



—————LEGAL GUIDE—————

TO DO BUSINESS IN COLOMBIA 2014



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INTRODUCTION

Colombia is a democratic country, with a privileged location in Latin America and rich in natural resources. It is at present, one of the main investment destinations in the region and it has been ranked by the World Bank as the top Latin American country in investment protection. In the last decade, Colombia's GDP growth rate has been significantly higher than the world average, and in recent years the country has shown great economic stability and adequately controlled its inflation rate. Recently, the principal risk rating agencies have given Colombia higher confidence indices.

Proexport Colombia and Ernst & Young S.A.S. have prepared this Legal Guide to Do Business in Colombia (the "Guide") to provide foreign investors guidelines on the main legal aspects.

The content of this document was prepared and updated in February 2014 based entirely on the current information and legislation.

Warning

The purpose of this document is purely informative. The Guide is not intended to provide legal advice. Therefore, those using this Guide shall not be entitled to bring any claim or action against Proexport Colombia or Ernst & Young S.A.S., their respective directors, officers, employees, agents, advisors, or consultants arising from any expense or cost incurred into or for any commitment or promise made based on the information contained in this Guide. Neither shall they be entitled to indemnifications from Proexport Colombia or Ernst & Young S.A.S. for decisions made on the basis of the contents or the information provided in this Guide.

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

On the figures in this Guide

The figures used on this Guide have been determined as follows: (i) the figures expressed in US dollars have been calculated using an exchange rate of COP 1,900 = USD 1; and (ii) for those based on the current minimum legal monthly wage (MLMW) in Colombia, the MLMW for the year 2014 is COP 616,000 (approx. USD 324).

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

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



———— CHAPTER 1 ————

FOREIGN INVESTMENT

1 FOREIGN INVESTMENT

Five things an investor should know about the protection of foreign investment in Colombia:

1. Foreign investment is freely permitted in all sectors of the economy, with the exception of national defense and security and the processing and disposal of toxic, hazardous, or radioactive waste not originated in the country.
2. As a general rule, there is no limitation to the percentages of foreign investment except for certain exceptions.
3. To encourage foreign investment, the Colombian Government has signed several international investment agreements including several agreements on the reciprocal promotion and protection of investment, and the investment chapters contained in free trade agreements.
4. Colombia's commitment to free trade is demonstrated by the number of free trade agreements ratified by the country. Colombia is a party to numerous double taxation agreements that prevent investors from being subject to double taxation.
5. Mechanisms that avoid investors from being subject to double taxation are contained in the double taxation agreements, from which Colombia is also a party.

The Colombian Political Constitution states that foreign nationals and citizens have rights identical to those of Colombian nationals¹, thereby permitting, with some limited exceptions, foreign investment in all sectors of the economy. Likewise, under the principle of equal treatment, foreign investors are entitled to access any benefits or incentives established by the Government for Colombian parties. The principles regulating foreign investment in Colombia are the following²:

EQUAL TREATMENT

For all purposes, foreign investment is subject to the same treatment as investments made by Colombian nationals. Therefore, the imposition of any conditions on foreign investors, whether discriminatory or favorable, is not permitted.

1. Article 100 of the Colombian Constitution.
2. Decree 2080 of 2000.

UNIVERSALITY

Foreign investment is allowed in all sectors of the economy with the exception of the following:

- Activities related to defense and national security
- Processing and disposal of toxic, hazardous, or radioactive waste not originated in the country

There are certain legal restrictions with respect to entities operating open television services, pursuant to which foreign investment cannot exceed 40% of the company's capital. On the other hand, certain private security and surveillance services can only be provided by entities whose equity holders are Colombian individuals. Additionally, Colombia, in its multiple free trade agreements, has included certain exceptions and obligations (nonconforming measures) that must be met

by a foreign investor in order to perform certain activities in the country.

