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is passion!

Doing Business and Investing in Colombia

Libertad y Orden
Ministerio de Comercio, Industria y Turismo Colombia

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Work Commitment Ingenuity

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The main purpose of this document, which was made in joint fashion by Proexport and PricewaterhouseCoopers, is to inform the reader in a summarized way about the most relevant legal and tax matters that relate to foreign investment in Colombia. We hope this summary is extremely useful for those interested in doing business in Colombia. The contents of this document were updated in April 2010 and the same are based upon the information available at the time.

It is worth noting that the investment amounts required for a person to be eligible to claim Free Trade Zone benefits have been stated in minimum legal monthly wages (SMMLV for the Spanish initials), that all the information stated in US dollars has been translated into that currency at a rate of 2,000 COP to the dollar.

The minimum legal monthly wage in Colombia for year 2010 is COP $515,000 (equivalent to US $258), and the foreign exchange rate varies every single day depending upon market demand and supply. The UVT (Tax Value Unit) for year 2010 is COP $24.555 (equivalent to US $12, 27).

Finally, we ought to make the point clear that this document is not or does not involve any type of professional advice whatever. Should any person intend to act based upon the information included herein, that person will have to seek help from an expert professional which is a specialist in the relevant matters and obtain advice that includes more detailed information in accordance with the person's own particular situation. Therefore, neither Proexport nor PricewaterhouseCoopers shall assume any type of responsibility whatever for any decisions adopted by any person solely relying on the information contained herein, i.e. without consulting with an expert professional which is a specialist in the relevant matters.

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1.Foreign Investment and Exchange Regime

This chapter presents the main aspects of the Colombian foreign investment regime, enunciating the fundamental principles thereof, the types and forms of investments that may be made in the country, and the requirements to perfect them. The chapter describes, in a general manner, the Colombian foreign exchange regime, which aims to promote the internationalization of the Colombian economy, to stimulate foreign trade and foreign investment, to facilitate the development of everyday transactions abroad, and to give the monetary authorities true and relevant information with regard to the influx and departure of foreign currencies into and out of the country. Particular emphasis is given to the ordinary exchange regime applicable to activities other than those conducted in the oil and gas and mining sectors and their related activities, as these are governed by the special foreign exchange regime, which is applicable only to branches of foreign corporations.

1.1 Foreign Investment

Foreign investment is considered to be any capital investment, be it direct or as part of a portfolio, made from abroad in the Colombian territory, including Colombian free trade zones, by persons who do not reside in Colombia.

A foreign capital investor is considered to be any individual or legal person that owns a portfolio or direct foreign investment. Local investors of member states of the Andean Community of Nations -CAN- are considered to be local investors for the purposes of the classification of the enterprise. Loans and transactions that involve debt do not constitute foreign investments under the Colombian foreign exchange regime.

It is presumed that those appearing as foreign investors on foreign exchange forms related to registration with the Central Bank (Banco de la República), are non-residents; however, it is necessary to keep the documentation that evidences their non-resident status in the country. For foreign exchange purposes, Colombian residents are considered to be all individuals living inside the national territory, legal persons domiciled in Colombia, branches of foreign corporations established in the country, and foreign individuals that remain inside the country for periods of more than six continuous or non-continuous months, over a 12 month period.

1.1.1 Principles of the Foreign Investment Regime

1.1.1.1 Equality of treatment

Foreign investment receives the same treatment as local investment. Therefore, the imposition of discriminatory or more favorable treatments or conditions on foreign investors is not permitted.

1.1.1.2 Universality

Foreign investment is welcomed in any sector of the economy, save for the following cases:·

- National defense and security activities
- Processing, disposal and dumping of toxic, hazardous or radioactive waste produced outside of the country.
- Private Surveillance and Security companies

Companies which provide public (unrestricted) television services may not have foreign investment over 40% of its capital..

1.1.1.3 Automaticity

Carrying out foreign investment does not require any authorization, except under the special regimes governing the mining, oil and gas, insurance, television, and financial sectors, which require, in certain events, prior acknowledgment or authorization by official authorities such as ministries and offices of superintendents.

1.1.1.4 Stability

The conditions for the reimbursement of the investment and for the remittance of profits that were in effect on the date of the investment's registration may not be modified in a way that adversely affects the investor. Such scenario may only take place when the international reserves are less than the value of three months of imports.

1.1.2 Types of Foreign Investment in Colombia

1.1.2.1 Direct foreign investment

This type of investment is made:

a. In the acquisition of equity participations, shares, corporate interests, mandatory convertible bonds, or any representative interest in a company's capital.

b. In the acquisition of rights in autonomous patrimonies established by means of a mercantile trust agreement, in order to develop an enterprise or for the purpose of buying, selling or administering shares in companies that are not registered in the National Registry of Securities and Issuers.

c. In the acquisition of real property or certificates of participation in real estate securitization processes or investments through real estate funds, by means of public or private tender.

d. In taking part in activities or contracts when the same do not represent equity interests in the company, and the income produced by the investment depends on the company's profits. Such is the case with t technology transfer, cooperation, concession, service administration, and licensing contracts.

e. In investments in assigned capital or as supplementary investments to assigned capital in branches established in Colombia by foreign legal persons.

f. In the acquisition of participating interests in private equity funds.

1.1.2.2 Portfolio investment

This type of investment is made through foreign capital investment funds shares, mandatory convertible bonds, and other securities registered with the National Registry of Securities and Issuers (RNVE for its initials in Spanish).

These funds are defined as patrimonies organized under any form (mercantile trust agreements, fiduciary trusts, custodial contracts, and the like) in Colombia or abroad, with resources paid by one or more entities, individuals, or legal persons, for the purpose of making investments in the public securities market. The acquisition of shares through these funds is subject to the regulations governing public tenders for local investors, without prejudice to the regulations applicable to certain types of investments.

The administration of these funds is entrusted to an international administrator and a local administrator (trust companies and stock brokers).The latter represent the fund in all matters related to the investment and they are liable for compliance with all applicable legal and regulatory provisions.

Foreign capital investment funds may be of two different kinds:

1.1.2.2.1 Institutional funds

These are funds whose resources come from private or public placements of shares or participation units abroad, and whose main purpose is to make investments in worldwide capital markets. These funds may operate in Colombia once their local administrators file the required documentation with the Office of the Superintendent of Finance pursuant to the applicable regulations, and after they have obtained their Tax Identification Numbers (NIT, for its acronym in Spanish).

1.1.2.2.2 Individual funds

These funds invest in negotiable securities in the public securities market in order to channel their treasury surpluses, without such operations having to constitute their main business purpose. The establishment of this kind of fund does not require any special authorization, except as required by regulations governing local administrators.

1.1.3 Investment Methods

Foreign investment in Colombia may be carried out by different methods.

a. By means of transferring foreign currencies through the exchange market, in order to make a direct contribution to the capital of a company or to acquire a third party's rights and/or shares in existing companies.

b. In kind, directly against delivery or transfer of tangible or intangible assets, or indirectly by means of the capitalization of a sum in favor of the investor.

c. By means of funds in local currency obtained from domestic credit transactions entered into with credit establishments, to be used for the acquisition of shares in the public securities market.

1.1.4 Registration of Foreign Investment

All foreign investments, regardless of their type or method, need to the registered with the Central Bank of Colombia as a necessary condition for the foreign investor to be able to exercise foreign exchange rights conferred by law. The registration procedure for foreign investments is simple and can be conducted either directly with the Central Bank through an authorized Exchange market intermediary or a current compensation account, but always by the foreign investor, his/her agent or the person representing his or her interests.

The periods and conditions for registering foreign investments differ, depending on whether the same is made directly or via portfolio, and on the method by which it is made. The general rule establishes that the registration of foreign investments occurs automatically by means of filing the international investment exchange declaration (Form No.4 of the Central Bank) with the Exchange Market Intermediary, or by means of an account deposit and subsequent filing of the exchange declaration when the foreign currency is channeled through current compensation accounts (Form No. 10 of the Central Bank). In all other events, the registration requires filing Form No. 11 “Registry of Foreign Investments” along with the application and the supporting documentation before the Central Bank, or filing the request and demonstrating to said entity that the investment's requirements have been fulfilled. For more information, please visit www.banrep.gov.co.

In the case of procedures before the Central Bank, the filing seal or the acceptance of the electronic transmission of the respective forms and communications will serve as evidence of the registration or its request, as well as of any related extensions, updates and reports of information. If necessary, an extension of the time required for the registration of the foreign investment (in the different kinds of currencies) may be requested for a maximum period of three (3) months in addition to the initial term.

In the event of sale of the investment to Colombian residents, liquidation of the investment in whole or part, reduction of capital, buyback of shares or corporate interests, or sale of real property, the interested party must cancel the corresponding foreign investment registration.

The owner of the foreign investment that transfers or sells its investment to another foreign investor must file the application of substitution of foreign investment before the Central Bank along with its income tax return, together with the liquidation and payment of the tax that accrues by reason of the respective operation, with the banks and other authorized entities. The filing of the income tax return is obligatory for every transaction, even when no tax is accrued on the transaction.

Foreign investments in Colombia must be updated each year, within the time limits and subject to the procedures established by the Central Bank of Colombia (Form No. 13 or 15 accordingly).

1.1.5 Foreign Exchange Rights

Once the investment is registered, the owner thereof acquires the following foreign exchange rights:

a. To remit proven net profits generated periodically by his or her investments.

b. To reinvest the profits or retain them in the surplus of undistributed profits with right of transfer.

c. To capitalize sums with right of transfer, produced by obligations derived from the investment.

d. To remit abroad, in freely convertible currency, sums received either from the transfer of the investment inside the country, from the liquidation of the company or the portfolio, or from a decrease in the capital of the company or the portfolio.

1.2 Foreign Exchange Market

The foreign exchange market is constituted by currencies which are voluntarily or compulsory channeled or negotiated through foreign exchange market intermediaries or current compensation accounts.

1.2.1 Operations that pertain to the Regulated Exchange Market

The following operations need to be channeled through the foreign exchange market:

a. Importation and exportation of goods.

b. Foreign debt operations conducted by Colombian residents, as well as financial costs inherent in the same.

c. Foreign capital investments in the country, as well as returns associated with the same.

d. Colombian capital investments abroad, as well as returns associated with the same.

e. Financial investments in securities issued abroad, or investments in assets situated abroad, as well as returns associated with the same, except when investments are made with currencies coming from operations not required to be channeled through the foreign exchange market.

f. Guarantees and surety agreements in foreign currencies

g. Derivatives operations

All of the exchange operations which are not catalogued as to be compulsory channeled through the exchange market belong to the freetrade market and therefore can be executed without having to go through foreign exchange market intermediaries or compensation accounts (i.e. payments in foreign currency for provision of services).

1.2.2 Foreign Exchange Market Intermediaries

Foreign exchange market intermediaries are entities authorized to channel currencies pertaining to operations conducted in the regulated foreign exchange market and to operations voluntarily channeled through the same, by acquiring and selling the currencies required for or generated by such operations. The exchange rates for buying and selling currencies shall be those freely agreed by the parties to the operation, and no commissions may be charged by the intermediary.

The following entities are the foreign exchange market intermediaries that may channel operations through the foreign exchange market:

a. Commercial and Mortgage Banks

b. Financial Corporations

c. Commercial Finance Companies

d. Financiera Energética Nacional (FEN)

e. Bancoldex

f. Financial Cooperatives

g. Stock brokerage firms

h. Currency Exchange Houses

1.2.3 Compensation Accounts

1.2.3.1 Current compensation accounts

The foreign exchange regime has provided Colombian residents with a flexible mechanism for managing their exchange operations, particularly those pertaining to the regulated exchange market, without the need to turn to foreign exchange market intermediaries. This is possible through the opening of current accounts abroad in foreign currency, which are later registered as compensation accounts with the Central Bank of Colombia.

Compensation accounts may be used to pay for imports, deposit sums resulting from the payment for exports, receive sums for foreign investment in Colombia, transfer investment profits, receive disbursements of foreign loans and pay principal and interest.

Compensation accounts may also be used to pay free market obligations so that, with the fulfillment of some pre-established requirements, comply with certain procedures of the voluntary channeling of foreign currency through the exchange market.

The opening, managing and closing of compensation accounts are subject to the reporting requirements of the Central Bank of Colombia and the Directorate of National Taxes and Customs (DIAN, for its acronym in Spanish).

1.2.3.2 Special compensation accounts

As a general rule payments in foreign currencies made between Colombian residents are prohibited, except for

companies engaged in the exploration and production of oil, natural gas, coal, ferronickel and uranium or are exclusively dedicated to the rendering of services regarding oil & gas. As an exception to the general rule, special compensation accounts have been created in order to allow for the payment in foreign currency (in other words different from the Colombian Peso, COP) of obligations related to the fulfillment of obligations derived from domestic transactions between residents in Colombia who are not subject to special regimes (those related to the oil & gas and mining sectors and related services).

These accounts share the same characteristics of ordinary compensation accounts, but their use is restricted. In order to make payments to a resident in Colombia through a compensation account, it is necessary for the currency of the account of who comes through with the payment originate from operations that must be channeled through the foreign exchange market. Also, currencies received by the residents in these accounts must originate exclusively from payments for domestic operations conducted with other residents of Colombia. Such currencies may be used only to pay for operations conducted in the foreign exchange market, or to sell their remaining balances to foreign exchange market intermediaries or to other owners of traditional or special compensation accounts.

1.2.4 Foreign Exchange Declaration

The foreign exchange declaration is a formality required to evidence the execution of a foreign exchange operation which implies the purchase o sale of currency in the exchange market when the same is channeled through the foreign exchange market by means of current compensation accounts or through duly authorized foreign exchange market intermediaries.

The foreign exchange declaration is a form pre-designed by the Central Bank for the provision of information about an operation. The declaration must be signed by the person carrying out the operation either personally or through his/her general or special representative or agent, who need not be an attorney.

When operations are conducted trough foreign exchange market intermediaries, the foreign exchange form is presented to them (Form No. 4 of the Central Bank in case of international investments). When they are conducted through compensation accounts, the declaration is filled in electronically by the interested party or the person acting on his or her behalf, and submitted directly to the Central Bank. In the latter case, a duly numbered and signed physical copy of the declaration needs to be kept. In some exceptional cases this copy needs to be transmitted to the Central Bank.

Since this is a private declaration, the veracity of the information provided therein, as well as the fulfillment of foreign exchange requirements, are the sole responsibilities of the person who carries out the foreign exchange operation.

The Office of the Superintendent of Companies has authority to control and sanction operations related to foreign investment and foreign debt transactions for working capital that are conducted by companies in general. The statute of limitations for the respective foreign exchange sanction action is two (2) years. The DIAN is authorized to control and sanction foreign exchange infractions related to foreign trade operations and foreign indebtedness derived therefrom. The statute of limitations for the respective foreign exchange sanction action is three (3) years. During the aforesaid terms, the competent authorities, as the case may be, have the power to investigate and sanction foreign exchange infractions.

(Even if not considered exchange returns, it is important to warn that there are other existent forms of the Central Bank that may be used to inform exchange operations with the aim to update the foreign investment of the companies which belong to the general exchange system (Form No 15), register and update the foreign investment of the hydrocarbons sector (Form No 13), register the compensation account (Form No 9), among others, which should be duly filed before the Central Bank either physically or electronically.)

1.2.5 Regulation of Foreign Exchange Market Operations

Payments by residents in Colombia for imports or exports must be made with foreign exchange market currencies. The currencies required for such purposes must be obtained through foreign exchange market intermediaries or by using current compensation accounts.

1.2.5.1 Importation of goods

The foreign exchange declaration for the importation of goods is made by means of Form No.1 of the Central Bank, “Exchange return for importation of goods” and its attachments will depend on the type of payment made by the importer. Besides the acquisition and transfer of currencies through foreign exchange market

intermediaries or by way of current compensation accounts, residents in Colombia may pay for their imports in the following ways:

a. In Colombian legal tender, channeling its value through foreign exchange market intermediaries by means of deposits into accounts opened in Colombian legal currency by foreign suppliers or foreign financial institutions.

b. In legal tender, by means of drafting a counter check to the foreign supplier, when the same does not have a checking account or a savings account in Colombian legal tender.

c. Charged to an international credit card issued in Colombia and billed in Colombian legal tender, or charged to an international credit card issued abroad or in Colombia and billed in foreign currency.

Importations may be financed by the merchandise supplier, by foreign exchange market intermediaries or by foreign financial institutions. If the foreign supplier grants a payment term of greater than 6 months from the bill of lading date, and the operation has an FOB value equal to or greater than ten thousand dollars ($10,000 USD), it is considered to be an external credit transaction, even if the value pending transfer abroad is less than said amount. In such case, the Central Bank of Colombia must be informed of the transaction within the aforementioned 6-month term, through the foreign exchange market intermediaries. For such purposes, the importer must fill out and file Form No.6 of the Central Bank ("Information about external credit granted to residents") with a foreign exchange market intermediary paying the corresponding banking fees. Once information about the external indebtedness has been provided in such fashion, the payments must continue to be channeled in the manner indicated, but henceforth using Form No.3 of the Central Bank (Exchange return for foreign liability) rather than Form No.1 of the Central Bank.

International leasing operations are considered, by definition, as financed importations. Therefore, they must be reported to the Central Bank of Colombia using the same procedure described above.

Finally, it is important to warn that in regards to importations, the compensation or crossing of reciprocal obligations is not admissible, and that the general rule it is the importers duty to transfer the currency of the importation of merchandise abroad or a penalty of 200% of the value of the transfer would be applied.

1.2.5.2 Exportation of goods

The payment for exports may also be accepted in Colombian legal tender through foreign exchange market intermediaries, by means of an international credit card charge in foreign currency channeled through the exchange market or in Colombian legal tender. The exchange declaration for the exportation of goods is made via Form No.2 of the Central Bank "Exchange return for exportation of goods" and needs to be filled out as soon as the reintegration of the currencies into the exchange market takes place. If the payment for the exportation is accepted in Colombian legal tender, it must be made through foreign exchange market intermediaries by filing the exchange declaration for exportation of goods within five (5) business days following the channeling of the payment via an account credit.

When the Colombian exporter grants the foreign buyer a payment term greater than 12 months from the final declaration of exportation, and the operation has a value in excess of ten thousand ($10,000 USD), the operation is construed as a foreign debt transaction (active credit) and needs to be reported to the Central Bank of Colombia by filing Form No. 7 ("Information about external credit granted to nonresidents") within twelve (12) months following the date of the declaration of exportation.

On the other hand, if the foreign buyer decides to pay in advance the value of future exportations of goods, the Colombian exporter shall have 4 months from the date of channeling the currencies through the foreign exchange market intermediary or the current compensation account, in order to carry out the respective exportation. If the term for the exportation exceeds four (4) months, the transaction is construed as an external debt transaction that needs to be reported to the Central Bank of Colombia prior to the expiration of said term, on Form No.6 of the Central Bank "Foreign liability information issued to residents" before the expiration date without regarding the received value of the prepayment. This transaction cannot constitute a financial obligation that accrues interest for the Colombian exporter, nor may it generate an obligation different from that of delivering the merchandise. When the exportation related with the prepayment of foreign liability is carried out, the Central Bank must be informed of such activity by filing Form 3A of the Central Bank.

The foreign exchange regime allows exporters to obtain loans from foreign financial institutions or foreign exchange market intermediaries in order to pre-finance the exportation of goods.

Finally, it is important to warn that in regards to importations, the compensation or crossing of reciprocal

obligations is not admissible, and that the general rule iis that the currency corresponding to the foreign payments be presented to the Colombian exporter by his client abroad a penalty of 200% of the value of the transfer would be applied.

1.2.5.3 Loans in foreign currency

Revenues and expenditures in foreign currencies related to loans in foreign currencies obtained or granted by residents in the country need to be channeled through the foreign exchange market.

Residents and foreign exchange market intermediaries may obtain loans in foreign currency only from foreign financial institutions registered by the Central Bank of Colombia (passive credit). For the purposes of obtaining loans abroad, reinsurance companies domiciled abroad, promotion oriented multilateral financial funds, and foreign risk capital funds are also considered to be foreign financial institutions. On the other hand, residents in Colombia may also grant loans in foreign currency to residents abroad (active credit), regardless of the period and destination of said currencies.

All external loans (active or passive in nature) granted or obtained by residents in Colombia must be channeled through the foreign exchange market and must be reported to the Central Bank of Colombia prior to their disbursement by means of filling out and filing Form No.6 of the Central Bank “Foreign liability information issued to residents” por liability loans or Form No.7 of the Central Bank “Foreign liability information issued to residents” for active loans with a foreign exchange market intermediary.

1.2.5.4 Investment of Colombian capital abroad

The foreign exchange regime recognizes two types of investments of Colombian capital abroad: direct investments, and financial investments or investments in foreign assets.

Direct investments

These are made by residents in Colombia in the capital of foreign companies. This type of investment and its respective movements need to be reported to the Central Bank of Colombia on Form No.4 of the Central Bank “Exchange return for international investments.”

Financial investments or investments in foreign assets

This type of investment includes:

a. The purchase of securities issued abroad or assets located abroad.

b. The purchase of private foreign obligations, external public debt, and bonds and debt securities representative of external public debt.

c. Transfers abroad originating in the placement with residents of securities issued by foreign companies and foreign governments, or guaranteed by them, authorized by the Office of the Superintendent of Finance of Colombia.

These investments may be made via the foreign exchange market or the free market with currencies used in foreign exchange operations that are not required to be channeled. If they are made via the foreign exchange market, they are understood to be automatically registered by means of Form No.4 of the Central Bank “Exchange return for international investments.” once the currencies are transferred. If the investment is made with currencies from the free market, and its value is greater than five-hundres thousand dollars ($500,000 USD), the operation must be reported by means of Form No.11 of the Central Bank “Registry of Foreign Investment” before July 30th of the following year.

1.2.6 Special Exchange Regimes

A special exchange regime is applied only to branches of foreign companies of the hydrocarbon and mining sector which carry out activities of exploration, exploitation, and render services in the hydrocarbon sector. The stated mining activity is exclusively related to the exploration and extraction of carbon, ferronickel, and uranium. The main characteristics of the special regime of the mentioned branches are:

a) The branches under this regime are not compelled to reinsert into the exchange market the currency derived from the export sales in foreign currency. Only the currency derived from the need to fulfill with its own needs in national currency mat be reinstated through the stated regime.

b) These branches do not have access to the exchange market to acquire currency for the operations in

foreign currency in Colombia or abroad.

c) The sale and purchase of fuel for ships and aircrafts of international trips between residents in the country may be paid in foreign currency as well as the sale of crude oil and natural gas of the national production of ECOPETROL or other companies that are dedicated to the industrial refinement of petroleum.

d) The sale of the national production of natural gas carried out by companies with capital abroad which carry out exploration and exploitation activities of petroleum and natural gas may be in foreign currency.

e) The services regarding the hydrocarbon sector provided by residents exclusively dedicated to this activity may be paid according to the certification issued by the Ministry of Mining and Energy to companies of the hydrocarbon sector.

The supplementary investment account of the assigned capital of the branch may be credited no only with the contributions given by the head office in currency but also in goods and services.

These branches which are compelled to annually file Form 13 of the Central Bank with the objective if updating the equity accounts and register the movements in the supplementary investment account of the assigned capital (ISCA).

The branches which decide not to adopt the special regime must inform the Central Bank so to be excluded within ten (10) years counted from the date of the communication. Consequently, the operations which are carried out are submitted to the ordinary exchange regime.

1.2.7 Foreign Exchange Forms

FORM NO.	FORM DESCRIPTION
1	Exchange return for importation of assets.
2	Exchange return for exportation of assets.
3	Exchange return for foreign debt.
3A	Report of payment of foreign debt.

4	Exchange return for foreign investments
	Applies for:
	• Direct foreign investment
	  • Acquisition of shares, participation, quotas, including those destined to the assigned capital of branches of foreign companies; bonds compulsory convertible into shares;
	  • Supplementary investments of the assigned capital of the branches of foreign companies.
	  • Acquisition of shares in private capital funds.
	  • Acquisition of non-movable assets, as well as participation titles issued as a result of a process of a real estate change of title of a non-movable asstes either by a private or public auction.
	• Foreign portfolio investments.
	• Acquisition of shares, bonds compulsory converted into shares and other securities inscribed in the national registry of shares, including ADR/GDR programs)

5	Return of change of services, transfers and others.
6	Foreign debt information issued to residents.
7	Foreign debt information issued to non-residents.
8	Registry of guarantees in foreign currency.
9	Registry of compensation checking accounts.
10	Comparison of operations of compensation checking accounts.
11	Registry of foreign investments: Applies for: • Sums transferred for direct foreign investment and portfolio investment. • Trust assets. • Payments in kind (tangibles and intangibles) • Agreements without capital participation. • Acquisition of shares carried out through the public money market with national currency resulting from local credit operations executed with credit establishments.
13	Foreign branches of the special regime (Mining and Hydrocarbons) – Registry of supplementary investment of the assigned capital and the update of patrimonial accounts.
15	Companies and branches of the common regime – Patrimonial conciliation (update of the foreign investments in Colombia for receiving companies of foreign investment and branches of foreign companies of the common regime)
17	Extension for the registry of international investments.

1.3 International Investment Treaties

As part of the strategy adopted by Colombia to improve foreign trade relations, the country is presently involved in the negotiation and signing of Bilateral Investment Treaties (BIT) as well as Free Trade Agreements (FTA) that include specific chapters about foreign investments.

BIT are international treaties that regulate the treatment of foreign investment. Both the BIT and the foreign investment chapters in FTA have as their main purpose to establish clear and stable rules for investments made by the nationals of one of the Parties in the territory of the other, based on the principles of justice, transparency, non discrimination and other international standards. In addition, they include obligations with respect to the treatment and protection to be provided for both investors and their investments, as well as an specific mechanism for solving disputes between an investor and the host State when they are related to the investment principles included in the treaty, such mechanism includes the possibility to attend to international arbitration under the ICSID or other international accepted arbitration rules as an additional option to local courts, .

The main elements present in these agreements are:

a. National Treatment: Each party must grant to the investors of its counterparty, and their investments, a treatment that is not less favorable than that granted under similar circumstances to its own investors.

b. Most Favored Nation Treatment: Each party must grant to the investors of its counterparty, and their investments, a treatment that is not less favorable than that granted under similar circumstances to investors of other countries.

c. Fair and Equitable Treatment: Each party must grant a minimum treatment as required by international standards to investment and investors of the other contracting Party

d. Prohibition of illegal expropriation: The possibility of carrying out expropriations without just cause or in a discriminatory manner is restricted, and remains viable exclusively for reasons of public utility or social interest, subject to due process, carried out in a non-discriminatory manner in good faith and accompanied by the payment of a proper and effective indemnification.

Presently, Colombia has FTA including foreign investment provisions in force with Mexico, Chile, Guatemala, Honduras, El Salvador and BIT with Peru, Spain and Switzerland.

FTA which include investment chapters have been signed with USA, Canada, Iceland, Liechtenstein, Norway, and Switzerland and BIT with Peru (a more profound agreement that the one in force), with India, China, and the UK.

Currently, negotiations of FTA including foreign investment provisions are being carried out with South Korea, Panama and the BIT negotiations are being held with Germany, France, Japan, Kuwait, Saudi Arabia, and Uruguay.

1.4 Arbitration

The laws of Colombia allow individual parties to resort to the arbitral procedure in order to resolve their disputes. Arbitration may be agreed to in a contract, in which case it is understood that the arbitration clause applies, or it may be initiated when a dispute takes place before a formal arbitration agreement is reached, in which case the parties act pursuant to a promise to arbitrate. The parties are at liberty to choose the arbitrators. This choice may made by common agreement of the parties, or they may designate a third party to name the arbitrators. Contracts entered into with public entities may also be subject to arbitration, in this event the arbitration shall be decided in accordance with the law (in other cases, the arbitration may be decided ex aequo et bono). The arbitration tribunal shall be composed of a minimum of three arbitrators, unless the contract has a small value, in which case only one arbitrator will be necessary.

It is also permissible for the parties to agree to submit their disputes to international arbitration, provided that one of the following conditions exist:

a. If the parties are domiciled in different States.

b. If the place of performance of an important part of the obligations related to the subject matter of the dispute is in a State different from the State in which the parties have their main domicile.

c. If the matter subject to the arbitral clause affects the interests of more than one State and the parties have so expressly agreed.

d. If the dispute directly and unequivocally affects the interests of international commerce.

The parties may agree on the applicable substantive and procedural law.

International arbitration is governed by international treaties signed and ratified by Colombia, which prevail over the internal laws of the country (The Convention on the Recognition and Enforcement of Foreign Arbitral Awards – the "New York Convention" of 1958, The Inter-american Convention on International Commercial Arbitration – the "Panama Convention" of 1975 and the Convention on the Settlement of Investment Disputes between States and Nationals of other States – the "Washington Convention" of 1965).

