
- When public works considered as "macro infrastructure projects" are included in the POT and/or in the instruments that develop it, and the valorization contribution has not been used for its financing

Acts involving transfer of property rights and the issuance of building permits generate surplus value, ranging between 30% and 50% of the higher value per square meter that befalls to the benefited property.



10.7.3. Recovery Contribution

Is a lien on real estate properties that benefit from the public interest works carried out by the State. Said lien must be registered in the ownership certificate.

10.7.4. Urban Lination Tax

Urban lination tax is levied on the issue of construction licenses for executing new real state works, extensions, modifications and repairs on real state.

Regulatory framework

NORMA	TEMA
Civil Code	Contracts
Code of Commerce	Contracts
Law 820 of 2003.	Urban Leasing Law
Decree 2811 of 1974	National Code for Renewable Natural Resources and Environmental Protection
Law 44 of 1990	Real Estate Tax
Law 9 of 1989 and 1469 of 2011	Municipal development plans, acquisition and expropriation
Law 160 of 1994	Creates the National System for the Rural Reform and set forth rules for Baldíos
Law 388 of 1997	Amendment of Law 9 of 1989
Law 507 of 1999	Modifications of Law 388 of 1997
Law 810 of 2003	Planning sanctions
Decree 564 of 2006 (partially removed)	Planning permits
Decree 2181 of 2006	Partial plans
Decree 0097 of 2006	Planning permissions on rural land
Decree 4300 of 2007	Partial plans
Decree 3600 of 2007	Rural land zoning regulation
Decree 4065 of 2008	Urbanization and development of lands and areas on urban land and expansion and applicable legislation on calculation of participation in surplus value



Modifications to Decree 3600 of 2007	Modifications to Decree 3600 of 2007
Decree 3641 of 2009	Modification to Decree 3600 of 2007
Decree 1469 of 2010	Planning permissions
Law 1454 of 2011	Organic rules for area zoning
Law 1469 of 2011	Promotion of developable land and access to housing
Ley 1469 de 2011.	Promoción de suelo urbanizable y acceso a la vivienda.
Decree Law 0019 of 2012	Paperwork reduction
Law 1753 of 2015	National Development Plan 2015-2018
Decree Law 2365 of 2015	Winding up of the Colombian Institute of rural development (INCODER)
Decree Law 2364 of 2015	Creation of the Rural Development Agency (ADR)
Decree Law 902 of 2017	Issue to facilitate the implementation of the Integral Rural Reform contemplated in the Final Agreement signed with FARC, specifically the procedure for access and formalization and the Land Fund
Resolution 740 of 2017	
Decree 2051 of 2016	Regulates the Unique Registry of Abandoned Lands and Territories -RUPTA-
Decree 1766 of 2016	Modifies the decree of the rural development sector, Decree 1071 of 2015
Decree 2537 of 2015	By means of which Title 5 is added to Part 10 of Book 2 of Decree 1071 of 2015, Sole Regulatory Decree of the Agricultural, Fisheries and Rural Development Administrative Sector, related to the temporary assumption of the administration of parafiscal contributions
Decree 1071 of 2015	Decree of the rural development sector
Decree 1273 of 2016	Regulates the Areas of Interest for Rural, Economic and Social Development (ZIDRES for its acronym in Spanish)
Law 1776 of 2016	Create the Areas of Interest for Rural, Economic and Social Development (ZIDRES for its acronym in Spanish)
Decree 2363 of 2015	Creates the National Land Agency, (ANT for its acronym in Spanish)





LEGAL **GUIDE**

TO DO BUSINESS IN COLOMBIA

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CHAPTER

11

**GOVERNMENT
PROCUREMENT**



GOVERNMENT PROCUREMENT

Five things an investor should know about government contracting in Colombia:

1

In Colombia, objectivity in the selection process is the guiding principle of government contracting in order to achieve the goals of the State. This implies that public entities must always choose the most favorable offer for the public interest. Other constitutional principles applicable to government contracting are the procedural economy, transparency, equality and responsibility, among others.

2

Foreigners may participate in the selection processes of contractors conducted by governmental entities under the same conditions as a Colombian would participate in a selection process in the country of origin of the foreign bidder. For this to happen, an agreement between the Colombian Government and the country of the foreigner participating in the selection processes must be entered providing that the same treatment to nationals of such country will be granted to Colombian bidders; or in case a commercial agreement is in force, it is required that the Colombian Government certifies that Colombian bidders are benefited with national treatment in the country of origin of goods and services, based on the revision and comparison of the regulations on government contracting of both states.

3

All individuals and legal persons, whether Colombian or foreign, based in Colombia or established through a branch in the country, wishing to execute contracts with governmental entities must register in the bidder's registry (RUP by its acronym in Spanish). However, foreign entities without domicile or branch in Colombia are not obliged to have such registration.

4

The contractors must submit a performance bond to guarantee compliance with the obligations of the contract, except in the case of loan agreements, inter-administrative contracts, insurance contracts, and contracts for less than 10% of the budget allocated to the particular entity.

5

In Colombia, private initiatives are possible for public-private partnerships (APP by its acronym in Spanish), regardless of whether public resources are required to develop them. For projects from private initiative, economic resource from the public entity cannot exceed 30% of the budget of the investment project and a public tender must be carried. For this purposes, "public resources" are considered those obtained from the national budget, from the budget of local authorities, or other public funds.

1 De conformidad con la modificación incorporada en la Ley 1753 de 2015 en los proyectos de asociación público-privada de iniciativa privada que requieran recursos públicos, los recursos del Presupuesto General de la Nación, de las entidades territoriales o de otros fondos públicos, no podrán ser superiores al 30% del presupuesto estimado de inversión del proyecto. En el caso de proyectos de infraestructura vial de carreteras dicho porcentaje no podrá ser superior al 20% del presupuesto estimado de inversión del proyecto.



11.1. General Aspects

In Colombia, government contracting legislation has been designed to achieve the State's purposes through the collaboration with nonpublic entities that under certain agreements get to carry on social functions and their obligations.

11.2. Scope of Government Contracting Laws

Generally, all governmental entities are covered by the government contracting regulations; however, there are some exceptions, which are subject to a special set of rules. A contract in which at least one of the parties is a public entity is considered a government contract, except for financial entities or public home service companies for contracting purposes.

11.3. Parties in Government Contracts

Government contracts are executed between the contracting entity and the contractor, whereby the latter may be an individual or a legal person, national or foreign, a group of persons joined in legal structures like a joint venture or by a group or persons bound together by a contract known as "commitment to create a company."

National and foreign legal persons wishing to execute contracts with governmental entities must demonstrate their legal capacity, pursuant to the applicable commercial legislation. They must also demonstrate the following: That the activity that the contract would allocate is within the scope of their corporate purpose, that they have the experience, technical and financial capacity and that they have not incurred into any of the grounds for impediment or conflict of interests .

A consortium is defined as two or more persons who jointly submit the same proposal in order to be awarded, execute and perform the contract, and who are jointly and severally liable for each and all obligations derived from the proposal and the contract (including the sanctions that may be imposed during its performance). A temporary union, on the other hand, is basically the same as a consortium except for the fact that the person liable for the penalties imposed during the performance of the contract will be individually the member of the joint venture responsible for the activity, according to the distribution of activities in the temporary union's contract.

Other corporate alternatives to submit a bid, to a state entity are: (i) The promise of incorporating a company, whereby the parties submit a document of intention to incorporate a company as soon as the contract is awarded; and (ii) the constitution of special purpose vehicles, created with the sole purpose of executing and performing the government contract. In this case, the liability of the partners of a special purpose vehicle is the same as that of a consortium.



Finally non-profit entities are entitled to enter into contracts with the Colombian government under the following conditions:

a) The agreement shall be directly related to public interest programs and activities provided by the National or Sectional Development Plan according to the authorities' capacity. The purposes of these programs shall be exclusively directed to promote rights, peace, education, artistic and cultural expressions, among others.

b) The agreement shall not involve a commutative relation whereby the public entity receives a compensation nor direct instructions from the public entity to the non-profit entity to comply with the contract.

c) That the goods or services required for the contract purpose, are not offered by any agent in the market other than the non-profit entities.

Furthermore, these non-profit entities must demonstrate experience in the field of the contractual purpose.

11.4. Grounds for Impediment and Incompatibilities

Grounds for impediment or incompatibilities are situations that by law limit the bidder's capacity to enter into contracts with the Colombian Government. Their purpose is to protect the principles of morality, transparency and equality in government contracting. Impediments and incompatibilities have been defined as "a set of circumstances regarding the contractor and whose existence prevents the contract from being executed because it can be considered invalid."

Impediments "are legal or special inconveniences that the potential contractor may have, which hinder the right to participate in the process, or to be awarded or celebrate the government contract." Incompatibilities are "prohibitions or ineligibilities to carry out the activity of the contract because the interested party is or has been for a certain period of time a public servant."

Due to the fact that there are limitations or restrictions to execute contracts with the State, impediments and incompatibilities must be explicitly indicated in the law and cannot be broadly interpreted or applied to analogous situations.

Some of the impediments stated in the law are for: i) Whoever caused an expiration declaration; ii) whoever keeps from subscribing a state contract without just cause; iii) whoever has been condemned by a judge to the additional penalty of interdiction in rights and public functions or has been sanctioned with a destitution; and iv) public servants, among others.

On the other hand, incompatibilities to sign public contracts arise for the following persons among others: i) Whoever made part of the board of directors or the council of administration of the public entity or whoever has been a public servant in the signing entity in a directive, consulting or executive positions in the prior year; and ii) whoever has a blood, affinity or civil relation up to a second degree with public servants in a directive, executive or consulting position in the public entity or with a member of the board of directors or the council of administration, or a person that exercises internal controls within the entity.

2 Solano Sierra Jairo Enrique. Contratación Administrativa. Segunda edición, 1997. Página 81
3 Solano Sierra Jairo Enrique. Contratación Administrativa. Segunda edición, 1997. Página 81



Por su parte, son incompatibles para celebrar contratos estatales las siguientes personas: i) quienes fueron miembros de la junta o consejo directivo o servidores públicos de la entidad contratante a nivel directivo, asesor o ejecutivo dentro del año anterior; y ii) las personas que tengan vínculos de parentesco, hasta el segundo grado de consanguinidad, segundo de afinidad o primero civil con los servidores públicos de los niveles directivo, asesor, ejecutivo o con los miembros de la junta o consejo directivo, o con las personas que ejerzan el control interno o fiscal de la entidad contratante.

11.5. Bidders Registry

It is a mandatory and public registry for all national or foreign persons based in Colombia or branches of foreign companies interested in executing contracts with governmental entities and that implies their enlisting, certification of qualifications and classification of activities.

The bidders' registry (RUP in Spanish) must be filed in the chamber of commerce of the main domicile of the interested party, which must verify the information filed in order to issue a certification endorsing the qualifications of a contractor to participate in a contract selection process with governmental entities considering its financial and organizational capabilities and experience.

The renewal of the RUP shall be done on an annual basis, on the fifth labor day of April of every year, at the latest.

For the case of contractors or consultants that are legal entities incorporated for less than 36 months, such can credit experience before the RUP based on that of its partners or shareholders, associates or constituents.

The RUP is the only document required as evidence of the qualifications and classification it certifies, since they have been previously verified by the corresponding chamber of commerce. The Chamber of Commerce shall verify the conditions set for the contractors such as: (i) experience, (ii) legal standing, (iii) financial capability, and (iv) organizational capability.

The RUP is not required to execute contracts with governmental entities in the following situations:

- In the event of direct contracting
- Contracts for less than 10% of the allocated budget of the particular entity (low-value).
- Healthcare procurement contracts.
- Concession contracts and in general public-private partnerships (PPP) of any kind.
- Contracts for the disposal of state assets.
- Contracts for agricultural products or products destined for agricultural production offered by legally established commodity exchanges.
- Acts and contracts directly involved in the commercial and industrial activities of state-owned industrial and commercial companies.
- Foreign natural persons not domiciled in Colombia or foreign legal persons without a branch in Colombia that wish to execute contracts with governmental entities.



In the abovementioned situations, and for interested foreign parties, the relevant contracting governmental entities are responsible for verifying that the bidders meet the requirements.

11.6. Principles of Government Contracting

Government contracting is ruled by the following principles:

- The principle of objective selection, defined as the application of objective criteria in selecting the option that is most favorable to the interests of the entity and its goals, without personal considerations or subjective motivations. The legal capacity and conditions regarding experience, financial capacity and organizational aspects of the bidders are verified as qualifying requirements for the participation in the selection process, but do not grant scoring in this process. The qualifying requirements of bidders are certified by presenting the RUP. In the specifications for contracts whose purpose is the acquisition of goods and/or services of uniform technical characteristics and common use, public entities shall include as sole selection criteria the lower offered price.
- Colombia follows the free competition principle and accordingly foreigners may participate in selection processes under the same conditions as nationals. Also, the reciprocity principle applies allowing the foreign bidder to receive the same treatment as a national bidder, if the former proves that a Colombian proponent would receive equal treatment as a national in the foreign bidder's country of origin. A foreign bidder with reciprocity will be preferred over one without it. Within selection processes, additional points are given to offers of Colombian goods and services and offers of foreign goods and services from countries where offers of Colombian goods and services receive equal treatment.
- The right to due process in government contracting applies to all public acts that imply a unilateral decision or a sanction affecting the contractor. Contracting legislation guarantees the right to a fair hearing (*audi alteram partem*) and to defense, and both rights are enacted in the Constitution and public contracting law.
- The principles of transparency, equality, economy and speed, which allow bidders to know and discuss the evaluation reports, since all records are public, and may be consulted through the online system for government contracting (SECOP by its acronym in Spanish).

11.7. Modalities of Contractor Selection

To guarantee the principles of equality, reciprocity, transparency and objective selection, different procedures have been established for the selection process, through which governmental entities ensure the selection of the best offer.

The selection procedures are: public tender, abbreviated selection process, selection based on qualifications, direct selection and low-value contracts.



11.7.1. Public Tender

The tendering process begins with a public invitation placed by the public entity calling all interested participants to submit their bids, where the most favorable bid in terms of the goals and needs of the entity is chosen on the basis of the criteria and conditions set forth by the public entity in the terms of the bid “pliego de condiciones.”

The tender processes must adhere to the following process:

1. PRELIMINARY STUDIES

Determines the necessity and convenience of taking upon the related agreement and helps as support for the “pliego de condiciones” as well as for risk assesment.