AUTOMATICITY

Generally, foreign investment in Colombia does not require prior authorization, except for investment in the insurance, finance, mining, and hydrocarbon sectors, which may require in certain cases, prior authorization or recognition by the relevant authorities (e.g.: The Colombian Financial Superintendency or the Ministry of Mines and Energy).

STABILITY

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

was executed. To achieve this, these agreements define the protected assets, providing protection standards that are reflected in international law principles such as equal treatment, fair and equitable treatment, full security, and guarantees and provide the rules for dispute resolution through different mechanisms such as State-investor international arbitration.

While IIAs offer protection for investors, they do not affect the Government's regulatory authority. On the contrary, both ARPPIs and FTAs restrict the level of protection offered to investors to the substantial adverse effect on their rights. For this reason, possible effects of regulatory changes do not necessarily constitute a breach of the guarantees contained in such agreements.

1.1.1. Colombia and international conventions on the protection of foreign investment

In order to protect foreign investment, Colombia is party to the Multilateral Investment Guarantee Agency (MIGA), the International Centre for Settlement of Investment Disputes (ICSID) and the Overseas Private Investment Corporation (OPIC). Each of these agreements constitutes an important mechanism for the protection of foreign investment.

MIGA⁴ is a multilateral organization that provides protection to foreign investors in member countries against noncommercial risks such as riots and civil wars, exchange transfer restrictions, and discriminatory expropriations. The agency aims to provide services for foreign investors who invested in member developing countries. Additionally, MIGA provides information about developing countries in order to support the investment process from the earlier stages.

The ICSID⁵ agreement provides foreign investors in Colombia (whose home country is part to this agreement) with the alternative to submit disputes to international arbitration or conciliation, specialized in dispute resolution among investors and host states. It should be noted that arbitration or conciliation may be considered as dispute resolution mechanisms as long as there is a treaty into force that allows that possibility.

The main objective of OPIC is the promotion of U.S. investment in developing countries. For this purpose, OPIC provides financing and guarantees investment projects as well as protection against risks such as political instability and currency transfer restrictions.

1.1. International Investment Agreements

In order to create and maintain a favorable investment environment for foreign investors, Colombia has implemented a policy of negotiation and ratification of International Investment Agreements (IIAs), (which include Agreements on the Reciprocal Promotion and Protection of Investments – ARPPIs), as well as Free Trade Agreements (FTAs) with investment chapters and Double Taxation Agreements (DTAs)³.

This policy implements the strategy of economic integration embodied in the Colombian Political Constitution and in the last three national development plans.

Such international investment agreements, aim to create a transparent regulatory framework with predictable rules to reduce noncommercial risks for investors. In particular, ARPPIs, as the name suggests, are not multilateral but have the purpose of securing foreign investment in the country where the agreement

3. Conpes 3135 of 2001 and 3197 of 2002.

4. Law 149 of 1994.

5. Law 267 of 1996.

1.1.2. Overview of the ARPPIs signed by Colombia

Generally, the ARPPIs signed by Colombia contain the following types of clauses that grant protections to foreign investors:

NATIONAL TREATMENT

Under this principle, each country grants foreign investors and their investments a treatment no less favorable than the one it grants, under like circumstances, to its own investors.

MOST FAVORED NATION TREATMENT

Under this principle, each party grants foreign investors treatment no less favorable than it grants, under like circumstances, to investors of any other country.

FAIR AND EQUITABLE TREATMENT

This concept derives from the international principle of good faith and results in a protection against arbitrariness. It addresses the issue of access to justice and compliance with the rules of due process.

PROHIBITION OF UNLAWFUL EXPROPRIATION

This principle bars discriminatory expropriation or expropriation without just cause, except for social purposes or in public interest, carried out in accordance with due process of law, in a nondiscriminatory manner, in good faith and subject to prior, prompt, adequate, and effective compensation.

Additionally, this principle covers indirect expropriation consisting of systematic acts of the receptor state of the investment, which tend to deprive the foreign investor of its property, without an expropriation process that is according to the Colombian Political Constitution and the Law.