1.5 Legal Stability Contracts

The laws of Colombia have established this type of contract in order to guarantee an investor the continuity of the determinative legal conditions present at the time the investment was made. These contracts assure the investors who sign them that if during the effective term of the same any of the laws identified in the contract as being determinative for the investment is adversely amended, the investors will have the right to the continued application of said laws in their original form for the remainder of the term of the respective contract (between three and 20 years). Foreign portfolio investment is excluded.

The following are the requirements for entering into these contracts:

a. The making of a new investment or enhancement of an existing one for a value equal to or greater than 150.000 tax units (value of a Tax Unit in COP = 24.555), approximately $1,840,000 USD.

b. The submission of a request for a contract to the Legal Stability Committee. Such request must be accompanied by a study that demonstrates the origin of the investment resources, as well as a detailed description of the activity to be conducted, together with any feasibility studies, plans and technical studies that the project may require, and the number of jobs expected to be created.

c. The identification of the specific laws for which stability is requested, providing the reasons that demonstrate the importance and determinative character of the same for the proposed investment.

d. The payment to the Nation of a premium equivalent to 1% of the value of the investment agreed to in the Agreement, made each year; the rate may be lowered to zero point five (0.5%) for non-productive periods.

The following laws may not be subject to stability contracts:

a. Laws that harmonize rights, guarantees and duties established in the National Constitution with respect to international treaties ratified by Colombia.

b. The social security regime.

c. Compulsory investments decreed by the government under exceptional circumstances.

d. Indirect taxes

e. Laws declared unconstitutional or illegal during the term of duration of the Legal Stability Contracts.

f. Regulation issued by the Central Bank of Colombia.

g. Prudential regulations applicable to the financial sector.

h. The rate regime applicable to public utilities.

i. The legal obligation to declare and pay taxes.

2. Corporate matters

In Colombia, domestic and foreign investment vehicles are supported by Constitutional principles, such as the right of association, the right to equality, and the protection of free enterprise and private initiative. This chapter presents a summary of the most relevant legal aspects of the most commonly used investment vehicles in Colombia.

2.1 Most common Vehicles for channeling Foreign Investment

There are three corporate vehicles that are most widely used by foreign investors to channel their investments in Colombia: the corporation and the limited liability company, which both belong to the category of commercial enterprises, and the foreign company branch.

Also, another vehicle, the Simplified Stock Corporation, (SAS for initials in Spanish)is a new type of corporation created by Law 1258 of December 5, 2008, which enjoys more flexible procedures and characteristics with respect to the company's creation, amendments and other corporate acts. Although it is currently not the most widely used corporate vehicle, given that it has only recently been authorized, its convenient and flexible legal regime may very soon make it one of the most commonly used types of business associations.

Among the mentioned investment vehicles, the SAS should be highlighted due to the flexibility. For their exchange benefits, the foreign company branch is recommended for the mining and hydrocarbon sectors.

Other corporate vehicles with individual characteristics which are not as used by foreign investments are:

a. Sole Member Company: This is a company whose owner is the only member, which can be an individual or a legal entity (domestic or foreign). Once it has been registered in the commercial registry, the company becomes a legal entity distinct from its member. Pursuant to recent legal provisions, Sole Member Companies will have to be transformed into Simplified Stock Corporation prior to June 5, 2009.

b. General Partnership: A partnership in which a premium is placed on trust among the partners. In this type of partnership, each partner is liable not only up to the amount of his contribution but to the extent of their personal patrimony.

c. Limited Partnership: This is formed by managing partners (or general partners) and limited partners. The former have unlimited joint and several liability, while the liability of the latter is limited to their contributions. Limited partnerships are generally used for family businesses.

2.1.1 General features of Business Companies

2.1.1.1 Creation

Business companies are created by the execution of a corporate agreement that regulates basic matters, such as the company's name, place of business and purpose; meetings of the corporate organs; and the scope and limitations of the powers of the legal representative, among others. The creation of these companies is subject to certain formalities for purposes of acquiring a legal status that is distinct from and independent of that of its partners or shareholders, such as issuing public and private documents and its registry.

2.1.1.2 Operation, amendments and right of withdrawal

Generally speaking, business companies do not require the prior authorization of any public authority in order to be able to operate.

An exception exists for companies involved in financial, stock brokerage or insurance activities, as well as the management, exploitation and investment of funds obtained from the public. These companies require the prior authorization of administrative authorities. This is the case for banks, trust companies, securities exchanges, stock brokerage firms and insurance companies, among others.

Also, as a general rule, amendments to corporate bylaws and articles of incorporation do not require the approval of the authorities, except if the amendments involve a corporate reorganization such as a merger or spin-off, which are subject to special notice and meeting procedures for the partners or shareholders, as well as

the creditors of the company party to the amendment. Amendments that reduce capital by authorizing the reimbursement of contributions also require authorization.

The right of withdrawal is defined as the possibility for partners to separate themselves from the company, with the resulting reimbursement of their contributions to capital, when the highest corporate body makes a decision that involves a change in circumstances such that the partner or shareholder loses interest in continuing as such. The causes for withdrawal are: a transformation, merger or spin-off of the company that involve an increase in the liability of the partners or a diminution of their interest [such as dilution] and of their rights to voluntarily cancel the registration of the shares on the national registry of securities.

2.1.1.3 Regulation of parents and subsidiaries - Business Groups

A company is a subsidiary or controlled when its decision-making power is subject to the will of one or more entities or individuals who constitute the parent or controlling party. This control may be economic, political or commercial.

The control may be exercised mainly through a majority or deciding interest in the corporate capital of the subsidiary, 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.

If the subsidiary company supports such control directly, it is called a first-tier subsidiary; if it bears such control with the assistance or through subsidiaries of the parent company, it is called a second-tier subsidiary. In this regard, it is important to highlight the following points:

- The law recognizes that there can be subordination of one entity by another without the need for any participation in the capital of the subsidiary.
- Similarly, it is recognized that the control can be exercised by individuals or non-corporate legal entities.
- The majority participation in the capital of the subsidiary company can be motivated by speculative or strategic reasons, and not necessarily by the intention to form a business group.

The existence of an economic or business group composed of several legal entities requires a unity of purpose and direction between the different entities, in addition to the existence of a subsidiary relationship.

For these purposes, the law recognizes a unity of purpose and direction when the existence and activities of all of 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 control situation and/or a business group must be registered with the Chamber of Commerce, so as to provide notice to third parties who do business with the entities involved.

2.1.1.4 Financial statements

Financial statements have the purpose of providing those who do not have access to a company's records information about controlled resources, obligations which require the transfer of resources, the changes suffered by such resources over time and the results for any given period.

In this regard, the law provides that commercial companies must close their books and produce general purpose financial statements at least once a year, on December 31, notwithstanding the ability of the partners or shareholders to agree, through the bylaws, to different and additional dates.

General purpose financial statements are those that are prepared at the close of a specific period for information to undetermined users, for the purpose of satisfying the common public interest in evaluating the capacity of an economic entity to generate positive cash flows. The financial statements include the balance sheet, the income statement, the statement of changes in equity, the statement of changes in financial position, and the cash flow statement.

2.1.1.5 Profits

Profits are distributed on the basis of financial statements prepared in accordance with generally accepted accounting principles, in proportion to the paid portion of the nominal value of the shares, parts or corporate interests of each partner or shareholder, if the contract has not validly provided otherwise.

Clauses which deprive any shareholder or partner of full participation in the profits will be deemed not having been written.

2.1.1.6 Inspection, oversight and control

As a general rule, all business companies are subject to inspection and possible oversight and control by the Office of the Superintendent of Companies.

As an exception, due to the nature of the activity that constitutes the corporate purpose, the oversight and control duties can be assigned to other superintendents (Finance, Public Utilities, Health, Ports, Private Surveillance and Security, etc.).

2.1.1.7 Dissolution and liquidation

Under Colombian law, the extinction of a legal entity occurs through a process that begins with its dissolution. This event marks the initiation of the liquidation process, which ends with the liquidation proper of the entity. The dissolution can be generated by the expiration of the period agreed to by the partners or shareholders for the life of the company, or by the advent of certain circumstances (prescribed by law or the bylaws) that prevent continued activity in furtherance the corporate purpose, such as a decision by the highest corporate body or the Authorities, or the extinction of the property whose exploitation constitutes the corporate purpose among others.

When the company is dissolved and is in the process of liquidation, its corporate purpose is restricted to a single aim: the use of the assets to pay the liabilities, that is, to proceed with all steps necessary to extinguish the legal entity.

The liquidation may be voluntary or court-ordered. The former is conducted by liquidators appointed by the partners or shareholders in accordance with the procedure prescribed by the Commercial Code. The latter is conducted by liquidators appointed by judicial authorities, and can take place as a consequence of the failure or breach of a restructuring agreement or debtor reorganization plan or reorganization agreement, as well as the direct request of the debtor, the Authorities or the creditors, among other causes provided by law. The creditors appear in such proceedings to file their claims, in the form and within the time provided by law, for the purpose of enforcing their rights and obtaining payment of their claims in the order and with the priority and preferences established by law.

2.1.2 Foreign Company Branch

Colombian commercial law establishes rules to distinguish between foreign companies and local branches of foreign companies. The Commercial Code states that "Foreign companies are companies that are established in conformity with the laws of another country and that have their principal offices abroad". The status of a foreign company is founded on two premises: i) that it has been established under the laws of another country, and ii) that it has its principal offices abroad.

Colombian law does not provide a definition for a foreign company branch. The Commercial Code simply provides that if a foreign company wishes to carry out business in Colombia on a permanent basis, it must open a branch with offices in the country. However, applying the commercial code's definition of a domestic branch, one can conclude that branches of foreign companies are also "... business establishments opened by a company within or outside its territory for the carrying out of all or part of the company's business, managed by agents with authority to represent the company...".

Thus, a foreign company branch should be understood as a business establishment opened by the foreign company in the country to carry out permanent activities. It follows that the foreign company branch is not an autonomous entity distinct from the Parent Company, and therefore it does not enjoy an independent legal status.

Furthermore, in order for a foreign company to begin doing business in Colombia on a permanent basis, it must incorporate a branch with offices in the country, as provided in the Commercial Code. It is clear, then, that it must be determined whether the activity that a foreign company is going to carry out in the country is a “permanent activity” that requires it to incorporate a branch.

The Code does not expressly define what a permanent activity is, and only enumerates very dissimilar activities that are considered to be permanent, as follows:

a. Opening commercial establishments or business offices within the territory of the republic, even if they only have a technical or consulting nature.

b. Participation as a contractor in the execution of projects or the provision of services.

c. Participation in any way in activities related to the management, exploitation or investment of funds obtained from private savings [that is, the public].

d. Participation in any of the segments or services of the mining industry.

e. Obtaining a “concession” [such as oil or mining grants] from the Colombian Government or participation in the exploitation of the same in any manner.

f. Operation of its shareholders' or members' meetings or boards of directors, or its management or administration takes place in the national territory.

The Colombian authorities have for a long time held that this provision of the Commercial Code regarding permanent activities cannot be applied literally. Rather, the circumstances surrounding the activities of foreign companies should be studied in each specific case, with respect to such matters as the nature, frequency or duration of the activities, in order to determine conclusively whether they are permanent or transitory.

2.1.2.1 Creation

A foreign company branch is a business establishment of a foreign company created by its Parent Company, and therefore it lacks a different or independent legal existence.

2.1.2.2 Name

As it does not have a distinct legal existence from its foreign Parent Company, it is given the same name as the foreign company, with the addition of the expression “Sucursal Colombia” (“Colombia Branch”).

2.1.2.3 Assigned capital

The branches have certain capital assigned by their Home Offices which, in essence, serves as a general guarantee for the liabilities incurred in Colombia. The assigned capital stated in the branch's documents of incorporation must be paid in full at the time of the branch's establishment.

The Home Office may also provide its branch with an investment supplementary to the assigned capital, which consists of a balance sheet account for the available assets, foreign currency or services that remain in the current accounts of the Home Office during the year corresponding to the earnings or contributions. The credit balance of the account corresponds to the amount that must be recorded as a supplementary investment to the assigned capital.

By registering the supplementary investment to the assigned capital with the Banco de la Republica, the company obtains foreign exchange rights and, consequently, both the invested capital and the earnings generated by the investment can be repatriated.

The practical difference between the assigned capital and the supplementary investment to assigned capital is that if the company decides to increase the capital assigned to the branch, it must amend the opening certificate, have it formalized through a public deed, and register it with the competent Chamber of Commerce. These steps are not necessary in the case of the supplementary investment.

2.1.2.4 Corporate bodies

Because the branch of a foreign company is a business establishment, its main bodies are those of its Home Office. However, the branch has a General Agent, who performs the functions of representing the branch, managing the establishment and representing the foreign company in transactions with third parties.

Additionally, the law provides that branches of foreign companies are obligated to appoint a statutory auditor, who must fulfill the same functions as those appointed by corporations.

2.1.2.5 Decisions

Except for decisions that the General Agent is authorized to make in relation to administration and the ordinary course of business, all decisions of importance are adopted by the corresponding body of the Home Office, in accordance with the laws that govern the corresponding corporate establishment in the country of origin.

2.1.2.6 Special causes for liquidation

The causes for liquidating branches are the same as those for liquidating the Home Office, given that the existence of the branch depends on the existence of the company to which it belongs.

Also, because branches are seen as similar to business companies, they are subject to the general causes for dissolution of Colombian companies that are compatible with the legal nature of the branch, such as the decision of the Home Office (or the corporate body charged with this function by the bylaws) to close the business, or the decision of the authorities when they determine that the assigned capital has fallen below 50% and that measures to restore it have not been taken.

2.1.2.7 Profits

All of the profits generated by the branch can be transferred abroad upon compliance with the requirements established by law.

2.1.3 Procedure and Requirements for Creation

2.1.3.1 Power of Attorney

If the future partners or shareholders cannot be present or available in the country in order to attend to the procedures required by the Authorities, they must prepare and grant a written power of attorney for the creation of the company or the branch in Colombia. This power of attorney may also be issued by the legal representative of the Home Office.

2.1.3.2 Bylaws

a. In the case of the opening of a branch, the Home Office must legalize before a notary public the documents that show the bylaws of the Home Office and its good standing (its valid existence and legal representation). The Home Office must also provide the minutes of the meeting adopting the bylaws of the branch in Colombia and its opening, the designation of its general agent, his/her alternate and the statutory auditor.

b. In the case of the creation of a company, documents must be provided that certify the good standing of each of the partners or shareholders, if they are legal entities. If they are individuals, it is sufficient to provide a photocopy of their passports or foreigner identification cards if they are foreigners, and a photocopy of their citizenship identification cards if they are [Colombian] citizens, without any additional procedures. In addition, the bylaws of the company to be established must be submitted.

2.1.3.3 Documents Issued Abroad

All documents issued abroad must contain the “chain of authentications,” that is, the seals and authentication of the notary and the [nearest] Colombian consul in the city of origin. In the absence of a notary, the signatures must be authenticated by the consul, and the consul's signature must be certified by the Ministry of Foreign Affairs in Colombia. For countries that are signatories to the Hague Convention, it is sufficient to legalize the documents with the corresponding Apostille.

Documents issued in another language must be submitted to the authorities in their original language, with an official translation made by a translator authorized by the Ministry of Foreign Affairs.

2.1.3.4 Public Deed

a. In the case of a branch, the above-mentioned documents and the powers of attorney must be formalized in a public deed.

b. In the case of a business company, the above-mentioned documents and powers of attorney must be formalized in a public deed. For simplified stock companies, the documents need not be formalized in a public deed, as it is sufficient to obtain a notary's authentication of signatures. In case in which a private document is issued abroad, legalization will also be required as indicated in point

2.1.3.5 Registration of the Company

The public deed or the private document of constitution, as the case may be, the acceptance letters of the persons appointed for the management and administration of the company, and the RUT (Registro Unico Tributario, or “Single Tax Registration”, the form used to register companies with the tax authorities) must be filed with the Chamber of Commerce together with the other forms issued by this entity.

2.1.3.6 Payment of Capital and Registration of the Foreign Investment

Foreign currency must be managed through compensation accounts registered before the Central Bank or

duly authorized financial institutions in Colombia. Consequently, foreign exchange declarations must be filed with the Banco de la Republica in order to convert foreign currency into domestic currency.

If the investment is made in foreign currency (not in assets) the filing of the declaration will be sufficient to register the foreign investment. Otherwise, if the investment is made in assets, the applicable procedures are different. (see the Foreign Investment Chapter)

2.2 Comparative analysis of the Vehicles from a legal and business perspective

Below we highlight the main advantages and disadvantages of the four investment vehicles from an exclusively legal-business perspective:

2.2.1 Limited liability company

The main advantages of this corporate vehicle are that it may be created with only two members and that it is not required to have a statutory auditor, except in certain cases established by the law with respect to the value of its assets and revenues

The main disadvantage is that, although the liability of the members is limited to the amount that they contribute to the capital of the company, there are two exceptions which make them jointly and severally liable for the labor and national tax obligations of the legal entity.

2.2.2 Corporation

This vehicle is widely used in Colombia, with the largest economic enterprises being created as corporations, although not necessarily so. One of the attractive aspects of the corporation is that the liability of its shareholders is limited to the amount of their contributions, without exception.

There are two special characteristics of this type of entity. The first is the requirement to have a statutory auditor, and the second is the requirement that it have a minimum of five (5) shareholders for its creation and operation.

2.2.3 Foreign company branch

This form is used widely in the Colombian market. It should be noted that the branch is an extension of the Home Office, which is therefore responsible for all of the liabilities incurred by the branch in the country. Like corporations, branches are required to have a statutory auditor. Their great advantage is in being able to have an asset account called Supplementary Investment to Assigned Capital, which works as a reciprocal account between the branch and its Home Office.

2.2.4 Simplified stock company

Although this form of enterprise has only recently been authorized, it has become the most widely used investment vehicle because of its flexible and adaptable regulation, which provides shareholders with instruments that facilitate the creation, operation and termination of the company, and which are very useful for the prevention of intra-corporate disputes.

2.3 Summary of the investment vehicles

The table below summarizes the main differences among the most widely used investment vehicles in Colombia.

Corporation (Sociedad Anónima) - S.A.	Limited Liability Company - Ltda.	Foreign Company Branch	Simplified Stock Company
Members			
The Corporation is created and subsists with a minimum of 5 shareholders. The shareholders are liable only up to the amount of their contributions (subscribed capital).	A minimum of 2 members is needed to create and maintain the company. The maximum number of members is twenty-five 25. The members are liable only up to the amount of their contributions to capital. However, they are also jointly and severally liable for the payment of tax and labor obligations.	The branch is a commercial establishment owned by the Home Office, and therefore it has no separate legal existence from that of the Home Office. Consequently, the contingencies of the branch in Colombia pass directly to its Home Office.	This company can be created with one or more natural or legal persons. The shareholders are liable only up to the amount of their contributions to capital. The shareholders are not liable for labor, tax or any other kind of obligation incurred by the company, except when the company is used for fraudulent purposes or to harm third parties.
Name, Effective Term and Purpose			
The corporate name must be followed by the words “SOCIEDAD ANÓNIMA” or “S.A.” If the company is registered or publicized without said specification, the managers will be jointly and severally liable for the corporate transactions that are conducted. Its effective term must be limited. Its purpose must be defined and limited to specific business activities.	The company name must be followed by the expression LIMITADA or LTDA, or else the members will bear unlimited joint and several liability. Its effective term must be defined. Its purpose must be defined and circumscribed by specific commercial activities.	The Office of the Superintendent of Companies has established that the branch should use the same name as the Home Office, followed by the word “SUCURSAL” (BRANCH). Its effective term must be limited. Its purpose must be defined and limited to specific business activities.	The company name must be followed by the words “SOCIEDAD POR ACCIONES SIMPLIFICADA” or “S.A.S.” Unlike the other commercial companies, the S.A.S. may perform any legal business activity without it having to refer to a specific business activity.

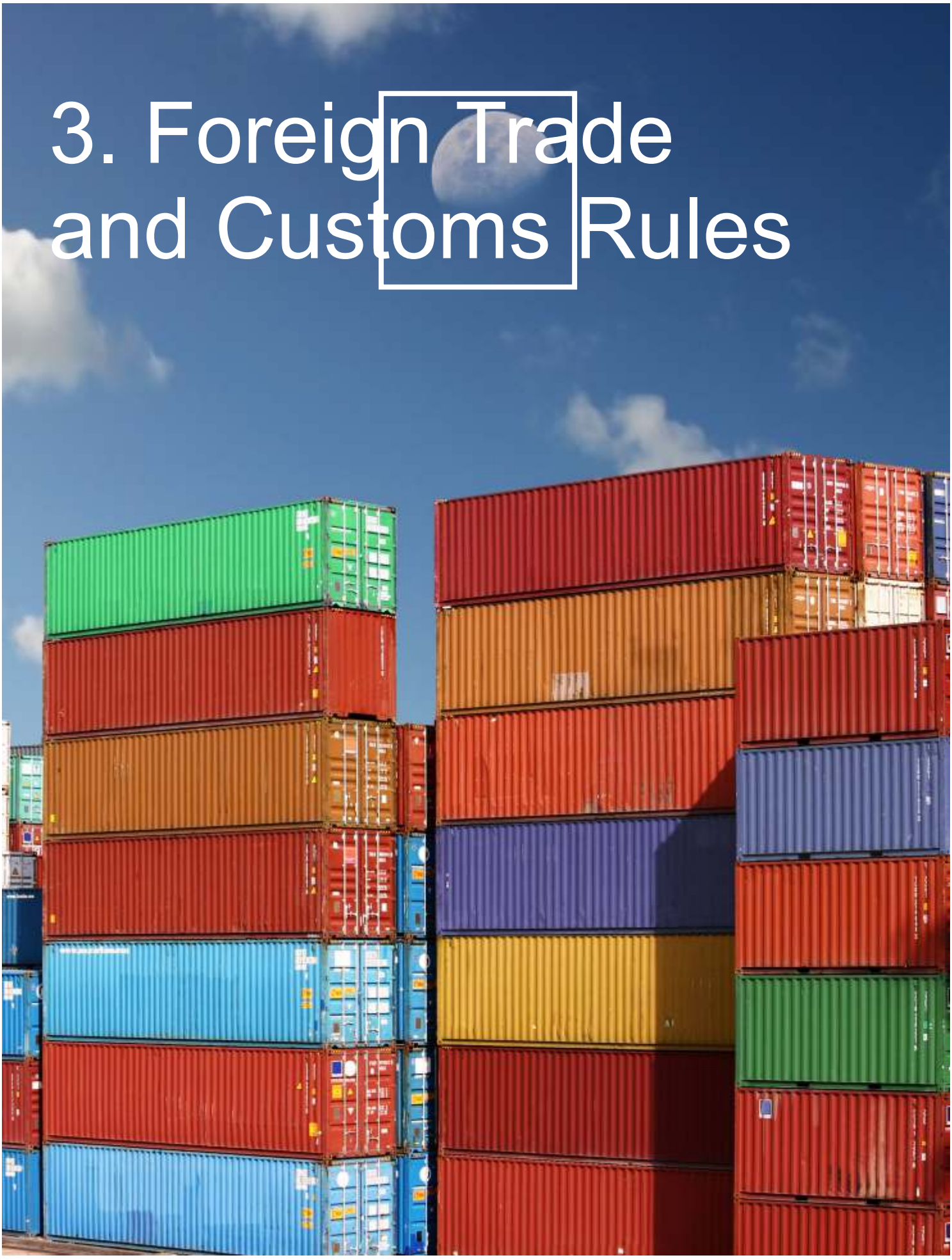
Corporation (Sociedad Anónima) - S.A.	Limited Liability Company - Ltda.	Foreign Company Branch	Simplified Stock Company
Capital			
The capital is represented by nominative shares and is divided into three classes: 1. Authorized Capital: the amount of capital that the shareholders expect to raise during the life of the company. 2. Subscribed Capital: the amount of capital that the shareholders are obligated to contribute in money or in kind at the time the corporation is established or in subsequent subscriptions. 3. Paid-in Capital: the portion of the subscribed shares that the shareholders have actually paid. At the time of incorporation, a minimum of 50% of authorized capital must be subscribed, and one-third (1/3) of subscribed capital must be paid. The balance of the subscribed capital must be paid within one year. The subscribed capital is considered to be the corporate capital, because the shareholders are liable for the total of the subscribed capital, whether or not it has been paid. The shares are freely negotiable, unless there is an agreed right of preference (right of first refusal), or the shares are preferential or not fully paid-in, or subject to a lien which requires certain authorizations and special procedures.	The capital is divided into equity interest units and must be paid in full at the time of creation. The assignment of interest is made through a public deed granted by the legal representative of the company, the assignor and assignee, since this involves an amendment of the bylaws. (In exceptional cases involving small companies created as such, it is not necessary to make the assignment by public deed). The assignment of interest is subject to the right of first refusal, unless the company bylaws provide the contrary.	The branches have capital assigned by their Home Office, which in principle, as in the case of business companies, constitutes general security for its creditors. Because branches are governed by Colombian laws that do not specifically refer to them, it is understood that their capital must be paid in full at the time of their creation.	The capital is represented by nominative shares and, like that of corporations, is divided into three classes: Authorized, subscribed and paid-in capital. The subscription and payment of the capital may be made under conditions and in proportions and periods that are different from those prescribed by law for corporations. The period for the payment of the shares cannot exceed two (2) years. The company may establish minimum or maximum percentages or amounts of the corporate capital that may be controlled directly or indirectly by one or more shareholders. If such limits are established, the bylaws may contain provisions that regulate the effects of noncompliance with such limits. The bylaws may prohibit the negotiation of the shares issued by the company, or any of the classes of shares, as long as the effective term of the restriction does not exceed ten (10) years from their issuance. This period may be extended for additional periods of not more than ten (10) years by the unanimous consent of all shareholders. The negotiation of the shares can be made subject to the prior authorization of the shareholders' meeting.

Corporation (Sociedad Anónima) - S.A.	Limited Liability Company - Ltda.	Foreign Company Branch	Simplified Stock Company
Corporate bodies			
It has the following corporate bodies, as prescribed by law: General Shareholders' Meeting: The highest body, made up of all the shareholders. The Shareholders' Meeting makes decisions that are fundamental to the life of the company, establishes the company's guidelines, and controls the lower management bodies. Board of Directors: A body elected by the Shareholders' Meeting. It cannot have less than three (3) members, with their respective personal or numeric alternates. Legal Representative: Normally chosen by the Board of Directors. Its principal function is the legal representation of the company. Any limitations of its powers must be expressly specified. Statutory Auditor: An oversight and control body that is mandatory for this type of company, elected by the Shareholders' Meeting.	Board of Members: Each and every member serves on the Board of Members, which is responsible for the representation and management of the company, except that the legal representation can be delegated. The Board of Members is responsible for adopting all of the decisions of the company. Legal Representative: appointed by the Board of Members, with functions and limitations established in the bylaws. Statutory Auditor: This type of company is not required to have a Statutory Auditor, except when the amount of its gross assets as of December 31 of the immediately preceding year exceeds five (5) thousand times the minimum wage (approximately US$ 1,287,500), or its gross revenues as of the same date exceed three (3) thousand times the minimum wage (approximately US$772,500). In this type of company, the creation of a Board of Directors is voluntary. * For FY 2010, US$1 = Col$2,000	It is important to keep in mind that because the branch is a business establishment, its principal organs are to those of its Home Office. However, for purposes of representation it has a General Agent, who carries out the functions of managing the establishment and representing it in dealings with third parties. Additionally, the law provides that branches of foreign companies are obligated to name a statutory auditor, who has the same functions as statutory auditors of business companies.	The bylaws freely determine the structure of the company and other regulations that govern its operation. In the absence of a provision in the bylaws to the contrary, the Shareholders' Meeting or the single shareholder has the same functions as the General Shareholders' Meetings of corporations, and the management functions of the legal representative. The S.A.S. is n ot required to have a Board of Directors. If it agrees to the creation of a Board of Directors, the Board may be made up of one or more members, for whom alternates may be established. Statutory Auditor: This type of company is not required to have a Statutory Auditor, except when the amount of its gross assets as of December 31 of the immediately preceding year exceeds five (5) thousand times the minimum wage (approximately US$ 1,287,500), or its gross revenues as of the same date exceed three (3) thousand times the minimum wage (approximately US$772,500). * For FY 2010, US$1 = Col$2,000

Corporation (Sociedad Anónima) - S.A.	Limited Liability Company - Ltda.	Foreign Company Branch	Simplified Stock Company
Decisions			
The Shareholders' Meeting shall convene with a plural number of persons who represent at least one-half plus one of the subscribed shares, unless the bylaws determine a different majority. The decisions shall be made with a plural number of persons who represent at least one-half plus one of those present, unless the bylaws determine a different majority. The Board of Directors shall validly convene and decide with the presence and votes of a majority of its members.	The Board of Members shall make decisions with a plural number of favorable votes that represents the absolute majority of the equity interest units into which the capital is divided. Each member shall have as many votes as the number of equity interest units that he/she owns. Amendments to the bylaws shall require the vote of at least seventy (70)% of the equity interest units into which the capital has been divided.	Except for those decisions that correspond to the management and ordinary course of business, all decisions of importance are adopted by the respective body of the Home Office, in accordance with the laws that govern the type of company in the country of origin.	Unless otherwise set forth in the bylaws, the shareholders' meeting shall convene with one or more shareholders who represent at least one-half plus one of the subscribed shares. The decisions, including amendments to the bylaws, shall be made by the favorable vote of a singular or plural number that represents at least one-half plus one of the shares present, unless otherwise set forth in the bylaws.
Special causes for dissolution			
In addition to the causes established by law and the bylaws, a Corporation shall be dissolved when there are losses that reduce its net assets to below fifty (50)% of the subscribed capital, or when ninety-five (95)% or more of the subscribed shares are held by a single shareholder, and when the number of shareholders becomes less than five (5). The deadline to offset this causes are 6 months	In addition to the causes established by law and the bylaws, this type of company shall be dissolved when there are losses that reduce its capital below fifty (50)%, or when the number of shareholders exceeds twenty-five (25) or is less than two (2). The deadline to offset this causes are 6 months.	Branches are dissolved for the same reasons as their Home Office, given that branches depend on their Home Office for their existence.	The legal causes for dissolution are similar to those for companies in general. Dissolution also occurs when there are losses that reduce net assets to below 50% of subscribed capital. The period for preventing this cause from becoming effective is eighteen (18) months.