2. PROJECT OF “PLIEGO DE CONDICIONES”

It is elaborated based on the preliminary studies and published in the Electronic System for Public Contracting (SECOP by its Spanish initials), in order to inform all possible interested parties and to allow comments upon the proposal.

3. ADJUSTMENTS TO THE “PLIEGO DE CONDICIONES

Based on the comments received, the entity can modify the bids.

4. OPENING OF THE BID

The object of the public contract is set, the applicable selection procedure, the schedule of the process, the physical and electronical address to obtain the terms of the contract and preliminary documentation, the summon for citizens watch and the certification of budget approval.

5. PUBLICATION OF THE “PLIEGO DE CONDICIONES”

The final “pliego de condiciones” is published in the SECOP. The terms and conditions contained therein rule the entire selection process and must provide all the information required for the bid.

6. PUBLIC HEARING FOR RISKS ALLOCATION

If a bidder considers necessary to carry a public hearing to clarify the scope of the bid terms, such clarification will take place on this public hearing. On this public hearing the contracting public entity must present the risk analysis and must perform the final risk allocation.



7. CLOSURE OF THE BID

Once the due date for the bid is reached, the contracting entity evaluates the proposals in order to identify the one that contains the most favorable conditions for its interests.

8. EVALUATION REPORT

The contracting public entity will publish the report establishing an order of favorability of the offers made to the entity, in order to have the bidders commenting upon it. Once the comments have been presented, the entity might modify, adjust or keep the evaluation report.

9. PUBLIC HEARING FOR CONTRACT AWARD

Based on the evaluation report, the contract must be awarded during a public hearing, where the awarded bidder gets to be notified in order to proceed with the execution of the contract. The award is irrevocable, and therefore obliges both the entity and the bidder unless stated otherwise, in the law.

In public tender processes, a ten (10) labor days limit will be available for presenting observations and comments on the publication of the bid terms.

11.7.2. Abbreviated Selection Process

This selection alternative is faster than the public tender, and it can be applied in the following cases: (i) the procurement of goods and services which have uniform technical standards and are of common usage (e.g. office supplies); (ii) the procurement of products for agricultural use; (iii) low-value contracts; (iv) healthcare procurement contracts; (v) contracts for the disposition of state assets; (vi) contracts directly related to the activities of state-owned industrial and commercial companies; (vii) procurement of goods and services for defense and national security; (viii) when a public tender has been opened but is not awarded due to lack of qualified bidders; and (ix) contracts with entities responsible for programs for the protection of vulnerable populations. Additionally, this selection process will also be applicable in contracts with the National Institute of Roads (in Spanish "INVIAS") for the development of security on roads programs, contracting of goods, constructions and services that are performed with resources managed by the Colombian defense sector.

In abbreviated selection processes, a five (5) labor days limit will be available for presenting observations and comments on the publication of the bid terms.

11.7.3. Selection Based on Qualifications

The selection based on qualifications is a procedure for the selection of consultants or projects, following stages laid down by law and considering that the contractor has to carry out an intellectual task. For this type of selection process priority is given to technical and professional considerations where economic criteria is not a deciding selection factor.

Decree 1082 of 2015, the selection based on qualifications can be carried in an open procedure or in a pre-qualified procedure.



11.7.4. Direct Contracting

Direct contracting is an exceptional selection mechanism, by virtue of which public entities can enter into contracts without the need to previously carry out a competitive selection process. Therefore, its application is limited to the grounds stated in the law which are as follows:

- Loans
- Interadministrative contracts
- Urgent need.
- Provision of professional and support services for the implementation of artistic works that can only be entrusted to certain individuals
- Goods and services for the defense sector, the acquisition of which is confidential
- Trust agreements entered into by certain territorial entities (e.g. departments or municipalities) for their liability restructuring agreements
- Contracts for the development of scientific and technological activities
- When there is no plurality of bidders in the market
- Lease or purchase of real estate

11.7.5. Low-Value Contracts

Low-value contracts are awarded by means of fast procedures which can be carried out when the value of the contract is equivalent to or less than 10% of the entity's budget.

11.8. Publication of the Contracting Process Through Electronic Means

Government entities must publish on the website el SECOP (Sistema Electrónico de Contratación Pública in Spanish) and/or www.contratos.gov.co all the information required by law regarding the different selection processes they are conducting, in order to inform the general public so that it can comment on it or participate in the bidding process.

Additionally, all public entities are obliged to publish an annual plan which includes all goods, constructions and services that they pretend to purchase through the year (PAA, per its acronym in Spanish), which shall be published in the SECOP website. Through this publication, all purchases made by each entity will be public on annual basis.

All public entities (that contract with public resources) will also have to publish through the SECOP, all documentation related to the process and bidding administrative acts within the following three (3) days of its enactment.

SECOP II, is the newest version of SECOP, becoming from a tool of simple publicity to a transactional platform which allows buyers (public entities) and suppliers, to perform the contractual process online. This new platform, allow public entities to create and allocate contractual processes, register and make follow up to the performance of executed agreements .

The National Agency for Contractual Process –“Colombia Compra Eficiente”- has implemented tools for those who are interested in becoming suppliers of the Nation, may be registered and receive information regarding

4 Salvo los asuntos sometidos expresamente a reserva.



business opportunities published in SECOP I .

La Agencia Nacional de Contratación – Colombia Compra Eficiente – ha implementado herramientas para que los interesados en ser proveedores del Estado se inscriban y reciban información de las oportunidades de negocio con el Estado publicadas en el SECOP I.

11.9. Contents of the Government Contract

The government contract consists of the executed contract document and any annex or amendments thereto, if any, the terms of the bid and amendments thereto, the preliminary studies, the risk allocation matrix , the proposal submitted by the awarded bidder, as well as all other documents issued during the bidder selection process. Thus, government contracts consist of a group of documents that regulate the contractual relationship.

11.9.1. Term of the Contract and Additions

Government contracts generally establish, in addition to the term for their performance, a term for their settle of up to four months; if this term is fulfilled and the contract can not be settled by agreement of the contractor and the entity, the latter will have 2 months within which it may settle the contract unilaterally. Finally, if this term expires without the contract having been settled, the parties will have 2 years to be able to do so by mutual agreement, or, in the absence thereof, the entity will carry out the settlement unilaterally.

Furthermore, except for concessions and other forms of PPP (see Section 11.10.7) governmental entities can consider entering into additional contracts, that is contracts which increase the scope of the initial obligations, the only limitation being that the addition must not exceed 50% of the initial value of the contract.

11.9.2. Guarantees

Whoever submits a bid for a selection process must provide a bid bond for a value which is usually set at 10% of the value of the offer, although this value may be lower in processes involving large sums. Additionally, those awarded the contract are required to submit a performance bond to cover any failure to comply with the obligations set forth in the contract. The performance bond must offer ample coverage.

When contracting with the government, contractors can submit different kinds of guarantees as risk coverage or multiple ones such as: (i) insurance policies; (ii) a trust as guarantee; (iii) a guarantee issued by a bank; (iv) securities endorsement as a guarantee; or (v) a cash deposit. In addition, foreign individuals or legal entities without domicile or branch in Colombia may submit, as a guarantee, standby letters of credit issued abroad.

The guarantee must cover the risks that may arise in connection with any failure to comply with the terms of the bid or of the bid contract. In this regard, the Contracting Agency must specify the warranties required in every stage of the contract, or each contract period taking into account the contractor's obligations at each stage of the contract.



11.9.3. Extraordinary Powers

Extraordinary powers are faculties that surpass commercial and civil law, embedded in the administration and providers of public utilities, that can be used only when the failure of a contractor to comply with the terms of the contract is so severe that the service or public utilities entity is responsible for, are at risk of being paralyzed or seriously affected, or when such powers are required to protect the general interest. These powers are used to ensure the immediate and continuous provision of the services in question.

These extraordinary powers include submission to national laws, unilateral modification, termination and interpretation of the contracts, as well as the mandatory handover of the assets to the State at no cost at termination of contracts for the exploitation of public assets and the forfeiture of the contract. These powers can only be exercised by governmental entities in the circumstances set forth by law.

For some contracts it is mandatory to establish exceptional powers clauses in: (i) Contracts to perform an activity that constitutes a state monopoly; (ii) the provision of public utilities; (iii) the exploitation and concession of state assets; and (iv) public work contracts. If the aforementioned faculties are not expressly agreed upon when mandatory, they are understood to be part of the agreement by law. Supply agreements and services agreements might contain extraordinary clauses, in all other contracts it is forbidden to include exceptional power clauses.

11.9.4. Fines and Penalty Clause

In the fulfillment of the duty that public entities have to control and supervise the performance of government contracts, these entities may impose the fines agreed in the contracts in order to demand from the contractor compliance with the agreed obligations. Likewise, public entities have the legal capacity to execute the penalty clause, as agreed in the corresponding contract.

11.9.5. Assignment of Government Contracts

Government contracts are based on the contractor's qualifications. Therefore, once they have been executed, they cannot be assigned without prior written authorization of the contracting entity. In the event a contractor has an impediment or incompatibility, the contractor must assign the contract, with prior written authorization of the contracting entity, and if not feasible, then the contractor must withdraw from the contract.

If a member of a consortium or temporary union has an impediment or incompatibility, it must assign its part in the consortium or temporary union with the prior written authorization of the contracting entity. In no event may the assignment take place between members of the consortium or temporal union.

For the contracting entity to approve the assignment of the contract, the assignee must comply with all the requirements set forth in the Request for Proposal (RFP) of the awarded contract.



11.9.6. Payment Method

In government contracts, governmental entities can agree to make an advance payment (anticipo) or down payments (pago anticipado) but such advances may not exceed 50% of the contract's value. Accordingly, "advance payment means the first payment of a contract agreed by the parties to be carried out over a period of time; and down payment refers to the first partial payment to a contractor for a contract to be performed immediately."

The Anti-Corruption and Bribery Code has established the obligation for all beneficiaries of advance payments for the construction agreements, concessions, health or those determined by public tender, with the exception of those of minor and minimum amount, to create a separate equity "patrimonio autónomo" through an irrevocable commercial trust and to directly pay for all the cost of the commission to the fiduciary, for the management of those resources .

Other rules applicable to the management of the advance payments are the following:

- The initial terms of the bid have to determine if there will be advance payments, and if so, indicate its value, considering the revenues that could be generated
- The initial terms of the bid have to include the terms and conditions for the administration of the advances, such as restricting the payments to the suppliers with previous instructions and authorization from the supervisor or the controller, and only if it was previously stipulated in a plan; which means, they are also imposing the obligation to make and have such plan
- The guarantees have to include the good management and appropriate investment of the advances and to be valid up to the termination of the agreement or until its amortization

11.9.7. Conflict Resolution

Government entities and contractors must seek to resolve disputes arising from their contracts in a flexible, fast and direct manner, using conflict resolution mechanisms, such as conciliation, amicable settlements or transaction. The parties may also use alternative conflict resolution mechanisms such as national or international arbitration

If the parties agree to resort to ordinary courts, the resolution of conflicts arising from government contracts is subject to the jurisdiction of the administrative courts.

11.9.8. Final Accounts for Government Contracts

Es obligatoria salvo para los contratos llamados a ejecutarse de manera instantánea, y puede efectuarse de común acuerdo o unilateralmente por parte de la entidad pública contratante. Sin embargo, en la prestación de servicios profesionales y de apoyo a la gestión no se requiere de liquidación.

11.10. Types of Government Contracts

Governmental entities may enter into any kind of agreement permitted by law. Any contract executed by a public entity is a state contract.

⁵ Consejo de Estado, Sala de lo Contencioso Administrativo, Sentencia del 22 de junio de 2001, C.P.: Ricardo Hoyos Duque.

⁶ La Agencia Nacional de Contratación – Colombia Compra Eficiente – emitió una Guía para el manejo de anticipos mediante contrato de fiducia mercantil, definiendo lineamientos para proveedores y entidades estatales en esta modalidad de contrato fiduciario y para el manejo de los anticipos en el patrimonio autónomo https://www.colombiacompra.gov.co/sites/default/files/manuales/20140708_guia_para_el_manejo_de_anticipos_mediante_contrato_de_fiducia_mercantil_irrevocable.pdf



Many types of government contracts have been created as a result of the diversity of needs of public entities with the aim of achieving the goals of the State. The following provide a brief summary of some government contracts.

11.10.1. Construction Contract

Construction contracts are those entered into by governmental entities for the construction, maintenance, installation and the performance of any other material works, regardless of the execution and payment modalities.

11.10.2. Consultancy Contract

Consultancy contracts are executed by governmental entities to carry out studies related to the execution of investment projects, diagnostic studies, prefeasibility or feasibility studies for specific programs or projects, as well as to engage technical assistance for coordination, control and supervision. Consultancy contracts also include auditing and advisory; management of works or projects; direction, programming and implementation of designs, blueprints, preprojects and projects. The obligations of a consultancy contract are characteristically of an intellectual nature.

11.10.3. Service Contract

This contract is executed to carry out activities related to the administration or operation of governmental entities. The contractor in this type of contract must always be an individual in situations where the state entity does not have sufficient or qualified personnel to carry out the contracted job.

11.10.4. Concession Contract

Concessions have been classified as a type of public-private partnership – PPP (APP, per its acronym in Spanish), a form of association described in section 11.10.7 below.

11.10.5. Trust Agreements for the Administration of State Assets

Trust agreements (encargos fiduciarios in Spanish) are contracts executed between governmental entities and trust companies authorized by the Financial Superintendence to manage the funds of contracts executed by public entities with third parties. The public trust agreement is a kind of “encargo fiduciario” as far as public funds cannot be transferred to a stand-alone trust fund. Governmental entities may set up a standalone trust fund in the cases explicitly permitted by law such as securitizations.

11.10.6. Other Contractual Arrangements

Colombian legislation does not limit the types of contractual arrangements in government contracting, thereby permitting the creation of new contractual arrangements, as long as they comply with the law and the Constitution.



Other contractual arrangements not expressly regulated in the government contracting regulations are: supply, purchase, loan, exploration and production of natural resources, leasing, factoring, franchise, joint venture, merchandising, putting out system, just-in-time, swap, forward, and option contracts.

11.10.7. Public-Private Partnership Regulations - PPP

(i) Definition

A PPP has been defined as follows: "Public-private partnerships are mechanisms to attract private capital that materializes in a contract that binds a state entity and an individual or legal entity for the supply of public goods and related services, which implies risk retention and risk allocation among the parties and payment methods according to the availability and the level of service of the infrastructure and/or service."