REDUCING BARRIERS TO INVESTMENT

This principle refers to the reduction of barriers concerning the admission and the establishment of foreign investment consistent with national legislation.

DISPUTE RESOLUTION

ARPPIs, as well as most of the investment chapters of FTAs signed by Colombia, include legal mechanisms for resolving disputes arising between foreign investors and the Colombian State. These mechanisms enable investors to file claims against the State before international investment arbitration courts in connection with potential violations of the protections provided by these types of treaties.

1.2. Double Taxation Agreements signed by Colombia

Colombia has been interested in developing a wide network of agreements to avoid double taxation (DTA). As a result of having the treaty with the Andean Community of Nations (CAN, in Spanish), Colombia has currently signed several DTAs, which are in force with Spain, Chile, Switzerland, Mexico, and Canada and it is currently negotiating with other jurisdictions.

The purpose of a DTA is to abolish or reduce double taxation, promote cooperation between states in order to avoid tax evasions, and to promote trade between the countries involved. The DTAs are limited to income tax and equity tax. Indirect taxes such as the Value-Added Tax (VAT) are not covered by these agreements as well as territorial taxes and the Industry and Commerce Tax (ICA, in Spanish).

Colombia has followed the global trend to adopt as the basis for negotiations, a model treaty that in general terms, follows the model of the Organization for Economic Cooperation and Development (OECD) or the model of the United Nations (UN). These models determine which states (parties to the negotiation) apply the tax, based on the residence criteria. Strictly speaking, the UN model follows the pattern of the OECD model; in fact, many of its provisions are the same. The most significant difference between these two models is that the UN model contemplates fewer restrictions than the OECD model, when taxing the source country.

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1.3. Trade Agreements, Agreements on the reciprocal promotion and protection of investments, and Double Taxation Agreements concluded or under negotiation by Colombia

1.3.1. Trade agreements signed or under negotiation

AGREEMENT	ENTRY INTO FORCE	APPROVING LAW	STATUS OF THE AGREEMENT
Andean Community of Nations (Peru, Ecuador and Bolivia)	1993	Decision 324	In force
Andean Community of Nations – MERCOSUR	2005	Law 1000 of 2005	In force. Constitutionality ruling C-864 of 2006
FTA G2 (Mexico and Colombia)	1995	Law 172 of 1994	In force. Constitutionality ruling C-178 of 1995
FTA Chile	2009	Law 1189 of 2008	In force. Constitutionality ruling C-031 of 2009
FTA Northern Triangle (Guatemala, El Salvador and Honduras)	Guatemala: 2009 El Salvador: 2010 Honduras: 2010	Law 1241 of 2008	In force. Constitutionality ruling C-446 of 2009
FTA United States	2012	Law 1143 of 2007 (Amendment Protocol to Law 1166 of 2007)	In force. Constitutionality ruling C-751 of 2008
FTA EFTA (Iceland, Liechtenstein, Norway and Switzerland)	Liechtenstein and Switzerland: 2011. Iceland and Norway are in process of approval	Law 1372 of 2010	In force only for Liechtenstein and Switzerland. Constitutionality ruling C-941 of 2010
FTA Canada	2011	Law 1363 of 2009	In force. Constitutionality ruling C-608 of 2010
Partial Agreement Venezuela	2012	Decree 1860 of 2012	In force by means of the Decree for provisional application while the corresponding law that approves the agreement is approved by the Colombian Congress