Corporation (Sociedad Anónima) - S.A.	Limited Liability Company - Ltda.	Foreign Company Branch	Simplified Stock Company
Profits			
The Shareholders' Meeting is exclusively responsible for the distribution of profits. Profits are distributed in proportion to the subscribed shares. The distributed amount shall not be less than fifty (50)% of the net profits for each year, unless determined otherwise by seventy-eight (78)% of the shares represented at the Shareholders' Meeting. Corporations must constitute a legal reserve equal to fifty (50)% of subscribed capital, comprised of ten (10)% of each year's profits, until this amount is reached, and said reserve must be maintained during the entire life of the company.	The laws governing the distribution of profits and maintenance of a legal reserve by limited liability companies are the same as those for corporations.	They are required to constitute a legal reserve in the same terms as Corporations.	This decision is made by the favorable vote of a singular or plural number of shareholders who represent at least one-half plus one of the shares present at the meeting, unless the bylaws provide for a different majority. There is no obligation to distribute a minimum amount of profits.
Inspection, Oversight and Control			
All business companies are subject to inspection and possible oversight and control by the Office of the Superintendent of Companies when certain conditions are met, unless such authority has been conferred on a different superintendent's office. Inspection is the authority granted to the corresponding entity to occasionally request, confirm and analyze the information it requests about the company's legal, accounting, economic and administrative condition. The oversight function consists of ensuring that the companies comply with the law and the bylaws in their formation, functioning and pursuit of their corporate purpose. Oversight is exercised on a permanent basis. Control is the authority of the corresponding superintendent's office to order the taking of specific corrective measures necessary to remedy a critical legal, accounting, economic or financial problem. Companies that as of December 31 of the immediately preceding year recorded assets, including adjustments for inflation, equal to or greater than thirty (30) thousand times the minimum wage (approximately US $7,725,000), and those that as of the same date recorded total revenues, including adjustments for inflation, greater than thirty (30) thousand times the legal minimum wage (approximately US$ 7,725.000), are subject to oversight. Branches of foreign companies are subject to inspection by the Office of the Superintendent of Companies, and they may be subject to oversight if they fall within any of the situations set forth in Decree 2300 of 2008.			

3. Foreign Trade and Customs Rules



Colombia enjoys a strategic geographic location and a privileged position to access international markets through commercial agreements and tariff preferences that guarantee the best conditions for the sale of Colombian products in foreign markets. Additionally, Colombia has customs procedures that are agile, efficient and modern, in accordance with current international trade standards.

3.1 Foreign trade Procedures

Colombian legislation has concentrated on facilitating customs operations for imports, exports and transit of goods by regulating the application of various forms of foreign trade, conforming to the guidelines of the World Trade Organization Treaty ("WTO") (approved by Law 170 of 1994), aimed at promoting and supporting different benefits for the companies associated with this sector in Colombia.

Since 2005, Colombia implemented the Single Window for Foreign Trade ("VUCE"), managed by the Ministry of Commerce, Industry and Tourism. This Window, based on electronic and Internet media, has the purpose of consolidating all the government procedures related to foreign trade operations. To these ends, it has three independent sections: Imports, Exports and the Single Foreign Trade Form ("FUCE"), that allow on-line transactions such as electronic payment, aiming to speed up the procedures. More information on VUCE may be obtained at the website www.vuce.gov.co

3.1.1 Imports

Imports, according to customs rules, consist of the entry of goods to the "national customs territory"[1] from the rest of the world, or from a Free Zone, with the purpose of remaining permanently or temporarily in it for the achievement of a specific purpose.

The importation processes before the DIAN [the Colombian Internal Revenue and Customs Service] can only be carried out by users registered in the Customs Information System, either Customs Agencies (previously called Customs Intermediation Companies) or Permanent Customs Users ("UAPs"). The latter may file their own customs declarations, as long as the value of the imported goods exceeds the sum of US $1,000; otherwise, they must do it through the Customs Agencies.

According to the Harmonized System of Designation and Coding of Goods approved by the WTO, the imported goods are classified into Subentries composed by six (6) digits. Also, two (2) digits are added which are for exclusive use of the CAN, and two final digits which correspond to the digits for use of Colombia. The custom subentries which is the ten (10) digit result are exposed in the Colombian Customs Tariff, which is governed by Decree 4589 of 2006 which also reflects the applicable tariff of each duty. The value added tax (VAT) which is also part of the customs duties is regulated in the Colombian Tax Code.

3.1.1.1 Ordinary Importation

This is the most widely used mode of importation. With it, the importer in Colombia receives the goods for his free disposal, once he has completed all customs procedures. The obligations include the declaration of the goods, in the formats established by the customs authorities, the payment of all applicable customs duties, including tariffs and value added taxes ("VAT"), and obtaining the final release order.

The valuation of the goods is done according to the methods established by the Agreement on Valorization approved by the WTO which is based on the General Agreement on Tariffs and Trade (GATT) of 1994.

The importation declarations have a standing term of 3 years from the filing and acceptance date which are part of the document which credits for the legal introduction of goods to the National Customs Territory.

[1] D. 2685, 1999, Section 1. "National Customs Territory: Limit within which customs laws apply, covers the entire national territory, including the subsoil, the territorial sea, contiguous zone, continental shelf, exclusive economic zone, airspace, the segment geostationary orbit, the electromagnetic spectrum and the space where the Colombian state acts in accordance with international law or the laws of Colombia in the absence of international standards."

3.1.1.2 Temporary Importations

3.1.1.2.1 Temporary Importation for Re-exportation in the same Condition

Temporary importation is defined as the importation with suspension of customs duties (tariffs and VAT) for certain goods that, at the end of the specified period, must be exported in the same condition as they came in to the national customs territory, that is, without having experienced any modification, except for the normal depreciation originated by the their use. The sale of the goods will be restricted. These importations may be of two classes:

Short Term

Applies when the goods are imported to attend to a specific need that determines their brief stay in the country. The maximum importation term will be 6 months, which may be extended up to 3 additional months and in exceptional cases for up to 3 more months with prior customs authorization. The customs duties on this type of temporary importation are permanently suspended, unless the importer decides that the goods will stay permanently in Colombia.

Long term

Applies to the importation of capital goods, their accessories, parts and spares, as long as they constitute one single shipment. The maximum term for this importation is five years. Customs duties will be deferred in semi-annual payments, which in any case must be paid during the time that the goods stay in the national customs territory.

3.1.1.2.2 Temporary importation for active perfecting

The kinds of temporary importation for active perfecting allowed in the customs statutes are:

Temporary importation for active perfecting of capital goods

This type allows the temporary importation with suspension of customs duties, of capital goods destined to be re-exported after being subjected to repairs and reconditioning in a term no longer than 6 months, which can be extended for an equal period. The disposition of the goods will be restricted.

Temporary importation for industrial processing

This type allows the temporary importation of raw materials and supplies that are going to be subjected to transformation, processing or industrial manufacture by industries recognized as “Highly Exporting Users” (“ALTEX”), and authorized by the customs authority (DIAN). The sale of the goods will be restricted.

3.1.1.3 International leasing

The concept of international leasing may be applied to long term financing of temporary importations of capital assets, which may remain in the national customs territory for more than 5 years. Under this concept, a foreign company (foreign supplier, foreign financial institution or leasing company) grants the right of use of imported capital assets in Colombia to a Colombian resident in exchange for periodic payments by the latter. Payments must be made through the mechanisms authorized by the foreign currency exchange regulations and following the procedure established for passive external debt operations, because the operation is considered to be a financed importation. In this case, the customs duties are caused bi-annually. The maximum term for deferment is 5 years, regardless of the fact that their actual stay in the country may be higher than this period.

This system has the following advantages:

a. Payment of customs duties (tariffs and VAT) is carried out in semi-annual payments within a maximum period of 5 years.

b. Operative leasing is not subject to “integral inflation adjustments” on the part of the lessee, since it is not registered as an asset.

c. In the case of operative leasing, the lessee may deduct on his income tax statement 100% of the payments transferred abroad (until 2012).

d. The payments made to the leasing company when it is a foreign leasing company without registered offices in Colombia are not subject to income tax withholding in the country (as they are not domestic income).

e. There is a 30% income tax deduction on investments effectively made through financial leasing with an irrevocable purchase option.

3.1.2 Exports

Exports, according to their legal definition, are foreign trade operations consisting in the exit of goods from the national customs territory with destination to the rest of the world or to a free-trade zone.

In Colombia, exports do not cause customs duties and are privileged by a large amount of mechanisms, such as, among others:

a. Special export and import programs – Vallejo Plan.

b. International Marketing Agents (Comercializadoras Internacionales), which are businesses specifically established to purchase national products for export, granting the manufacturers and the suppliers all the benefits as if they were exporters.

c. Special export programs ("PEX") of tax reimbursements.

Furthermore, exports are benefited by a large number of international agreements granting tax preferences.

3.1.2.1Special export programs ("PEX")

These programs allow the treatment as exports of sales made by a domestic producer to a foreign company, even though the products are not exported directly by him, but delivered to another domestic company to be transformed and exported as a finished product.

Through these PEX operations an agreement is made under which a foreign resident purchases raw materials, supplies, intermediate goods, packaging material or bottling from a Colombian company and arranges its delivery to another Colombian producer who in turn, commits to manufacture and export the products manufactured from the goods received.

PEX programs must be approved by the DIAN and allows the direct or indirect exporter to have access to the tax benefits granted to exporters, VAT exemption, and the exclusion of industry and commerce tax and of the stamp tax at the moment of export of the finished goods.

3.1.3 Special import and export programs – Vallejo Plan

In order to promote foreign trade operations, Colombia has included in its customs legislation special importation -exportation programs through which goods or equipment may be imported with tax benefits as long as the exportation agreements of finished goods or services are fulfilled.

The following are among the current types of Plan Vallejo:

3.1.3.1 Exportation – Vallejo Plan for raw materials

This type allows the receipt, within the national customs territory, under Decree Law 444 of 1967 and Order 1860 of 1999, with total or partial suspension of customs duties, of specific goods destined to be totally or partially exported within a certain period of time, after having undergone transformation, manufacture or repair, including the materials needed for these operations.

Under this type, machinery, equipment and spare parts may also be imported, to be used partially or entirely in the production and sale, of goods and services destined for export. The goods so imported remain under restrictions of sale.

Starting on January 1, 2007, customs duty exemptions for the importation of capital goods, spare parts and intermediate goods were eliminated, except for products for the agricultural sector not related with subsidies (Order 11 of 2003, Ministry of Commerce).

Plan Vallejo benefits are granted by direct operation to the importer of goods, raw materials or supplies, who produces and exports the finished goods, or by indirect operation to the importer or producer of intermediate goods sold to the exporter, or to whoever provides the associated services with the production of the goods to the exporter.

3.1.3.2 Vallejo Plan for exportation of services

This type, applicable to the exports of companies whose main activities are lodging services, human health, air transportation of passengers, research and development, consulting and management, architecture and design, engineering, special design services, value-added telecommunications and software exports, allows the temporary importation of capital goods listed in Decree 2331 of 2001, with total or partial suspension of

duties and deferment of payment of Sales Tax. In addition, it allows the temporary importation of spare parts for the aviation industry.

Those having access to this program must export services, as a minimum, for an amount equivalent to 150% of the FOB value of the imported capital goods and spare parts, guaranteeing the authorized use of the capital goods and spare parts temporarily imported and not to sell them or give them a use different from that authorized while the goods are under restrictions as to disposition.

3.1.3.3 Replacement or Junior Vallejo Plan

This type grants the exporter of goods the right to replace, through a new importation exempted of duties, the raw materials or supplies that have been used in the production of such goods, when the all customs duties were originally paid (tariffs and VAT) upon importation (art.183 of Decree 2685 of 1999). This reposition right must be requested within the 12 months following the shipment of the exported products.

3.1.4 Free-Trade Zones

In order to promote commerce, investment and the creation of sources of employment in the country, in Colombia there are Special Permanent Free-Trade Zones or "Single-Company Free-Trade Zones" and Permanent Free-Trade Zones, which depart from the general guidelines applied in the rest of the national territory.

In essence, these Free-Trade Zones are geographic areas of the national customs territory with boundaries established by the national customs authority, within which customs duties do not apply and in most cases where reduced rates in income taxes apply.

Following are the levels of investment required to access the benefits of a Free-Trade Zone. The amounts, by law, are calculated in Current Minimum Legal Monthly Wages ("SMMLV"), however they are expressed in Dollars at an exchange rate equivalent to Col$2,400 per US Dollar. The Minimum Monthly Wage for 2008 was Col$481,500. Both the SMMLV as well as the exchange rate may vary.

3.1.4.1 Types of Free-Trade Zones

3.1.4.1.1 Special Permanent Free-Trade Zone or "Single-Company Free-Trade Zone" (ZFPE or ZFU)

With this special type a single company may request the establishment of a Free-Trade zone in order to develop a new investment project. Depending on the economic sector in which the project will take place, the following requirement must be met:

Special Permanent Free-Trade Zone or ZFU of Goods

For its establishment a minimum new investment of US $38.62 million must be made and 150 new direct jobs must be created. For each US$5.92 million over the minimum required investment, the number of jobs to be created can be reduced by 15. The project must always create at least 50 direct jobs.

Special Permanent Free-Trade Zone or ZFU of Services

For its establishment any of the following levels of investment and employment job creation must be met:

Investment Range (in Millions)	Jobs Directly Created
Between US$ 2.6 and US$ 11.9	500
Between US$ 11.9 and US$ 23.7	350
Higher than US$ 23.7	150

If the project is developed in different geographic areas, exceptionally the establishment of a ZFE may be requested for each. Furthermore, it is allowed the employment through "work from home" of workers when 50% of these employees are handicapped or single mothers.

Special Permanent Free-Trade Zone or ZFU for Agro-industry

For its establishment a minimum new investment of US $19.31 million must me made or 500 direct or related jobs must be created. The projects must certify their connection with the areas farmed and domestic raw materials.

Special Permanent Free-Trade Zone or ZFU of Ports Company

For its establishment a minimum new investment of US $38.6 million must be made and 20 new direct and 50 related jobs must be created.

Special Permanent Free-Trade Zone or ZFU for pre-existing investments

For its establishment, the investor must meet the following 3 requirements:

a. Net assets of more than US $38.62 million

b. Make new investment within 5 years following the declaration of more than US $178.19 million

c. Double the net taxable income calculated as of December 31 of the year before the date of the declaration

This type of Free-Trade Zone may be chosen by companies that were favored with the Special Tax System under the Paez Law, for whom the requirements are less.

3.1.4.1.2 Permanent Free-Trade Zone (ZFP)

It is an area within the national territory in which multiple companies are organized, enjoying a special tax and customs treatment, managed by a “User Operator”.

For the creation of a new ZFP the User Operators must meet the following requirements:

a. The project to be developed must have a minimum area of 20 hectares

b. The User Operator must have net assets of more than US $ 5.92 million for a ZFP.

Within 5 years following the declaration, the ZFP must have installed at least 5 users that make new investments of more than US $11.85 million.

3.1.4.2 Kinds of users

Every Free-Trade Zone, Permanent “Multiuser”, or Special Permanent “Single enterprise” must have a User Operator. Within its perimeter, commercial (only in Permanent Free-Trade Zone - ZFP) or industrial users may operate and among the latter, there can be industrial users of goods and/or of services.

To be qualified as a user in a ZFP or “Multiuser”, the interested party must request authorization from the User Operator.

To be qualified as user in a Special Free-Trade Zone “Single enterprise” , the interested party must obtain the recognition (statement) from the customs authority (DIAN).

In order to produce goods, render services or carry out commercial activities within the “Multiuser”, industrial users must meet the following requirements, depending on the total assets of the company:

Total asset range of the company	Minimum amount of the new investment to be made	Minimum amount of direct jobs to be created
Between US$ 0 and US$ 129.000	US$ 0	0
Between US$ 129.001 and US$ 1.3million	US$ 0	20
Between US$ 1.3 million and US$ 7.72million	US$ 1.3 million	30
More than US$ 7.72million	US$ 3 million	50

3.1.4.2.1 User Operator

The User Operator is a company dedicated to the management and control of customs matters. In the ZFP the User Operator is also in charge of promoting its creation and development and of qualifying to each commercial or industrial user who requests to operate inside the same.

3.1.4.2.2 Industrial users of goods

These are users that manufacture, produce, transform or assemble goods inside the Free-Trade Zone.

3.1.4.2.3 Industrial users of services

These are users that that render services within or from the area of the Free-Trade Zone , to develop, among others, the following activities: Logistics, transportation, distribution, telecommunications, scientific and technological research, medical assistance, dental and medical health in general, tourism, technical support, ship and airplane equipment, consulting or similar.

3.1.4.2.4 Commercial users

These are users that store, market, preserve and sell within the corresponding Free-Trade Zone. They may occupy up to 5% of the total area of the ZFP “Multiuser”. They cannot be located in a ZFU “Single enterprise” and cannot use the income tax benefits.

3.1.4.3 Incentives

Free-Trade Zones offer the following incentives to their users for a period of up to thirty (30) years with a possible extension of an equal period:

3.1.4.3.1 Tax and Customs

a. Single flat 15% income tax rate for all users of the Free-Trade Zones, except for Commercial Users with general income tax rate (33%).

b. Exemption of customs taxes (VAT and tariffs) for the introduction of goods from abroad, while the goods remain in the Free-Trade Zone. Taxes are caused when the goods are permanently introduced into the national territory.

c. Possibility of nationalizing the goods manufactured in the Free-Trade Zone, using the tariff sub-item of the finished product and paying taxes on the added value of the foreign supplies, or nationalizing the raw materials before entering the production process, with their own tax entry.

3.1.4.3.2 Procedural

a. Quick and simplified introduction procedures.

b. Possibility of introducing foreign goods, nationalized goods and domestic goods for temporary storage, in general with the sole authorization of the User Operator of the Free-Trade Zone, without having to go through national customs procedures.

c. Possibility of temporary removal of raw materials for partial processing outside of the Free-Trade Zone for a period of up to nine (9) months.

d. Ease of handling of inventories and logistics operations between Border Free-Trade Port Zones and Interior Port Free-Trade Zones.

3.1.4.4 Introduction of products to Free-Trade Zones

Sales made from the rest of the national territory to users of the Free-Trade Zones are treated as sales tax (VAT) exempt when referring to finished products, raw materials and supplies that are inside the Colombian territory, as long as these goods are going to be used in production processes related to the activities of the industrial users of the Free-Trade Zone in which they are going to be introduced or are destined for export.

These benefits do not apply when the goods are introduced to the Free-Trade Zone for temporary processes of passive perfecting.

3.1.5 Highly Exporting Users – ALTEX

Companies recognized as “Highly Exporting Users –ALTEX” by the DIAN, enjoy a series of tax and administrative benefits. For their recognition they must meet the following requirements:

a. Have exported during the 12 months prior to the filing of the request, an amount equal or higher than US $ 2,000,000

b. That the value of exports, directly or through an International Marketing Agent , represents at least 30% of the amount of its domestic sales in the same period.

c. When not meeting the previous conditions, certify, prior to the request, directly or indirectly exported FOB amounts equal or higher than US $21,000,000 regardless of the sales percentage to the export markets.

Among the tax benefits for ALTEX are:

a. No levy of VAT in ordinary importation of industrial machinery that is not produced in the country, destined for the transformation of raw materials.

b. Possibility of obtaining the authorization, on the part of DIAN, of an industrial processing warehouse that allows the importation of supplies and raw materials with suspension of customs duties and of VAT, as long as they are used in the production of exportation products.

3.1.6 Permanent Customs Users

Permanent Customs Users (PCU) are recognized as such by the Tax Authorities for five (5) years if they have carried out foreign commerce operations in the previous twelve (12) months for a FOB value equal to US$ 5.000.000.oo or such value as a yearly average during the past three (3) years and have filed at least 100 import or export declarations in the past twelve (12) months. The value of USD$ 5.000.000.oo may be reduced in 60% if the taxpayer is classified as a Big Taxpayer.

Those who use Plan Vallejo in the past three (3) years from the filing date and show exportations of USD$2.000.000 in the last twelve (12) months will be considered PCU.

PCUs must account for a bank or insurance company guarantee which will be determined by the Tax Authorities and may not be superior to 5% of the FOB value of the imports and exports carried out in the last twelve (12) months of the filing of the request of recognition and inscription. The warranty must be delivered within the following fifteen (15) days of the recognition and inscription.

The PUC will have the following benefits once they are declared and registered:

a. Automatic imported merchandise release.

b. Possibility of importing raw materials or inputs under the temporary import for industrial processing, that allows the import without paying custom duties for those raw materials or inputs considering they are used for manufacturing exported goods.

c. Granting a global guarantee that covers all the foreign trade operations before the authorities (DIAN).

3.1.7 Authorized Customs Warehouses

Authorized Customs Warehouses are public or privately-owned spaces approved by the customs authority for the storage of goods under customs control. The goods may remain temporarily stored in the authorized customs warehouses, without payment of customs duties (VAT and tariffs) applicable to their importation or nationalization, for the duration established in the law, while their customs situation is defined.

Among the privately-owned customs warehouses are:

a. Private warehouses for transformation or assembly.

b. Private warehouses for industrial processing.

c. Private warehouses for international distribution.

d. Private warehouses for aviation.

e. Transitory private warehouses.

f. Warehouses for urgent deliveries.

The authorized warehouses cannot carry out activities of cargo consolidation or de-consolidation, transport or customs intermediation, with the exceptions established by law.

In order to apply this concept, the company must certify that it has the minimum technical and administrative infrastructure required by the DIAN, that it does not have previous customs, exchange or foreign trade violations and that it meets the rest of the legal requirements.

3.2 Colombia and the World Trade Organization (WTO)

The WTO agreement came in force for Colombia on April 30, 1995 and since that moment, the country meets all the commitments as full member of this organization. Colombia is a beneficiary of all the rights derived from the principle of Most Favored Nation, from the principle of National Treatment and of all the guarantees established in the Agreement. Among the benefits, there is the protection provided by the WTO mechanism for dispute resolution, to which the member states may have recourse when they consider that the commitments and the agreements ratified in the WTO framework have been infringed by another member.

3.3 Tariff Preferences

3.3.1 The United States: ATPDEA

Initially the Andean Trade Preference Act –ATPA was a unilateral preferential tariff program granted by the United States in year 1992 to favor economic growth and support the fight against drugs in the Andean countries (Colombia, Bolivia, Ecuador and Peru).

In October 2002, the United States Congress enacted a law by which it extended ATPA and expanded the preferences to products of great importance that were previously excluded. This new law, which is known as ATPDEA (Andean Trade Preference and Drug Eradication Act), allows the entry to the United States without tariffs of certain products that are grown, produced or manufactured in a beneficiary country in the initially approved sectors, including chemical, agricultural, metalworking, plastics, craftsmanship, wood and furniture, paper and lithography, shoes and leather manufactures, oil and its derivatives, among others.

The ATPDEA preferences will be in effect until December 31, 2010 for Colombia, thanks to the latest extension granted by the United States Congress in December 2009.

3.3.2 Generalized Preference System with the European Union (GPS Plus)

At the end of the year 2005, the system called GPS Plus was approved, having as its purpose to stimulate economic and social development and the insertion of the developing countries into the world economy. The system went into effect on January 1, 2006, with a duration of 10 years from that date. Colombia is among the beneficiaries of the System, together with other countries such as Bolivia, Ecuador, Peru and Venezuela.

On July 22, 2008, the Council of the European Union approved the Generalized Tariffs Preferences System for the period between January 1, 2009 and December 31, 2011. Colombia will be a beneficiary of the tariff preferences granted by the European Union as a special stimulus for sustainable development.

3.3.3 Commercial agreements

In addition to the commercial preferences mentioned above, Colombia has been structuring a policy of open integration, thanks to which it enjoys free markets in the Latin American arena, within the Latin American Integration Association – ALADI.

Among the different agreements signed by Colombia, the most relevant are:

3.3.3.1 Andean Community of Nations (CAN)

One of the strategic integration plans for Colombia is the Andean Community of Nations that works under the auspices of ALADI. By virtue of this agreement, Colombia has exemption of duties and restrictions becoming a Free-Trade Zone with Bolivia, Ecuador, Peru and Venezuela until 2011, after the withdrawal from the agreement by this country in 2006. Additionally, in September 2006, the Council of Ministers of Foreign Relations of the Andean Nations granted the condition of associated member country to Chile, reaffirming the economic commitments established with that country and expanding the integration framework in the region.

The main objective of the CAN is to deepen the integration through a common market, in which agreements are reached, by consensus and with a supranational character, on monetary, fiscal, currency exchange, environmental and public services policies.

3.3.3.2 Mexico –Colombia Free Trade Agreement (TLC –G2)

This treaty went into effect in 1995, with the participation of Colombia, Mexico and Venezuela. At present, it includes only Colombia and Mexico, since Venezuela withdrew in November, 2006. The agreement includes a schedule of asymmetric elimination of tariffs from the entire set of tariffs that aims to equalize, within a period of 10 years, the tariffs of the 3 countries, giving special treatment to the agricultural and automotive sectors.

The treaty establishes mechanisms to prevent the application of internal protective measures to health and human, animal and vegetal life, to the environment and to the consumer.

Currently, both countries are negotiating to extend the content of the Treaty regarding origin rules, access to industry and agricultural markets as well as sanitary regulations.

3.3.3.3 Economic Complementation Agreement (ACE) with Chile and Colombia – Chile TLC

Through the ACE, a Free-Trade Zone between Colombia and Chile is created, with the gradual elimination of customs duties and non-tariff barriers, eliminating 95% of the duties in bilateral trade, corresponding to 96% of all Colombian tariffs. The remaining percentage will be totally freed, with zero tariffs in year 2012.

Based on the depth reached by the ACE with Chile, both countries decided to initiate the negotiation of a Free Trade Agreement. As a consequence of such negotiations, on November 27, 2006, the final text of the TLC was signed and went into effect in on May 8, 2009.

3.3.3.4 TLCs (FTAs) – TLC Colombia – Northern Triangle

With the objective of strengthening the regional economic as an essential instrument for the progress of the social-economic development of Latin-American countries, Colombia, Guatemala, El Salvador, and Honduras began a negotiation process in June 2006 for a TLC. The Agreement was signed on August 9th, 2007. The treaty went into effect regarding Guatemala on November 12th, 2009, with El Salvador on February 1st, 2010 and Honduras since March 27th, 2010.

The treaty includes issues such as: National Treatment and access of goods into markets, investment, services, international service commerce, electronic commerce, cooperation, solution of differences, public contracting, commerce facilitation, sanitary measures, technical norms, origin norms and commercial defense measures.

3.3.3.5 TLCs (FTAs) Signed and Under Negotiation

At present, Colombia has signed Free Trade Agreements with the US (2006), Canada (2008), and The European Free Trade Association (EFTA) Switzerland, Norway, Iceland and Liechtenstein (November 2008). The Agreement with the European Union, South Korea, and Panama are under negotiation.