PPP regulations explicitly establish that concession contracts are PPPs and that the purpose of these contracts is to grant a person the total or partial provision, operation, exploitation, organization or management of a public service, or the total or partial construction, exploitation or conservation of works or goods intended for public use or service.

The execution of the contract is the sole responsibility of the concessionaire under the supervision and control of the granting entity in return for payment, which can consist of royalties, duties, fees, value added or profit sharing with regards to the exploitation of the goods, or as agreed between the parties.

The right over immovable property owned by the State has also been conceived as a form of remuneration. Such goods may not be necessary for the provision of the PPP project service.

Concession models have been addressed under the project finance schemes known as "project finance" as follows:

- BOT (BUILD, OPERATE AND TRANSFER)

Under this model, the company finances, builds and operates the project which generates income that covers the operational and investment costs. On a date previously agreed by the parties, the company transfers (returns) all rights of the asset to the State.

- BOMT (BUILD, OPERATE, MAINTAIN AND TRANSFER)

Under this model, the company finances, builds and operates the project which generates income that covers the operational and investment costs. It maintains the project for a specified length of time and on a date previously agreed by the parties, transfers (returns) all the rights to the State.

- BOO (BUILD, OWN AND OPERATE)

Under this model, the contractor is contractually bound to build, own, and operate the assets, with the corresponding financing of the works and in compliance of the specifications as required by the regulator. In this case, the useful life of the project refers to the time required to pay off the debt and pay the contractors. The main difference between BOO and BOT is that "the assets will always remain property of the private entity."

7 Revista letras jurídicas EPM, Vol. 12, No.1, Marzo de 2007.



- BOOT (BUILD, OWN, OPERATE AND TRANSFER)

Under this model, the contractor is bound to build, own, operate and transfer the assets, and it is responsible for obtaining the corresponding financing for the project. The difference between BOOT and BOT is that the contractor owns the assets during the term of operation.

- BOOMT (BUILD, OWN, OPERATE, MAINTAIN AND TRANSFER)

Under this model, the contractor is bound to build, own, operate and maintain the project for a period of time previously agreed by the parties, to transfer the assets, and to finance the project.

- BLT (BUILD, LEASE AND TRANSFER)

This type of concession has the same features as BOT, but the financing is made through leasing.

(ii) General aspects

PPPs are all contracts in which the entities entrust to a private investor the design and construction of infrastructure and their associated services, provided that the amount of the investment is over 6,000 times the current minimum legal monthly wage (MLMW), (approx. USD1,475,440). Pursuant to the law, the maximum term of these contracts is 30 years, including extensions. Notwithstanding the foregoing, the term may be extended for more than 30 years when necessary, according to the results of structuring the respective project, and provided that the National Council for Economic and Social Policy (CONPES in Spanish) approves such extension.

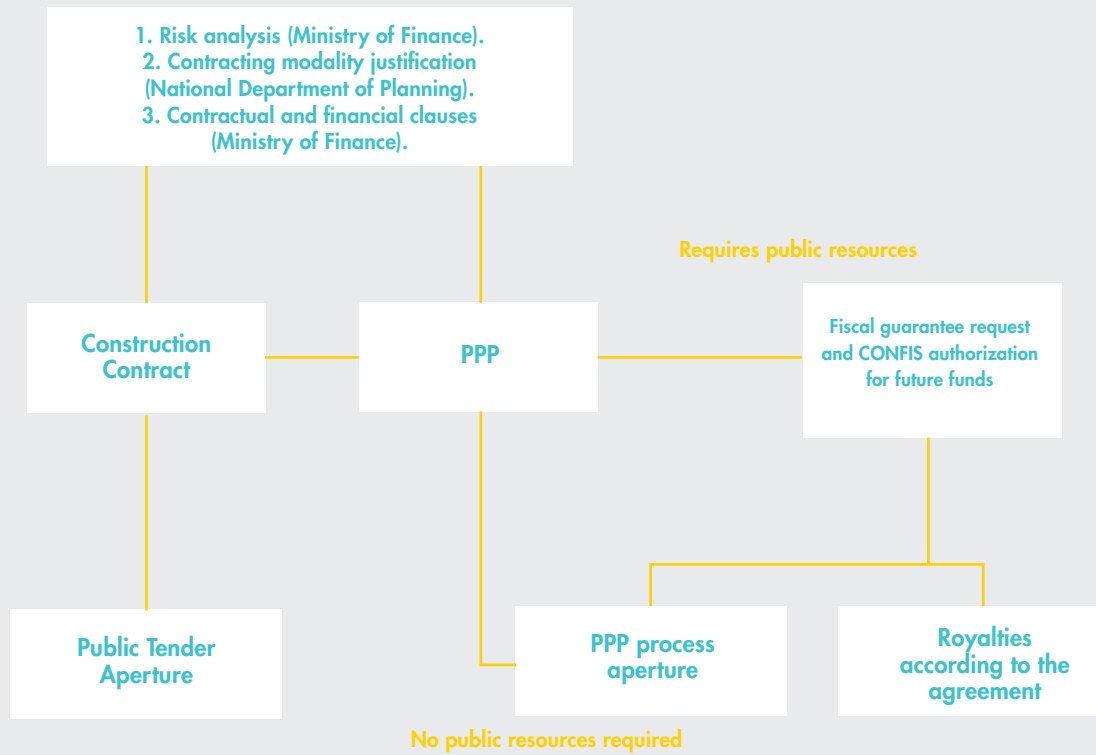
In PPPs of public initiative, the additions may not exceed 20% of the value of the contract originally agreed. In this contracts, the extensions in time shall be valued by the competent state entity. Requests for additions of resources and the value of the extensions in time added, may not exceed 20% of the value of the contract originally agreed.

However, in the case of private initiative PPPs with public resources, the additions of resources to the project may not exceed 20% of the disbursements of the public resources originally agreed. In this contracts, the extensions in time shall be valued by the competent state entity. The requests for additions of resources and the value of the extensions in time added, may not exceed 20% of the disbursements of the public resources originally agreed upon.

8 Ibid.



Finally, within the framework of private initiative PPPs without public resources, they can only be extended up to 20% of the initial term.



Source: National Department of Planning. PPP on infrastructure on Colombia. December 2016.



(iii) Selection Process

The selection process begins by carrying out a cost-benefit analysis of the project, taking into consideration its economic, social and environmental impact for the population that is directly affected. Special attention will be paid to the documents of this analysis and to the structural design of the project considering the ones with a technical, socioeconomic, environmental, real estate, financial legal character (structuring), as well as risk definition, classification, calculation and allocation by means of the preparation of the risk matrix for the project.

The private partner will then be selected by means of a prequalification process, a public call or a public tender.

The selection must follow the principles established in Law 80 of 1993 and Law 1150 of 2007, which defines an objective selection as that in which the most favorable offer to the interests of the entity is the chosen offer, based on objective factors previously determined in the RFP or any other equivalent document.

(a) Private Initiatives of PPP

(i) General Considerations

Private initiatives refer to the fact that the originator of the idea or intention to carry out a project is of someone other than the State (the Originator), who must carry out all the studies required, as indicated above. There are two types of private initiatives, those that require public funding and those that are privately funded.

Private initiative PPP projects, whether involving public or private funding, require that the Originator has the capacity to structure them, assuming all the implied costs. The submission of the project is confidential. The structuring process consists of two stages:

- Prefeasibility: The Originator must make a complete and adequate description of the project indicating the minimum design in the prefeasibility stage, construction, operation, maintenance, organization and exploitation of such estimated cost and financial source (Prefeasibility Stage).

- Feasibility: The Originator shall provide documentary evidence of its legal and financial capacity or of its financing potential, its experience in investment or structuring and the value of the project; also, it is necessary to present the financial model detailing and formulating the value of the project, a detail description of the stages and length, a justification for the contract length, a risk assessment of the project, an environmental, economic and social impact studies, and studies of technical feasibility, economic, environmental, real estate, financial and juridical status of the project (Feasibility Stage).



Additionally, the originator must take care of the costs involved in the evaluation of their initiative, taking into account the number of professionals required to do so. These costs may not exceed 0.2% of the total CAPEX value of the project, this for each of the evaluation stages (feasibility and pre-feasibility).

The public-private partnership law provides terms for the state entity to determine whether or not the proposal is in line with the policies for the industry and the priorities set for projects, without granting any rights to the Originator. In case the initiative is not rejected in the Prefeasibility Stage, the structuring of the project will continue, initiating the Feasibility Stage, in which the State analyses the structuring submitted by the Originator.

(b) Private Initiative PPP with Public Funds

(i) Public Contributions

Public contributions destined to the completion of the project may be in kind or in the form of disbursements from the public entity's budget, which cannot exceed 30% of the total budget of the project; in the case of road infrastructure projects, such contributions may not exceed 20% of this purpose, neither contributions in kind of local authorities, nor the resources arising from the economic exploitation of infrastructure are considered public budget.

This implies that the entity to which the proposal is submitted must have available assets (if the contribution is in kind), the necessary funds or the authorization to commit such funds, in order to carry out the project or service proposed in the initiative.

(ii) Selection Process

Once the Prefeasibility and Feasibility stages have been completed, and provided that the initiative has been deemed viable, in order to guarantee the transparency in the use of the public funds and the right to equality, a selection process must be carried out.

The Originator shall obtain bonus points during the selection process, ranging between 3% and 10%, depending on the complexity of the project, as compensation for assuming the burden of structuring the project.

If, as a result of the public tender process, the Originator is not chosen, it shall have the right to be reimbursed with the costs of the structuring previously approved by the public entity.

⁹ Ley 1508 de 2012.



(c) Private-Initiative PPP with Private Funds

(i) Selection Process

Once the Prefeasibility and Feasibility stages have been completed, and provided that the initiative has been deemed viable, in order to make the initiative public, the documents supporting the structuring of the project must be published on the SECOP website for at least one month and for a maximum of six months.

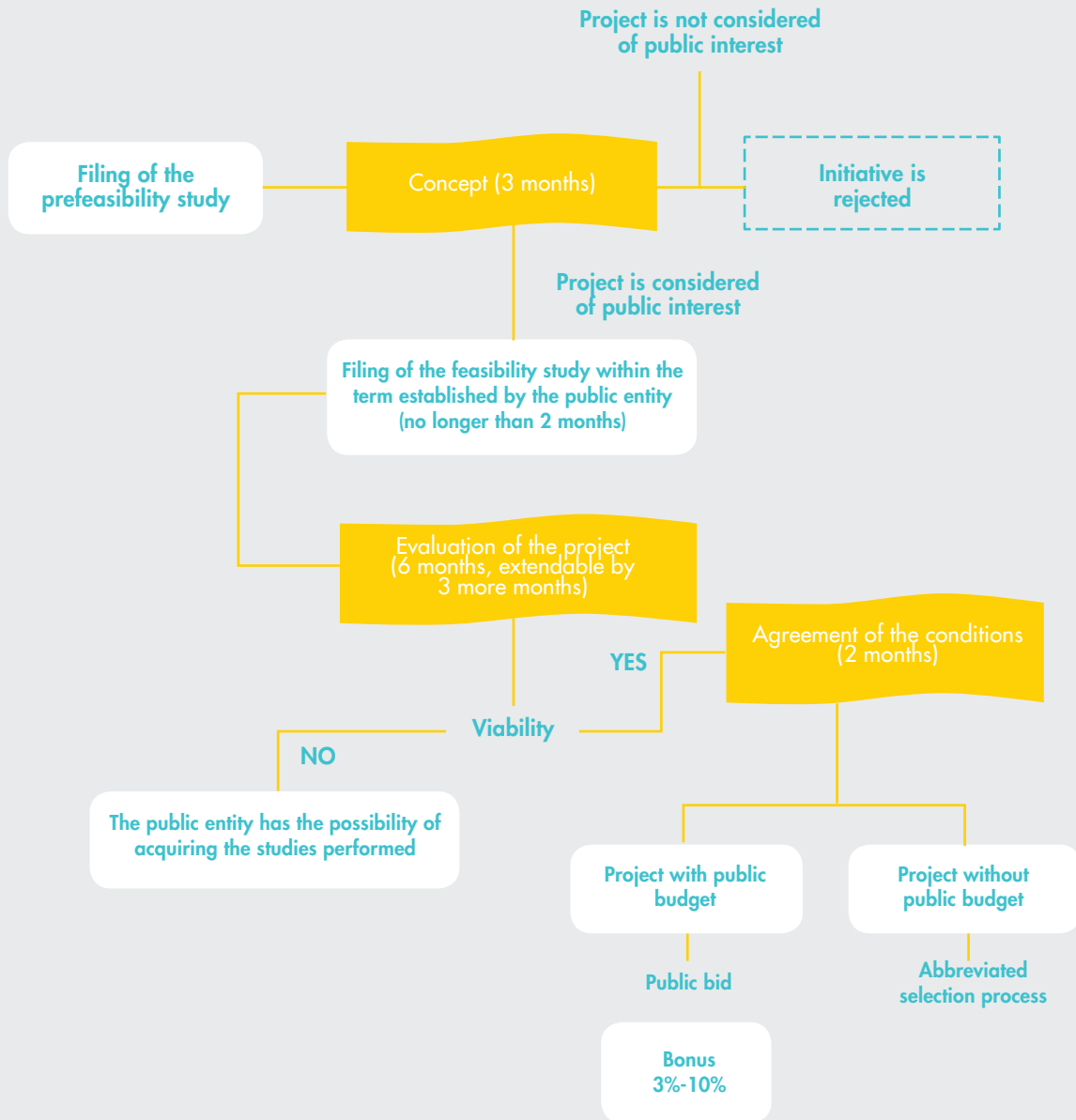
If during the time these documents are on the website, nobody expresses an interest in developing the project, aside from the Originator, then the state entity may directly contract the Originator.

However, if a third party expresses an interest in executing the project on the same basis that it shall not require public funding, it must guarantee the offer with an insurance policy, a bank guarantee or any other guarantee authorized by law and submit evidence of its legal and financial capacity and of its experience in investment or structuring of projects to develop the project in question.

In the event that there are interested third parties, the entity must open an abbreviated selection process for a low-value contract with prequalification, which includes the Originator and all other interested parties that have submitted a guarantee.