AGREEMENT	ENTRY INTO FORCE	APPROVING LAW	STATUS OF THE AGREEMENT
Partial agreement Nicaragua	Decree 2500 of 1985	Treaty of Montevideo of 1980	In force
Complementary agreement Cuba	July 10 of 2001	Decree 4225 of 2008	In force
CARICOM	1996	Law 216 of 1995	In force. Constitutionality ruling C-331-1996
FTA European Union	In force	Law 1669 of 2013	Signed and approved by the Colombian Congress. Pending constitutionality ruling. In force by means of the Decree 1513 of 2013 for provisional application
FTA Panama	Signed	Pending	Signed on December 12, 2013
FTA South Korea	Signed	Pending	Signed on February 21, 2013
FTA Israel	Signed	Pending	Signed on September 30, 2013
FTA Costa Rica	Signed	Pending	Signed on May 23, 2013
FTA Turkey	Pending	Pending	Under negotiation
FTA Japan	Pending	Pending	Under negotiation
FTA Pacific Alliance	Pending	Pending	Under negotiation

1.3.2. Agreements on the reciprocal promotion and protection of investments signed or under negotiation

ARPPi	ENTRY INTO FORCE	APPROVING LAW	STATUS OF THE AGREEMENT
Chapter XVII of the G2 FTA (Mexico and Colombia)	1995	Law 172 of 1994	In force. Constitutionality ruling C-178 of 1995
Chapter IX of the FTA with Chile	2009	Law 1189 of 2008	In force. Constitutionality ruling C-031 of 2009
Chapter XII of the FTA Northern Triangle (Guatemala, El Salvador and Honduras)	Guatemala: 2009 El Salvador: 2010 Honduras: 2010	Law 1241 of 2008	In force. Constitutionality ruling C-446 of 2009
ARPPi Spain	2007	Law 1069 of 2006	In force. Constitutionality ruling C-309 of 2007
ARPPi Switzerland	2009	Law 1198 of 2008	In force. Constitutionality ruling C-150 of 2009
Chapter X of the FTA United States	2012	Law 1143 of 2007 (Amendment Protocol to Law 1166 of 2007)	In force. Constitutionality ruling C-751 of 2008
Chapter V of the EFTA	2010	Law 1372 of 2010	In force only for Liechtenstein and Switzerland, constitutionality ruling C-941 of 2010
Chapter VIII of the FTA with Canada	2011	Law 1363 of 2009	In force. Constitutionality ruling C-608 of 2010
ARPPi Peru	2010	Law 1342 of 2009	In force. Constitutionality ruling C-377 of 2010
ARPPi China	2012	Law 1462 of 2011	In force. Constitutionality ruling C-199 of 2012

ARPPI	ENTRY INTO FORCE	APPROVING LAW	STATUS OF THE AGREEMENT
ARPPI India	2012	Law 1449 of 2011	In force. Constitutionality ruling C-123 of 2012
ARPPI United Kingdom	Signed	Law 1464 of 2011	Constitutionality ruling C-169 of 2012. Pending of approval by the UK
ARPPI Singapore	Signed	Pending	Pending of approval by the Colombian Congress
ARPPI Japan	Signed	Pending	Pending of approval by the Colombian Congress
Chapter II of the FTA European Union (except for those countries in which there is a specific agreement)	Signed	Pending	Signed. Pending of approval by the Colombian Congress
ARPPI Kuwait	Pending	Pending	Under negotiation
ARPPI Turkey	Pending	Pending	Under negotiation
ARPPI France	Pending	Pending	Under negotiation
ARPPI Qatar	Pending	Pending	Under negotiation
ARPPI Azerbaijan	Pending	Pending	Under negotiation
ARPPI Russia	Pending	Pending	Under negotiation

1.3.3. Double Taxation Agreements Signed, Under Negotiation or in Force

In addition to the DTAs listed below, Colombia has signed agreements to avoid double taxation regarding income tax and equity tax in the transport and/or maritime

navigation or air transportation with Germany, Argentina, Brazil, Chile, United States, France, Italy, Panama and Venezuela.