3.3.3.6 Economic Complementation Agreement with CAN and MERCOSUR

On October 18, 2004, the Economic Complementation Agreement was signed between Argentina, Brazil, Paraguay and Uruguay, the countries that make up MERCOSUR, and Colombia, Ecuador, and Venezuela member countries of the Andean Community of Nations - CAN. The Agreement, with an unlimited duration, takes into account the asymmetries derived from the different levels of economic development of the parties, and as a consequence, it determined sub-items for immediate tariff elimination and periods for tariff elimination of between 6 and 15 years for sensitive products such as vehicles, auto parts and electric appliances.

The Agreement includes topics such as dispute resolution, health and plant safety standards, technical regulations and safeguards.

3.3.3.7 Caribbean Community (CARICOM)

CARICOM is a trade liberalization program that went into effect on January 1, 1995. For its application it takes into account the differences in relative economic development levels of the member countries. The agreement lets Colombia have access to the 4 million consumers of CARICOM.

In the framework of the Agreement, Colombia grants tariff preferences to member countries in 1,128 sub-items of products and receives a reduction in tariffs on 1,074 sub-items from Trinidad and Tobago, Jamaica, Barbados and Guyana. The levels of tariff preferences for negotiated products are 100%.

3.3.3.8 Colombia and the Pacific Basin

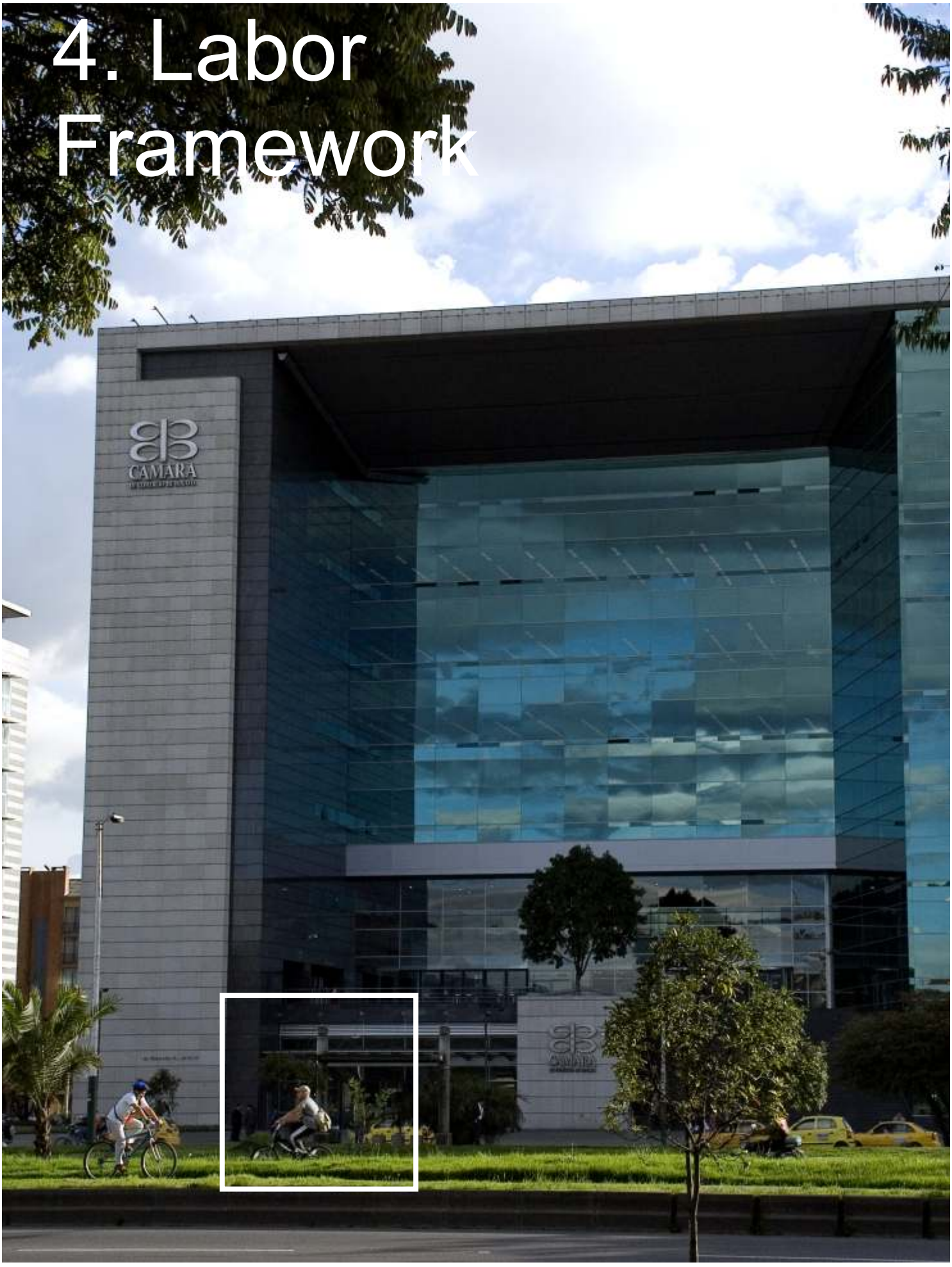
Moving closer and strengthening the ties with the Pacific basin countries is a priority of Colombian foreign policy. To this end, the Colombian Council of Cooperation with the Pacific (COLPECC) was created.

At present, Colombia belongs to the Pacific Basin Economic Council – PBEC, also called the Pacific Club. This is a non-governmental association made up by the most important entrepreneurs of countries with coasts on the Pacific , whose purpose is to increase mutual knowledge, business and investment flow, economic cooperation, transfer of technology and tourism, among others.

The Asia Pacific Economic Cooperation Forum - APEC is a governmental organization of great economic importance, whose purpose is creating a free trade zone among its members by 2010 at the latest, for the developed countries, and by 2020 for the less developed ones. Presently, Colombia has the position of an observer and participates in the different work groups of this organization. In the future, the country hopes to participate as a full member.

Likewise, Colombia is a full member of the Pacific Economic Cooperation Council – CCEP, a three party non-government organization, made up of the governmental sector, private enterprise and academia.

4. Labor Framework



Labor law in Colombia is regulated by the Political Constitution of 1991, by international treaties and agreements signed by Colombia and by the Labor Code.

Labor law is divided into two areas: individual labor law, that regulates the relationships between the employer and his [individual] employees, and collective labor law, that regulates the relationship between the employer and his employees when united in associations, whether unions or otherwise.

4.1 General Features

The “labor contract” constitutes the agreement reached between an employee and his employer by which the employee personally provides certain services, under the continuous subordination of the employer in exchange for a compensation that is generally called salary.

4.2 Types of Labor Contracts

Labor Contracts can be classified in different ways. Depending on their duration they are classified in the following manner:

a. Fixed term contract: Its duration cannot be more than three (3) years. However, the parties may extend it indefinitely.

b. Contract for the duration of a work or contracted job: It has a duration equal to the duration of an assigned task.

c. Occasional or temporary contract: It hasa duration no greater than one (1) month and it refers to activities different from the normal activities of the employer.

d. Indefinite term contract: A term is not specified and its duration is not determined by the task or the nature of the job contracted, nor does it refer to an occasional or temporary job.

Contracts can also be classified as oral or written. The following types of contract must always be in writing:

a. Fixed term contract, its extensions and the advanced termination notice.

b. Contracts signed with foreign nationals not residents in the country.

c. Contracts through which ten (10) or more employees are moved to render their services out of the country (collective hiring).

Similarly, the following agreements or covenants between employee and employer must be in writing:

a. Trial period: Term corresponding to the initial stage of the work contract with the object of allowing the employer to evaluate the abilities of the employee and allowing the employee to evaluate the convenience of the work conditions. This period must not exceed two (2) months in most cases. In fixed term contracts With duration of under one (1) year, the trial period cannot be superior to 1/5 of the initial duration agreed to by the parties.

b. Lump-Sum Salary: It is a form of compensating the employee, consisting in the payment of a lump sum that, in addition to compensating ordinary work, covers in advance the value of the benefits, surcharges, obligations and in general any other items that are by agreement are included as compensation. When employees wish to accept this type of salary, the decision must be set forth in writing; otherwise, the agreed salary may be considered as ordinary. The amount of contributions for pension, health, worker's compensation and family subsidy are calculated based on 70% of the monthly salary. In every case, it is calculated based on a maximum base of twenty-five minimum wages (for FY 2010 = COP$12.875.000 – US$6437) for pension and health and twenty minimum wages (for FY2010 $10.300.000 – USD$5.150) for worker's compensation (the resulting lesser value).

c. Exclusions are agreements between the parties to exclude certain extra-legal assistance or benefits from the base salary that affect the payment of severance benefits and payroll taxes [“payroll-based contributions”]. In other words, such benefits or extra-legal assistances are not considered salary for legal effects. These exclusions are called labour flexibility.

4.3 Apprenticeship Contract

The apprenticeship contract is a special form of contracting in Labor Law, by which an individual receives theoretical education in an authorized educational facility under the auspices of a sponsoring company that supplies the means so he can receive systematic and complete professional training.

The apprenticeship contract does not imply subordination and is established for a period no greater than two (2) years and must be in writing. The apprentice will receive a support payment that is not to be considered salary, from the sponsoring company which is equal to 50% of a minimum wage during the learning stage or 75% of the minimum wage during the practice stage.

4.4 Working Hours

Ordinary working hours cover a maximum of eight (8) hours a day and forty-eight (48) hours per week that can be distributed from Monday to Friday or from Monday to Saturday. By Law, flexible working hours may be agreed to by the employer and employee.

Daytime working hours extend for the period between 6:00 a.m. and 10:00 p.m. Night shifts correspond to a period between 10:00 p.m. and 6:00 a.m.

4.5 Flexible Working Hours

The worker and employer may agree on the organization of successive work shifts, every day of the week, that do not exceed 6 hours per day and 36 hours per week, without payment of a surcharge for work at night, on Sundays or holidays.

Similarly they may agree on a flexible workday, so that the 48 weekly hours may be distributed in a maximum of six (6) days, where the number of daily working hours may go from 4 to 10, without payment of the overtime surcharge, as long as these do not exceed 48 hours per week, and the work is done on daytime hours.

When the commercial activity implies shifts without continuous activity, by Law, the eight (8) hour daily period and forty-eight (48) week period may be extended as long as the estimate of a three (3) week period does not overpass the eight (8) hour daily period and forty-eight (48) week period. There is no surcharge for supplementary work or extra time in this case.

4.6 Payment Derived from the Labor Relationship

4.6.1 Salary

Salary is the direct compensation received by the employee in exchange for the personal rendering of his services in favor of the employer.

4.6.1.1 Types of Salary

4.6.1.1.1 Ordinary wages

Is the compensation that pays for ordinary work. At the end of each year, the Government establishes the current minimum monthly legal wage or SMMLV (referred to as “SMMLV” throughout this document). For year 2010, the SMMLV is COP$515,000 (approximately US$257, taking Col$2,000 to the dollar as reference exchange rate).

4.6.1.1.2 Lump-sum salary

It is the salary that in addition to pay for ordinary work, compensates in advance for the value of labor benefits, surcharges and benefits such as those corresponding to nighttime, overtime, Sunday and holiday work, to the legal and extralegal bonuses, severance and its interest, subsidies and supplies in kind and in general those included in the agreement, except vacations. Lump-sum salary must be established in writing and in no case can it be lower than thirteen (13) SMMLV with a value of Col$6,695,000 (approximately US$3,347, taking Col $2,000 to the dollar as reference rate of exchange.

Lump-sum salary is distributed in the following manner: ten minimum wages which correspond to salary, and three minimum wages which correspond to labour benefits (health, nighttime, overtime, Sunday and holiday work). When a Lump-sum salary superior to the minimum, 70% corresponds to salary and 30% to labour benefits.

4.6.2 Transportation Aid

Corresponds to the monthly aid for 2010 of COP%61.500 – USD$30.75 and is only issued to those workers which earn up to two minimum wages (COP$1.030.000 – USD $515)

4.6.3 Shoes and Dress Aid

It must be paid or given to workers who earn up to two minimum wages (COP$1.030.000 – USD $515).

4.6.4 Labor Benefits

Every employer is required to pay his employees that earn ordinary wages, the following labor benefits:

Concept	Payment period	Description
Severance Pay	Annual	One monthly salary for each year of service or proportionately for any fraction thereof, which must be deposited in a severance fund on February 14 of the following year or paid directly to the employee at the termination of the contract.
Interest on severance	Annual	12% of the annual severance amount or proportionately for a fraction thereof.
Service bonus	Every six months	Fifteen (15) days of wages for each semester worked or proportionately for fraction thereof payable in June and in December.
Transportation assistance	Monthly	Col$59,300 for 2010 (approx. US$ 24 using Col$2,000 as reference exchange rate), payable to all employees who earn up to two (2) SMMLV.
Work shoes and clothing	Every four months	Payable to employees who earn up to two (2) SMMLV (COP$1.030.000 – USD $515).

4.6.5 Compulsory Rest Periods

4.6.5.1 Paid Rest on Sundays and Holidays

The employer is compelled to give the paid Sunday rest to his employees and the paid holidays. This payment is included in the monthly amount to be paid as wages.

If the employee works on Sunday occasionally, (up to two Sundays on the same month) he must receive the salary with a surcharge of 75% of the hourly rate.or one additional paid rest day The following week.

If the worker works on Sunday on a habitually (three or more Sundays) a surcharge of 75% of the ordinary salary must be paid in proportion to the worked hours on Sunday and he must receive one additional paid rest day per week.

4.6.5.2 Annual Paid Vacations

The employees have the right to enjoy fifteen (15) business days of paid vacation for each year of work. As a minimum, the employee must enjoy six (6) vacation days for each year of service. The remaining days may be accumulated for up to two (2) years for ordinary workers. If they perform their work at a place different from the residence of their families, or are specialized, technical, or trusted, the vacation days can be accumulated for up to four (4) years.

4.6.6 Indemnification

Indemnifications are payments derived from the failure to comply on the part of the employer of his legal or contractual obligations, or for the lack of compliance with the obligations that the labor law imposes on him. The most common indemnifications are:

4.6.6.1 Indemnification for the Unilateral Termination of Contract without Just Cause

a. For fixed term contracts, the indemnification is an amount equivalent to the time remaining of the agreed term.

b. For contracts for the duration of a work or contracted job, the indemnification is equivalent to the time remaining for the completion of the work or job, with a minimum of fifteen (15) days.

c. For indefinite term contracts, the compensation is calculated as follows:

a) For employees earning a salary less than ten (10) SMMLV:

- If the employee has less than one (1) year of continuous service, he must be paid thirty (30) days of salary.
- If the employee has one (1) year of continuous service, he will be paid thirty (30) days of salary for the first year and twenty (20) days of salary for each of the years subsequent to the first one and proportionately for any fraction thereof.

b) For employees earning a salary equal to or higher than ten (10) SMMLV

- If the employee has up to one (1) year of continuous service, he will be paid twenty (20) days of salary.
- If the employee has more than one (1) year of continuous service, he will be paid twenty (20) days of salary, in addition to the fifteen (15) basic days, for each of the years subsequent to the first and proportionately for any fraction thereof.

4.6.6.2 Indemnification for Lack of Payment of Salary and Benefits

In case that the employer, at the termination of the labor contract does not pay the employee the sums owed for salary or additional benefits in due time and form, the employee will have the right to receive as indemnification for such delay, one (1) day of salary for each day of failure to comply, during the first 24 months.

4.6.7 Contributions to the Social Security Systems

Obligación	Periodo de pago	Porcentaje
Contribution to the general pensions system. Maximum contribution base is 25 SMMLV with a value of Col$12,875,500 for FY2010 (Approx. US$6,437 using Col$2,000 to the dollar as reference rate of exchange).	Monthly	16% of employee's monthly salary, of which the employer pays 12% and the employee 4%. Employees who earn more than 4 SMMLV must pay an additional one (1%) percent, with destination to the solidarity fund. Employees earning 16 SMMLV or more, will have an additional contribution over their contribution base income, as follows: From 16 to 17 SMMLV 0.2% From 17 to 18 SMMLV 0.4% From 18 to 19 SMMLV 0.6% From 19 to 20 SMMLV 0.8% From 20 to 25 SMMLV 1.0% Foreigners who contribute to the pension system of their countries of origin, will not have the obligation of contributing to the pension system in Colombia.
Contribution to health social security system. Maximum contribution base is 25 SMMLV.	Monthly	12.5% of employee's monthly salary of which the employer pays 8.5% and the employee 4%.
Contribution to professional risk system. Maximum contribution base is 20 SMMLV.	Monthly	Rate varies between 0.348% and 8.7% depending on level of risk of the company. The total amount is paid by the employer.

Colombia has signed bilateral social security agreements with Chile, Argentina and Spain. The intent of these agreements is to guarantee that citizens of the contracting countries can validate the time they have contributed to the pension system in any of the two countries for the purpose of recognizing the pensions for retirement, disability, or to survivors, under the conditions and with the characteristics of the legislation of the country of residence of the employee at the moment that he requests the benefit.

4.6.8 Payroll Tax ("Payroll-based Contributions")

Payroll taxes ("aportes parafiscales") are the payments every employer who hires more than one employee must make to the Colombian Family Welfare Institute ("ICBF") and to the Family Compensation Funds.

According to law, contributions to the ICBF are 3% of the monthly payroll and contributions to SENA and to Family Compensation funds are 6% of the payroll (2% and 4% respectively).

4.6.8.1 Payroll reduction for micro, small and medium enterprises

Article 43 of Law 590 of 2000 establishes that Micro, Small and Medium companies have, during their first three years, right to reduce its payroll tax. This reduction will be at the following rates:

1. 75% during the first year of operation;

2. 50% during the second year of operation, and

3. 25% in the third year of operation.

To qualify for the abovementioned benefit, the company should update its tax ID, reporting as a micro, small and medium enterprises as well as its desire to obtain the said benefit. Likewise, at the moment to pay such contributions it should report its nature on the form, ticking the appropriate box.

The Micro, Small and Medium Enterprises are classified as follows:

Microenterprise: The company that has a personal plant no more than 10 employees, or total assets, excluding housing, worth less than 500 legal monthly minimum salary (COL $ 257,500,000).

Small Business: The company that has between 11 to 50 employees, or total assets worth between 501 legal monthly minimum salary (COP $ 258,015,000 – Aprox US $ 129,075) and 5,000 legal monthly minimum salary (COP $ 2,575,000,000 – Aprox. US $1.287.500).

Medium company: The company that has between 51 to 200 employees, or total assets worth between 100.000 UVT (Tax Value Unit) (COL$ 2.455.500.000 approx. US $ 1.227.750) y 610.000 UVT (COL$ 14.978.550.000 approx. US $ 7.489.275).

4.6.9 Maternity Leave

Each pregnant employee has the right to a twelve (12) week leave, which may begin two (2) weeks before the date expected for childbirth. This leave is paid by the health-care social security system. No employee can be fired by reason of pregnancy or breastfeeding, except if there is a just cause previously qualified by a government work inspector.

It is prohibited to request a pregnancy test to candidates for employment.

4.6.10 Paternity Leave

The husband or permanent companion will have the right to eight (8) working days paid leave for paternity, independently if both parents or only the father contributes to the social security system.

In both cases, the husband or permanent companion must have contributed the same number of weeks which are required from the mother to have the right for a maternity leave.

4.6.11 Bereavement Leave

In case of death of the spouse or permanent companion, or of a family member up to second degree of blood kinship, first degree of affinity and first degree of adoption-based kinship, the employee will have the right to a paid bereavement leave of five (5) working days whatever the type of contract or labor relationship.

4.7 Regulations

Employers have the obligation of issuing the following regulations:

4.7.1 Workplace Regulations

Any company that employs more than five (5) permanent employees in commercial companies, or more than ten (10) in industrial companies, or more than twenty (20) in agricultural, livestock or forestry companies, is in the obligation of adopting workplace regulations [employee manual].

4.7.2 Workplace Safety and Health Regulations

Every company that employs ten (10) or more permanent employees must prepare a special Workplace Safety and Health Program.

4.8 Labor Harassment

Law 1010 of January 23, 2006, defines, prevents, corrects and punishes all forms of aggression, mistreatment and in general any insult to human dignity practiced in labor relations.

This law requires employers to modify the internal work regulations of companies in order to establish preventive mechanisms for labor harassment behaviors and an internal, confidential, conciliatory and effective procedure in order to overcome any such conduct that may occur at the workplace.

4.9 Foreign Workers

Foreign workers have the same rights and the same obligations as Colombian workers. However, when a foreign person enters into a labor contract in Colombia, both the employer and the employee must meet certain additional obligations that they must comply with, originating from the administrative procedures for the admission and control of foreigners during their stay in the country.

Companies having more than ten (10) employees in their payroll cannot hire more than 10% of foreign employees, as ordinary employees, nor more than 20% as management and confidence employees. Only in special cases and for certain industries can these percentages be higher for which it would be necessary to obtain an authorization of the Ministry of Social Protection where it is certified that by contracting the foreign employee the stated proportion is undergone.

4.10 Collective Rights

Collective law is in charge of regulating relationships between the employer and union organizations, collective contracting and the defense of common interests, both of employers as well as of employees, during the course of a collective work conflict. Its purpose is to develop the right of union association and the right to collective contracting and bargaining, as well as to establishing the mechanisms to guarantee the right to unionize and to go on strike.

4.10.1 Right to Unionize

Colombian employees have the right to unionize as an exercise of common labor guarantees. This constitutional right seeks to protect the creation and development of labor unions, as well as guarantee the exercise on the part of the employees of the defense of their labor and union interests.

4.10.2 Union

It is an organization of employees lawfully constituted for obtaining, improving and consolidating common rights with their employers. It is also the association of employees aimed at the defense of the individual and collective interests of its members. Unions are classified according to law, as follows:

4.10.2.1 Company union

Constituted by individuals of various professions who render their services to the same company.

4.10.2.2 Industry union

Constituted by individuals who render their services to different companies belonging to the same economic activity.

4.10.2.3 Trade union

Constituted by individuals who belong to the same trade.

4.10.3 Collective Bargaining Agreement

Is the agreement reached between one or several employers or employer associations, on one part and one or several unions or worker's federations, on the other part, to set the conditions that will regulate work contracts for their duration.

4.10.4 Collective Agreement

Is the agreement made between the employer, on one hand, and the non-unionized employees, on the other, to set certain conditions that will rule their labor relationship.

4.10.5 Union Contract

Is the contract made between a union and one or several employees, or several worker's unions with several employees, for the rendering of services or for the execution of a job by the union workers.

4.10.6 Collective bargaining

A concerted action between employers and employees to discuss the requests contained in a list of petitions tending to establish new and/or better work and employment conditions.

4.10.7 Strike

A strike is defined as the collective, temporary and peaceful suspension of work, carried out by the employees in a company or establishment, with certain economic and professional interests proposed to their employers, after compliance with certain requisite procedures. Its exercise is only lawful and possible within the collective bargaining process as an option to employees, provided that they work for an employer in the private sector who does not carry out activities classified by law as Public Services.

Whether a strike is considered legal or not is a faculty given strictly to the judges. By law, a special procedure of maximum ten (10) days for the judges to come forward on the legality of the strike is given.

Colombian labor law provides that where a strike lasts more than 60 days, the parties, employers and employees, seeking a consensus, should convene a Court of Arbitration required. Once called the Court of Arbitration, the employees have a period of maximum three (3) business days to return to work.

5. Immigration Rules – Visas

The immigration rules in Colombia control and regulate the entry and permanence of foreigners in the country. This chapter presents the regulations that the Ministry of Foreign Relations has established for the citizens of the countries who do not require a visitor's visa and the main categories of visas that may be requested by a foreigner with the intention of establishing contacts, render services or conduct business, commercial, entrepreneurial or investment activities in Colombia.

5.1. Countries that do not require a Visitor's Visa

Citizens of the following countries do not require a tourist visa (as a tourist, temporary visitor, or technical visitor) to visit Colombia:

Germany, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Bolivia, Brazil, Brunei-Darussalam, Bhutan, Canada, Korea, Costa Rica, Croatia, Chile, Cyprus, Denmark, Dominica, Ecuador, El Salvador, United Arab Emirates, Slovakia, Slovenia, Spain, United States of America, Estonia, Fiji, Philippines, Finland, France, Granada, Greece, Guatemala, Guyana, Honduras, Hong Kong, Hungary, Indonesia, Ireland, Iceland, Marshall Islands, Solomon Islands, Israel, Italy, Jamaica, Japan, Latvia, Liechtenstein, Lithuania, Luxemburg, Malaysia, Malta, Mexico, Micronesia, Monaco, Norway, New Zealand, Netherlands, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, United Kingdom of Great Britain and Northern Ireland, Czech Republic, Dominican Republic, Romania, Saint Kitts and Nevis, Samoa, San Marino, Saint Lucia, the Vatican, Saint Vincent and the Grenadines, Singapore, South Africa, Sweden, Switzerland, Suriname, Trinidad and Tobago, Turkey, Uruguay, Venezuela.

The nationals of these countries obtain an entry and permanency permit as visitors (tourist, temporary or technical) when entering the country and the permanency is stated through a stamp issued by the migratory authorities.

The stay in the country is allowed for a term of up to 180 calendar days within the same calendar year.

5.2. Classification of Visas

5.2.1. Business Visa

5.2.1.1 Applicants

Merchants, industrialists, service and goods suppliers, business visitors, who wish to enter the country to do business or to carry out market research, or future sales negotiations or permanent establishment, and who have an economic relationship with a national or foreign company in Colombia and are in capacity of developing the activities of the business regarding interests such as (i) assisting to board meetings, (ii) carrying out business, (iii) carry out marketing consulting investigations, or (iv) supervise the administration of the business with who a related judicial, strategic, and economic bond exists.

Legal representatives, directors or executives of foreign commercial, industrial or service companies, having an economic relationship with a national or foreign company in Colombia. The visa issued to the national of the state on behalf of the corresponding agreement and who wishes to carryout business, promote business, develop investments, establish a commercial presence of a company, and promote the commerce of good and services, and in general the activities defined in the stated agreements.

People which enter Colombia as a “boss”, representative, or as part of the personnel of a governmental foreign commercial office which promote economic or commercial exchange in or with Colombia.

5.2.1.2 Duration

The visa is issued for a maximum duration of four (4) years for multiple entries, and authorizes a permanency of up to one continuous year for each entry except for those who enter the country for Free Trade Agreements, association agreements, or any other international commitment in which Colombia is party, case in which the person may remain for up to two (2) continuous years for each entry[1]. Those who obtain visa as “boss” or as part of the personnel of a governmental foreign commercial office may reamin in the country for four (4) continuous years.

[1] Section 23 od Decree 4000 of 2004 ammended by Section 6 of Decree 2622 of 2009.

5.2.2 Resident Investor Visa

5.2.2.1 Applicants

A foreigner who makes in his name a direct foreign investment of at least US$ 100,000 in the Colombian territory. The foreigner may, under the protection of the visa, carry out activities related to the business management of his investment.

If the investment is in real estate, the person must show in his name a direct foreign investment of at least US$ 200.000 and the proprietorship of the real estate must be accredited.

5.2.2.2 Duration

The visa is issued for an indefinite period of time, with multiple entries. However, the visa will expire if the foreigner remains abroad for more than two consecutive years or if investment does not remain in Colombia.

5.2.3 Qualified Resident Visa

5.2.3.1 Applicants

Persons who show a direct foreign investment of at least US$ 100.000 or US$ 200.000 for real estate which has remained in the country for over 3 years. This applies also for those foreigners who have had Temporary Visas and who have remained in the country for at least five (5) continuous and uninterrupted years or foreigners who are beneficiaries of holders of a Qualified Resident Visa who show an activity or source income that remained in the country for at least five (5) continuous and uninterrupted years in Colombia.

Those who remained in the country for at least five (5) continuous and uninterrupted years with a Temporary Visa. Those who have a Spouse or Permanent Partner Temporary Visa must accredit for a permanency in the country of three (3) years.

Those who are father or mother of a national Colombian.

5.2.3.2 Duration

The visa is issued for an indefinite period of time, with multiple entries. However, the visa will expire if the foreigner remains abroad for more than two consecutive years or if investment does not remain in Colombia.

5.2.4 Temporary Visas

5.2.4.1 Temporary Work Visa

5.2.4.1.1 Applicants

The visa is granted to foreigners who:

a. Are retained by local companies to develop activities in their specialty such as technicians, journalists, persons belonging to artistic groups and legal representatives, among others.

b. Plan to enter the country by virtue of academic agreements existing between institutions of higher education or inter-administrative agreements in specialized areas.

c. Are accredited as foreign journalists by news agencies or national or international information agencies.

d. Are appointed by government organization or entity.

e. Are directors, technicians or administrative personnel of private or public foreign companies of commercial or industrial nature and who have been transferred from abroad to cover specific positions in their companies.

f. Without having a work contract with a company established in Colombia, render their services in specific projects by request of companies located in Colombia.

g. Are part of an artistic, sports or cultural group contracted by reason of its activity, when it is remunerated.

h. Are volunteers or missionaries who are not part of the hierarchy of a Church, faith, religious denomination, federation, confederation or association of religious ministries.