If after the evaluation of the offers, the Originator's proposal is not the most favorable to the entity, the Originator may submit within ten days after the publication of the evaluation report a new offer trumping the offer submitted by the best qualified bidder. If the Originator improves the proposal, it will be awarded with the contract; otherwise, the Originator is entitled to be reimbursed with the costs of structuring the project from the successful bidder.

The following chart shows a step by step process to present a PPP of private initiative:





11.11. Residential Utilities

The regime of residential utilities (SPD in Spanish) is regulated by a special set of regulations different from those of government contracting. Due to the importance of this industry, and the extensive development that it has had in the past 20 years in Colombia, the most relevant aspects of such regulations are explained below.

11.11.1. General Aspects

SPDs are subject to regulations laid down by law and these services may be provided directly or indirectly by the State, by organized communities or by private entities. In any case, the State shall guarantee their provision, and has the power to regulate, control and supervise these services.

The following are the SPD regulated by law: (i) water; (ii) sewage; (iii) waste management; (iv) electricity; and (v) gas distribution. Residential public utilities are considered essential and therefore, public utility companies' employees are not entitled to the right to strike. There is a special legal regime for the generation, interconnection, transmission, distribution and marketing of electricity. It is worth pointing out some of the aspects of this legal regime, as follows: (i) the Nation or the territorial entities may allocate the provision of electricity to a private or public legal entity, or to PPP by means of a concession contract; (ii) the contract's remuneration consists of the rate or the price that the users pay, pursuant to the regulation; and (iii) companies incorporated after 1994, for the provision of electricity may only perform one of the activities related to this service, with the exception of marketing which can be carried out simultaneously with generation or distribution; and iv) the applicable contracting regulation to the provider of the services of generation, interconnection, transmission, distribution and commercialization of electric energy will be that applicable to private agreements, notwithstanding the Commission of Regulation of Energy and Gas (CREG in Spanish) can demand the inclusion of exceptional clauses to some of the agreements executed by the entities.

11.11.2. General Principles of Residential Public Utilities

The provision of SPD is regulated by a series of principles that govern the performance of this activity such as economic freedom, equality, continuity, regularity, efficiency and freedom of entry to the market.

Some of the most important aspects of such principles are:

- Economic freedom implies that duly incorporated and organized public services companies do not require any permit to develop their activities in Colombia
- In the context of economic freedom, public service companies may declare an asset to be of public utility or social interest to obtain its expropriation or the imposition of rights of way or easements
- The principle of equality in SPD is reflected in the concept of "rate neutrality," according to which every consumer has the right to have the same rate treatment as the others if the characteristics of the services are the same
- The provision of public utilities cannot be interrupted except for reasons of force majeure, unforeseeable circumstances, scheduled rationings or technical repairs
- Passing on to users the costs of managerial inefficiencies is absolutely forbidden

10 La telefonía pública básica conmutada y la telefonía local móvil en el sector rural hacían parte de la lista de servicios públicos domiciliarios incluidos en la ley 142 de 1994, pero con la expedición de la ley 1341 de 2009 pasaron a ser regulados bajo a una normatividad especial, quedando regulados por la ley de servicios públicos aspectos muy puntuales de su actividad.



- Any national or foreign person has the right to organize and operate companies that include in their corporate purpose the provision of SPD in Colombia, as long as the Constitution and the law are respected

11.11.3. Applicable Legislation

The legal regime applicable to acts and contracts involving providers of SPD is that of private law. This means that government contracting law and the regulations on government contracting processes do not apply to residential public utilities.

Following, the National Agency for Public Procurement –“Colombia Compra Eficiente”– in fulfillment of its objective as governing body of the system of purchase and public contracting, established the conditions of publicity of the contractual activity of the industrial and commercial companies of the State. Companies of mixed economy and the companies of public utilities that in their commercial activity are in situation of competition. They may use their own information systems for the purpose of making public the contractual activity, when they are allowed to undergo the contracting process online; in addition to allowing suppliers and the general public to have timely, permanent and uninterrupted access to information. Their contractual activity and the information of the contractual activity must comply with the deadlines and requirements of the applicable regulation regarding contracting and access to information, with obey to reserved information and documents pursuant to applicable regulations. In order for public procurement information to be available to the general public, –“Colombia Compra Eficiente”– and designated entities that have their own information systems, must have a hyperlink that communicates to the SECOP

11.11.4. Authorized Providers of Public Utilities

Persons authorized to provide public utilities in Colombia are: companies incorporated as public utilities companies (ESP in Spanish), commercial and industrial companies of the state, organized communities, marginal producers and municipalities. Note that ESPs are stock companies incorporated to provide public utilities or complementary activities and may attract capital contributions from national and/or foreign investors.

11.12. Investment opportunities in Colombia

Colombia has a set of investment opportunities related to different infrastructure sectors. These sectors require huge investments in order to comply with the development plans, as detailed below:



TRANSPORTATION	
Item	Inversión requerida COP\$
Road network intervention (19,500 kms.)	182 billion (USD60.600.000.000 approx.)
Construction of 31 airports	16 billion (USD5.300.000.000 approx.)
Rail network rehabilitation (1,800 kms.)	10 billion (USD3.300.000.000 approx.)
Total	208 billion (USD69.000.000.000 approx.)

RIVER TRANSPORTATION	
Item	Inversión requerida COP\$
Amazon basin	5.4 billion (USD1.700.000.000 approx.)
Orinoco basin	2.5 billion (USD660.000.000 approx.)
Atrato basin	76,354 million (USD25.600.000 approx.)
Magdalena basin	407,914 million (USD135.600.000 approx.)
Pacífico basin	346,007 million (USD115.300.000 approx.)
Total	8,8 billion (USD3.000.000.000 approx.)

National Department of Planning. PPP on infrastructure on Colombia. December 2016



INFORMATION AND COMMUNICATION TECHNOLOGIES

Item	Inversión requerida COP\$
7,000 additional communication towers	1 billion (USD333.333.333 approx.)
Total	1 billion (USD333.333.333 approx.)

PUBLIC UTILITIES

Item	Inversión requerida COP\$
Energy-Transmission and distribution investment	4.3 billion (USD1.333.333.333 approx.)
Aqueduct- universal coverage and construction of potable water treatment plant	29.2 billion (USD9.600.000.000 approx.)
Basic sanitation- Construction of PTAR in the the country's watersheds and universal coverage	14.2 billion (USD 4.600.000.000 approx.)
Sanitation utility- solid residuals treatment	3.3 billion-(USD1.000.000.000 approx.)
Total	51 billion- (USD17.000.000.000 approx.)

HOUSING

Item	Inversión requerida COP\$
Familiar subsidies for social interest housing (410,000 subsidies)	7.7 billion (USD23.300.000.000 approx.)
Credits for social interest housing closure (138,000 credits)	17.3 billion (USD5.600.000.000 approx.)
Credits for house purchase	12.5 billion (USD4.000.000.000 approx.)
Saving contribution of 240,000 home for financial closure	53 billion (USD17.600.000.000 approx.)
Total	90.5 billion (USD30.000.000.000 approx.)



Regulatory Framework

NORMA	TEMA
Civil Code	Regime applicable to private parties
Code of Commerce	Regime applicable to private parties
Law 80 of 1993	Government contracting law
Law 142 of 1994	Public utilities law
Law 143 of 1994	Regime for the interconnection, generation, transmission, distribution and trading of electric energy
Law 1150 of 2007	Amends Law 80 and forms part of the contracting statute
Law 1508 of 2012	Public-private partnerships
Law 1450 of 2011	National development plan
Law 1474 of 2011	Anti-corruption statute
Law-Decree 019 of 2012	Reducing of processes
Law 1712 of 2014	Transparency and Right to access to the public information of the Nation Law
Decree 1082 of 2015	Decree that unifies and regulates the Administrative Sector of National Planning
Decree 103 of 2015	Partially regulates law 1712 of 2014 regarding management of public information
Decree 092 of 2017	Regulates contractual provision regarding nonprofit entities, following article 355 of the Constitution
Law 1882 of 2018	Infrastructure Law





LEGAL **GUIDE**

TO DO BUSINESS IN COLOMBIA

2 0 1 8

CHAPTER **12**

**ACCOUNTING
REGULATIONS FOR
COMPANIES**



ACCOUNTING REGULATIONS FOR COMPANIES

Seven aspects investors should know about accounting regulations applicable to companies in Colombia:

1

Colombia adopted the International Financial Reporting Standards (IFRS) and classified companies in two groups: Entities classified in Group I are required to prepare its 2015 and future financial statements under full IFRS. Entities classified as Group II will prepare their 2016 and future financial statements under the accounting framework of IFRS for SMEs.

All natural and legal persons who present financial information in Colombia must apply the regulatory framework that applies based on their individual characteristics or that is voluntarily adopted. Change of the applicable accounting framework can only occur after presenting at least two comparative financial statements under the same framework.

2

The convergence process to IFRS impacts the processes and operations of businesses. Not simply accounting and finance areas. Careful implementation will be required such that all areas in the business are aligned.

3

New IFRS rules issued by the IASB¹ are not immediately adopted in Colombia. There is a process by which those rules are reviewed by government. As such differences may exist between Colombian-adopted IFRS and full IFRS as issued by IASB. IFRS adoption is a significant step of Colombia towards internationalization and good corporate governance practices.

¹ International Accounting Standards Board

4

For tax purposes, according with the 2016 tax reform (effective as of 01-01-2017), the accounting bases will be the starting point to calculate taxes plus or minus certain specific adjustments. Even when the Colombian tax code adopted IFRS concepts and created a strong link between accounting and tax there are still significant differences.

5

The tax reform requires taxpayers to maintain a "reconciliation system" between accounting and tax bases. Nevertheless, there will be new regulations issued by outlining the characteristics of such reconciliation system, which may result in further developments to the existing libro fiscal (tax book), used through 2016 to reconcile IFRS and the amounts for tax purposes.

6

In Colombia, International auditing standards were adopted.

7

In Colombia the process of electronic invoice started and it will be mandatory for all companies some start the process on September 1, 2018 and others on January 1, 2019, which means a significant advance in the digital transformation procedure for the accounting in the country.



14.1. General Rules

In Colombia, Law 1314 of 2009 proposed the convergence of Colombian accounting principles to the International Financial Standards-IFRS. Subsequently, additional rules established the criteria and dates of implementation, classifying the companies into three groups, according to certain characteristics. The government Superintendencies have been in charge supervising the different stages of implementation.

For that purpose, financial statements were prepared under IFRS and respective interpretations, as translated into Spanish and issued by the IASB at 31 of December 2012 with certain exceptions .

For small and medium-sized entities, Colombian rules determined that the standards to be used should be the latest translations of international financial reporting standards for small and medium-sized entities (IFRS for SMEs) as issued by the international accounting standards board as of December 31, 2009.

Finally, through Decree 302 of February 20, 2015, the Colombian Government issued the following rules of Securing Information that will be in force by January 1, 2016

ISA: International Auditing Standards

IQAS: International Quality Assurance Standards

ISRE: International Standards on Review Engagements

ISAE: International Standards on Assurance Engagement

ISRS: International Standards on Related Services

Ethics Code for Professional Accountants

These standards are going to be mandatory for auditors of companies from group 1 and companies of group 2 that have assets in excess of 30.000 minimum monthly legal wages ("SMLMV" approximately USD 7.4 million for 2017) or more than 200 employees.

14.2. Adoption of International Accounting Standards

On July 13, 2009 the Colombian Congress enacted Law 1314, which establishes a new framework of accounting, financial information and information assurance rules.

Colombia decided to have as reference the International Financial Reporting Standards IFRS as issued by IASB. This decision was made after of taking into consideration the recommendations issued by the Public Accountancy Technical Board (Consejo Técnico de la Contaduría Pública -CTCP, in Spanish) and the various ad honorem technical committees established by Law 1314 of 2009. It is worth mentioning that the CTCP is the standard body established by Law 1314 jointly with the ad honorem technical committees, which are mainly conformed by representatives of Colombian companies and of the business community in Colombia, through various industry groups. As such, the process carried out by the Government as regards internationalization of financial and accounting matters has been highly participative.

² Decrees 2784 of December 2012 and 3024 of December of 2013

³ Law 1314 of 2009 for group 1, regulated by Regulatory Decree 2420 of 2015, partially modified by Decree 2496 of 2015

⁴ Law 1314 of 2009 for group 2 and regulated by the single regulatory decree 2420 of 2015, modified by decree 2496 of 2015



Additionally, the International Accounting Standards (IAS) as issued by the International Federation of Accountants (IFAC) were defined as the reference framework for assurance rules in Colombia.

After enactment of Law 1314 of 2009, new regulations were issued. The most recent are:

1. Decree 302 of 2015 regarding norms of assurance of the information.
2. Decree 3019 of December 27th of 2013 which modifies the Technical Regulatory Framework for microenterprises, annexed to Decree 2706 of December 28th of 2012.
3. Decree 3022 of December 27th of 2013 which regulates Law 1314 of 2009 regarding the technical regulatory framework for preparers of financial information that make up group 2.
4. Decree 3023 of December 27th of 2013, which partially amends the financial reporting technical regulatory framework for preparers of financial information that constitutes group 1, contained in Decree 2784 of December 29th of 2012.
5. Decree 3024 of December 27th of 2013, which modifies Decree 2784 of December 29th of 2012 and dictates further regulations.

Such decrees confirm the recommendations for moving forward to IFRS and information assurance in Colombia; such recommendations include the creation of different groups to implement the new rules on accounting and financial information. Three groups were defined, as follows:

14.2.1. Group 1

Companies to fully apply the IFRS as issued by the IASB. These companies are:

- Securities issuers: Entities and trust businesses that have securities registered in the National Registry of Securities Issuers (RNVE in Spanish) as stipulated in Article 1.1. 1. 1. 1 of Decree 2555 of 2010
- Public interest entities and businesses,
- Entities that do not fall under the mentioned categories and meet the following conditions; (i) head count of more than 200; or (ii) total assets higher than 30,000 minimum monthly legal wages (approximately USD7.4 million), and which additionally meet any of the following conditions:
 - Are subsidiaries or branches of foreign companies that fully apply the IFRS
 - Are subsidiaries or parent of companies mandated to fully apply the IFRS
 - Are parent of associated with or make a joint enterprise with one or more foreign companies that fully apply IFRS
 - Their imports or exports represent more than 50% of purchases or sales, respectively

The calculation of the number of employees and total assets, referred above is based on the 12-month average for the year prior to the period of compulsory preparation as defined Article 3 of Decree 2784 of 2012, or the year immediately preceding the period in which the obligation to implement the Technical Regulatory Framework as set forth in this Decree, in periods subsequent to the period of compulsory preparation.