DTA	ENTRY INTO FORCE	APPROVING LAW	STATUS OF THE AGREEMENT
Andean Community of Nations (Peru, Ecuador and Bolivia)	2004	Decision 578	In force
DTA Spain	2009	Law 1082 of 2006	In force. Constitutionality ruling C- 383 of 2008
DTA Chile	2010	Law 1261 of 2008	In force. Constitutionality ruling C- 577 of 2009
DTA Switzerland	2012	Law 1344 of 2009	In force. Constitutionality ruling C-460 of 2010
DTA Canada	2013	Law 1459 of 2011	In force. Constitutionality ruling C-295 of 2012
DTA Mexico	2013	Law 1568 of 2012	In force Constitutionality ruling C-221 of 2013
DTA South Korea	Signed	Law 1667 of 2013	Signed and approved by the Colombian Congress. Pending constitutionality ruling
DTA Portugal	Signed	Law 1693 of 2013	Signed and approved by the Colombian Congress. Pending constitutionality ruling
DTA India	Pending	Law 1668 of 2013	Signed and approved by the Colombian Congress. Pending constitutionality ruling

DTA	ENTRY INTO FORCE	APPROVING LAW	STATUS OF THE AGREEMENT
DTA Czech Republic	Signed	Pending	Signed and approved by the Colombian Congress. Pending constitutionality ruling
DTA with Belgium	Pending	Pending	Negotiated
DTA with France	Pending	Pending	Negotiated
DTA with the United States of America	Pending	Pending	Under negotiation
DTA with Germany	Pending	Pending	Under negotiation
DTA with The Netherlands	Pending	Pending	Under negotiation
DTA with Japan	Pending	Pending	Under negotiation



CHAPTER 2

FOREIGN EXCHANGE

2 FOREIGN EXCHANGE

Five things an investor should know about the Foreign Exchange Regime:

1. The Foreign Exchange Regime makes a distinction between two different markets: (i) the Foreign Exchange Market and (ii) the Free Market. The Foreign Exchange Market is strictly regulated and consists of all foreign currencies or foreign exchange transactions that have to be completed through foreign exchange intermediaries or compensation accounts.
2. Transactions corresponding to foreign investment in Colombia, investment of Colombian capital abroad, foreign indebtedness and endorsements, and warranty bonds in foreign currency, have to be informed and registered before the Colombian Central Bank.
3. Only duly registered foreign investment with the Colombian Central Bank allows the foreign investor to exercise his exchange rights to remit abroad or reinvest the profit of its investment.
4. Foreign loans made to Colombian residents can be granted by any non-resident legal entity (not individuals). There is the duty to register the nonresident with the Colombian Central Bank through the foreign exchange intermediaries.
5. Obligations resulting from transactions subject to registration may not be offset with each other or with any other type of obligations.

Colombia has a foreign exchange regime that although simple is strictly regulated by the Colombian Central Bank. Compliance to this regime is jointly supervised by the Superintendency of Companies, the Financial Superintendency, and the Colombian Tax Authority.

The Foreign Exchange Regime differentiates between two different markets: (i) the Foreign Exchange Market; and (ii) the Nonregulated Market, also known as Free Market.

2.1. Foreign Exchange Market

The Foreign Exchange Market consists of all foreign currencies or foreign exchange transactions that must be handled through (i) authorized foreign exchange intermediaries¹ or (ii) compensation accounts. The latter are construed as accounts in foreign currency in foreign

1. Pursuant to Article 58 of Resolution 8 of 2000, issued by the Colombian Central Bank, foreign exchange intermediaries are certain entities under the supervision of the Financial Superintendency, such as commercial banks (Bancos Comerciales, a type of financial institution), mortgage banks (Bancos Hipotecarios, a type of financial institution), financial corporations (Corporaciones Financieras, a type of financial institution), consumer finance companies (Compañías de Financiamiento Comercial, a type of financial institution), Financiera Energética Nacional - FEN (a state-owned promotion bank that directs funds to the power sector), Banco de Comercio Exterior de Colombia S.A. BANCÓLDEX (Colombia's Eximbank), financial cooperatives, broker dealers, and professional exchange bureaus (a type of licensed forex traders, which are not considered to be financial institutions).

banks, whose holders are Colombian residents and that are subject to registration with and periodic reporting to the Colombian Central Bank. Additionally, the currencies that are exempt and thus are not required to be channeled through the Foreign Exchange Market, but are voluntarily channeled through it, are also considered part of the Foreign Exchange Market.