5.2.4.1.2 Duration

The visa is granted for a maximum period of two (2) years with multiple entries. However, it will expire if the foreigner is absent from the country for a period longer than 180 consecutive days. Those who are part of artistic groups which are hired with a wage will only obtain a Temporary Work Visa for a maximum period of six (6)

months. The Temporary Work Visa for teachers will be issued for the period of the Agreement and three (3) additional months without being over two (2) years.

5.2.4.2 Special Temporary Visa

5.2.4.2.1 Applicants

It is granted to a foreigner who intends to enter the national territory for particular cases such as to:

a. Participate in administrative or judiciary proceedings.

b. Practice trades and/or activities of an independent nature which do not affect public space.

c. Carry out activities not included in the other types of visas.

d. Enter as a person who receives income from capital investments in a value not inferior to ten (10) minimum wages.

e. Undergo medical treatment, when the entry cannot be made within the terms of a Visitor's Visa or an Entry Permit.

f. Have the condition of retiree showing that he/she receives retirement pension not inferior to three (3) minimum wages.

g. Cooperate or volunteer in a non-profit or non-governmental organization, or having been duly introduced by an International Organization or Diplomatic Mission, to carry out social work, assistance, verification, observation or humanitarian aid in the country.

h. Act as partner or owner of a commercial establishment or commercial company constituted and registered in the Chamber of Commerce indicating a registration of the capital or asset of propriortership of the foreigner who is requesting the visa not inferior to US$ 100,000.

5.2.4.2.2 Duration

Except in the last two cases, in which the visa duration may be for up to two (2) years, the visa is granted for one year, with multiple entries.

5.2.5 Visitor's Visas

It is granted to citizens of countries that require a visa, according to the rules established by the Ministry of Foreign Relations, and who intend to enter Colombia without the intention of residing in the country. There are three types of visas in this category:

5.2.5.1 Tourist Visa

This visa is granted for rest or entertainment activities. It is issued for a period of 180 calendar days, within the same calendar year, with multiple entries.

5.2.5.2 Temporary Visitor Visa

This visa is issued for journalism activities and to cover special events, make contacts and commercial or business activities, participate in academic activities that do not exceed one academic semester, give interviews in personnel selection processes in public or private entities, for medical treatment, for non-paid sports scientific or cultural events, to provide training in companies, among others. It is granted as long as there is no labor contact.

This visa may be granted for up to 180 calendar days, except in the last case, in which it cannot be for more than 45 calendar days within the same calendar year.

5.2.5.3 Technical Visitor's Visa

This visa is granted to render urgent technical services to public or private entities, prior filing of a letter of responsibility from the entity justifying the urgency of the service required. It may be granted for up to 45 calendar days within the same calendar year.

Exception: When dealing with evident and publicly well-known events, the Ministry of Foreign Relations may issue a new visa for the duration necessary to resolve the urgency.

5.3 Foreigner's Identity Card

The foreigner who has obtained a visa for a duration higher than 3 months, must register before the Administrative Security Department – DAS within the next 15 days after his arrival in Colombia. Once the visa is

registered, DAS will issue a foreigner's identity card to the foreigner.

This document serves the foreigner as identification within Colombia and allows him to sign contracts, open bank accounts and carry out different operations. The foreigner must keep it with him at all times during his stay in the country.

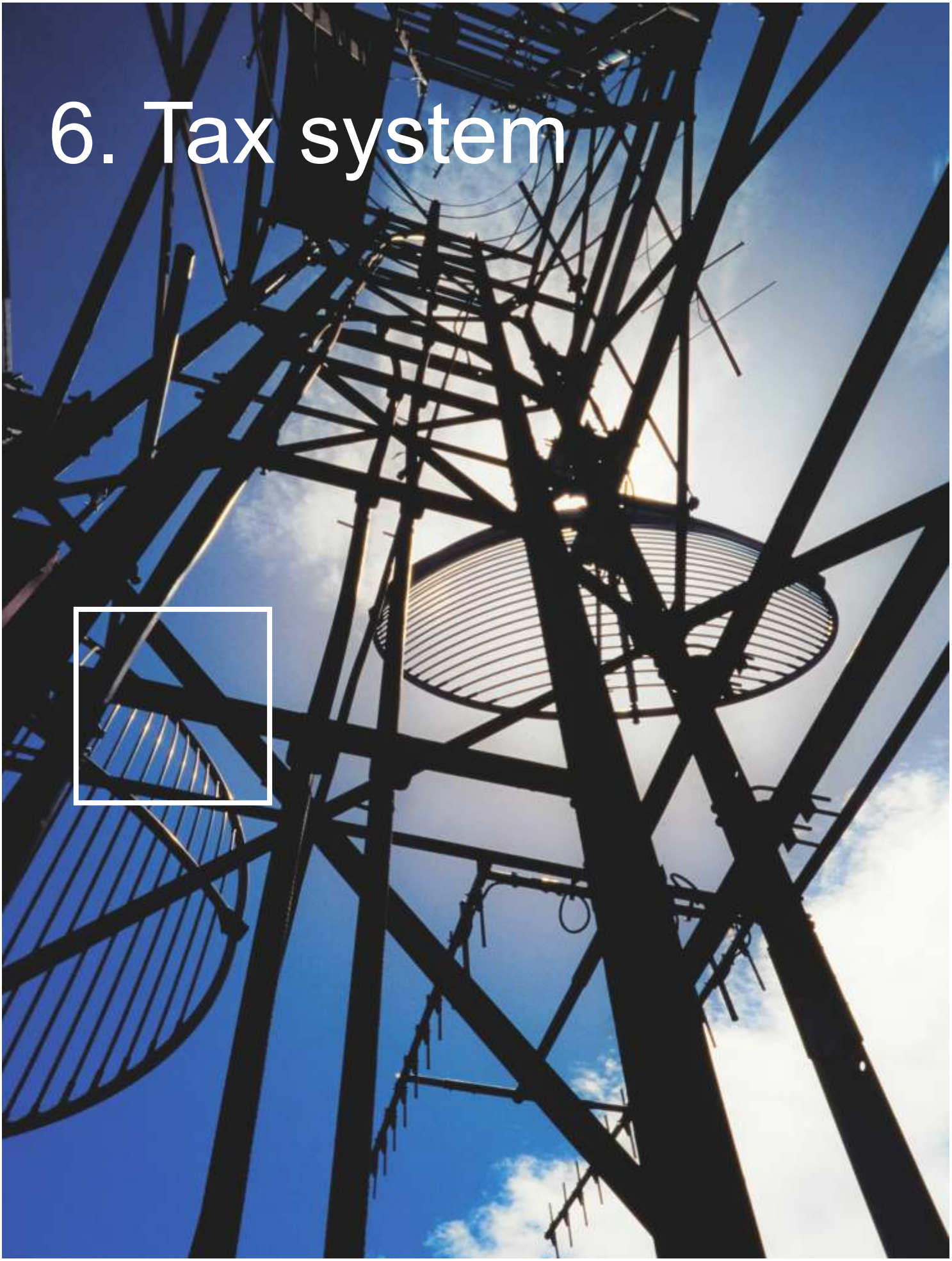
5.4 Visa costs

VISA CATEGORY	COST (USD$)		
	US, Canada, Africa, Asia and Oceania	Europe and Cuba	Latin America and the Caribbean
Business	170	150	170
Resident Investor	425	375	425
Temporary Worker	205	205	205
Temporary Special	175	175	175
Visitor	50	40	45

5.5 Regulations

The regulations that govern the Colombian immigration system are Decree 4000 of 2004 modified by Decree 2622 of 2009, Decree 4248 of 2004 and Order 4700 of 2009.

6. Tax system



The Colombian tax system establishes taxes at a national and sub-national level (departmental and municipal).

The main national-level taxes are the income tax and the supplementary capital gains tax, the equity or net assets tax (temporarily in effect), the sales tax or Value Added Tax ("VAT"), the tax on financial transactions and the stamp tax. Among the sub-national level taxes are the industry and commerce tax, the property tax and the registry tax.

In order to avoid double taxation and prevent tax evasion in matters of income tax and net assets tax, Colombia has been advancing in the negotiation of international treaties. To date, there are signed treaties with Spain, Chile, Canada, Mexico and Switzerland (only the first two in force) and under negotiation are those with Germany, Netherlands, India, Belgium, Check Republic, North Korea, Japan, France, Israel and United Arabic Emirates.

6.1 Income Tax and Capital Gains Tax

In general the income tax is imposed on earnings and profits obtained by taxpayers where the same are capable of enriching the taxpayers and are derived from their ordinary operations. On the other hand, the capital gains tax taxes certain extraordinary transactions of the taxpayers beyond the scope of their ordinary operations.

In the past, the income tax included a supplementary remittance tax that was applied to the transfer of income or earnings abroad. Although this tax was repealed in the last tax reform of 2006 for branches of foreign companies, some of its effects may remain in force for some time with regard to profits obtained before 2007.

6.1.1 General Features of the Income Tax and the Capital Gains Tax

Generally, income is the entry of resources that in the end produce increases in the gross assets of individuals or companies. Companies and individuals residing in Colombia are taxed on their Colombian or foreign source income (regular income and capital gains). On the other hand, nonresident foreign companies are taxed only on their Colombian source or foreign source income (regular income and capital gains). Foreign individuals residing in Colombia are taxed on their foreign source income or capital gains, starting only from their fifth (5th) year of residence in the country, it means, as from the sixth (6th) year of residence.

Branches of foreign companies located in Colombia are taxed only on their Colombian source income and capital gains.

As a general rule, the income tax is for annual periods and the annual period coincides with the calendar year. There are exceptions for cases in which the taxpayer has not existed during the entire calendar year, as in the case of incorporation or liquidation. In these events, the income tax is determined for the corresponding fraction of the year.

6.1.1.1 Colombian source income

Colombian legislation establishes the following main categories of income that qualifies as "Colombian source income":

- The income derived from the exploitation of tangible and intangible property within the country.
- The income derived from the provision of services within Colombian territory. Similarly, income derived from the provision of technical services, technical assistance, or consulting, whether done in the country or abroad, is considered income from a national source.
- The income derived from the sale of tangible and intangible property that is in the country at the moment of sale.

6.1.1.2 Income that does not qualify as Colombian source income

The following cases, among others, do not qualify as foreign source income:

- Income obtained from external debt if it comply with some requirements provided by law. Interest produced

by this external debt is not taxed with income tax and therefore there is not withholding tax liability. Additionally, the expense derived from this concept will be 100% deductible.

- Income originated in international leasing contracts to finance investment in machinery and equipment related to export processes or activities considered of interest for the economic and social development of the country.
- Income derived from technical services of repair and maintenance of equipment carried out abroad.

6.1.2 Income Tax Rates and Taxable Base

Starting in the taxable year 2008, the income tax rate is 33%. In the case of Industrial Users of goods and services located in Free Trade Zone, the income tax rate is 15%.

The Colombian legal system establishes two ways for determining the taxable base for income tax purposes: the ordinary system and the presumptive income system.

6.1.2.1 Ordinary System of Determination of Taxable Income

This system takes into account all revenue or income, ordinary and extraordinary, which is realized during the taxable year and is capable of producing an increase in net assets at the moment of realization, and which has not been expressly excluded from taxation. From the revenue, refunds, rebates and discounts are deducted to obtain a net revenue amount. From net revenue, the costs incurred and associated with such revenue are subtracted, in order to obtain gross income. From gross income, the accepted deductions are subtracted to obtain net income. Apart from the legal exceptions, net income is the taxable income on which the rate established by law is applied.

DETERMINATION OF ORDINARY TAXABLE INCOME
GROSS REVENUE Minus: Discounts Refunds Rebates
NET REVENUE Minus non-taxable income or capital gains
NET TAXABLE REVENUE Minus: Costs
GROSS INCOME Minus: Deductions
NET INCOME Minus: Exempt income
NET TAXABLE INCOME Multiplied by: Rate
BASIC INCOME TAX Minus: Tax credits
NET INCOME TAX

6.1.2.2 Presumptive Income System

The presumptive income system constitutes an alternate method for determining the income tax, so as to ensure that this tax is not lower than 3% of the net assets as of December 31 of the year prior to the current taxable year. In other words, presumptive income is the minimum estimated amount of profitability of a taxpayer based on which the law expects to quantify and collect the income tax. Presumptive income is not a real income generated by the activity of the taxpayer, but rather, it operates by virtue of the law (legal presumption) and under the parameters established by the law.

From the total amount of net assets, which is the base to calculate presumptive income, the following amounts, among others, can be subtracted:

- The net asset value of the shares owned in national companies.
- The net asset value of the assets affected by force majeure.

- The net asset value of assets associated with operations in unproductive periods.

Each year, taxpayers must compare the value resulting from the application of the foregoing two systems. The income tax for the taxable year will be calculated on the higher value resulting from this comparison. If presumptive income is higher than the ordinary net income, the difference constitutes an excess of presumptive income, which can be carried forward (adjusted for inflation) to any of the following five (5) taxable years and set off against the net income determined by the taxpayer.

As from year 2010, debts with foreign related parties are considered, for tax purposes as equity of the taxpayer and therefore can not be subtracted from it. This has implications for the determination of net worth for purposes of calculating the presumptive income.

6.1.3 Non Taxable Income

There are under tax legislation certain special tax treatments that allow the exclusion of certain income or revenue from the calculation of the taxable base. Among these revenues are dividends and shares in profits (as long as they are paid out from profits that have been taxed at the corporate level), certain profits on the sale of shares, the premium on shares placements, the capitalization of certain items, casualty insurance proceeds and the distribution of profits from the liquidation of companies.

6.1.4 Costs, Deductible Expenses and other Deductions

Costs are payments or charges incurred in the acquisition or production of goods, or to provide a service in order to obtain revenues. Costs having a causal nexus with the activity that produces the revenues are deductible, provided they are necessary, reasonable and provided they have been accrued or paid during the corresponding taxable year. It is understood that deductible costs accrue when the payment of same is actually made, in money or in kind, except for those costs incurred in advance. Costs incurred by taxpayers who use the accrual method of accounting are deemed to have accrued in the year or period in which the obligation to make the payment is created, even if the payment has not been made.

Expenses are all outlays that are made in carrying out the administration, sales, research and financing operations of an economic entity. With regard to expenses, tax law establishes that all expenses made during the taxable year in the course of an income producing activity are deductible, as long as a causal nexus with such activity exists and provided that they are necessary and reasonable.

The following are examples of deductions:

6.1.4.1 Wages and payroll taxes (“payroll-based contributions”)

Wages paid or accrued to workers are deductible as long as the employer has paid all the payroll taxes (“aportes parafiscales”) (ICBF, SENA, Family Subsidy and Social Security). These contributions are also deductible.

6.1.4.2 Taxes paid

- One hundred percent (100%) of the industry and commerce tax (and the supplementary billboard tax) and the real property tax actually paid in the respective taxable year, provided they have a causal nexus with the economic activity of the taxpayer.
- 25% of the tax on financial transactions actually paid during the fiscal period, whether or not there is a causal nexus with the economic activity of the taxpayer (See Tax on Financial Transactions – GMF).

6.1.4.3 Interest

Interest accrued under obligations entered into with entities subject to oversight of the Office of the Financial Superintendent is deductible in its entirety.

6.1.4.4 Expenses abroad

Taxpayers may deduct expenses abroad that have a causal nexus with their foreign source income, provided that the corresponding withholding tax has been collected when such payment constitutes taxable income in Colombia for the beneficiary of the expense.

The following expenses abroad are deductible without any withholding tax being required:

a. Payments to brokers abroad for the purchase or sale of merchandise, raw materials, or other types of goods, to the extent they do not exceed the percentage of the related operation value determined by the Ministry of

the Treasury and Public Credit for the taxable year.

b. Interest on short term credit (for one year or less) on the import or export of goods or bank overdrafts, to the extent they do not exceed the percentage of the amount of each credit or overdraft determined by the central bank (Banco de la República).

The costs or deductions for expenses incurred abroad to obtain foreign source income cannot exceed fifteen (15%) percent of the net income of the taxpayer, calculated before subtracting said costs and deductions, except in those cases expressly determined by law.

6.1.4.5 Donations

Donations made to certain entities expressly determined by law are deductible for income tax purposes in the period or year in which the donation is made.

6.1.4.6 Investment in scientific and technological development

Taxpayers that make investments, directly or indirectly, in projects that qualify as scientific, technological or which involve technological innovation or professional training projects of governmental, public or private institutions of higher education, will have the right to deduct from their net income 125% of the amount invested in the taxable year in which the investment was made. This deduction cannot exceed 20% of the taxpayer's net income, determined before subtracting the amount of the investment.

6.1.4.7 Investment in environmental control and improvement

Companies that make direct investments for the control and improvement of the environment will have the right to deduct the amount of such investment for the taxable year in which they were made. The amount of the deduction for this item cannot exceed 20% of the net income, calculated before subtracting the amount of the investment.

6.1.4.8 Investment in real productive fixed assets

40% of the amount of the investments made in real productive fixed assets acquired in the taxable year may be deducted, even if under financial leasing arrangements, when they are used directly and permanently in the income producing activity of the taxpayer. The deduction applies even if it results in a tax loss. The application of this benefit does not generate any taxable income for the partners or shareholders. Those who purchase fixed assets subject to depreciation and claim this special deduction can only depreciate such assets by the straight line method. In addition to the deduction of 30% of the invested amount (tax benefit), the depreciation expense related to the assets can also be deducted.

As of the year 2010, this deduction cannot be applied by industrial users of goods and services located in the Free Trade Zone with Income tax tariff of 15%.

6.1.4.9 Tax loss carryforwards

Starting in 2007 tax losses may be set off against any ordinary net income obtain in subsequent fiscal periods, without prejudice to the computation of the presumptive income for the period. These tax losses cannot be transferred to the shareholders or company members.

In the case of mergers and spin-offs, the absorbing or resulting company may set off against net income the tax losses incurred by the merged or spun-off companies up to a limit equal to the participation of the assets of the merged or spun-off companies in the assets of the absorbing company or the company resulting from the process of spin-off or merger.

6.1.4.10 Amortization of investments

Amortization is the distribution of the cost of an intangible asset during its useful life or during any other period of time, determined by valid criteria. According to the current tax system, necessary investments, that is, those made in furtherance of the business or activity of the taxpayer, other than investments in land or depreciable fixed assets, are amortizable. The foregoing includes disbursements made for the purpose of the business or activity, susceptible to impairment, that must be recorded as assets for their amortization in more than one year or fiscal period or that must be deferred because they constitute preliminary expenses of installation, organization or development.

These investments must be amortized in a term not shorter than five (5) years, except when, due to the nature

or duration of the business, they need to be amortized in a shorter period of time.

6.1.4.11 Depreciation

Reasonable amounts of depreciation caused by the normal wear and tear or obsolescence of fixed assets used in business or income producing activities are deductible in the amount or percentage necessary to amortize 100% of the cost during the useful life of such property.

6.1.4.12 Exchange rate differences

Payments made in foreign currency are estimated at the acquisition price in Colombian currency. When there are debts or assets in foreign currency, their amount is adjusted at the market rate of exchange [the so-called “tasa representativa del mercado”] on the last day of the year, and any difference is taxable or deductible, as the case may be.

6.1.5 Exempt Income

The law establishes among other cases, exempt income described below:

a. Publishing companies dedicated to the publication of books, magazines, brochures or collectible, numbered publications of a scientific nature, are exempted until year 2013.

b. The payments of principal and interest, commissions and other fees related to public foreign credit operations and similar operations, are exempt from all types of taxes, fees, assessments and national levies, as long as they are paid to persons who do not have a residence or domicile in the country.

c. The sale of electric energy generated from wind, biomass, or agricultural waste produced by generating companies is exempt for a period of 15 years, provided the company sells the energy itself and issues and negotiates Certificates of Reduction of Greenhouse Gasses.

d. Revenue generated by new exploitations of slow yield crops and plantations, in cocoa, rubber, palm oil, citrus and other fruits, as determined by the Ministry of Agriculture and Rural Development, is exempted.

e. River transportation services with shallow draft vessels and barges are exempt for a period of 15 years, starting in 2003.

f. Hotel services offered in new hotels that are built within a period of 15 years counted from 2003, for a term of 30 years counted from the date on which the new hotel start its operation.

g. Hotel services offered in remodeled and/or enlarged hotels, within 15 years, starting in 2003, for a term of 30 years, based on the cost of the remodeling and/or enlargement prorated to the tax basis of the remodeled and/or enlarged facility.

h. Ecotourism services for 20 years starting in 2003.

i. Investment on new forestry plantations, sawmills and plantations of timber-yielding trees.

j. New medicinal and software products developed in Colombia and protected under new patents registered with the authorities, with a high content of national research and technology, until 2013.

6.1.6 Tax Credits

The law has established that some items may be subtracted from the tax calculated by the taxpayer, among others, the following:

a. Tax credits for income taxes paid abroad by domestic taxpayers that receive foreign source income.

b. Tax credits to air and maritime Colombian transportation companies.

c. Tax credits for tree plantations in reforestation areas.

d. Tax credit for the sales tax paid on the importation of heavy equipment for basic industries.

e. Tax credit for investment in the stock market of shares of companies dedicated to agricultural industries.

In no case can the tax credits exceed the amount of income tax. The tax liability after all tax credits cannot be lower than 75% of the income tax calculated by the presumptive income method on net assets, before any tax credit.

6.1.7 Transfer Pricing

Colombian law on transfer pricing matters was written based on the guidelines of the Organization for Economic

Cooperation and Development – OECD – and went into effect in 2004.

With the entry into force of this system, the income taxpayers who carry out operations with foreign related parties must determine their income, costs and deductions taking into account the prices and profit margins used in comparable operations with or between independent parties.

Additionally, income taxpayers who carry out operations with related parties with offices or residence abroad, with gross assets of more than 100 UVT (COP $ 2.455.500 Aprox. US$ 1.228) and with gross revenue in excess of 61,000 UVT (COP $1.497.855.000 Aprox. US$ 748.927) are required to file an annual informative report of the operations carried out with their related parties and to prepare and file probative documentation for each of the operations in order to prove the correct application of the current transfer pricing regulations. This probative documentation must be kept for a period of five (5) years beginning on January 1st of the year following its preparation.

6.1.8 Capital Gains Tax

As a complement to income tax, the capital gains tax is imposed on earnings that are obtained from certain operations expressly defined by the law.

Capital gains cannot be reduced by the ordinary costs and deductions taken by the taxpayer in the same manner as capital losses cannot be taken into account for purposes of computing the ordinary taxable income of the taxpayer.

The most relevant operations that are subject to the capital gains tax include the following:

a. Gains (the excess of the sales price over the tax basis of the asset) derived from the sale of fixed assets of the taxpayer owned for a period of two or more years.

b. Gains originated in the liquidation of any type of company in excess of the invested capital, provided that the same do not correspond to income, reserves or earnings distributable as non-taxable dividends, and provided that the company has completed at the time of its liquidation two (2) or more years of existence.

c. Gains obtained from inheritances, legacies, donations, as well as those received in the manner of spousal forced shares.

d. Gains obtained from lotteries, prizes, raffles and the like.

For both national and foreign legal entities, the flat rate on capital gains is 33%.

6.1.9 Withholding Taxes

The Colombian tax system provides for withholding taxes as a method of advance tax collection. This mechanism authorizes, by law or regulation, a private or public entity, under certain special conditions, to collect or withhold certain taxes. According to the Tax Code, the withholding agents are (inter alia) the legal entities that due to their activities participate in acts or operations in which they must withhold the tax (or a portion of it) by express order of the law.

The main obligations of the withholding agents in this regard consist of carrying out the applicable withholding, deposit the withheld amounts where and when the government determines, file the monthly withholding tax returns and issue the corresponding withholding tax certificates.

Notwithstanding the above, it is important to point out that given that there are differential rates for local transactions and special rates for payments abroad, in order to determine the applicable withholding tax rate for a given transaction, it is necessary to determine its nature.

6.2 Net Assets Tax (Equity Tax)

For taxable year 2011, corporate and individual income taxpayers that are filers and which net assets (assets minus liabilities) as of January 1, 2011 amount to COP $3,000,000,000 (approximately US$ 1,500,000) are taxed with the net assets tax. The rate of the net assets tax is 2.4% for equities whose tax base is equal to or greater than COP $ 3,000,000,000 but not exceeding COP $ 5,000,000,000 and 4.8% for assets in excess of COP $ 5,000,000,000 (approximately U.S. $ 2,500,000).

The taxable base for this tax is the amount of the net assets of the taxpayer as of January 1, 2010, excluding the net asset value of the shares held in Colombian companies, as well as the first COP $220,000,000 (approximately US$ 110,000) of the value of the taxpayer's house or apartment (in the case of individuals). The

date of accrual of the tax is January 1, 2011.

As from year 2010, debts with foreign related parties, shall be deemed for tax purposes as equity of the taxpayer. This has implications for calculating the taxable base of the net asset tax and n the determination of net worth for purposes of presumptive income.

This tax is not deductible or creditable for income tax purposes, and it cannot be set of against any other taxes either. However, the law authorizes the taxpayers to charge this tax against the asset revaluation account, without affecting the income statement for the year.

6.3 Sales Tax (VAT)

This is a national level tax that taxes mainly the sale of items of tangible personal property that are not fixed assets and have not been excluded, the provision of services within the national territory and the importation of tangible personal property that has not been expressly excluded.

The sales tax is structured as a value added tax in Colombia; therefore, for purposes of VAT calculation, the VAT taxpayer is allowed to credit against the VAT payable the VAT that he has paid on goods and services acquired and used in the production of income from VAT-taxable operations.

The persons liable to the tax authorities in Colombia for the collection and payment of VAT are those who carry out any taxable operations, despite the fact that the person who bears the economic burden of this tax is the final consumer. Thus, the following are the VAT taxpayers, among others:

- In sales transactions, the merchants, whether distributors or manufacturers
- Whoever renders a service that is not excluded from payment of this tax
- The importers

In the case of sales transactions and the provision of services, the taxable base generally comprises the total value of the transaction. The taxable base of this tax includes the goods and services acquired for the account of or on behalf of the beneficiary of the sale or the service. Additionally, there are special taxable bases for certain types of goods and services.

There is a general VAT rate that applies to the majority of transactions, presently 16%, and there are some differential rates that vary from 1.6% to 35%.

6.3.1 Exclusions or Transactions that do not trigger Sales Tax

6.3.1.1 Goods in respect of which no sales tax accrues:

a. National or imported equipment and materials destined for the construction, installation, assembly and operation of environmental monitoring and control systems.

b. Importation of raw materials and supplies under the so-called Vallejo Plan – a special importation and exportation program –, where these materials and supplies are incorporated into products that will subsequently be exported.

c. Temporary importation of heavy machinery and equipment for basic industries provided that the M&E are not produced in the country. It is understood that basic industries are mining, hydrocarbons, heavy chemistry, iron and steel industry, metallurgy, extraction of natural resources, generation and transmission of electrical energy, and obtaining, purifying and conducting hydrogen oxide.

d. Importation of machinery and equipment not produced in the country, for recycling and processing of waste and refuse.

e. Ordinary importations on the part of highly exporting users – “ALTEX”, of industrial equipment not produced in the country destined for the transformation of raw materials, for an indefinite period of time.

f. Sales of fixed assets.

6.3.1.2 Excluded Services

a. Public and private, national and international freight transportation.

b. Public transportation of passengers in the national territory by water or land.

c. National air transportation of passengers to national destinations, where there is no organized land

transportation.

d. Transportation of gas and hydrocarbons.

e. Interest and other financial income from credit operations and financial leasing.

f. Medical, dental, hospital, clinical and lab services for human health.

g. Public utilities including energy, water, sewage, street cleaning, garbage collection and gas distribution.

6.3.1.3 Excluded Importations

The VAT- excluded importations are explicitly listed in the law. Among the importations that do not trigger VAT are the importations where there is no clearance through customs (short term importations), importation of heavy machinery and equipment for basic industries, importation to special customs zones, etc.

6.3.2 Creditable Taxes

The sales tax invoiced to the VAT taxpayer on acquisitions of personal property and services is VAT-creditable, as is the tax paid on the importation of personal property. VAT credits are granted in regard to the acquisition of personal property and services and imports only where the same are to be treated as costs or expenses of the company for income tax purposes and are destined for VAT-taxable operations. In the case of VAT paid on inputs for VAT-exempt operations (transactions), a VAT credit is available only where the taxpayer who carries out the exempt transaction is an exporter or producer of VAT-exempt goods. In the case of exporters, the total VAT invoiced is creditable provided that the related inputs (goods or services) are chargeable as production costs or as cost of goods sold of the exported goods, and provided that the rate of said VAT is the same that would have applied to the corresponding operation. The VAT paid may be entered on the books in the tax period corresponding to the date of accrual of the tax or in any of the two succeeding bi-monthly periods; and it can be claimed as a credit on the tax return of the period in which it was entered on the books.