⁵ In the case of service entities, the share of imports is measured by the costs and expenses abroad and exports by revenue. When importing materials for the development of its corporate purpose, the percentage of purchases will be established by adding the costs and expenses incurred abroad plus the value of imported raw materials. Purchases and sales of fixed assets are not included in the mentioned calculation.



For branches and subsidiaries of entities that report under full IFRS, the number of employees will exclude those individuals that provide consulting or advisory services, and will only include individuals performing direct and personal services to the entity in exchange for a fee, regardless of the legal nature of the contract.

Pursuant to the provisions set out in Paragraph 1 of Article 1 of Decree 2784 of 2012, public interest entities and business are those which, upon approval by the competent authority, capture, manage or administer public resources, and are classified as:

a) Banking institutions, financial corporations, finance companies, financial cooperatives, top grade cooperative organizations and insurers.

b) Capitalization societies; commission agent companies; exchange; management companies and private pension funds layoffs; trust companies; stock exchanges; exchanges of goods and agricultural products; agro industrial or other commodities and its members; securitization companies; stocks of goods clearinghouses and agriculture; agribusiness or other commodities; management companies centralized securities; deposits chambers risk product; central counterparty; investment management companies; brokerage exchange and special financial services companies; funds from voluntary and mandatory pensions; unemployment funds; collective investment funds and those set forth by Law 546 of 1999, and Decree 2555 of 2010 and others that meet this definition.

Further, paragraph 2 stipulates that portfolios managed by third party brokerage firms, business trusts and any other special vehicle managed by entities supervised by the Financial Superintendence of Colombia shall contractually establish whether or not to apply the technical regulatory framework set out in the Annex of Decree 2784 of 2012.

14.2.2. Group 2

This group of companies shall apply the IFRS for SMEs as issued by the IASB, with voluntary application of full IFRS as determined for Group 1. This group is made of large companies that do not meet the conditions of group 1 and of medium-size and small companies with revenues equal to or higher than 15,000 SMLMV (approximately USD3.7 million).

14.2.3. Group 3

A simplified accounting system as set forth by Decree 2706 shall be applied to this group of companies. Such decree is a compilation of concepts under the IFRS for small and medium-sized enterprises (SMEs) as issued by the IASB and the ISAR rules issued by UNCTAD. This group is made of individuals or legal entities that meet the criteria set forth in section 499 of the Colombian Tax Code and subsequent regulations, and small businesses that do not meet the conditions of group 2.

Permanence



The financial information preparers that are part of Group 1 based on compliance with the conditions established by Decree 2420 of 2015, in article 1.1.1.5, shall remain in such group for a term of not less than three (3) years, counted from its opening statement of financial position, or from its initial statement of financial position in Colombia (which will correspond to the one reported to external users at the beginning of the period immediately prior to the first reporting date based on regulatory technical frameworks in force for Group 1, making the adjustments practicable for changes in accounting policies or errors amendments as provided by these frameworks, regardless of whether in that term they no longer meet the conditions to belong to such group. Two periods of comparative financial statements according to the normative framework in force for Group 1. Once this term has been completed, they will assess whether they should belong to another group or continue in the selected group.

The entities that decide to remain in Group 1 must inform the controller entity, or leaving the relevant evidence to be displayed before the authorities authorized to request information, if they are not directly monitored or controlled by anybody.

Application for entities from Groups 2 and 3.

The entities that belong to Groups 2 and 3 and then meet the requirements to belong to Group 1, must adhere to the procedures established in Decree 2420 of 2015, in article 1.1.1.6 for the first time application of this normative technical framework. In these circumstances, they must prepare their opening statement of financial position at the beginning of the period following the one that is decided or the change is mandatory, based on the evaluation of the conditions to belong to Group 1, made with reference to the information corresponding to the period prior to the one in which the decision is made or the obligatory nature of group change is generated. Subsequently, they must remain at least three (3) years in Group 1, and must present at least two periods of comparative financial statements.

14.3 Accounting policies adopted in the Financial Statements presented in accordance with IFRS

IFRS 1 and Section 35 (SMEs) require an entity to use the same accounting policies in its opening financial statement, for all periods presented in its IFRS financial statements. Such accounting policies must comply with the accounting and financial reporting standards accepted in Colombia in effect as of the end of reporting period, except as it is specified in IFRS 1 and in section 359 and 35.10 (e.i. When the exceptions provided for in IFRS 1 and section 35.9 prohibit retroactive application or when an entity uses any of voluntary exemptions provided by IFRS 1 and section 35.10).

In Colombia, a Decree is required for an IFRS rule to be included in Colombia's Technical Regulatory Framework, which will contain all approved Spanish versions of the standards that will apply each year. This inclusion implies a delay between the issuance of the standard by the IASB and its application in Colombia.

These companies were also required to report the separate and consolidated financial statements as of each year to the Superintendence, under the XBRL language, between April and May according to the ID number of the company.

Latest modifications:

On December 14, 2015, the Colombian Ministry of Commerce, Industry and Tourism issued the Single Regulatory Decree (DUR) 2420 with the objective of compiling and rationalizing the regulatory standards issued under



Law 1314 of 2009, which governs accounting information, financial information and assurance of information in Colombia and thus have a unique legal instrument.

During 2016, the Ministries of Commerce, Industry and Tourism, and Finance and Credit Issued decrees 2101 2131 and 2132 of 2016, which modified Decree 2420 of 2015 –DUR as its acronym in Spanish– Unified Decree of the accounting, financial reporting and information assurance standards. The main topics are treated in each of the mentioned decrees are the following:

Decree 2101 of 2016

Title 5 is added to the existing regulatory framework, which contains the Financial Information Standards for entities that do not comply with going concern assumption, which is a fundamental principle for the preparation of the general purpose financial statements of an entity.

An entity is considered to comply with this principle when it has the ability to continue its operations for the foreseeable future without the need to be liquidated or to cease operations. Through it, it is added title 5 to part 1 of the book DUR 2420 of 2015 and is added annex 5.

This regulative framework operates for private companies that start dissolution or liquidation processes as of January 1, 2018.

Decree 2131 of 2016

Certain changes are made to the regulatory technical framework of the IFRS for Group 1 by incorporating Annex 1.2 of DUR 2420, 2015 that has modifications to IAS 7 Change in financial position, IAS 12 income tax and IFRS 15 income of ordinary activities precedent from agreements with clients. These changes will be effective as of January 1 of 2018.

Likewise, Title 2 of Decree 2420 of 2015 compiled the regulatory regime for Group 2 entities, which was initially regulated under Decree 3022 of 2013. This Decree was also included as Annex 2, the respective technical framework that was an integral part of the latter Decree.

However, the compilation and mechanical reproduction of this technical framework did not include Section 23, revenue from ordinary activities, which is part of it; so it is necessary to incorporate it in Annex 2 of Decree 2420 of 2015, to be part and remain in force next to the aforementioned technical framework.

Decree 2132 of 2016

The technical framework of the International Audit Standards IAS is partially modified by annex 4.1 of the decree, which will come into effect as of January 1, 2018, and has as main novelty the incorporation of the International Standard of Audit Practices 1000.

For 2017, and according to changes in accounting regulations in the country, derived from the implementation of International Financial Reporting Standards (IFRS), in which recognition of operations is based more on the economic reality of companies than in the current tax regulations; it was established that as of the end of 2016 all companies in Colombia, regardless the group designated for transition process, will present their financial



information under international accounting guidelines, for which new companies should take into account its business projections, since this will determine the application of the regulatory decrees related to the recognition of financial information.

Decree 2170 of 2017

For 2017, the Commerce, Industry and Tourism Ministry issued decree 2170 in which partially modified the technical frameworks of the regulations for the financial information and information assurance. In this decree, the following regulations and modifications were included and will come into force as of January 1, 2019.

International financial reporting standards 16 referring to Leasing, the amendment (modification) of IAS 40 Investment Property, as well as the amendment of IFRS 2 Payments based on investments, and IFRS 4 Insurance agreement; as well as the annual improvements of the cycle for 2014-2016 issued by IASB in the second half of 2016.

An important amendment this decree brings is related to the modification in the final section of paragraph 29.13 of IFRS for PYMES (technical annex 2.1) which came into force from December 22, 2017.

Related to the information insurance framework, it is added annex 4.2 that modifies annex 4. More relevant changes are in the report prepared by the public accountant as statutory auditor or external auditor, in accordance to its opinion.

These amendments are applicable as of the second following taxable year of the decree issuance, this is, January 1, 2019.

Finally, this decree brought in the revised flowchart of paragraph A47, of NIA 600, in page 548 of the technical annex 4.1 that is part of Decree 2132 of 2016; and included in the appendix section of Decree 2420 of 2015 for its recognition and application.

Following are the characteristics to be taken into account by each company for the application of the current regulations related to the recognition of financial information under international standards:

COMPANY TYPE	DECREE	EMPLOYERS	ASSETS
MICROENTITIES	2706 and 2012	<10	<500 SMLMV
PYMES – SMEs	3002 and 2013	>100 -<200	>500 -< 30.000 SMLV
PLENAS – FULL	2784 and 2012	>200	>30.000 SMLMV

In addition to the above, for the application of full IFRS, the following should be considered:

- a) Issuers of securities;
- b) Public interest entities
- c) Entities that are not issuers of securities nor entities of public interest, that also meet any of the following requirements:

I. Be subordinate or branch of a foreign company applying IFRS

II. Be a subordinate or parent of a national company that must apply IFRS



III. To have imports (foreign payments, if it is a service company) or exports (foreign income, if it is a service company) that represent more than 50% of purchases (expenses and costs, if a service company) or sales (income, in the case of a service company), respectively, of the year immediately preceding the reporting year

IV. Or be a parent, associate or joint venture of one or more foreign entities applying IFRS

14.4. Important Considerations in IFRS Adoption

14.4.1. Consequences of the Change to IFRS for Companies

The change to IFRS is one of the most significant changes for companies in Colombia. The changes are not limited to the financial function of companies. Conversion is not only a technical accounting task, but a change that has an effect on many business areas. Any and all business functions required to prepare financial information, or affected by financial information, are potentially impacted. Companies must expect changes in net earnings and in financial position. Below we present some examples of potential results for the businesses key areas:

14.4.1.1. IT and Information Systems

- Extended disclosures required by IFRS and changes in the presentation of financial statements giving rise to a new set of information
- Opportunities to automate the measure and assessment of transactions and the timing of recognition/derecognition
- Conversion calculations for entities with functional currencies different from the Colombian peso

14.4.1.2. Compensation Plans for Executives and Employees (Human Resources)

- Performance based on recognition and executive compensation tied to profitability
- Setting employee goals and evaluation based on the IFRS global success and the effective management of resources
- Scarcity of IFRS resources in general, resulting in a review of compensation programs and retention of finance and accounting key personnel

14.4.1.3. Foreign Currency and Coverage Activities (Treasury)

- Different criteria as regards to which is qualified as acceptable coverage or coverage element
- Criteria basically different for the derecognition of financial instruments and principles regarding securitizations

14.4.1.4. Corporate Taxes (Taxes)

- New accounting base for assets and liabilities and the impact thereof on future deferred tax balances
- Robust deferred tax calculations that require keeping track of book and tax bases of assets and liabilities, using enacted tax rates that apply when temporary differences reverse



14.4.1.5. Financial Ratios and Arrangements (Finance and Treasury)

- Volatility of financial ratios and key indicators arising from electing between an accounting system based on cost or on fair value
- Impact on financial arrangements arising from the changes in the balance sheet and the statement of income

14.4.1.6. Internal Controls and Processes (Finance)

- Changes and new documentation of internal controls associated with financial reporting, particularly as regards the following processes: closing of financial statements, taxes, financial instruments, property, plant and equipment, and property for investment, and the relevant valuations thereof
- Changes to accounting policies and procedure handbooks on the grounds of the election out of the policy options provided by the IFRS
- Review of controls on disclosures and certification procedures-to-adjust to improved and more robust disclosures as per the IFRS

14.4.1.7. Investor Relations and Communications to the Capital Markets (Finance and Investor Relations)

- Improved communication with analysts and investors around accounting differences and the underlying justification to elect a certain IFRS policy, among others
- Timely communication of the company's strategy to explain the volatility of changes in its financial statements

14.4.1.8. Management Report (Finance)

- Review of the company's long and short term strategic plans while obtaining full understanding of movements during transition years
- Changes in plans and internal budgeting criteria on the grounds of the review of financial ratios, new recognition/derecognition in assets and liabilities and measuring rules

14.5. Electronic Billing

As of January 1, 2018 all entities in the country are bound to implement electronic billing as the only way for booking its transactions.

To comply with Decree 2242 of the DIAN (Tax Authority), the entity implemented the generalization of the new model by revoking the previous physical billing.

All companies must use this new method when billing, therefore, entities should start with the adaptation and personnel training to comply with such decree.

What is electronic billing?

Both electronic and physical billing allow the transactions of assets' sale and/or services that comply with the characteristics and shipping conditions, acceptance, rejection and conservation. Companies required to invoice must use the electronic billing mechanism to deliver it to the acquirer.



Which are the benefits of implementing the electronic billing for companies?

These are the main benefits for companies that implement electronic billing

- Delivery time of the invoice, instead of days are minutes
- Improves data quality, electronic documents are controlled
- Exponential increase in the invoice process of acceptance and rejection by improving the posting time up to three days
- Positive impact in the cash flow because of the posting improvement
- Reduction is costs related to billing up to 85%

Who are required to implement the electronic billing?