Pursuant to foreign exchange regulations, the following transactions must be completed through the Foreign Exchange Market:

- Import and export of goods
- Foreign indebtedness and related financial costs
- Foreign capital investments in Colombia
- Colombian capital investments abroad
- Endorsements and warranty bonds in foreign currency
- Derivative transactions

Additionally, the Colombian Central Bank's Board of Directors allowed the payment of internal transactions among Colombian residents in foreign currency², through compensation accounts, as long as such transactions are duly informed through the forms established for such purpose.

2.2. Nonregulated Market or Free Market

The Free Market consists of all other operations that do not have the obligation to be channeled through the Foreign Exchange Market, such as payments for services in foreign currency and transfer of foreign currency for other types of transactions, such as donations. These types of transactions do not have to be reported to the Colombian Central Bank; nonetheless, they could be voluntarily completed through the Foreign Exchange Market.

Colombian residents are permitted to open and hold bank accounts in foreign banks without being under the obligation to inform the Colombian Central Bank. Any operation can be handled through these bank accounts with the exception of those that have the legal obligation to be completed through The Foreign Exchange Market. Furthermore, the Colombian Central Bank allows the payment in foreign currency of certain internal operations among Colombian residents from the oil and gas sector, as well as permitting the handling of these types of internal operations through the Free Market.

2.3. International investment

In accordance with the Foreign Investment Regime, foreign investors in Colombia and Colombian residents that invest abroad must register their investments with the Colombian Central Bank. Some direct foreign investments are automatically registered with the filing of the corresponding exchange form before the intermediaries of the Foreign Exchange Market, or by means of its electronic remittance to the Colombian Central Bank in the case of investments channeled through compensation accounts. In essence, this obligation allows the Colombian Central Bank to collect information on investment flows for statistical purposes.



² Articles 20 to 25 of the Decree 2080 of 2000 and Articles 48 to 52 of the Resolution 8 of 2000 issued by the Colombian Central Bank.

2.3.1. Remittance rights of foreign capital investment in Colombia

Foreign investments duly registered with the Colombian Central Bank grant to foreign investors the following rights:

- To remit abroad dividends resulting from the registered investment.
- To reinvest dividends and income derived from such investment.
- To transfer abroad any income derived from: (i) the sale of the investment within the country; (ii) the liquidation (winding up) of the company or portfolio; or (iii) the reduction of the company's capital.

The Foreign Exchange Regime distinguishes between foreign direct investment and portfolio investment.

- Tangible goods introduced to Colombia as nonreimbursable imports.
- Contributions consisting in technology, trademarks, or patents.
- Funds in COP with the right to be remitted abroad, such as dividends and foreign debts.
- Loans granted by foreign exchange intermediaries for the purchase of shares of stock markets.

In order to register the foreign investment with the Colombian Central Bank, the investor must complete the remittance of funds through the Foreign Exchange Market by means of filing out an exchange Form N.º 4 "Exchange declaration for foreign investments."

In the case of other types of contributions, the Foreign Exchange Regime requires the filing within the following twelve months of the investment of the following documentation: (a) a so called Form N.º 11 "Register of international investment;" (b) the legal document that supports the investment made; and (c) the certificate of the statutory auditor or Certified Public Accountant (CPA) of the company receiving the investment, certifying the concept, date and number of shares; and (d) further documents may be required depending on the type of investment. In this case, registration will be done by the Colombian Central Bank provided all requirements are met.