No VAT credit is allowed for the VAT paid in the following transactions:

- Acquisition of fixed assets
- Unrecoverable trade receivables (bad debts)
- Acquisitions made from suppliers that are not registered as VAT taxpayers
- Acquisitions made from fictitious or insolvent suppliers

6.3.3 Determination of VAT

VAT is determined by the difference between the tax accrued on taxable transactions and the VAT credits authorized by law, as follows:

VAT DETERMINATION
INCOME FROM TAXABLE TRANSACTIONS Times: Rate
TAX ACCRUED Minus: Creditable taxes
VAT PAYABLE (VAT LIABILITY)

6.4 Stamp Tax

Stamp tax accrues on public instruments or private documents executed or accepted in the country or which are executed abroad but are performed or create obligations in the national territory, and which evidence the creation, existence, modification or extinction of obligations, as well as their extension or assignment, when

their value exceeds 6,000 “Tax Value Units” (“TVU”) (equal to COP$ 142,578,000 – Aprox. US $71.289) for taxable year 2009), and provided that the person that executes, accepts or subscribes the document is a public entity, a legal or similar entity, or an individual who qualifies as a merchant and who earned gross income (revenue) or held gross assets in excess of 30,000 TVU in the prior year (with 30,000 TVU being equal to COP$ 661,620,000 – Aprox. US $330.810 for taxable year 2009).

Instruments evidencing the creation, existence, modification or extinction of obligations related to foreign debt transactions are not subject to the stamp tax.

For taxable year 2009 the rate is 0.5% of the total instrument value. For year 2010 the rate will be 0%.

In the case of contracts or other types of agreements between private parties and government agencies, private parties must pay only half of the stamp duties, that is, their share in the business.

The following, among others, are exempted from this tax:

a. Private documents through which the parties agree to the exportation of domestically produced goods and services.

b. Commercial offers accepted through purchase orders or the sale of goods and services.

6.5 Financial Transactions Tax (GFM)

The tax on financial transactions is a permanent tax on financial transactions the collection of which is the responsibility of the financial entities and the Central Bank (Banco de la República).

The taxable event, among others, is the carrying out of financial transactions that involve the disposal of resources deposited in checking or savings accounts as well as in deposit accounts with Banco de la República, and the issuance of cashier's checks. Given that this is the case of an instantaneous tax, the same accrues at the moment in which the resources that pertain to the financial transaction are disposed of.

The tax rate is four tenths of one percent (0.4%) of the total amount of the financial transaction through which the resources are disposed of. Starting in 2007, 25% of the total tax paid is deductible for income tax purposes, regardless of whether the transactions have a causal nexus with the income producing activity of the taxpayer.

This tax is collected through withholding, and the withholding agents are Banco de la República and the other financial entities subject to oversight by the Office of the Financial Superintendent and the Office of the Superintendent of Cooperatives where the respective checking account, savings account, deposit account or collective portfolio are held, or where the accounting transactions that imply the transfer or disposal of resources are booked.

The law establishes a series of operations and transactions that are exempted from this tax.

6.6 Industry and Commerce Tax and the supplementary Billboard Tax

6.6.1 Industry and Commerce Tax

6.6.1.1 Industrial Activity

This is a sub-national level tax that is imposed on revenue obtained from the exercise of industrial, commercial or service activities that are carried out directly or indirectly by individuals, legal entities or unincorporated entities in any of the Colombian municipal jurisdictions. The definitions of the above types of activities are shown below according to Colombian law.

Any activities that can be described as the production, extraction, making, preparation, repair, manufacturing or assembly of any type of materials or goods and generally any transformation process, as simple as it may be.

6.6.1.2 Commercial Activity

Any activities that can be described as sales, purchase and resale or distribution of goods or merchandises, both wholesale and retail. Commercial activities are also those defined as such by commercial laws.

6.6.1.3 Service Activity

All the tasks, labor or work executed by an individual or legal entity or by an unincorporated entity, without a labor relationship existing with the party that acquires the services, that generate a consideration in money or in kind and that involve the specific obligation to do something, regardless of whether the material or intellectual element prevails in the activity.

The taxable base for this tax is the total amount obtained by the taxpayer as derived from subtracting from

ordinary and extraordinary revenue the applicable deductions, exempt amounts and excluded amounts. The tax rate is applied to this amount.

The industry and commerce tax rate is determined by each municipality, with the municipality being allowed to establish any rate within the following limits established by law:

- For industrial activities, from 0.2 to 0.7 percent (from 0.2% to 0.7%)
- For commercial and services activities, from 0.2 to 1 percent (from 0.2% to 1%).

6.6.2 Billboard Tax

This is sub-national tax, complementary of the Industry and Trade Tax, which tax event is the placement of billboards in public spaces. This tax is imposed to all persons or companies engaged in industrial, commercial and service activities carried out in the municipal jurisdictions that use the public space to advertise its business through billboards,

The taxable base is the Industry and Trade Tax liability on which it is apply a 15% rate to determine the billboard tax.

6.7 Property Tax

The property tax is imposed on real property located in urban, suburban or rural areas, whether or not constructed land. Therefore, the property tax payers are the owners or holders of the real property. This tax is justified because real estate is the hallmark of concentration of income and it is on account of that fact that real property is subject to this tax.

The taxable base of this tax is the current cadastral value of the property, as adjusted for inflation. In zones such as the Capital District of Bogota, the taxable base is the value of the property as appraised by the taxpayer directly.

The applicable rate depends on the nature of the property; that is to say, if it is rural, urban or suburban, and varies between 4 per thousand and 12 per thousand (0.4% and 1.2%) taking into account the economic use of each property.

This tax is 100% deductible for income tax purposes, as long as there is a causal nexus with the income producing activity of the taxpayer.

6.8 Registry Tax

- The registry tax is levied over all the acts, contracts or business set in documents that a required to be registered before the Chamber of Commerce and before the Public Registry Office (Oficina de Instrumentos Públicos).
- The tax base is the value incorporated into the document that reflects the act, agreement or judicial contracts. The tax base of the documents that do not have a stated value will be that of the nature of the same.
- Acts, agreements, or judicial contracts with a stated value subject to registry at the Offices of Public Instruments will trigger a tax rate between 0.5% - 1%.
- Acts, agreements, or judicial contracts with a stated value subject to registry before the Chambers of Commerce will trigger a tax rate between 0.3% and 0.7%.
- Acts, agreements, or judicial contracts without a stated value that are subject to registry either before the Office of Public Instruments or Chambers of Commerce will trigger a tax rate between two and four minimum daily wages.
- Some examples of documents without a determined value are: Naming acts, name changes, statutory bylaws addendums (not including increase of capital and mergers), closing of companies, etc.
- As examples of acts with value, we can mention the following: company creation, increase of social capital and increase of the subscribed capital, transfer of quotas, sale of commercial establishments, closing of companies, etc.

- The request of filing an act or judicial contract must be carried out within the two (2) following months of the date of the document if it was issued in Colombia. If the document was issued abroad, the registry must be carried out within three (3) months of the date of the document.
- The registry of the documents that shows a control situation or conglomerate must be carried out within the following thirty (30) days of the establishment of the control situation or conglomerate.
- When the document is not filed within the previously stated periods, a penalty for delay is triggered, equivalent to the delay interests by month or monthly fraction on the value of the tax to be paid.
- When acts, agreements, or judicial contracts must be registered both at the Office of Public Instruments and the Chambers of Commerce, the tax must be paid only at the Office of Public Instruments.
- When a document is subject to Registry Tax, Stamp Tax will not be triggered.

6.9 Double Taxation Treaties and Decision 578 of the Andean Community

Colombia has been negotiating international treaties in order to avoid double taxation and prevent tax evasion in respect of the income tax and the net assets tax, particularly in cross-border operations.

At the level of the Andean Community, Colombia adopted Decision 578, which is the new supra-national Andean legal system designed to avoid double taxation and prevent tax evasion among member countries of the Andean Community (Colombia, Peru, Ecuador and Bolivia). This Decision is not, in a strict sense, a treaty to avoid double international taxation in respect of the income tax and the net assets tax; rather, it is a supra-national decision adopted by the Andean Community Commission which overrides the internal tax rules of the member countries; hence the application of the rules contained in the aforementioned Decision prevails.

With respect to the double taxation treaties signed by Colombia so far, besides avoiding double taxation and preventing tax evasion, they seek to eliminate barriers to the flow of capital, goods, technology and persons between the signatory countries. Additionally, these treaties allow for a better implementation of transfer pricing regulations, recognize the principles of non discrimination of nationals and non-residents with activities in the other country that is a party to the treaty, implement reciprocal cooperation procedures between tax authorities for the resolution of conflicts, consultations, exchange of information and assistance in the collection of taxes. To date, Colombia has signed treaties with Spain, , Chile, Canada, Mexico and Switzerland, with the first two being the only in effect, and negotiations are under way for treaties with Germany, United States, Netherlands, India, Belgium, Czech Republic, South Korea, Japan, France, Israel and United Arab Emirates.

At the same time, Colombia has signed investment protection and promotion agreements with Chile, Spain and United Kingdom.

7. Environmental Regulations

Colombian environmental law is centered on the concept of sustained development. It is contained in the Political Constitution of 1991, which included the environment as a collective right, in the Code of Natural Renewable Resources and of Protection to the Environment of 1974, and the precepts of the United Nations Conference of Rio held in 1992. This legal framework is regulated, controlled and supervised by the governing entity of the Colombian Sistema Nacional Ambiental (National Environmental System) – SINA- currently headed by the Ministry of the Environment, Housing and Territorial Development.

This chapter is a brief guide for the foreign investor whose investment projects in Colombia may have an impact on the environment. It includes a summary of the environmental authorities and their jurisdiction, as well as the more relevant features regarding permits, rates and contributions on environmental regulations.

7.1 Environmental Authorities

7.1.1 Ministry of the Environment, Housing and Territorial Development

The Ministry of the Environment, Housing and Territorial Development is currently the governing entity regarding the environment and the renewable natural resources, and as such, it is in charge of defining the policies and regulations for the recovery, conservation, regulation, handling, and use of the same.

7.1.2 Regional Autonomous Environmental and of Sustained Development Agencies – CAR–, and Urban Environmental Units – UAN –

The Regional Autonomous Environmental and of Sustained Development Agencies (CAR) are public entities formed by the territorial entities from areas which constitute one same ecosystem or which conform a geopolitical, bio- geographical or hydro-geographical unit. On the other hand, the Urban Environmental Units perform the same functions as the Regional Autonomous Environmental and of Sustained Development Agencies but within the urban perimeter of the municipalities, districts or metropolitan areas with a population higher or equal to 1,000,000 people.

The mission of both entities is to exercise the functions of environmental authority in their respective jurisdictions, executing within a framework of autonomy the general guidelines established by the Ministry of the Environment, Housing and Territorial Development, and performing the functions of evaluation, control and follow up on the use of the natural resources.

7.1.3 Institute of Hydrology, Meteorology and Environmental Studies (Ideam)

The Ideam is an entity of the national order which is part of the SINA and assigned to the Ministry of the Environment, Housing and Territorial Development. It is in charge of centralizing all the environmental information necessary for environmental authorities in the design and adoption of decisions and environmental policies in their jurisdiction within the national territory.

7.2 Permits for the use of Natural Renewable Resources

7.2.1 Water Resources

Pursuant to the water regulations, any person interested in using the water resources, whether surface or underground, for the development of his activities requires a water concession granted by the pertinent environmental authority. The types of activities to be developed include the following:

a. Irrigation and forestry

b. Industrial Use

c. Mining production and treatment of minerals

d. Oil production

e. Hydroelectric Generation

f. Transportation of minerals and toxic substances,

Likewise, will be required the approval of the competent environmental authority when pretending to carry out works which occupy the bed of a river or its waters in a temporary or permanent manner.

7.2.1.1 Water concession

The necessary concession for the use of water resources will be granted through an Order containing, among others aspects, the obligations of the grantee, the economic burden assumed, the duration of the concession, the conditions for the use of the resource and the reasons for termination of the authorization. Concessions may be granted for a 10 year term, and exceptionally up to 50 years, on works destined for the provision of public utilities or services necessary for the construction of works of social interest. In any case the user shall pay all the rights for the concession.

7.2.1.2 Permit for liquid waste discharge

The liquid waste discharge permit is granted by the competent environmental authority of the jurisdiction in which the water resource is located upon request by the interested party. The request must indicate the kind, quality and volume of liquids to be discharged, as well as the treatment systems of the same. The maximum term for liquid waste discharge, in any case, will be 5 years.

7.2.1.3 Obligation on the Use of Natural Springs

Any project including in its execution the use of water taken directly from natural springs and subject to the approval of an environmental permit, shall destine 1% of the total investment for the recovery, conservation, preservation and surveillance of the respective water source, a disbursement which shall be made only once by the beneficiary of the environmental permit and for environmental authorities with jurisdiction in the project influence area.

7.2.2 Air Resources

The Ministry of the Environment, Housing and Territorial Development established through the Reglamento de Protección y Control de la Calidad del Aire (Regulations for Air Protection and Quality Control), the regulations and general principles for the protection of the atmosphere, the mechanisms for the prevention, control and management of events of air contamination, the guidelines and jurisdictions for the establishment of regulations on air quality or emission levels and the basic regulations for the emission standards and discharge of contaminants into the atmosphere.

With regard to this environmental resource, Colombia created the National Technical Commission for the prevention and control of air contamination – CONAIRE in the year 2006, responsible for the coordination of public policies to prevent and control air contamination.

7.2.2.1 Permit on Emissions to the Atmosphere from Fixed Sources

Any person generating emissions into the atmosphere in the performance of his activity must obtain the corresponding permit, which shall only be granted to the extent that its emissions are within the levels authorized by the Ministry of the Environment, Housing and Territorial Development. The permit will only be granted to the owner of the works, enterprise, activity, industry or establishment originating the emissions.

Prior permit shall be required for atmospheric emissions generated by the following activities:

a. Discharge of smoke, gases, vapors, dust or particles through ducts or chimneys from industrial, commercial or service establishments.

b. Fugitive or disperse emission of contaminants in open pit mining production activities.

c. Incineration of solid, liquid and gaseous waste.

d. Operation of boilers or incinerators by an industrial or commercial establishment.

e. Production of lubricants and fuels.

f. Refining and storage of crude oil and its by-products; and petrochemical manufacturing processes.

The duration of the permit will be 5 years. In the case of temporary emissions generated by civil works, other works or temporary activities lasting less than five (5) years, the permit will be granted for the term of execution of the civil works, other works or activities.

The permit for emissions to the atmosphere will not be required for emissions not under a ban, a legal or regulatory restriction, or under control by the environmental regulations.

7.2.3 Solid Waste

The law on residential public utilities approved in the year 1994 regulated the public service of garbage collection within a framework of integral management for regular solid waste, regarding its components, levels, kinds, characteristics, quality, storage and processing, and also concerning the regulations for the persons rendering the service and the users.

Under the current regulation solid waste is defined as *"any solid object, material, substance or solid element resulting from the consumption or use of goods in domestic, industrial, commercial, institutional or service activities, that the user abandons, rejects or delivers and that is subject to be used or transformed into new goods, with an economic or final disposition value. Solid waste is divided into usable and non-usable. Likewise, the materials swept from public areas are also considered as solid waste".*

In this context, the competent environmental authority in each jurisdiction is responsible for the granting of the permits regarding the incorporation of solid waste to the water, air or ground.

7.2.3.1 Hazardous waste

According to the current regulation hazardous waste is considered *"that which by its infectious, toxic, explosive, corrosive, flammable, volatile, combustible, radioactive or reactive characteristics may cause any risk to human health or deteriorate the environmental quality up to levels causing risk to human health".*

Generally, the introduction of hazardous waste into the country is forbidden, including toxic, nuclear or radioactive materials as established in the Basel Convention. Likewise, the responsibility for the integral handling of hazardous waste generated in the country and the process of production, management and handling of the same is strictly regulated for purposes of preserving the environment.

Those persons that, in performing their activities generate or produce hazardous waste shall carry out the physical and chemical characterization of the same and report it to the individuals or entities responsible for the storage, collection and transportation, treatment or final disposal of such waste.

In order to obtain an environmental permit regarding any hazardous waste, it must be shown that the same is handled in such a manner that it does not cause any harm to the environment, nor does threaten human health, the physical integrity and the life of the inhabitants, or any other fundamental right. .

7.2.4 Noise

The Colombian legislation considers noise as a cause of contamination. Noise contamination is understood as any emission of sound which adversely affects the health or safety of human beings, property or the enjoyment of the same.

The Ministry of the Environment, Housing and Territorial Development has established through general regulations, the limits allowed for sound contamination and the necessity to obtain permits when generating noise.

7.3 External Visual Advertising

External advertising is allowed in Colombia as a means for promotion of commercial or civil activities within the national territory with the condition of respecting the public space and the environment. Under the current national legislation external visual advertising is regulated by the municipal or district legislative entities (Councils) and controlled by the competent environmental entities in each jurisdiction.

Visual external advertising is defined as the mass communication media aimed at informing or attracting the public's attention through visual elements such as phrases, inscriptions, drawings, photographs, or similar signs, visible from public areas and roads, regardless of whether they are pedestrian, for vehicles, terrestrial, fluvial, maritime or air ways.

The placement of all visual external advertising must be previously registered with the municipal, district or aboriginal territorial office in charge and must pay the corresponding fees. In case of non-compliance with the aforementioned, the advertisement may be removed and the offender penalized.

7.4 Environmental Permit

The environmental permit is the official authorization granted by the competent environmental authority in each jurisdiction for the execution of a project, work or activity, which according to law and regulations may cause a serious deterioration to the renewable natural resources or to the environment, or introduce considerable or

serious modifications to the landscape, and therefore, subject to the fulfillment of the requirements that the same law establishes regarding the prevention, mitigation, correction, compensation and handling of the environmental effects which may be generated.

The environmental permit must be obtained prior to the initiation of the project, work or activity. No project, work or activity will require more than one environmental permit.

The environmental permit may be general, as in the case of mining or hydrocarbon projects, or single, in all other cases as required, and includes all permits and authorizations and/or concessions for the use, benefit and/or affectation of the renewable natural resources necessary for the development and operation of the project, work or activity.

The environmental permit is granted for the useful life of the project, work or activity to be carried out, and covers the phases of construction, implementation, operation, maintenance, dismantling, abandonment and/or termination, unless provided otherwise by Law.

The environmental permit may be granted by the Ministry of the Environment, Housing and Territorial Development, the Regional Autonomous Environmental and of Sustained Development Agencies and/or Urban Environmental Units designated in each territory pursuant to the competences assigned by Law.

The Ministry of the Environment, Housing and Territorial Development is the competent authority to grant environmental permits for large scale projects such as:

a. The production of Hydrocarbons.

b. The mining of:

    a) Coal: When the projected production exceeds or is equal to 800,000 tons per year

    b) Construction materials: when the projected mineral production exceeds or is equal to 600,000 tons per year.

    c) Precious metals and stones: When the projected material to be removed exceeds or is equal to 2,000,000 tons per year

    d) Other minerals: When the projected production of the mineral exceeds or is equal to 1,000,000 tons per year.

c. The construction and operation of international airports and of new runways in existing ones.

d. The construction of new railroads and bypasses in the national railroad network.

e. The importation and production of pesticides and those substances, materials or products subject to control by virtue of treaties, agreements and international protocols. The importation of chemical pesticides for agricultural use shall follow the procedure indicated in the Andean Decision 435 of the Cartagena Agreement and its regulating procedures.

7.5 Rates and Contributions

7.5.1 Retributive and Compensatory Rates

The direct and indirect use of the atmosphere, the water and the ground to discharge or introduce waste is subject to the payment of retributive and compensatory rates. The retributive rates seek a consideration for the harmful effect caused to the natural resources as a consequence of their use. The compensatory rates, on the other hand, intend for the user of the resource to pay the expenses to renovate them.

The Ministry of the Environment is responsible for establishing the minimum fee amount for the rates regarding the use and benefit of the renewable natural resources included in the current regulations, taking into account objective factors.

7.5.2 Transfers from the Electric Power Sector

The electric power sector is currently under the obligation to make a transfer equal to 6% of its gross energy sales from hydroelectric plants, and 4% in the case of thermal plants. This transfer is applicable to the sale of power produced by them and covers all public and private companies who own power generation facilities with an installed capacity greater than 10,000 KV.

7.6 Kyoto Convention and Clean Development Mechanism – CDM – projects

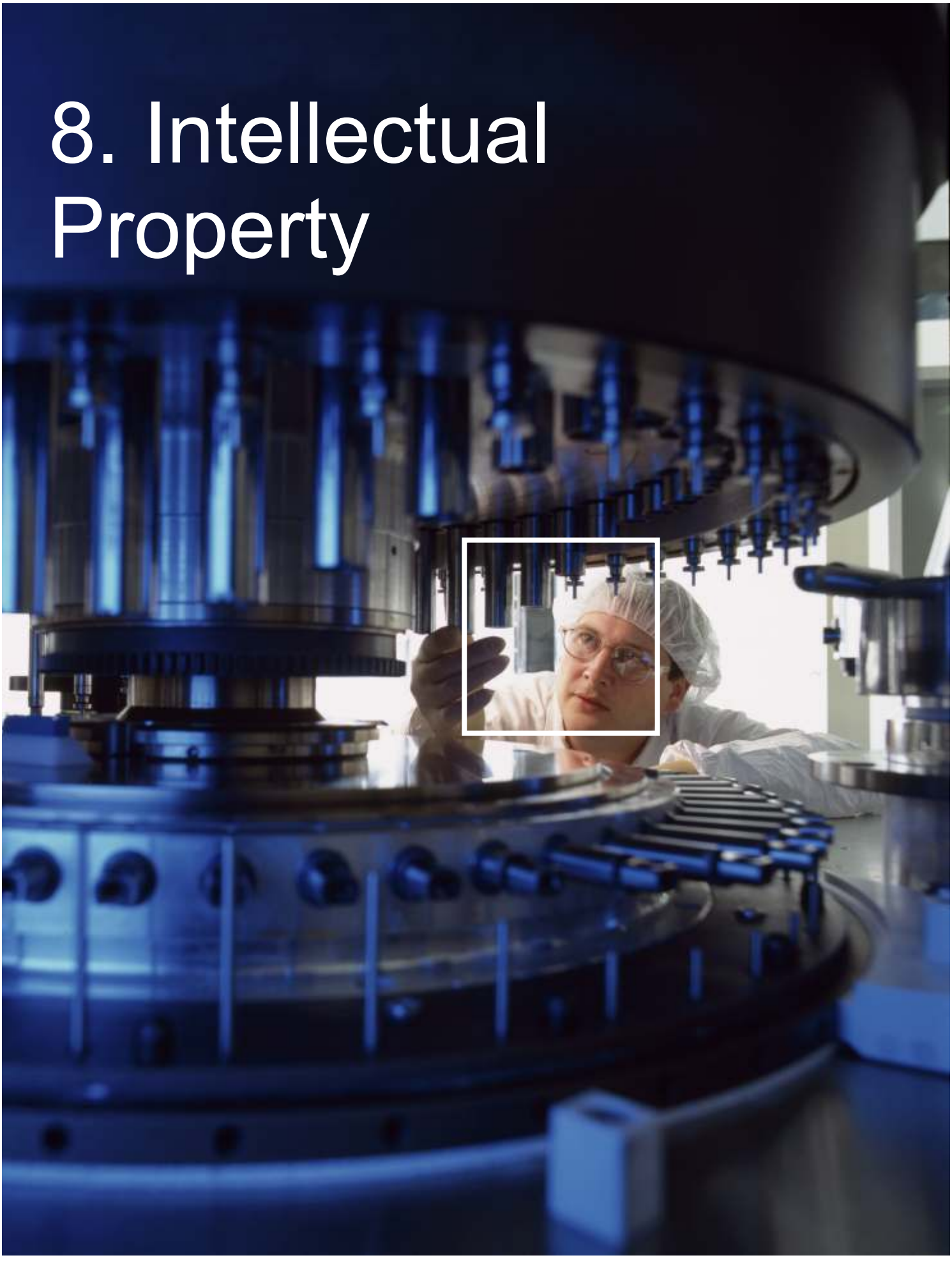
Since 1994 Colombia is a participant in the Kyoto Convention on climate change, and for this reason the development of projects of Clean Development Mechanisms (CDM) for the reduction of Greenhouse Gases represents a great investment alternative to the extent that they have important customs and tax benefits, and are eligible for Certificates of Emission Reductions (ERC) which may be traded abroad with those industrialized countries which require them to comply with their environmental obligations.

7.7 Penalties

The Ministry of the Environment, Housing and Territorial Development, the Regional Autonomous Environmental and of Sustained Development Agencies and the Urban Environmental Units may enforce and take any preventive measures aimed at the protection of the environment and the renewable natural resources, and impose fines and other penalties depending on the activity of the offender and the affected natural resource through a reasoned resolution and in accordance with the seriousness of the violation.

The payment of fines or other penalties compliance does not free the violator from the execution of the works or measures ordered by the entity responsible for the control, or from the obligation to recover the environment and the affected renewable natural resources. The penalties described above will be applied without prejudice to the exercise of the civil and penal actions which may be applicable.

8. Intellectual Property



Intellectual property regulations in Colombia are essentially of a multilateral nature, since the regulations are contained mainly in Decisions 486 for industrial property and 671 for copyrights, both from the Andean Community of Nations ("CAN"), which are applied directly to all country members of the Can and prevail over any domestic law.

This chapter contains a general guide for the investor, through which he may be acquainted with the general notions of the intellectual property system applicable in Colombia and in how to protect his intangible property while conducting his business or activities in the country.

8.1 Industrial Property

Decision 486 of 2000 from the CAN unified the rights over industrial property regarding the distinctive characteristics of products and services [trade dress] such as brands, commercial labels, names, commercial logos and denominations of origin, as well as the over new creations such as patents, industrial designs and circuit layouts.

8.1.1 Distinctive Signs

8.1.1.1 Trademarks

The trademark, within the distinctive signs, is the means to individualize in the market the goods and services that are part of the property of a business and distinguish them from the goods and services of others. Trademarks are classified by related products and services, such as function, revenue or use whichever is the case. This internationally accepted classification system is called the International Classification of Nice, which consists of 45 types of goods and services. The trademark is considered as an asset property to the extent that it is susceptible to be valued as an asset of the company, and as an intangible property, to the extent that it does not have a physical form and falls within the classification of intangible assets.

These trademarks may also be of different types, names, figures, mixed or 3-D.

The right of the exclusive use of a trademark in the Andean countries pursuant to the provisions of Decision 486 of the Cartagena Agreement is granted for a 10 year period, which may be extended as many times as it may be requested by the holder as long as the renovation is done within 6 months from its expiration. The right is acquired by registration of the trademark in the national office in charge of handling industrial property, which in the Colombian case is the Office of the Superintendent of Industry and Trade – SIC.

Upon obtaining of the registration, its holder must use the registered trademark in at least one off the country members of the CAN, or otherwise, he may be subject to an action of cancellation for non use. This action will proceed as long as the trademark is not used within three (3) years from the date on which the cancellation action is filed.

It is understood that the holder has used the trademark when the merchant places in the market, products distinguished with his trademark, provided that these have been made by him and placed in the market directly by him. Decision 486, however, establishes that use of the trademark may be accredited through a person authorized for such purpose, thus allowing acknowledgement of the use of the trademark through indirect means of commercialization such as individual sales, distribution agreements or supply agreements, among others. By allowing the use of this option, any event of a cancellation as a result of the non-direct use by its holder is avoided, which was not the case before. As a last resort the use of the trademark may be evidenced through the authorization to a third party to place the goods in the market by any lawful means, including licensing.

As a general rule, a trademark used in the Colombian business milieu without being previously registered will not confer any rights on its holder, and even worse, it will not provide any protection to the goods or services distinguished with such mark since the registration in Colombia and in the Andean countries are necessary to create any rights. The protection and the rights are only obtained by the registration, and exceptionally by the continuous and public use, which must be proven by the claimant.

Additionally, pursuant to the Régimen Comunitario Andino (Andean Community Rules) (Decision 486), the following legal special provisions apply in the member countries:

8.1.1.1.1 Priority claim

This benefit is granted to the holder of a registration of an intellectual property application originally filed in any of the countries of the Andean community so that within a term of six (6) months from the date of the application, such holder may request the same registration in another member country of the community.