1. Natural or legal person that are bound to bill and are selected by the DIAN to issue the electronic billing (required)
2. Natural or legal person that are bound to bill and select the issuance of electronic billing (volunteers)
3. Natural or legal person that not being bound to bill and according with the Tax Code and/or regulations, decide to issue an electronic bill (volunteers)

Steps to implement the electronic billing

- Fiscal process: Get the enablement in the DIAN. The resolutions of the DIAN that set which taxpayers are bound to bill electronically, will come into force in a term no lower than six months
- Technical process: Carry out the appropriate activities to design, build or acquire the technological solution to perform the electronic billing whether directly (own resources) or through a Technological supplier such as Carvajal Tecnología y Servicios

RELEVANT INFORMATION

1. Electronic billing will be mandatory in Colombia
2. Who implements the electronic billing must do it 100% of all its invoices
3. Who uses the electronic billing cannot issue, if the case, the electronic billing referred in Decree 1929 of 2007, the computer billing set in article 13 of 1165 of 1996, nor the stub billing
4. Prove the DIAN with an exact sample on the Invoices/Notes in a term of 48 hours
5. Decree 1929 is in force until January 2018 for those who enabled the DIAN procedure before November 24, 2015
6. Electronic billing could be Security once the Decree of the electronic billing regulated by Law 1231 of 2008 is issued



Regulatory Framework

REGULATORY FRAMEWORK:RULE	SUBJECT
Decree 2649 of 1993	General accounting regulations
Decree 2650 of 1993	Unique chart of accounts for merchants
Law 1314 of 2009	Colombian accounting change to International Financial Reporting Standards and Information Assurance Act.
Decree 1955 of 2010	Partially modifies the structure of the Central Board of Accountants and sets forth other regulations.
Decree 3567 of 2011	Sets forth the organization and operation of the Technical Board of Public Accountancy.
Decree 3048 of 2011	Whereby the Intersectoral Commission for IFRS is created.
Decree 2706 of 2012	Technical Regulatory Framework for microenterprises.
Decree 2784 of 2012	Technical regulatory framework for Group 1.
External Resolution 115-000002 de 2012	Conversion process to IFRS.
External Resolution 01 of 2013	Conversion plan to IFRS for Group 1.
Decree 1851 of 2013	Whereby the technical regulatory financial reporting framework for preparers of financial information in the Group 1 contained in the annex to Decree 2784 of 2012 is partially modified.
Decree 3019 of 2013	Modifies the Technical Regulatory Framework for microenterprises, annexed to Decree 2706 of December 28th of 2012.
Decree 3022 of 2013	Regulates Law 1314 of 2009 regarding the technical regulatory framework for preparers of financial information that make up Group 2.
Decree 3023 of 2013	Partially amends the financial reporting technical regulatory framework for preparers of financial information that constitutes Group 1 and is contained in Decree 2784 of December 29th of 2012.
Decree 3024 of 2014	Modifies Decree 2784 of December 29th of 2012 and sets forth other regulations.
Decree 2129 of 2014	By which a new deadline for preparers of financial information that make up the Group 2 comply with the provisions in paragraph 4 of Article 3 of the Decree No. 3022 of 2013.
Decree 2267 of 2014	Partially modifies Decrees 1851 and 3022 of 2013 and sets forth other regulations.
Decree 2548 of 2014	Regulates Article 4 of Law 1314 of 2009, Article 165 of Law 1607 of 2012 and Articles 773 and 774 of the Tax Code.
Decree 3022 of 2013	Regulates Law 1314 of 2009 regarding to the technical regulatory framework for preparers of financial information that belong to Group 2.



REGULATORY FRAMEWORK:RULE	SUBJECT
Decree 3023 of 2013	Partially amends the financial reporting technical regulatory framework for preparers of financial information that belong to Group 1 and is included in Decree 2784 of December 29th of 2012.
Decree 3024 of 2014	Modifies Decree 2784 of December 29th of 2012 and sets other regulations.
Decree 2129 of 2014	By which a new deadline for preparers of financial information that belong to Group 2 was issued in comply with the provisions in paragraph 4 of Article 3 of the Decree No. 3022 of 2013
Decree 2267 of 2014	Partially modifies Decrees 1851 and 3022 of 2013 and sets other regulations.
Decree 2548 of 2014	Regulates Article 4 of Law 1314 of 2009, Article 165 of Law 1607 of 2012 and Articles 773 and 774 of the Tax Code.
Decree 302 of 2015	Regulates the law 1314 of 2009, regarding to the technical framework for IAS
Unique Regulated Decree 2420 of 2015	Gather all regulatory decrees of law 1314 of 2009, regarding to IFRS and IAS, decree 2706 of 2012, 2784 of 2012, 3022 of 2013 and 302 of 2015.
Decree 2496 of 2015	Modifies Decree 2420 of 2015 (URD), and sets other regulations
Decree 2101 of 2016	Adds the title 5, called "Financial Information standards for those entities that not comply with business in progress, to the part 1 from the book 1 Decree 2420 of 2015 (URD), and sets other disposals.
Decree 2131 of 2016	5 modifications were introduced to the Unique Regulated Decree 2420 of 2015.
Decree 2132 of 2016	Partially modifies the IAS technical framework, art 1.2.1.1, book 1, part 2, title 1 from decree 2420 of 2015, and sets other disposals
Decree 2170 of 2017	On December 22, 2017 The Commerce, Industry and Tourism Ministry issued decree 2170 in which partially modified the technical frameworks of the regulations for the financial information and information assurance.





LEGAL GUIDE

TO DO BUSINESS IN COLOMBIA

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CHAPTER 13

**REGULATORY
COMPLIANCE**



REGULATORY COMPLIANCE

Seven things an investor should know about regulatory compliance in Colombia:

1

As part of the Colombian process to be a member of the Organization for Economic Cooperation and Development (OECD), legislation on various matters have been issued to comply with best practices required from the organization, which entail more obligations of transparency and compliance for companies.

2

The Political Constitution states, as fundamental rights, the right to personal and family privacy, good reputation and, particularly the right that every person has to know, update and rectify their information, which is gathered in databases and files of public and private entities.

3

Since 2012, companies shall comply with Personal Data Protection Regime, which impose some duties and obligations to those who gather, treat and circulate personal data. Additionally, it is binding for some companies (according to its size) to register the databases in the National Data Bases Registry (NDBR) managed by the Superintendence of Commerce and Industry (SCI).

4

In Colombia, there is an administrative liability of legal entities and its subsidiaries abroad for incurring on transnational bribery acts, including the holdings in the case that its subordinated companies incurs in any conduct of bribery or corruption.

5

The companies that fulfill some requirements shall implement Transparency and Corporate Ethical Programs.

6

In Colombia, money laundering and financing of terrorism may entail legal or administrative penalties for individual or legal entities responsible.

7

Companies that fulfill some requirements are bound to implement a self-control and risk management of money laundering and financing of terrorism system.



15.1 Personal data protection

The Personal Data Protection Regime (PDPR) is focused on ordering to those that perform personal data treatment¹, the obligation of comply with some principles and duties when they gather, manage or circulate this kind of information. Not complying with these obligations implies penalties imposed by the Superintendence of Commerce and Industry, which is the national authority of personal data protection.

In order to graduate penalties for breaching the PDPR, the Superintendence of Commerce and Industry, takes into consideration the effective management performed by the responsible of Treatment of the personal data.

There is no legal criteria that defines which are the accurate or effective measures to be adopted, reason why there is an obligation of diligence of the Responsible on the creation of an Integral Personal Data Management Program.

The principle of accountability, introduced as an obligation to the Responsible of Treatment, implies that the Responsible shall be capable to demonstrate, as requested by the Superintendence of Commerce and Industry that they have implemented the necessary and effective measures to comply with the obligations of the PDPR.

15.1.1 Application of the PDPR:

The PDPR will be applicable to any Personal Data registered in any database that makes them susceptible of Treatment by public or private entities, when their Treatment is carried out in Colombian territory or when the Responsible is established in Colombian territory. The PDPR does not apply to:

- I) Databases or files filed exclusively for private or domestic purposes
- II) Databases and files which purposes are defense and national security, as well as prevention, detection, monitoring and control of money laundering and financing of terrorism
- III) Databases containing intelligence and counterintelligence information
- IV) Databases and files of journalistic information and other editorial contents
- V) Databases and files gathered in governmental census

¹ Any operation or set of operations regarding personal data, such as its collection, storage, use, circulation or suppression.



15.1.2. Parties in the NRDB

Owner



It is the individual whose personal data is subject to treatment.

Responsible



It is the individual or legal entity, public or private, that by itself or in association with others makes decision about the data-base and/or data Treatment.

Person in Charge



It is the individual or legal entity that by itself or in association with others performs the Treatment on behalf of the responsible.

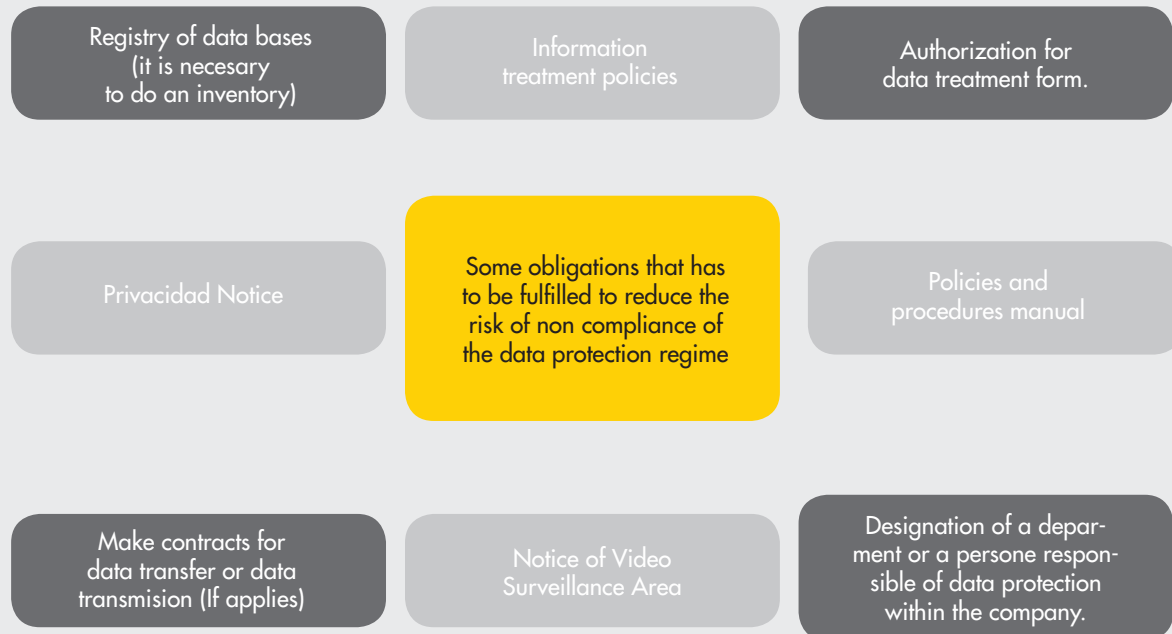
15.1.3 Obligations of the Responsible and Person in Charge

Those who perform the Treatment of Personal Data must comply with several obligations, among others:

- I. To have a Personal Data Treatment policy in accordance with the requirements of the Personal Data protection regulation
- II. To obtain authorizations by the Owners of the Personal Data, previously to Treatment of their Personal Data and expressly mentioning the purpose of the Treatment
- III. To make transfers and / or transmissions of Personal Data only as established in the applicable Personal Data regulation
- IV. To perform Treatment of Personal Data only for the purposes that it has been authorized
- V. To guarantee that strict security and confidentiality measures have been implemented to treat personal Personal Data
- VI. To attend questions and/or claims made by the Personal Data Owners and guarantee their rights
- VII. To register databases before the RNBD, if applicable
- VIII. Designate a department or a person responsible for the security of Personal Data within the company



The obligations and duties of Responsible and Person in Charge may be analyzed in more detail depending on the data Treatment performed by the company, but in any case, it must comply at least with the following requirements:



15.1.4 Owner of the Personal Data:

The law establishes the following rights for the Owners:

l) To know, update and rectify his or her Personal Data with the Responsible of the Treatment where, among others, the information is partial, inaccurate, incomplete, fractioned, misleading or not authorized to be used



- II) To request the Responsible evidence of the authorization given for the Treatment of his Personal Data, except when the information is expressly excluded from the application of the database protection regime
- III) To be informed by the Responsible about the Treatment that is given his Personal Data
- IV) To submit complaints to the SCI for breaches of the provisions of the database protection regime
- V) To revoke the authorization and/or request the deletion of the data when Treatment is not complying with the Personal Data protection regime
- VI) To have free access to the Personal Data that is being treated

15.1.5 International Personal Data transfer

The Personal Data Protection Regime allows the international transference of personal information to countries that provide adequate levels of protection.

It is considered that a country meets an adequate level of protection whenever the following concur:

- The recipient countries shall have personal data protection rules
- Applicable regulations set forth similar principles provided under Colombian Law for personal data treatment. The following principles shall be provided by recipients regulation: legality, purpose, freedom, veracity or quality, transparency, access and restricted circulation of information, security and confidentiality
- The personal data protection regulations of recipient countries shall provide duties applicable to the Responsible and Person in Charge of the information
- The personal data protection rules of recipient countries must have judicial and administrative authorities that protect the rights of the Owners
- Recipient countries shall have public authorities in charge of the supervision of the personal data protection regulations

Currently the SIC has identified thirty-seven (37) countries with adequate standard levels of data protection, as shown in the table below:



COUNTRIES WITH AN ADEQUATE LEVELS OF PERSONAL DATA PROTECTION

Germany	Slovenia	Iceland
Peru	Spain	Latvia
Austria	Portugal	Bulgaria
Estonia	U.S.A.	Lithuania
Italy	United Kindom	Cyprus
Poland	Finland	Luxembourg
Belgium	Czech Republic	Costa Rica
France	Malt	Republic of Korea
Croatia	Mexico	Romania
Greece	Denmark	Hungary
Norway	Serbia	Slovakia
Ireland	Netherlands	Sweden
Japan		

Should a Responsible enters into a transference agreement or any other legal vehicle with a recipient of the information, which regulates: (i) the conditions of the Personal Data Treatment, and (ii) guarantees the compliance of the applicable principles of the Colombian Personal Data Protection Regime; it will not be necessary to fulfill the Declaration of Conformity procedure before the SIC. However it is mandatory to notify the SIC about the transfer.

The transfer of Personal Data to countries that do not provide adequate levels of Personal Data protection is prohibited, except for:

- I) When the Owner of the Personal Data has expressly authorized it
- II) For medical reasons, when it is necessary for the Treatment of the information
- III) For banking or stock exchange transfers
- IV) Transfers under international treaties
- V) Transfers necessary for the execution of a contract between the Owner of the Personal Data and the Responsible, provided that there is authorization
- VI) And when it is legally required to protect the public order.



15.1.6.t Adoption of the Comprehensive Program for the Management of Personal Data ("PMDP")

Companies must implement a program of Personal Data management in order to adequately protect the rights of the Owners, the program is structured as follows:





15.1.7 Compliance dates for 2018

The Personal Data Protection Regime establishes the obligation to register databases before the National Registry of Databases (hereinafter RNBD per its acronym in Spanish) to non-for-profit entities and companies with total assets exceeding 100,000 Tax Value Units (UVT) and to gubernamental entities.