2.3.2. Direct foreign investment

The following are considered types of direct foreign investment:

- A company's capital contribution by means of the acquisition of shares, quotas in limited liability companies, or convertible bonds.
- The acquisition of rights in trust agreements with trust companies under the inspection and surveillance of the Colombian Financial Superintendency.
- The acquisition of real estate, directly or by means of trust agreements, or securities issued in connection with a real state securitization or real estate investments trust (REITs).
- The contributions to joint ventures and concessions, among other type of collaboration agreements, administration services, licensing, or agreements that generate technology transfer, as long as they do not represent a contribution to a company's capital and the income obtained from such investment is related to the company's profit.
- Supplementary investment to the assigned capital of the branches.
- Investment in local private investment funds.

The types of direct foreign investment permitted are:

- Contribution of freely convertible foreign currency.

2.3.3. Substitution of direct foreign investment

The substitution of foreign investment should be recorded by the investor or his agent before the International Exchange Department of the Colombian Central Bank, with the filing of a formal request, within the following twelve months of the relevant transaction.

Substitution of foreign investment can be of two types: (i) a change of ownership of the foreign investment to other foreign investors, or (ii) the change in the destination or the company receiving the investment.

When the substitution involves a change of ownership of the investment, it must be registered by both the grantor and the new investor, or their agents.

2.3.4. Cancellation of direct foreign investment

The cancellation, whether total or partial, of a foreign investment must be reported by the investor or his agent to the International Exchange Department of the Colombian Central Bank within a period of twelve months from the cancellation of such investment.

2.3.5. Portfolio investment

The Foreign Exchange Regime regulates the registrations relating to the various forms of portfolio investments, defined as those made in securities registered with the National Securities and Issuers Registry (RNVE, in Spanish), the participation in collective portfolios, as well as in securities listed in the securities quotation systems abroad.

In the case of portfolio investments, local administrators (e.g.: Stock brokerage firms, trust companies and investment management companies, known as “sociedades administradoras de inversión” must be appointed as representatives of foreign portfolio investors, and are required to carry out the applicable registration requirements.

The Foreign Exchange Regime regulates the following special registration procedures:

- Foreign capital portfolio investments carried out under the framework of agreements between stock exchanges under any existing integration programs.
- Certificates representing depositary receipts programs (ADRs/ GDRs);
- Exchange traded funds (ETFs), including stock funds that replicate national indexes, international indexes and foreign pooled funds; and
- Foreign capital investments in foreign securities issued abroad and registered with the RNVE.

2.3.6. Special Foreign Exchange Regime

There is a Special Foreign Exchange Regime applicable to branches of foreign companies that engage in activities related to the exploration and exploitation of oil, natural gas, carbon, ferronickel, and uranium; or that provide services exclusively to the oil and gas sector³.

It must be pointed out that regulations of the special regime prevail over the general exchange regulations in relation to branch offices of the special regime.

Access to the Special Foreign Exchange Regime provides certain benefits to the branches that belong to it, among others, the ability to: (i) make payments in foreign currency in the country; (ii) receive payments from sales of the branch abroad by its main office without having the obligation to bring such payments to Colombia; and (iii) receive funds from its main office as supplementary investment of the assigned capital, as well as in-kind contributions as supplementary investment of the assigned capital.

However, under this special regime the branch will not be able to obtain loans from nonresidents in Colombia, nor reimbursement of imports or, in general, acquire foreign currency in the exchange market, as a result of having restricted access to this market since they receive payment abroad for their exports or sales of oil and services. Nonetheless, there are two exceptions to the restriction for the purchase of foreign currency: (i) when the branch receives payment for oil sales or services in COP, or (ii) when the branch is liquidated.

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

Branches of foreign companies that develop exploration and exploitation activities of oil, natural gas, carbon, ferronickel, and uranium will be part of the Special Exchange Regime as a result of their corporate purpose, while branches of foreign companies that render services exclusively to the oil and gas sectors, will only be part of the Special Foreign Exchange Regime as of the date of the issuance by the Ministry of Mines and Energy of the certificate of exclusive dedication. Such certificate must be renewed on a yearly basis.