8.1.1.1.2 Andean oposition

This option is granted to the holder of a trademark or a request in process, to oppose registration requests of trademarks made in any of the Andean countries within thirty (30) days following to the publication of the request as long as the trademark object of opposition may be confused with the another in process or already registered in any of the countries of the Andean region. Whoever files an opposition has the obligation to request the registration in the country where the opposition is filed as a means to evidence his real interest.

8.1.1.1.3 Exception to cancellation for lack of use

In the event of filing of an action for cancellation due to non-use in a specific country, and the trademark is being used in another member country, this fact is valid to impede the continuation of such action.

This exception applies together with the registration without use, according to which, if the same trademark is registered in various countries of the Andean community but only used in one of them, such trademark remains valid in all the other member countries.

8.1.1.1.4 Preferential right

If an individual or entity obtains a favorable ruling in an action for cancellation of a third party's trademark due to lack of use in a country of the Andean Community, that person or entity may, invoking the preferential right, request the registration of his trademark from the date of filing the cancellation request and until three (3) months following the date after the ruling is final.

It must be highlighted that, although there is only one system of general guidelines and benefits for the holders of trademarks in the Andean Community, unfortunately there is not a unique registry of trademarks applicable to all the countries belonging to the Community. Thus, it is important to file requests for trademarks in each of the member countries of the Community, and thus have an adequate protection of the trademark.

8.1.1.2 Commercial Slogans

A commercial slogan is a word, phrase or inscription used as a complement of a trademark and therefore, of the products or services identified by such trademark. The request for registration of the commercial slogan must be filed before the Office of the Superintendent of Industry and Trade, Division of Distinctive Signs, specifying the requested or registered trademark it will be used with.

The provisions regarding the trademarks section of Decision 486 of 2000 apply to commercial slogans, that is, the registration conditions for commercial slogans are the same as those established for the registration of trademarks.

8.1.1.3 Commercial Names and Commercial Signs

The commercial name is used to identify, individualize and distinguish the entrepreneur behind an economic activity, while a trademark identifies or distinguishes products or services. The signs, as different from the commercial name which identify the entrepreneur, distinguish the commercial establishment.

The rights on a commercial name and commercial sign are acquired by their first use in the market and end upon cessation of the use of the commercial name or the activities of the business or the establishment using them.

The commercial name is formed by its use in the market, and therefore the object of protection is the sign recognized by the consumers and the competitors as the name of the business, even if such name does not correspond to the name appearing in the commercial registry.

The deposit of names or commercial signs is the registration that the merchant or entrepreneur makes in the public registry of industrial property administered by the Office of the Superintendent of Industry and Trade. It is used to constitute a legal presumption regarding the date from when it is understood that the corresponding name or sign started to be used, which for all purposes is the date of filing of the request, thus resulting in a statement and not in a constitution of rights.

Any names contrary to good custom, public policy or which may deceive any third parties regarding the nature of the activity or the origin of the products to be commercialized shall not be allowed to be used as names or commercial signs.

8.1.1.4 Designations of Origin

The designations of origin are a geographical indication constituted by the name of a country, a region or a specific place, or constituted by a name that, without being a country, a region or a specific place, refers to a specific geographical zone, used to designate a product originated in such place and whose quality, reputation or other characteristics are exclusively or essentially due to the geographical location in which it is produced, including natural and human factors. The authorization for a protected designation of origin shall have a term of ten years renewable for equal periods.

The protection of designations of origin as goods susceptible to the ownership is obtained through the declaration of protection by the Office of the Superintendent of Industry and Trade. This declaration grants the right of the exclusive use of the designation of origin to the producers of the region, and includes the power to prevent any unauthorized third persons from using the sign, or similar signs (that may confuse) for the same goods or those from the competition.

Likewise, the registration of a mark or slogan reproducing, containing or imitating a name of origin may be objected to within the 30 days after the publication of register request of stated trademark in the Gaceta de la Propiedad Industrial (Industrial Property Gazette).

8.1.2 New Creations: Patents

Patents of invention, industrial designs and circuit layouts (the last two constituting one type of patents) are within the group of new creations, which basically is a title of ownership issued by the government of a country which gives the holder the right to temporarily impede others the fabrication, sale or commercial use of the protected invention. Currently, patents have a transcendental importance for the technological development in most countries. In order to guarantee their correct use the Colombian legislation confers them a place of importance.

Patents are granted to those inventions of products or procedures in all technological areas, provided they are new, have a level of invention and are susceptible for industrial applications.

8.1.2.1 Invention Patent

It is conferred to the invention or product which has the characteristics of having an inventive level, being innovative and susceptible for application in the industrial world. The right for the exclusive use of this patent is twenty (20) years from the filing of the registration request and not after the granting of the same as occurs with the trademarks.

The Andean regulations do not consider as inventions the discoveries, scientific theories and mathematical methods; the biological or genetic processes isolated from their natural environment; any work protected by copyrights; computer programs and any form of presenting information, among others.

8.1.2.2 Utility Model

A utility model patent is granted to any new form, configuration or composition of elements of any device, tool, instrument, mechanism or other object, or to any part of the same, which allows a better or different functioning, utilization or manufacturing of the object, or which incorporates or provides any use, advantage or effect which it did not have before. The right of exclusive use for this type of patent is ten (10) years from the time of the request for registration.

This protection excludes any art works, architectural works or objects of mere esthetic character which may be protected by copyrights regulations.

8.1.2.3 Industrial Design

Industrial design is the particular appearance of a product resulting from any collection of lines, or combination of colors, or of any external bi-dimensional or tri-dimensional form, line, outline, configuration, texture or material, without changing the function or purpose of the product. The right of exclusive use for this type of patents is ten (10) years from the last day of the year in which the first commercial use of the industrial design drawing was made in any place in the world, or the date on which the request for registration is filed in a member country of the CAN, whichever occurs first.

8.1.2.4 Rights Conferred by Patents

8.1.2.4.1 General Rights

Regardless of whether they are invention patents, utility models or industrial designs, patents in general terms, provide to its owner the right to the exclusive production of the object of the patent as well as the right to prevent others from manufacturing, utilizing, selling, using or marketing the object of the protection.

With Decision 486 the countries in the Andean Community offer a wide protection to technical creations through Invention Patents, Utility Models and Industrial Designs Patents. After this Decision, the figure of priority claim applies in the member countries. Pursuant to the provisions in Decision 486, similarly to trademarks, the holder of a patent request also has the right to claim priority on the first request filed in another country. As a consequence, invention patents, utility models and industrial designs requests originated in any of the countries of the Andean Community have a term for filing requests to be all covered under the oldest filing date. Thus, the priority terms are one (1) year for patents and utility models and six (6) months for industrial designs.

8.1.3 Rules Applicable to Industrial Property Rights

The applicable rules in Colombia for industrial property are of supra-national character as they are contained in Decision 486 of the CAN. Regarding patents it is important to mention that Colombia has also adhered to the cooperation treaty on patent matters (PCT) which allows a more extensive protection on these matters.

8.1.4 Negotiability

Pursuant to the applicable regulations, the negotiability of the rights conferred by the registration of the distinctive signs and patents is free. As a consequence, the legitimate holders may make use of the rights entitled to them after registration of the same in different ways such as; assignment by sale, concession of use, production or license, and use them as pledges or collaterals.

Considering that the ownership over trademarks and patents arises upon their registration, any act or use as those previously described must be registered before the competent national authority to have any effect before any third parties and also in order to be subject to protection.

8.1.5 Applicable procedure and Fees

The procedure applicable for the registration of trademarks and patents is administrative and not judicial, must be take place before the Office of the Superintendent of Industry and Trade and comprises the following stages:

a. Payment of rights and filing of the request.

b. Preliminary study on the compliance of formal requirements.

c. Official publication of the request for third persons.

d. Period for the filing of oppositions.

e. Period for debate with any opposing third parties and presentation of evidence.

f. Decision regarding registration or denial.

g. Filing of appeals.

h. Ruling of appeals.

In practical terms, this procedure may last between 6 months and one year until obtaining a final Decision by the competent authority, without prejudice of the special actions by the holders of trademarks and patents registered in other member countries of the CAN to debate any registration after being granted.

Current fees may be consulted at www.sic.gov.co

8.2 Copyrights

8.2.1 General Features (with emphasis on software Includes: Introduction, competent authority, legitimate use, definitions and rights subject to protection).

Under this type of intellectual property the Colombian state grants protection over a new artistic or literary work, including computer programs or software, as a general rule in favor of its author, who shall always be a physical person (i.e. an individual), from the moment of its creation and for a specific period of time, regardless of the form or medium on which it is being expressed, with the purpose of being economically used in an exclusive

manner and only during that term period.

Under the applicable Colombian regulations copyrights include the moral rights which are those the author has over his work and throughout his life and are inalienable or non-transferable, and the equity rights, which are susceptible of economic assessment, may be assigned, and include: the reproduction, communication, public distribution, translation, adaptation, as well as the arrangement and transformation.

The registration of works protected under copyrights has declarative effects, that is, it does not create a right for the holder, but rather it can be used to make public his creation and facilitate his opposition before any third parties, and thus its importance.

The period of protection of the equity rights is equal to the life of the author plus 80 years. The period for protection of moral rights is indefinite as they are permanent and non-transferable.

8.2.2 Applicable Rules

The most important regulations regarding copyrights in Colombia are Decision 671 of the Andean Community of Nations - CAN and Law 23 of 1982, amended by Law 44 of 1993. It is important to mention that in the event of any discrepancy between the community rule and the local law the former prevails by express provision of the Political Constitution of Colombia.

Additionally it is important to highlight that Colombia applies the Berne Convention, the OMPI Treaty on Copyrights (WCT) which includes the Treaty on Copyrights and on Interpretation and Production of Phonograms (WPP).

8.2.3 Negotiability

By express regulations, the equity rights are the only ones susceptible of negotiation. Taking this into account, such rights may be assigned by virtue of agreements among the parties, by legal order or as a result of death.

8.2.4 Applicable procedure and Fees

The registration in the Registro Nacional de Derecho de Autor (National Register of Copyrights) in Colombia must be carried out before the Oficina de Registro de la Unidad Administrativa Especial Dirección Nacional de Derecho de Autor (Registry Office of the Special Administrative Office of the National Direction of Copyrights), using the form provided by such authority for such purpose. Regarding this point, it is reiterated that the registration does not create the copyright, which arises at the time of the intellectual creation, but will be useful in case of any eventual litigation.

All registrations made before the Dirección Nacional de Derechos de Autor (National Office of Copyrights) are free from the payment of any rights; however, the registration requires from the filer the payment of certain expenses which are published in www.derautor.gov.co

9. Zoning Law

Real estate, its use, distribution, transferability and development are some of the determining factors which must be considered when making an investment in Colombia. This chapter addresses some of the topics concerning zoning law, the main regulations at the national, district and municipal level, and the legal outlook which regulates the field of acquisition of real estate property and construction in the country.

9.1 Real Estate Acquisition Process

The acquisition of real estate property in Colombia requires the execution of a sales contract between the seller and the purchaser which has to be converted into a public document by signing the corresponding public deed before a Colombian public notary. The public deed must be registered at the Real Property Register of the jurisdiction where the real estate is located, pursuant to the established legal provisions and with the payment of the applicable fees and taxes.

Prior to the execution of the sales contract certain precautions considered as essential must be taken into account to achieve a proper acquisition of real estate property in Colombia.

Step 1

Directly obtain, or request from the seller, a recent " Real Property Record" ["certificado de tradicion y libertad"] of the property in question (it is recommended that date of issuance of the certificate should not be over 30 days) to verify the ownership titles of the property and to ensure that the property is free from encumbrances such as mortgages, attachments or leases, and to confirm that the real estate is legally owned by whoever is offering it for sale.

The Real Property Record is obtained from the Real Property Register of the place in which the real property is located. To request it, the number of the property record folio is needed, its address or the number of the identification document of the owner and the payment of the corresponding fee for the issuance of the certificate.

Likewise, it is advisable that the purchaser request a statement of the financial situation of the property with the municipal or district treasury offices of the place where the property is located to ensure that it is free and clear from any taxes due.

Step 2

Upon verification of the information explained in the previous step, if there are no problems in the ownership of the property, that is, there are no gaps or inconsistencies in the chain of ownership or in tax matters, the sales contract may be completed through the execution of the corresponding public deed, which must be signed before a public notary by the parties, directly or through an attorney. In the latter case, the power of attorney must be notarized, and when the power of attorney is issued from abroad, the notary's signature must be legalized by diplomatic means (chain of authentications) or apostilled, provided that the country in which the power of attorney is executed is a signatory to the Hague Convention.

Step 3

The sales contract must contain the minimum elements for such contract to have legal existence and validity, mainly the identification of the parties, the identification and individualization of the real estate property, the price, the terms of payment and the terms for delivery.

The following documents, among others, shall be attached to the public deed:

a. Power of attorney to execute the public deed, if such is the case.

b. Proof of payment of appreciation fees (this is a document evidencing the payment of the appreciation tax levied by some municipalities); in Bogotá D.C. it is issued by the Instituto de Desarrollo Urbano (Institute of Urban Development) (IDU) – www.idu.gov.co.

c. Proof of payment of property taxes or photocopy of the receipt or the tax return and payment of the tax year in which the public deed is executed.

d. If the property is subject to condominium rules and regulations (as in the case of a home in a gated community or an apartment in a building) it is necessary to present proof of payment of fees issued by the condominium management office; optionally, a duplicate of the public deed nay be attached containing the condominium rules and regulations to which the property is subject to.

Step 4

Notary's fees equal to 0.27 percent of the amount of the transaction must be paid at the notary's office where the public deed will be signed (although there is no fixed rule in this respect, in Bogotá, it is customary for the parties to pay these fees equally between them) as well as 1% of the amount of the transaction as withholding tax if the seller is an individual and not a corporation (although there is no fixed rule in this respect, in Bogotá, it is customary for the payment of the withholding tax to be borne by the seller).

A copy of the sales public deed must be registered at the Office of Registry of Public Instruments, where the registration fee and public charity tax [“beneficencia”] must be paid (equal to 0.5% and 1% of the value of the transaction respectively), which are generally paid by the purchaser. The process before the respective Registry Office takes between three (3) business days and one (1) month depending on the city where the transaction is carried out.

Step 5

Upon registration of a copy of the sales public deed in the Registry Office and once the real property has been delivered to the purchaser, such purchaser becomes the new owner of the property and as such may exercise his corresponding rights.

9.2 Zoning Authorities

9.2.1 Ministry of the Environment, Housing and Territorial Development

The Ministry of the Environment, Housing and Territorial Development through the Office for Territorial Development is in charge of the territorial development and the framework for urban development regulations. The Ministry coordinates and carries out the follow up to the zoning planning officers or zoning curators aimed at the guidance and support for the adequate implementation of the regulations within the local public administrations.

9.2.2 Mayor's Offices

The district and municipal mayors through the planning offices or the corresponding entity shall be responsible for the coordination and the timely drafting of the project for the Territorial Ordering Plan and submit it for consideration to the Government Council.

Additionally, the Mayor's Offices perform control on the regulatory compliance on the part of the zoning curators and hear appeals in any administrative proceedings. The mayor's offices also perform ex post facto controls on the execution of works authorized by the competent authorities or those executed without the corresponding permits.

9.2.3 Zoning Curators

The zoning curators are private entities that carry out public functions and are responsible for studying, processing and issuing zoning permits. The zoning curators work in coordination with the Ministry of the Environment, Housing and Territorial Development and with the municipal and district mayor's offices and their planning offices, which in turn perform supervision and control over these entities.

9.2.4 Offices of Registry of Public Instruments

They are responsible for maintaining the real property records in a specific district or municipality through the different recordings or cancellations made in the folios of the real estate property records. Among the recordings or cancellations made are those acts, contracts and judicial orders which either modify o limit the ownership or any other right concerning real estate property. Real estate property must be registered by the corresponding Office of Public Instruments Registry, which is determined by the geographic area of destination.

9.3 Building Regulations

9.3.1 Territorial Zoning Plan – Plan de Ordenamiento Territorial – POT –

The Territorial Zoning Plans (“POT” for the Spanish initials) are acts of the municipal and district public administrations which contain the objectives, guidelines, policies, strategies, goals, programs, actions and

regulations adopted to guide and manage the development and physical planning of the territory and the land use of the municipality or district to which they correspond.

Each Plan, Basic Plan or Territorial Zoning Scheme (the name of the plan varies with the size of the population of the municipality or district) has a schedule which defines the actions set forth in the zoning plan, which will be carried out during the period of the corresponding municipal or district administration, as defined in the corresponding development plan of the municipality or district, indicating the programming of the activities, the responsible entities and the funds required.

Additionally, partial plans are instruments through which the provisions of the territorial zoning plans are developed and complemented, but only for specific areas of urban land and for urban expansion, pursuant to the authorizations generated from the general zoning regulations set forth in the POT.

9.3.2 Land Use: Zonal Planning Units – Unidades de Planeamiento Zonal – UPZ – and Rural Planning Units – Unidades de Planeamiento Rural – UPR –

The Territorial Zoning Plans establish units of territorial division at the municipal and district level with the purpose of defining and specifying precisely the planning and use of urban land.

Such divisions have different names which vary according to the zoning plan of each municipality or district. The regulations established in the UPZ have a lower regulatory hierarchy than the Territorial Zoning Plans.

The UPZs (name adopted for Bogotá) seek to respond to the dynamics of the municipality or district and its insertion in the regional context, involving the social actors in the definition of different aspects of zoning and control.

At the rural level, the basic planning instrument is the Rural Planning Unit (name adopted for Bogotá). The UPRs approach the problems associated with natural resources, the handling of activities around urban areas and the protection of the ecology of the specific rural area.

9.4 Zoning permits

These are prerequisite authorizations, issued by the zoning planning officer or the competent municipal or district authority to carry out development works, construction, expansion, upgrading, structural reinforcing, modification, demolition of buildings; land segregation, subdivision of plots, and for the intervention and occupations of public space in compliance with the zoning and construction regulations adopted in the territorial zoning plan, in the instruments that develop or supplement it and in the laws and other provisions enacted by the National Government.

9.4.1 Procedure for Obtaining a Zoning Permit

The study, processing and granting of development, parceling out, subdivision and construction permits corresponds to the zoning planning offices in those municipalities and districts having such offices. In all other municipalities and districts and in the department Archipelago of San Andrés, Providencia and Santa Catalina this corresponds to the planning offices or the entities substituting them.

The granting of intervention and occupation of the public space permits is the exclusive jurisdiction of the municipal or district planning offices or the entities substituting them.

The application for the zoning permit shall include the following documents, among others:

a. Copy of the certificate of conveyance and clearance of the property or properties that are the object of the application.

b. The single national form for permit application duly filled out.

c. If the applicant is a legal entity, the good standing and authority to represent it must be evidenced through the pertinent legal document.

d. Duly granted Power of Attorney when acting through an attorney.

e. Copy of the proof of payment or the property tax return with payment for the previous five (5) years for the property or properties that are the subject of the application.

It must be taken into account that each type of permit requires additional documentation such as architectural drawings and technical studies which are listed in the law.

Once the application permit is presented, it will be filed and numbered consecutively in chronological order of

reception, stating for the record the documentation attached to the application. The permit process includes among others, summoning the neighbors surrounding the property that is the object of the application to become parties to the process and defend their rights, as well as the technical and legal review of the application which shall be carried out by the zoning planning officer in charge of the process.

The authority processing the application shall have a maximum term of 45 business days to decide on the permit application, from the date of the legal and proper filing of the application. Upon expiration of such term without any decision, it will be understood that the permit has been granted, provided the application filed is not contrary to the provisions of the territorial zoning plan and the regulations that develop it, but in any case with supporting documentation issued by the corresponding administrative authorities and the pertinent notarial procedures.

If, on the contrary, the entity studying the permit application complies with the legal term, the permit will be issued through an administrative act. However, depending on the magnitude of the project, the term for study of the application may be extended up to one half of the time initially granted, that is, up to twenty two (22) more business days.

9.4.2 Validity

The validity of zoning permits is limited depending on the type of permit. Therefore, for development, parceling out and construction permits the maximum duration is twenty-four (24) months and may be extended for twelve (12) months more, but if the development and construction permits were requested simultaneously, their validity will be thirty-six (36) months and may be extended for twelve (12) months more.

10. Government Contracting

The importance of public contracting in the economic development of the country is undeniable, because of its impact not only in the development of its infrastructure but also because it is a promoter of the stimulus to sectors such as construction, technology transfer and industrial expansion, as well as the corresponding creation of jobs. For that reason, this chapter presents the principal aspects of government contracting in Colombia, indicating the fundamental principles, the types of public contracting, the modes and the process of selection of contractors, conflict resolution in government contracting, public services, privatization (sale of stocks), legal system of oil exploration and exploitation and risk management, insurance, among other aspects.

10.1 Government Contracting

10.1.1 Principles

Public contacting is regulated by Law 80 of 1993, Law 1150 of 2007 and its regulatory decrees (including Decree 2474 of 2008), that together comprise the General Contracting Statute of the Public Administration. Where there is no specific rule contained in the General Contracting Statute of the Public Administration, the Colombian civil and commercial laws apply.

Government contracting has a higher nature derived from the State purposes that it pursues, since the well-being and application of the rights and interests of the community is sought with the signature and execution of these contracts. These purposes comprise obligations for the corresponding government entities as well as for the private parties that contract with the government.

Law 80 of 1993 and Law 1150 of 2007 set forth the principles that must govern the actions of those who intervene in government contracting, making their application indispensable. These principles are transparency, economy, responsibility, objective selection and reciprocity. These principles must not be construed as exclusive and unique, because they must concur with the principles that govern the function of public administration, which are equality, morality, efficacy, celerity, impartiality and publicity, contained in Article 209 of the National Constitution.

10.1.1.1 Transparency

The principle of transparency in public contracting ensures that during the contractor selection process the actions of the administration that might affect the proponents are fully public and that the procedure is performed under equal conditions and opportunities for those who participate in it.

The application of this principle is required during the entire process of government contracting, independently of the mode of selection being carried out, and is reflected in the making of the terms of reference or the document serving as such, in the evaluations and the award, giving the proponents certain legal confidence in the job being done by the public entities.

The entity must guarantee that the proponents are informed of the contents of the reports, decisions and opinions issued by it, that they have the possibility of making any observations that they consider pertinent with regard to the process and always obtain from the administration a response to them, as well as being able to controvert the decisions made by public entities, so demanding that each decision taken is based on objective motives that are the foundation of the process, excluding the possibility of making discretional decisions by the entity.

10.1.1.2 Economy

By virtue of the principle of economy[1], the steps in the process of selection of the contractor shall be those strictly necessary to achieve its objective selection. The stages and contractual procedures shall have fixed precluding terms that ensure there are no additional stages to those expressly set forth. This way decisions are expedited, procedures are carried out in the least time possible and with the least amount of expenses for those who intervene in them.

Likewise, this principle grants that once the contractor has been selected, his proposal is not subjected to further administrative reviews nor additional demands or requirements.

[1] Article 25 of Law 80 of 1993.

To this end the obtaining bonds is required, both the bid bond as well as others, which seek to cover the different foreseeable risks that may arise during the execution of the contract. The requirement of the bonds depends on the subject of the contract and the expected quality in its development, circumstances that potentially may harm both the entity and the contractor.

10.1.1.3 Responsibility

The principle of responsibility in government contracting seeks to ensure that, under certain circumstances set forth in the law, not only the responsibility of the Government is compromised for any damages caused as a result of the contract activity, but also that of public officials and contractors taking part in it.

To guarantee the fulfillment of this principle, public officials taking part in contract activities shall be civilly, fiscally, criminally and disciplinarily liable, so that they are obligated to comply with the purposes of contracting, keeping watch over the proper execution of the contract subject and the protection of the rights of the entity and the contractor. They shall be liable for their actions as well as their omissions and must indemnify for any damages caused as a result thereof.

10.1.1.4 Objective Selection of the Contractor

The selection of the contractor must be objective, that is, the most favorable proposal to the entity and the ends it seeks must be selected, without considering factors of affection, interest or subjective motivations. To attain this objective, a distinction has been made between qualifying requirements and requirements for evaluation of the proposal. The former refer to conditions of experience, legal, financial and organizational capacity; these requirements do not give points in the evaluation of the proposal; merely it is verified that the contractor complies with them. The second type of requirements refers to technical and economic factors of selection established by the corresponding entity, which shall be awarded points that determine the qualification order.

With this principle one seeks to choose the proposal most favorable to the interests of the administration, so that in the decision that is adopted is impartial, without favoritism and foreign to any political, economic or family factor, seeking transparency, impartiality and equality of opportunities.

In public works contracts, the shorter term does not influence the evaluation of the proposal. In contracts which purpose is the purchase or supply of goods and services of uniform technical characteristics and common use, the only weighing factor considered is the lower price offered. On the other hand, in contest selection the higher quality offered shall be taken into account; talent shall be awarded without taking into account price as a selection factor of the contractor[2].

10.1.1.5 Reciprocity

In government contracting processes, the foreign proponent of goods and services shall receive the same treatment and shall be under the same conditions as the domestic proponent. The principle of reciprocity is understood as the commitment undertaken by another country, by accord, treaty or covenant signed with Colombia, to the effect that offerings of Colombian goods and services shall be granted in that country the same treatment given to its nationals regarding the conditions, requirements, procedures and criteria for the awarding of contracts entered into with the public sector in matters of government purchases.

If no accord exists, the proponents of foreign goods and services may participate in contracting processes under the same conditions and with the same requirements demanded of Colombian national, provided that in their respective countries Colombian proponents of goods and services enjoy the same opportunities.

When the proponents offer domestic goods or services, 10% to 20% additional points shall be given to stimulate Colombian industry. In this same spirit, foreign goods and services shall be assigned 5% to 15% additional points to stimulate the addition of a Colombian component of professional, technical and operational goods and services.

If there are only foreign proposals, in equal conditions, the one that contains the highest amount of domestic human resources, domestic component and better conditions for technology transfer shall be preferred[3].

10.1.2 Government Contracts

The Contracting Statute determined the contracts that must be subject to the regulations provided therein. By

[2] Law 1150 of 2007. Article 5, section three.
[3] Law 80 of 1993. Article 20.

legal mandate, and seeking contract security, government contracts must be in writing, except for situations of urgency that do not allow for the execution of a written contract. In exceptional cases, the contracts must be reduced to public deed (mainly when they imply the transfer of real property). Likewise, all the clauses and conditions agreed to in the contracts must be in accord with the Political Constitution, the laws, public safety and the principles and purposes set forth in the Government Contracting Statute.

A characteristic of government contracts lies in their nature of intuitu personae, that is, they are entered into because of the person and the specific qualities of the contractor. Consequently, the assignment of any government contract must have the prior written authorization of the contracting entity.

The execution of a contract signed abroad will be ruled by the laws applicable to the country where it was signed, unless they are executed in Colombia in which case they will be ruled by Colombian applicable laws. Likewise, the contracts signed in Colombia but executed abroad shall be ruled by the foreign applicable law.

The principal government contracts included in the Contracting Statute are:

10.1.2.1 Construction

The construction contract is entered into by government entities for the construction, maintenance, installation and execution of any other material work on real property, whatever the mode of execution and payment may be.[4]

10.1.2.2 Consulting

Consulting is the contracting of the necessary studies for the execution of investment projects, diagnostic studies, pre-feasibility or feasibility for specific programs or projects, as well as technical assistance for coordination, control and supervision, interventoria, works or project management, direction, programming and execution of designs, drawings, pre-projects and projects[5].

The consulting contract is characterized by its obligations having a predominantly intellectual quality, as a condition for the performance of the activities inherent thereto; it is also associated with the application of that knowledge to the execution of projects or works.

10.1.2.3 Provision of Services

The contract for the provision of services is entered into for the development of activities related with the administration or operation of the entity. This type of agreements can only be entered into with individuals, provided that the government entity does not have sufficient or qualified personnel to carry out the contracted job, for a term appropriate to the job being carried out.

The provision of services does not create a labor relationship or gives rise to labor benefits, and the contractor does not acquire, as a result of having executed a contract with the government, the nature of a public employee or official worker[6].

10.1.2.4 Concession

The government hires a company to build and operate a project for a specific period of time, during which the company makes the necessary investments for the construction and maintenance of the project. This legal figure has certain special elements that make it a form of provision of public services of the Government through collaboration of domestic or foreign private parties; the relevant elements are the following:

1. The parties shall be on one hand the Government (concession grantor) and on the other a private party (concession holder or concessionaire).
2. The object is that the concession grantor grants to the concession holder the possibility of operating, exploiting, completely or partially managing a public service, or also the possibility of building, exploiting or conserving totally or partially a public work.
3. The concession grantor shall reserve in any case the right to inspection, surveillance and control of the contract granted.
4. The concession holder, partially assumes the risks of its management and therefore acts at his own cost and risk.