The registration of databases before the RNBD shall be fulfilled in three (3) different dates as follows:

- If the Responsible is a non-for-profit entity or a legal entity with total assets exceeding 610,000 UVT (USD6.741.720), the registration must not be later than September 30th, 2018.
- If the Responsible is a non-for-profit entity or a company with total assets exceeding 100,000 UVT and up to 610,000 UVT (USD6.741.720), the registration must not be later than November 30th, 2018.
- If the Responsible is a government entity, the registration must not be later than January 31st, 2019.

The databases that are created after the expiration of the mentioned periods, must be registered within the following 2 months, from their creation.

Information registered before the RNBD must be updated: (i) within the first ten (10) business days of each month, when substantial changes are made in the registered information, and (ii) annually, between January 2nd and March 31st, starting in 2019.

15.2 Prevention of transnational corruption and bribery

The legislation establishes an administrative liability to legal entities that by means of one or more of the employees, contractors, administrators or associates of its own or of its subsidiaries, directly or indirectly grant, offer or promise to a foreign public officer, sums, objects of economic value or a benefit or profit, in exchange of any activity, omission, delay or any action related to his/her public functions and related to a business or international transaction.

The Superintendence of Companies is the competent authority to impose administrative penalties that may consist of fines or inability to contract with the Colombian Government for 20 years.

The effects of the penalties are extended to: (i) merging or merged companies; (ii) spin off companies and/or beneficiaries of a spin off processes, and (iii) the acquiring party in change of control situations. Penalties may also be applied to subsidiaries operating abroad and to the headquarters when one of its subsidiaries incur in the mentioned conducts.

For purposes of graduating the penalties, the Superintendence of Companies takes into consideration different criteria, which includes the existence, execution and effectiveness of Corporate Ethical Programs.



15.2.1 Corporate Ethical Program

The Corporate Ethics Program consists of specific process in charge of the compliance officer, aimed to implement compliance policies to identify, detect, prevent, managed and mitigate risks of transnational bribery, as well as others that are related to any act of corruption.

15.2.1.1 Obligated

Legal entities subject to supervision by the Superintendence of Companies shall implement compliance programs as well as internal audit, anti-corruption and transnational bribery prevention mechanisms through a compliance plan to mitigate acts of corruption within the company. The Superintendence of Companies established the following criteria to determine which companies should initially implement Corporate Ethical Programs:

1. That the Colombian company has carried out a business or international transaction through third parties:

- Intermediary or contractor
- Or a subordinate company
- Or a branch that has been incorporated in another country by that company

2. The Colombian company that has carried out international business or transactions, belongs to one of the following economic sectors, and as of December 31 of the immediately prior year complies with one of the following criteria related to gross income, total assets or employees:



Obligation to implement business ethical programs

ECONOMIC SECTORS	GROSS INCOME AS OF DECEMBER 31, 2017	TOTAL ASSETS AS OF DECEMBER 31, 2017	STAFF AS OF DECEMBER 31, 2017
Pharmaceutical	≥ COP55.328.775.00051 ≥ USD18.442.92517	≥ COP55.328.775.00051 ≥ USD18.442.92517	≥2.000 employees
Infrastructure	≥ COP110.657.550.000 ≥ USD \$36.885.850	≥ COP110.657.550.000 ≥ USD36.885.850	≥2.000 employees
Manufacturing	≥ COP110.657.550.000 ≥ USD36.885.850	≥COP 110.657.550.000 ≥USD \$36.885.850	≥2.000 employees
Mining-energy	≥ COP110.657.550.000 ≥ USD36.885.850	≥COP 110.657.550.000 ≥USD \$36.885.850	≥2.000 employees
Information technology and communication	≥ COP368.858.500.000 ≥ USD122.952.833	≥COP 368.858.500.000 ≥USD \$122.952.833	≥1.000 employees

15.2.1.2 Principles

The Superintendence of Companies issued a guideline, in which gives administrative instructions related to the promotion of the transparency and corporate ethical programs, as well as internal mechanisms of audit, anti-corruption and transnational bribery prevention.

This guideline proposes the adoption of the following eight principles to develop de Corporate Ethical Programs, inspired in the best international practices, and in accordance with the risks that may affect each entity:

1. Commitment of Administrators with the Prevention of Transnational Corruption and Bribery: Regardless the size, internal structure and geographic markets where the legal entity develops its activities, it is advisable that the administrators and associates are committed to prevent transnational corruption and bribery conducts, for such purpose it is recommended:

(i) Implement Compliance Policies and the Corporate Ethical Program

(ii) Leading proper communication actions to disclose the prevention of corruption and transnational bribery policy.



2. Conduct a risk assessment related to transnational bribery: It is recommended to adopt evaluation procedures that are proportional to the size, structure, nature and specific activities of each legal entity.

3. Corporate Ethical Program: It is recommended that all internal rules and the ethical values that each legal entity deems appropriate to carry out their business in an ethical, transparent and honest manner be gathered in a comprehensive manner. The Program must be written and included in the Compliance Manual.

In addition, it should detail the specific risks of transnational bribery; determine the general procedures for compliance auditing and due diligence; policies of gift giving to third parties, remuneration and payment of commissions with regards to international transactions, and donations; among others. It is also suggested to establish control mechanisms, sanction procedures, ethical guidelines, exit clauses.

4. Compliance Officer: The greater or lesser complexity of a Corporate ethics program will depend, among other factors, on the particular risks of transnational bribery, which makes it necessary to designate an individual with the suitability, experience and leadership required to manage such risks.

5. Due Diligence: It is recommended to carry out due diligence processes on a regular basis, by reviewing legal, accounting and financial aspects, in order to obtain the necessary elements to identify and mitigate risks related to transnational bribery. This process must be carried out by employees or third parties specialized in these kind of tasks.

6. Control and supervision of Compliance Policies and Corporate ethics program: Procedures for controlling, monitoring and updating compliance policies and the Corporate ethics program should be implemented, considering changes and complexity of international business perform by the company, as well as the changes in applicable legislation.

7. Disclosure of Compliance Policies and the Corporate Ethical Program: Appropriate mechanisms shall be put in place for the proper communication of Compliance Policies and the Corporate Ethical Program through internal/external communications and training.

8. Communication channels: Proper mechanisms must be put in place to allow employees, associates, contractors, and in general to any person, to report infractions in a confidential manner.

15.2.1.3 Terms

As from 2017, companies that meet the criteria indicated in numeral 15.2.1.1. of this document shall adopt a Business Ethics Program within the following year as of the date they meet the criteria.

Pursuant to the abovementioned, neither Law 1778, 2016 nor Resolution 100-002657, 2016 establish sanctions for not complying with the obligation to adopt a Business Ethical Program. However, should a corruption situation arises without having adopted a Business Ethical Program, the company will not qualify to obtain a benefit on any possible sanction to be imposed.



The Superintendence of Companies has not established a new term for the adoption of the business ethics program.

15.3 Others

With respect to individuals, the Colombian criminal system establishes crime penalties for those persons who, for their own benefit or for the benefit of a legal entity, commit offenses of improper bribery, own bribery, bribery or bribe to give or offer, all of which are typified in the Colombian Criminal Code.

Individuals that incur in transnational bribery acts, will be disabled to contract with Colombian government up to 20 years. This inability is extended to companies in which these individuals are partners, to its holdings and its subsidiaries, with exception of corporations (“Sociedades Anónimas Abiertas”).

15.3 risk of money laundering and financing of terrorism

Money laundering and financing of terrorism are crimes defined in the Colombian Criminal Code, as follows:

MONEY LAUNDERING	FINANCING OF TERRORISM
<p>There is Money Laundering when there is a purchase, safeguard, invest, transport, transform, storing, keep or manage of assets that have their origin in illegal activities such as:</p> <ol style="list-style-type: none">1. Human trafficking3. Blackmailing4. Illegal enrichment5. Kidnapping6. Subversive activities7. Arms trafficking8. Trafficking of children9. Terrorism financing and administration of assets related to terrorist activities10. Drug trafficking11. Crimes against the financial system12. Offenses against public administration13. Smuggling of hydrocarbons or their derivatives14. Customs fraud or favoring and facilitating smuggling <p>And profits and assets derived from such activities are given the appearance of legality or are legalize by legal transactions in order to hide their true nature, origin, location, destination, movement or right over such property.</p>	<p>There is Financing of Terrorism when directly or indirectly it provides, collects, delivers, receives, manages, contributes, safeguard funds, goods and other assets, or perform any other act that promote, organize, support, finance or sustain illegal armed groups or its members, as well local or foreign terrorist groups, and any kind of terrorist activities.</p>



Colombia has different specialized entities whose functions include to enforce the application of the ML/FT regulation and applying the relevant penalties when individuals or legal entities omit such regulation.

- Superintendence of Companies (“SS”)
- Superintendence of Financial Institutions (“SFC”)
- Colombian Tax Authority (“DIAN”)
- Financial Investigation and Analysis Unit (“UIAF”)
- The General Prosecuting Attorney Office (“Fiscalía General de la Nación”)

15.3.1 Obligations

OBLIGED			REGULATORY OBLIGATIONS
Legal entities supervised or controlled by the Superintendence of Companies, that belong to the following sectors, that also comply with all the requirements established for each sector (“Obliged Companies”).			Implementation of the self-control (“SAGRIFT”). Particularly, the design approval and implementation of a policy for the prevention and control of the ML/FT risk.
Economic Sector	Standard Industrial Classification of All Economic Activities (CIU)	As of December 31 of the immediately preceding year it has obtain a total income equal to or greater than:	Obliged Companies, shall adopt the system (ML/FT) within 12 months term beginning on September 1, 2016.
Real state	L6810 and L6820	0.000 MMLW ² (COP44.263.020.000; USD14.754.340)	In general, comply with the implementation of the SAGRIFT has a 12 months term beginning on December 31 of the year in which the mentioned incomes are exceeded.
Mining	B05 and B07 and B08	60.000 MMLW (COP44.263.020.000; USD14.754.340)	
Legal services	M6910	30.000 (MMLW) (COP22.131.510.000; USD7.377.170)	
Accounting services, debt collection and classification of credit risk	N8291 y/o M6920	30.000 SMMLV. (COP \$ 22.131.510.000 USD \$ 7.377.170)	
Car and autoparts sales	04511 y/o 04512 y/o 04530 y/o 04541	130.000 SMMLV (COP \$ 95.903.210.000 USD \$31.967.736)	
Construction	F4111 y/o F4112	100.000 SMMLV (COP \$ 73.771.700.000 USD \$ 24.590.566)	
Another sector different from the above-referred		160.000 SMMLV (COP \$ 73.771.700.000 USD \$ 24.590.566)	

² Based on the Minimum Monthly Legal Wage (MMLW) for 2017 which was COP737,717 equivalent to USD245.91 approx.



<p>Individuals, legal commercial entities and sole proprietorships dedicated professionally to the sale and/or purchase and sale by consignment of new and/or used automotive vehicles.</p>	<p>Report to the UIAF information related to its commercial operation as follows:</p>										
	<table border="1"> <thead> <tr> <th data-bbox="899 453 1146 516">REPORT</th> <th data-bbox="1146 453 1308 516">TERMS OF REPORTING</th> </tr> </thead> <tbody> <tr> <td data-bbox="899 516 1146 636">Report of suspicious transactions (RST)</td> <td data-bbox="1146 516 1308 636">Once the suspicious transaction is determined</td> </tr> <tr> <td data-bbox="899 636 1146 1020">Report of absence of suspicious transactions (RST)</td> <td data-bbox="1146 636 1308 1020">Every (3) months, all obligated parties that have not determined the existence of suspicious transactions within the first fifteen (15) calendar days of the month following that quarter</td> </tr> <tr> <td data-bbox="899 1020 1146 1163">Transactions Report on Automotive Vehicle Sales</td> <td data-bbox="1146 1020 1308 1163">Within the first fifteen (15) calendar days of the following month</td> </tr> <tr> <td data-bbox="899 1163 1146 1339">Report of absence of transactions of sale of motor vehicles</td> <td data-bbox="1146 1163 1308 1339">Within the first fifteen (15) calendar days of the following month</td> </tr> </tbody> </table>	REPORT	TERMS OF REPORTING	Report of suspicious transactions (RST)	Once the suspicious transaction is determined	Report of absence of suspicious transactions (RST)	Every (3) months, all obligated parties that have not determined the existence of suspicious transactions within the first fifteen (15) calendar days of the month following that quarter	Transactions Report on Automotive Vehicle Sales	Within the first fifteen (15) calendar days of the following month	Report of absence of transactions of sale of motor vehicles	Within the first fifteen (15) calendar days of the following month
REPORT	TERMS OF REPORTING										
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Transactions Report on Automotive Vehicle Sales	Within the first fifteen (15) calendar days of the following month										
Report of absence of transactions of sale of motor vehicles	Within the first fifteen (15) calendar days of the following month										
<p>I. Gold exporting companies II. Gold importing companies III. Gold smelter entities IV. International commerce companies dedicated or partly dedicated to gold sale</p>	<p>Report to the UIAF information related to its commercial operation as follows:</p>										