[4]Law 80 of 1993. Article 32, section one.
[5]Law 80 of 1993. Article 32, section two.
[6]Law 80 of 1993. Article 32, section three.

5. The contract has as its particular characteristic the economic cost; there is a compensation that may be agreed on by the parties, mainly of rates, fees, added value, exploitation of the property, etc.
6. Exceptional clauses must be accorded in favor of the administration, such as: unilateral termination, interpretation, liquidation and amendment, expiration of rights and penalties.
7. To this extent the concession holder becomes a delegate of the administration by collaboration in the fulfillment of the purposes of the government, always seeking the continued and efficient provision of public services or the proper execution of public works.

10.1.3 Subjects Of Government Contracting

Individuals and corporations, domestic and foreign, considered legally capable under current laws can enter into contracts with government entities; that is, those who are not under any cause for incapacity or incompatibility.

Consortiums and joint ventures [uniones temporales or temporary associations], which are specific contracting legal figures recognized in the Contracting Statute as forms of association to contract with the government (known internationally as joint ventures) can also enter into contracts with state entities; Law 80of 1993 regulates them as follows:

1. A Consortium is defined as the union of two or more individuals or legal entities that jointly present a proposal for the award, entering into and execution of a contract, being joint and severally liable for each and every one of the obligations derived from the proposal and the contract. Consequently, the actions, events and omissions that arise in the course of the proposal and contract shall affect all the members that make up the consortium[7].
2. In the case of Joint Ventures [uniones temporales or temporary associations], two or more persons jointly present a proposal for the award, entering into and execution of a contract, being joint and severally liable for the full compliance with the proposal and the subject contracted. However, the penalties for breach of the obligations derived from the proposal and the contract shall be imposed according to the participation in the execution of each of the members of the joint venture[8].

The difference between the Consortium and the Joint Venture lies then, not in the nature itself of the legal institutions, but in the extent of the penalty in case of breach. While in the consortium the penalty affects all the members that take part in it, being joint and severally liable. In the joint venture the penalty is determined according to the participation of each one of the members in the execution of the contract. As a common characteristic we find that the members both of the consortium and the joint venture must appoint a person to represent them for all purposes (representative) and indicate the basic rules that regulate the relationships between the members and their respective participation[9].

The requirements demanded for the consortiums and joint ventures cannot be different from those that the law requires for individuals and legal entities that appear as proponents, in order to protect the principles of equality, transparency and objective selection.

Furthermore, international entities or organizations may contract with the government. The contracts or cooperation agreements that are signed with international entities or organizations, financed by funds or contributions from the government entity in excess of 50% of the total funds, shall be governed by the procedures of Law 80 of 1993.

10.1.4 Modes of Contractor Selection

As a general rule, the choosing of the contractor must be made by a public tender; however, in some cases the administration contracts by more expedite procedures, also equally transparent, fair and objective, such as competitive selection, abbreviated selection and direct contracting. This power is entirely regulated by law, where the causes which justify the application of a contractor selection mode other than public tender, whether because of the characteristics of the subject matter, the nature or the conditions of the contract to be entered

10.1.4.1 Public Tender

The tender is a regulated procedure by means of which a public invitation is made by the Administration so that those possibly interested in contracting with it present their proposals, from which the most favorable one for the purposes of the contract is selected, subject to certain bases and conditions established by the public entity tendering.

[7] Law 80 of 1993. Article 7, section one.
[8] Law 80 of 1993. Article 7, section two.
[9] Law 80 of 1993. Article 7, section one.

The public tender is generally applicable to select a contractor. This type of selection is applied to high complexity and value matters in public contracts.

The Tender processes must follow the following rules:

1) With the purpose of providing to the general public the information that permits it to make observations to its contents, the entities publish the projected terms of reference, together with the studies and documents that served as the basis for their preparation.

   This document must contain, at least: the description of the necessity the corresponding entity intends to fulfill by means of the contract, the purpose of the contract, the legal bases of the selection mode that will be carried out, the technical and economic analysis of the object being contracted, the justification of the selection factors of the most favorable proposal, the support for the foreseeable risks that may affect the economic equilibrium of the contract and the analysis supporting the requirement for bonds to cover the damages of a contractual and non-contractual nature that may arise during the pre-contract and contract stages of the process.

2) The entity makes the public tender notice, which must provide the necessary information to make known the purpose of the contract, the selection mode, the official budget of the contract and the physical or electronic location where the project of terms of reference, studies and preliminary documents may be consulted.

3) Afterwards, the representative of the government entity orders the opening of the process by means of a supported administrative action, where it includes the purpose of the contract, the selection mode, the schedule of the process, the physical or electronic location where the terms of reference and preliminary documents may be collected, the summoning of the citizens' oversight organizations [veedurias ciudadanas] and the certificate of budget availability.

4) The government entity proceeds to the publication of the terms of reference, where it indicates the requirements to participate in the process, the definition of the objective rules for the presentation, evaluation and weighing of the proposals, the reasons and causes of rejection of proposals, the rules for award, the purpose of the contract and its conditions of execution, its legal regulation, the estimation, classification and allocation of foreseeable risks involved in the contract, the rights and obligations of the parties, as well as all the other circumstances of time, mode and place that are considered necessary to guarantee objective, clear and complete rules for the contracting process.

5) The terms of reference and its attached documents are binding upon the parties and all the rules and conditions of the process must be included therein.

6) The proposals presented must refer and be subject to all the items contained in the terms of reference. The proponent may, in some cases and according to the wishes of the contracting entity, present alternative proposals and technical or economic exceptions, provided that they do not imply conditions for award.

7) The award shall be made in a public hearing by supported resolution which shall be deemed notified to the winning proponent at that hearing. The act of awarding is irrevocable and binding upon the entity and the awardee.

10.1.4.2 Abbreviated Selection

This mode of contracting is provided for those cases where, due to the characteristics of the object being contracted, the circumstances of the contract or the amount or destination of the property, works or service, a simplified process of objective selection can be carried out. The foregoing does not imply that the procedure is not public and open, but that it will be carried out in a simplified manner[10].

The causes for abbreviated selection arise by virtue of the object being contracted, its value, the sector of the administration that wants the object being contracted or the fact that a tender process has failed.

Law 1150, issued in the year 2007, established the following as causes for abbreviated selection:

1) Purchase or supply of goods and services with uniform technical characteristics and common use, which

[10]Law 1150 of 2007, Article 2, section two.

can be purchased by “reverse auction”, price range agreements or purchase in commodity exchanges[11].

2) Contracts enter into by government entities for the provision of health services.
3) Small value contracts, defined as a proportion of the annual budget of the government entity.
4) Contracts where the public tender process was declared “deserted”.
5) When the contract's object is the sale of government property (except for shares, membership interests or convertible bonds)
6) Products of agricultural origin or destination offered at legally organized commodity exchanges.
7) Contracts that have as direct object commercial and industrial activities inherent to the industrial and commercial enterprises of the State and “mixed economy corporations.”
8) Contracts of entities charged with the execution of programs for the protection of highly vulnerable populations in a recognized state of exclusion.
9) The contracting of goods and services required for the national defense and security.

10.1.4.3 Competitive Selection

In the selection of contractors where the intellectual component is considered more important than the material one there applies an appropriate mode of selection of prequalified competition and open contests. The forming of workgroups, the experience and in certain cases, the development of methodologies shall come first as evaluation factors, leaving aside the economic criteria as an enabling requirement to participate in the process. This seeks to have in favor of the entity the best talent, experience and capacity of the contractor, above the price offered[12].

10.1.4.4 Direct Contracting

Direct contracting is an exceptional selection mechanism, by virtue of which public entities, expressly limited to a certain number of cases set forth in the law, can enter into contracts without the need to previously carry out a competitive selection process. The contracting is carried out by means of a simplified procedure, abbreviated, agile and expeditious and follows objective and public interest criteria to select the most convenient proposal for the interests of the Administration.

Direct contracting may proceed in the following cases:

a) Contracting of loans: loan agreements are those that have as their purpose to provide the government entity contracting with funds in national or foreign currency with a term for their repayment[13].
b) Interagency agreements: are those that a public entity enters into with another entity of the same nature and that can be entered into provided that the obligations derived from the contract are directly related to the object of the contracting or executing entity[14].
c) Manifest Urgency: occurs when due to the circumstances it is impossible to carry out a tender and applies in the following cases:
    i. When the continuation of the service requires the provision of goods or the provision of services, or the execution of works in the immediate future;
    ii. When situations related to states of exception arise;
    iii. When it is necessary to control exceptional situations related to tragic events or force majeure or disasters that demand immediate action; and
    iv. When there are similar situations that make it impossible to recur to public selection processes or competitions[15].
d) Provision of professional services and support of management for the execution of artistic works that can only be charged to certain individuals; these services refer to those of an intellectual nature, different from those of

[11]Law 1150 of 2007, Article 2, section two, paragraph a.
[12]Law 1150 of 2007. Article 2, section three.
[13]Decree 2681 of 1993. Article 7.
[14]Decree 2474 of 2008. Article 78.
[15]Law 80 of 1993. Article 42.

consulting, derived from the compliance with the functions of the entity[16].

e) Goods and services required for the national defense and security that require secrecy for their acquisition: these are goods and services required for the national defense and security, those acquired for this purpose by the President of the Republic, the entities of the defense sector, the DAS, the Prosecutor General's Office, the INPEC, the Ministry of the Interior and Justice, the National Registry of Citizens and the Superior Council of the Judiciary[17].

f) Trust agreements entered into by the territorial entities when they begin the Liabilities Restructuring Agreement: the trust is a kind of fiduciary business by virtue of which a person (public entity) delivers to a trust company (a financial entity of the public sector) a property or set of properties without transferring ownership thereof, with the purpose of the latter managing the properties delivered and complying with the instructions issued in the act of constitution of the trust. The trustee shall not be considered owner of the property it receives as a mere holder thereof.

g) Contracts for the execution of scientific and technological activities; by the execution of this activities are understood:

   i. Scientific investigation and technological development, development of new products and processes, creation and support to scientific and technological centers and creation of investigation and information networks.

   ii. Scientific and technological broadcasting; that is information, publication, disclosure and assistance in science and technology.

   iii. Scientific and technological services referring to the realization of plans, studies, statistics and census of science and technology; to the normalization, methodology, certification and quality control; to the prospecting of resources, inventory of land resources and territorial ordering; to scientific and technological promotion; to the realization of seminars, conventions and workshops of science and technology, as well as to the promotion and management of overall quality systems and technological evaluation.

   iv. Innovation projects incorporating technology, creation, production, appropriation and adaptation thereof, as well as the creation and support or enterprise incubators, technological parks and technology based companies.

   v. Technology transfer including negotiation, appropriation, de-aggregation, assimilation, adaptation and application of new domestic and foreign technologies.

   vi. Domestic and international scientific and technological cooperation[18].

h) When there is no more than one proponent in the market. It is considered that there is no more than one proponent when there is no more than one person registered in the RUP[19] or when there is only one person who can provide the good or service because he is the owner of the industrial property rights, of the copyrights or is according to law its exclusive provider[20].

i) Leasing or purchase of real property.

10.1.5 Contracting by Electronic Means

Government entities must publish all the pertinent information of the different selection processes they are conducting, with the purpose of the public in general having knowledge thereof and eventually being able to present their observations or present themselves as proponents thereto.

In those cases where the entity does not have the technological resources necessary to do so in its own portal, the publication will be made in the Single Contracting Portal [“Portal Único de Contratación”].

The Single Contracting Portal presents itself as a tool that the public entities have to make known the contractual processes that are in progress in each one of them. Through these electronic means easily accessed and consulted by those interested, they can inform themselves regarding the selection processes being conducted by the different entities. In this manner, the Single Contracting Portal guarantees and promotes the principles of

[16]Decree 2474 of 2008. Article 82.
[17]Decree 2474 of 2008. Article 53.
[18]Decree 0591 of 1991. Article 2.
[19]Single Proponents Register
[20]Decree 2474 of 2008. Article 81.

transparency and efficiency by the use of technology applied to the publication of the contracting of goods and services by the Administration, favoring in this manner both businesses or possible proponents (domestic and foreign) as well as government entities.

The government entities have the obligation to publish the following contract information:

a) Projects of terms of reference.

b) Observations and suggestions to the projects of these documents.

c) The opening of the selection process.

d) Final terms of reference.

e) Minutes of the hearing of clarification of the terms of reference and related documents with the questions posed by the proponents thereto.

f) The evaluation reports of the proposals.

g) Minutes of the public hearing of award.

h) Information relating to the delivery of reports resulting from contracts.

i) The certificate of liquidation by mutual agreement, the administrative act of unilateral liquidation.

Likewise, all the information produced within the contracting processes being handled through electronic means shall be part of the file of the contracting process and its custody shall be charged to the corresponding government entity. In this sense obligations for the entity accrue, such as:

a. Administrative acts must be published on the same day they are issued or no later than three business days thereafter.

b. Acts and contracts must remain published during two years from the administrative act that declared the process "deserted" or from the date of the act of liquidation of the contract.

10.1.6 Single Proponents Register

The Single Proponents Register ["Registro Único de Proponentes"] or RUP (for the Spanish initials) is a register where individuals or legal entities who hope to enter into contracts with government entities must be entered. It has as its purpose to provide the necessary information of a registered contractor regarding his experience, technical capability, organizational capability and financial capability, and in it are verified the enabling requirements of the contractor. This is done by the qualification and classification that each interested party realizes at the moment of his registration, renewal or update, providing the required documentation. The register is the subject of documentary verification by the corresponding Chamber of Commerce.

As principal characteristics of the RUP we can mention the following:

a) All individuals and entities, domestic or foreign, domiciled or with a branch in Colombia, who hope to enter into contracts with government entities shall be registered in the Single Proponents Register of the Single Corporate Register of the Chamber of Commerce with jurisdiction over its principal domicile[21].

b) The certification issued by the Chamber of Commerce is full proof of the qualification and classification of the proponent and of the enabling requirements shown therein. Consequently, government entities cannot request information that was verified in the Single Proponents Register, so that they can only verify what is not shown therein.

c) The Proponents Register is public; therefore, any person has the right to consult at no cost the documents contained therein, to obtain copies of the information contained in the register and to request that certifications relating to the information contained therein be issued[22].

d) Foreign legal entities with a branch in Colombia shall register before the Chamber of Commerce where the branch is registered.

e) Foreign individuals domiciled in Colombia must provide a statement, deemed to be sworn, indicating the municipality where their domicile is located.

f) Foreign individuals without a domicile in the country or foreign legal entities that do not have a branch

[21] Decree 1464 of 2010. Article 4.
[22] Decree 1464 of 2010. Article 3.

established in Colombia and that hope to enter into contracts with government entities do not need to be entered in the Single Proponents Register. Their conditions shall be verified by the contracting entity. The contracting entities must verify directly and only the information referring to the legal capacity and the conditions of experience, financial and organizational capability of the proponents[23].

g) In no case the demands made of the foreign proponents mentioned in the preceding section can be more onerous than for domestic or foreign proponents, which are to be registered in the Single Proponents Register, nor can they be required to present documents or information that is not necessary to verify the enabling requirements[24].

h) The entry in the register shall be effective for a period of one year form the date of the act of entry as proponent, and shall be renewed annually within the month before its expiration. Registered persons may request the corresponding Chamber of Commerce to update, amend or cancel their entry each time they consider it convenient[25].

The Single Proponents Register shall not be required in the following cases[26]:

a) In the cases of direct contracting mentioned above.

b) Contracts that do not exceed ten percent (10%) of the “minor amount” of the corresponding entity.

c) Contracts for the provision of health services.

d) Concession Contracts.

e) Contracts for the sale of government property.

f) Contracts for the agricultural purchase or destination of goods offered in legally organized commodities exchanges.

g) Acts and contracts having as direct purpose commercial and industrial activities appropriate to the industrial and commercial enterprises of the State and mixed economy corporations.

10.1.7 Resolution of Contract Conflicts

Government entities and contractors will seek to resolve the differences and discrepancies arising from the contracts in an agile, rapid and direct manner, using contract conflict resolution mechanisms provided for these cases such as domestic and international arbitration, reconciliation, mediation and settlement.

In case the parties decide to recur to ordinary courts, the competent judges to resolve the conflicts from government contracts are those of the administrative courts.

10.1.7.1 Arbitration

Arbitration is an alternative conflict resolution mechanism to which parties involved in a conflict susceptible to settlement can recur in order to provide a solution thereto, without the direct intervention of the State by means of judges. This mode of conflict resolution is optional for the parties, who, by means of the arbitration or compromise clause temporarily empower a third party to hand down justice in the specific case and give a final and binding solution called an arbitral award.

The jurisdiction of the arbitrators is limited by the following:

1. It is the parties who enable the arbitrators to hand down justice in the specific case
2. The activity of the arbitrators is of a transitory or temporary nature, until the resolution of the conflict.
3. The decisions taken by the arbitrators must conform to law and only circumstances susceptible to settlement (where rights can be lawfully waived) can be submitted to the decision of an arbitral tribunal.
4. The private individuals temporarily invested with the power to hand down justice cannot take jurisdiction over matters of public policy, national sovereignty or the constitutional order.

[23]Decree 1464 of 2010. Article 4.
[24] Decree 1464 of 2010. Article 53.
[25]Decree 1464 of 2010. Article 6.
[26]Decree 1464 of 2010. Article 4. Sub-Paragraph.

10.1.7.2 Conciliation

Conciliation is a conflict resolution mechanism by means of which the parties involved in a contract controversy of a renounceable or negotiable nature can resolve by themselves their differences, with the aid of a neutral and qualified third party, called conciliator.

The agreements reached by the parties through conciliation and with the help of the conciliators enabled by law cannot again be the subject of debate by a judicial procedure or other alternative conflict resolution mechanism.

The minute of reconciliation is an executory document, that is, when this document contains a clear, express and due obligation, the party on whom such obligation is imposed must fulfill it under the conditions stipulated, and if fails to do so, the injured party may recur to the courts to demand compliance with the agreement.

10.1.7.3 Mediation

Mediation is a conflict resolution mechanism by means of which an impartial third party, called a mediator, resolves a conflict between the parties. The mediation is an eminently contractual procedure, as the neutral third party resolves the matter by virtue of a mandate that has been given by the parties involved in the controversy.

10.1.7.4 Settlement

The settlement is a contract by which the parties, giving up part of their claims, terminate out of court a pending litigation or prevent an eventual litigation. This legal figure, as a mechanism of contract conflict resolution reaches an agreement between the parties directly, without requiring a third party to resolve the conflicts.

The settlement has the effect of res judicata; once entered into, its effect is to close, inevitable and fully, the litigation in the terms established in it.

10.2 Public Services

Public services may be provided by the government, directly or indirectly; by organized communities or private parties, but in any case the oversight, control and regulation of such services shall remain. In turn, the government may reserve for itself certain strategic activities or public services, with certain conditions that include the obligation to indemnify, in advance and fully, any persons who are deprived of the exercise of a lawful activity.

This is why the legal figure developed by the Colombian government for the efficient provision of public services is the “concession of public services” by a contract or a license which gives to a person, called a concession holder the provision, operation, exploitation, organization, or , total or partial management, of a public service; the term for the provisions of the services is defined, the operational demarcation of the territory, the regulation of the rate system and the operating conditions, as well as the use of state or private property for the provision of the service.

10.2.1 Direct Provision of Services

It is present when the government hires a private company for the direct operation of a part or all of a project. This mode is used for water supply projects, television, mobile telecommunications, local telecommunications, generation and distribution of electric power.

10.2.2 Association With Public Sector Enterprises

Public sector enterprises can join with private companies to provide public services, forming associations in which the government does not surrender its interest in the corresponding enterprise.

10.2.3 Acquisition of Public Enterprises

Private investors can purchase part or all of the shareholding interest in a public service providers, purchasing a block of shares or important assets of the company.

10.2.4 Residential Public Services

Law 142 of 1994 establishes the legal system applicable to residential public services of water, sewer, cleaning, electricity, gas, basic switched telephone and local mobile telephone in rural areas.

Any person who intends to be a provider of residential public services must organize a corporation to which the

laws applicable to corporations will apply and will submit to a special regime contained in the law. The corporate contributions may belong to domestic or foreign investors. These corporations will be regulated by the Superintendent of Public Services and in their name, after the initials S.A. they must add the initials E.S.P.

To be able to operate, the public services enterprises must obtain from the competent authorities, as the case may be, the concessions, permits and licenses necessary for their operation, depending on the nature of their activities[27].

On its part, Law 143 of 1994 establishes the system for generation, interconnection, transmission, distribution and commercialization of electricity, from where we highlight as principal characteristics the following:

1. By means of a concession agreement, the Nation or any territorial entity may assign temporarily the organization, provision, maintenance and management of activities of the public service of electricity to a private or public corporation or a mixed economy corporation, which assumes it at its cost and risk, under the supervision and control of the grantor entity. The granting of the concession shall be made by a public offering to whoever presents the best technical and economic conditions for the conceding entity and to the benefit of the users.
2. Notwithstanding the foregoing, concession agreements can only be entered into in those events where, as a result of the free initiative of the economic actors in a context of competition, there is no entity willing to provide this public service[28].
3. The compensation of the concession agreement consists of the rates or prices the users of the services pay directly to the concession holders, which are set according to the provisions set forth in the law[29].
4. Companies incorporated after 1994 with the purpose of providing the public service of electricity cannot carry out more than one of the activities related thereto, with the exception of sales, an activity that can be carried out in combination with the activities of generation or distribution[30].

10.3 Privatizations (Sale of Stock)

Within Law 226 of 1995 is included the procedure by means of which private parties will be given the possibility of having access to participation in the sale of State interest. In this process several moments are distinguished: the making of the decision to proceed to the sale of interest; the offers of interested parties; the award; entering into and perfecting of the contract. In these stages inevitably there is a public interest to be protected by all the authorities of the Colombian government.

We find thus a constitutional and legal framework where private participation in government institutions is coherently developed by the legislature and applied by the national government, under an economic model that makes the entering of private capital viable, both domestic and foreign, under the supervision and control of the government entities with the mission of complying with the principles of the public interest at stake.

10.4 Legal System of oil Exploration and Exploitation

With the implementation of a new organic structure of Ecopetrol S.A. (formerly Empresa Colombiana de Petróleos – ECOPETROL S.A.) and the creation of the National Hydrocarbons Agency [Agencia Nacional de Hidrocarburos – ANH] as the entity managing the oil resources of the Nation, a new stage in the development of hydrocarbons in Colombia began through the new regime for contracting for the exploration and production of hydrocarbons.

Under the new scheme, investors and Ecopetrol S.A. compete under the same conditions, without an association contract as required before.

The new contract has the following characteristics:

a) It is a government contract with a special regime, not subject to the contract system of Law 80 of 1993.

b) The contract must be negotiated and approved by the ANH.

c) The contractor assumes 100% of the work programs, assets, costs and risks.

d) The contractor has total independence and operational responsibility.

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[27] Law 142 of 1994. Article 22.
[28] Law 143 of 1994. Article 56.
[29] Law 143 of 1994. Article 60.
[30] Law 143 of 1994. Article 74.

e) The contractor has rights over all the production, after the discounts for royalties have been made, which must be placed at the disposition of the ANH.

The ANH administers the resources of the Nation, carrying out a follow-up of the contracts and managing the royalties received therefrom.

For the allocation of areas of exploration and exploitation, the new scheme allows a direct allocation without necessarily requiring a tender for the allocation. The interested companies may request the allocation of the areas according to the qualification they have:

10.4.1 Free Areas

Those over which, up to the time of presentation of the proposal, there is no kind of contract in effect for the development of oil exploration and exploitation activities. For these areas the principle of "first come, first served" is applied in order to establish an order of priority to begin the negotiation of the contract with the ANH.

10.4.2 Freed Areas

Those that have been allocated by an exploration and exploitation contract, but which were returned to the ANH due to termination of the contracts or partial returns of areas. For their allocation proposals are received during the term established by the ANH, which shall initiate the negotiation process with the proponent that presents the most favorable proposal. It requires a notice of liberation of the area by the ANH in order to participate.

10.4.3 Special Areas

Those that the ANH determines that, due to their extraordinary conditions and characteristics, must have this qualification. For the selection of the contractor, the ANH invites a plural number of proponents to, under equal conditions, select the most favorable proposal. The conditions for the proposals are established at the time of opening the process.

In order to insure against the possible risks derived from the investment projects conducted by foreign investors, Colombia has certain mechanisms to achieve their coverage.

10.5 Management of Risk: Insurance

10.5.1 Multilateral Investment Guarantee Agency – Miga

As a member of the World Bank Group, this institution has as its purpose to promote the investment of foreign investors in developing countries (Direct Foreign Investment), insuring the investments against non-commercial risks, such as non-convertibility of currency, discriminatory expropriation, war, civil disturbances and breach of contract.

MIGA insures investments in a wide range of industries and covers several types of investment. Investors who may recur to the coverage offered by MIGA must be nationals of member countries of the agency, but from a different country to that where the project will take place, with certain exceptions under special conditions. The eligible companies must, in turn, have been incorporated or have their main offices in a member country of MIGA.

Investment projects electable by MIGA must be financially viable, environmentally safe, consistent with international labor standards and must comply with the minimum development objectives of the investing country.

Since its creation, MIGA has guaranteed around 800 projects and has intervened in several cases of conflict resolution between investors and local governments, which allowed the continuation of the projects.

Since its creation in 1988, in Colombia 5 guarantee contracts have been issued, with an approximate coverage of US$255 million to mitigate the risks of investors from the Netherlands, Spain and the US, mainly in projects in the areas of financial services (leasing and mortgages), telecommunications, electricity and mining.

10.5.2 Overseas Private Investment Corporation – OPIC

Investments in Colombia are covered by OPIC since 1985. It has as purpose to promote United States investments in developing countries, financing and insuring long-term private investment projects against risks

such as non-convertibility of currency, expropriation and political violence.

Direct loans are reserved for small American companies, and the private capital funds guaranteed by OPIC serve as catalysts for the activities of the private sector in developing countries through investment in new or expanding companies or those undergoing privatization.

OPIC covers investments in several economic sectors including infrastructure, manufacturing and financial services and does not require a minimum amount of the investment.

10.5.3 Spanish Company for Export Credit Insurance – CESCE

A specialized company in the coverage of risks for nonpayment derived from the sale of products and services in domestic and foreign markets of companies.

CESCE provides coverage on its own account for commercial short-term risks, both inside and outside of Spain, and on account of the government, for commercial long-term risks and political risks both long and short-term, related to the foreign activity of Spanish companies.

Commercial risks are defined for these purposes as those produced in private commercial activity and correspond mainly to the breaches of private entities, having its most characteristic expression in bankruptcy situations or suspension of payments, and by political risks those that have their origin in the sovereign activity of a State. In this case CESCE manages and covers, on account of the government, the risks from omission of foreign currency transfers, lack of public purchasers, catastrophic or extraordinary circumstances and war, revolution or similar occurrences.

10.5.4 Andean Development Corporation – CAF

CAF executed an agreement with AIG – Global Trade & Political Risk Insurance Company in order to incorporate the Compañía Latinoamericana de Garantías de Inversiones, which offers insurance policies against political risk and investment guarantees for external credit operations, foreign trade and capital investment.

By agreement executed between the CAF and AIG insurance the LAGIC (Latin American Investment Guarantee Company) was created, in order to offer political risk insurance and investment guarantees permitting financial institutions and private companies with interests in Latin America and the Caribbean to expand their businesses with confidence; protect them against unforeseen losses of assets or investments; offer the shareholders, counsel, directors and managers with a higher level of security when authorizing business abroad, and access to financing.

The main insurance policies offered by LAGIC are:

a) Insurance coverage for political risks of importers and exporters.

b) Insurance coverage against the unlawful demand of guaranty payment.

c) Insurance coverage against political risks for projects.

Since its creation, the use of LAGIC has been concentrated in Mexico, with 23%, Argentina, with 22% and Chile, with 12%. In turn, Colombia has participated with 2% in the subscription of financial stability and political risk policies.

10.5.5 International Center for Settlement of Investment Disputes – ICSID

Since August 14, 1997 Colombia is a member of this organization, designed with the purpose of providing solutions to the problems arising between governments and foreign nationals.

It is an organization of the World Bank Group, created in 1966, charged with providing reconciliation and arbitration procedures that manage to create an environment of legal security for foreign investors.

10.5.6 International Bank for Reconstruction and Development – IBRD

Since December 24, 1946 Colombia is part of the IBRD, which was established in 1944. It has as its principal function to contribute with the development and reconstruction of the territories of its member countries, facilitating loans and assistance for development; as important functions it must be highlighted, the search for equilibrium in the balance of payments and maintaining balanced growth in foreign trade. All the funds provided by the IBRD to member states must be destined to productive purposes, coherent with the growth policies that previously have been studied for the development of that State.

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