v. International commerce companies dedicated or partly dedicated to gold exporting	<table border="1"> <thead> <tr> <th data-bbox="732 394 971 436">REPORT</th> <th data-bbox="971 394 1360 436">TERMS OF REPORTING</th> </tr> </thead> <tbody> <tr> <td data-bbox="732 457 971 541">Report of suspicious transactions (RST)</td> <td data-bbox="971 457 1360 541">Once the suspicious transaction is determined in a reasonable time</td> </tr> <tr> <td data-bbox="732 562 971 667">Report of absence of suspicious transactions (RST)</td> <td data-bbox="971 562 1360 667">During the immediately preceding month, they must report within the first ten (10) calendar days of the month</td> </tr> <tr> <td data-bbox="732 688 971 772">Transactions Report on gold Sales</td> <td data-bbox="971 688 1360 772">Four-monthly, within the first ten (10) calendar days following the cutoff date of the four-semester period</td> </tr> <tr> <td data-bbox="732 793 971 877">Report of absence of transactions of gold sales</td> <td data-bbox="971 793 1360 877">Every four (4) months, within the first ten (10) calendar days of the month following the quarter</td> </tr> <tr> <td data-bbox="732 898 971 982">Transactions Report on gold Sales</td> <td data-bbox="971 898 1360 982">Four-monthly, within the first ten calendar days of the month following the quarter</td> </tr> <tr> <td data-bbox="732 1003 971 1108">Reporte de ausencia de transacciones de exportaciones y/o importaciones de oro</td> <td data-bbox="971 1003 1360 1108">Every four (4) months, within the first ten (10) calendar days of the month following the four-month period</td> </tr> </tbody> </table>	REPORT	TERMS OF REPORTING	Report of suspicious transactions (RST)	Once the suspicious transaction is determined in a reasonable time	Report of absence of suspicious transactions (RST)	During the immediately preceding month, they must report within the first ten (10) calendar days of the month	Transactions Report on gold Sales	Four-monthly, within the first ten (10) calendar days following the cutoff date of the four-semester period	Report of absence of transactions of gold sales	Every four (4) months, within the first ten (10) calendar days of the month following the quarter	Transactions Report on gold Sales	Four-monthly, within the first ten calendar days of the month following the quarter	Reporte de ausencia de transacciones de exportaciones y/o importaciones de oro	Every four (4) months, within the first ten (10) calendar days of the month following the four-month period
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Reporte de ausencia de transacciones de exportaciones y/o importaciones de oro	Every four (4) months, within the first ten (10) calendar days of the month following the four-month period														
The Directors or ("factors") of the legal entity that provides discounted invoice-portfolio purchase services.	<p>Those who act as factors are obliged to:</p> <p>I. Adopt measures, methodologies and procedures aimed to prevent that the operations in which they intervene may be used, directly or indirectly, as an instrument for the concealment, management, investment or use of money or other property derived from criminal activities or for their financing; or to give legality appearance to criminal activities or to transactions and funds linked thereto; or for laundering of assets and/or the channeling resources to perform terrorist activities; or concealment of assets from such activities.</p> <p>II. Any suspicious money laundering or criminal activities should be reported to the competent authorities.</p> <p>III. Recording, in a specially designed form for such purpose, all information regarding the money transactions made, in local or foreign currency, for amounts higher than the amounts periodically determined by the Superintendence of Financial Institutions.</p> <p>IV. Only companies duly incorporated and registered before the corresponding chamber of commerce are able to provide discounted invoice-portfolio purchase services.</p>														



<p>International trade Users with the obligation to report directly to the UIAF:</p> <p>I. Public deposits and private deposits</p> <p>II. Customs brokerage companies</p> <p>III. Port companies</p> <p>IV. The free zones users</p> <p>V. Conveyor companies. (Transport companies are all legal entities operating customs transit operations. As well as within this category are included multimodal transport operators, cabotage companies and transshipment companies)</p> <p>VI. International Freight Agents: Legal entities registered before the DIAN to act exclusively in the mode of maritime transport</p> <p>VII. Permanent customs users</p> <p>VIII. Highly Export users</p>	REPORT	TERMS OF REPORTING
	Report of suspicious transactions (RST)	Immediately after the suspicious transaction is determined, they must report to the UIAF
	Report of absence of suspicious transactions (RST)	Every three (3) months, when no suspicious transactions have been determined, in any of the months of the quarter or at all, they must report this fact to the UIAF within ten (10) days of the following month to the quarter
	Individual transaction reporting in cash	Monthly within the first ten (10) days of the following month, all transactions involving cash payments in an amount equal to or greater than the sum COP10,000,000 or its equivalent in other currencies (aprox. USD3.333)
	Report of absence of transactions in cash:	Every three (3) months, when no suspicious transactions have been determined, in any of the months of the quarter or at all, they must report this fact to the UIAF within ten (10) days of the following month to the quarter.

1 Self-monitoring and risk management system ML/FT ("SAGRLAFT" for its Spanish acronym)

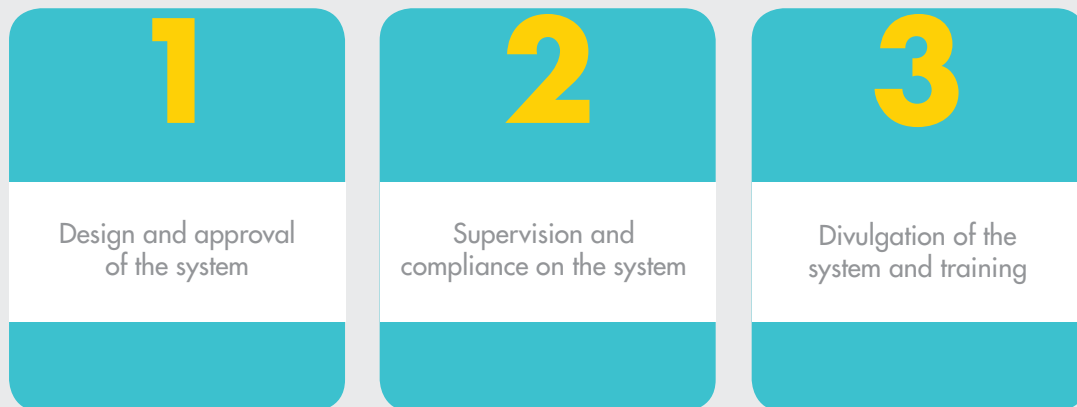
The SAGRLAFT is the system adopted by Colombia according to the delimitations of public policy against ML/FT, which considers the risks of each company, analyzing the type of business, operation, size, areas in which it operates and any other specific qualification. In this sense, Obligated Companies must have an ML / FT, risk matrix that allows them to measure and monitor their evolution. In the event that a business group is formed, each company individually must adopt its own matrix of risk.



a. Elements of the System

RISK IDENTIFICATION	RISK MEASURE AND EVALUATION	RISK CONTROL	RISK MONITORING
<p>Identification of the factors that give rise to the risk of ML/FT for which Obligated Companies must:</p> <ol style="list-style-type: none">1. Establish methodologies for segmentation of risk factors and classify the respective risk factors2. Adopt methodologies for identifying the risk of ML/FT and its related risks, with respect to each of the segmented risk factors3. Identify ways the risk of ML/FT may be presented	<p>The System must allow the Obligated Companies to measure the possibility or probability of occurrence of the inherent risk of ML/FT with regards to each factor as well as measure their impact in case of materialization.</p>	<p>The System should allow measures in order to control the ML/FT risk.</p> <p>As a result of the application of the corresponding controls, companies must be able to establish the ML/FT risk profile, and as a consequence, a decrease or mitigation should occur.</p>	<p>The System should allow the exercise and surveillance of the ML/FT risk and be able to detect unusual operations and suspicious operations by:</p> <ol style="list-style-type: none">1. An effective monitoring process that facilitates quick detection and correction of system deficiencies2. A comprehensive control of all risks and operating accurately, effectively and efficiently

b. Phases





I. Design and approval of the System:

The design of the system will be under the compliance officer supervision and direction or whoever undertakes that role, that under no circumstance shall be a third party. The compliance officer together with the legal representative will present the system to the board of directors or the highest corporate body for their approval.

II. Supervision and compliance of the System:

The legal representative must provide the operational, economic, physical, technological measures and sources necessary and required by the compliance officer to implement the system.

The Compliance Officer must submit report about the system to the legal representative, the board of directors or the highest corporate body, as required by the system. In any case, at least a semi-annual report has to be submitted to such corporate authorities. Reports shall include at least:

- An evaluation and analysis on the efficiency and effectiveness of the system and, if necessary, to propose any required improvement
- A section that demonstrates the results of the compliance officer's and company's administration management about the compliance with the system
- The penalties included in the system to ensure compliance by those involved in its application, as well as a file with all documents generated by virtue of the application of the system and its development

III. Disclosure of the system and training:

The system must be disclosed within the company and to third interested parties, in a manner and frequency required to ensure its appropriate compliance. Additionally, it is required to train the company staff.

c. ML/FT risk prevention and management measures

I. Analysis and evaluations of operations, contracts and business:

The operations, business and contracts carried out by the company must be evaluated and analyzed to identify the sources of risk, such as counterparties, products, distribution channels and territorial jurisdiction.

II. Due Diligence proceedings:

Due diligence to know clients and any other counterparties must be performed pursuant to the company needs, it is recommended to consider its operation, size, economic activity, distribution channels, geographical areas where it operates and other particular characteristics.

III. Internal regulation for cash transactions:

Companies have to establish controls and procedures to regulate the handling of cash transactions. It is important to consider the business specific characteristics.



IV. Other measures:

The system should establish mechanisms and controls necessary to reduce the possibility that executed or to be executed operations, business and contracts are used to give legality appearance to money laundering or financing of terrorism activities.

15.3.2.3. Terms

Companies that, by August 2016, were already Obligated Companies, should review and adjust their policies or system of prevention and management of ML/FT risks at the latest on September 1, 2017.

Companies that are considered Obligated Companies by December 31, 2016, should put into place the system within a maximum term of twelve months, counted as from January 1 of the year that follows the fulfillment of the requirements.

15.3.2.4. Sanctions

The Superintendence of Companies is entitled to impose successive fines of up to 200 legal monthly salaries for any breach of the ML/FT management measures.

Legal Framework Regulatory Compliance

PERSONAL DATA PROTECTION	
NORM	CONTENTS
Law 1581 of 2012	Personal Data Protection Regime
Decree 1377 of 2013	Regulates Law 1581 of 2012
Decree 886 of 2014	Regulates Law 1581 of 2012
Decree 1074 del 2015	Regulates Law 1581 of 2012
External Circular No. 01 dated as of November 8, 2016	Amends the Unique Circular of the SCI
External Circular No. 02 dated as of November 23, 2016	Regulates the National Registry of Databases
External Circular No 01 of 2017	Establishes new compliance dates for registering databases
External Circular No	Set forth adequate levels of data protection
External Circular No	Add Japon as a country with adequate levels of data protection
Decree 090 of 2018	Amends the Decree



ANTI-CORRUPTION AND BRIBERY LAW IN COLOMBIA

NORM	CONTENTS
Law 599 of 2000	Colombian Criminal Code
Law 1474 of 2011	Anti-corruption law
National Decree 734 of 2012	Regulation of the Anti-Corruption Law
Law 1778 of 2016	Administrative liability to legal entities
Resolution 100-002657 of 2016	Superintendence of Companies defines criteria for the implementation of Corporate Ethical Programs
External Circular 100-000003 of July 26, 2016	Guide to Implementing Compliance Plans
Office 220-188158 of September 29, 2016 Superintendence of Companies	Issues general and abstract opinion of the criteria to determine which companies must implement the Corporate Ethical Programs

REGULATION AGAINST RISK OF MONEY LAUNDERING AND FINANCING OF TERRORISM (ML/FT)

NORM	CONTENTS
Decree 663 of 1993	Organic Statute of the Financial System
Law 222 of 1995	It points out that the Superintendence of Companies, within its functions, is empowered to impose penalties or fines, successive or not, for up to two hundred legal minimum monthly salaries, to those who fail to comply with their orders, the law or bylaws
Law 599 of 2000	Colombian Criminal Code
Law 793 de 2002	By means of which Law 333 of 1996 is repealed and establishes rules that govern the extinction of dominion
Decree 3420 de 2004	Modifies the composition and functions of the Inter-Institutional Coordination Commission for the Control of Money Laundering and other provisions. CCICLA, created by Decree 950 of 1995
Law 970 de 2005	Approves the United Nations Convention against Corruption, adopted by the General Assembly of the United Nations
Law 1121 de 2006	Establishes rules for the prevention, detection, investigation and punishment of the financing of terrorism and other provisions. Regulates the procedure for the publication and fulfillment of obligations related to international lists binding for Colombia
Resolution 363 de 2008	Imposes to gold exporting companies and/or importers, gold smelting entities and international trading companies that in their economic activity have the commercialization of gold and/or carry out export and/or import operations of gold, reporting duties to the Financial Information and Analysis Unit (UIAF)



Law 526 of 2009	By means of which the UIAF is created
Law 1186 of 2009	By means of which the Memorandum of Understanding between the governments of the states of the financial action group of South America against money laundering (GAFISUD) was approved. By which of means the financial action group of South America against money laundering (GAFILAT) was created and put into operation with the aim of recognizing and applying the recommendations of the GAFI
Law 1453 de 2011	By means of which the Colombian Criminal Code, the Code of Criminal Procedure, the Code of the childhood and the adolescence, the rules on extinction of dominion and other provisions in the matter of security are amended
Decree 1023 of 2012	Establishes that Superintendence of Companies shall instruct companies subject to its surveillance about measures that have to implement to prevent the money laundering/financing of terrorism risks
CONPES Document 3793 - December 18, 2013	The general objective of this document is establish the lineaments to put in place the National Anti Money Laundering and Financial of Terrorism Policy. The idea is to implement a comprehensive and more effective system to prevent, detect, investigate and judge money laundering and financing of terrorism activities
Decree 1074 of 2015	It points out that Superintendence of Companies is the authority in charge to exercise surveillance over commercial companies, branches of foreign companies and sole proprietorships
Decree 1068 of 2015	Provides that public and private entities belonging to sectors other than financial, insurer and stock market must report Suspicious Operations to the UIAF, in accordance with Article 102 (2) (d) and Articles 103 and 104 of the Organic Statute of the Financial System, when said Unit so requests, in the form and opportunity that it indicates to them.
External Circular 100-000005 of the 2018 of the Superintendence of Companies.	egulation against risk of money laundering and financing of terrorism (ML / FT)
Decree 1674 of 2016	Includes a new chapter to Title 4, Part 1, Section 2 Decree 1081 of 2015, related to PEP ("Politically Exposed Persons").



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Assurance

- Audit
- Financial Accounting Advisory Services
- Fraud Investigation & Dispute Services
- Climate Change and Sustainability



Tax

- Country Tax Advisory
- Cross Border Tax Advisory
- Global Trade
- Accounting Compliance and Reporting (ACR)
- Global Compliance and Reporting (GCR)
- Transfer Pricing
- People Advisory Services
- Tax Litigation Services
- Tax Accounting and Risk Advisory

Consulting

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- IT Advisory
- Performance Improvement
- Business Strategy

Transaction Advisory Services - TAS

- Transaction Support
- Transaction Tax
- Valuation & Business Modelling
- Operational Transactions Services (OTS)
- Restructuring
- Working Capital
- Lead Advisory M&A
- Infrastructure Projects & Real Estate Advisory

Financial Services Office (FSO)

- Risk Management
- IT Advisory
- Performance Improvement
- Business Strategy
- Actuarial Services

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