³. Articles 20 to 25 of the Decree 2080 of 2000 and Articles 48 to 52 of the Resolution 8 of 2000 issued by the Colombian Central Bank.

2.3.7. Foreign investment registration update

Companies subject to foreign investment, including branches of foreign companies, which belong to the General Exchange Regime, and who are not obliged to transmit their annual financial statements to the Superintendency of Companies, must submit (in hard copy or transmit electronically) Form N.º 15 to the Foreign Exchange Department of the Colombian Central Bank after the completion date of the ordinary general meeting of shareholders and no later than June 30 of the following year to the corresponding fiscal year ending. This term may not be extended⁴.

Additionally, companies that have their shares registered in the stock market should send, electronically, after the completion date of the ordinary general meeting of shareholders, and no later than June 30 of the following year to the fiscal year ending, the "Report for equity compensation of companies with shares registered in the stock market."

Branches of foreign companies subject to the Special Exchange Regime must submit to the Foreign Exchange Department of the Colombian Central Bank, Form N.º 13 "Registration of supplementary investment to the assigned capital and update of equity accounts of branches of the Special Exchange Regime." For these branches, the term to request the registration and to report the update of the equity accounts will be six months as of December 31 of the corresponding fiscal year.

2.3.8. Obligations of foreign investors – foreign investment in Colombia

A) Registration obligation before the Colombian Central Bank:

DESTINATION	TERM
Foreign currency (with the exception of investments in financial institutions or in foreign exchange intermediaries)	Automatic, once the foreign currency is channeled through the Foreign Exchange Market
Contributions in-kind, intangibles or capitalization of amounts with exchange remittance rights	12 months
Loans in COP, granted by foreign exchange intermediaries to nonresidents for the acquisition of shares in the public securities market	12 months
Change of holders, destination of the investment or the company receiving the investment	12 months
Total or partial cancelation of the investment	12 months

B) Obligation of registration update:

TYPE OF INVESTMENT	FORM	TERM
General Exchange Regime ⁵	No. 15 and for companies with shares registered in the Colombian Stock Market (BVC, acronym for its initials in Spanish)	June 30, of the next year (electronic means)
Special Exchange Regime	N.º 13	June 30, of the next year
Portfolio	N.º 15	Within the following month

4. Chapter 7.2.1.6 Circular Reglamentaria Externa DCIN-83 of the Colombian Central Bank.

5. Companies obliged to submit financial statements before the Superintendency of Companies are not under the obligation to fill out Form N.º 15.

2.3.9. Investments of Colombian capital abroad

This type of investment is defined by the Foreign Exchange Regime as (i) the link of Colombian assets to foreign companies, securities and/or assets located or issued abroad; or (ii) the reinvestment or capitalization of funds abroad that otherwise may be repatriated, like interest payments, royalties, premiums, and other payments for technical services.

The permitted types of Colombian investment abroad are:

- Export of foreign currency as contribution to a company's capital.
- Export of intangible assets.
- Export of services, technical assistance, technological contributions, and intangibles.
- Reinvestment or capitalization of amounts with the obligation to be repatriated derived from dividends, loans, exports, and royalties among others.
- Contributions made in foreign currency derived from foreign debts acquired for this purpose.
- Linking of funds abroad, even if there is no remittance of such funds.
- Contributions in-kind, foreign currency, or services that do not constitute contribution to a company's capital.

Colombian capital investors abroad will have the obligation to repatriate the dividends and remnants when the investment is liquidated.

In general, to register the investments of Colombian residents abroad with the Colombian Central Bank, the investor must undertake the remittance of funds through the foreign exchange market by means of filing out an exchange Form N.º 4 **"Exchange declaration for foreign investments."**

In the specific case of investment through contributions in-kind or funds of compulsory repatriation through the Foreign Exchange Market, the investor must fill out with

the Colombian Central Bank a Form N.º 11 together with a certificate of the corporation's legal representative indicating the information associated to the investment, within the 12 months following the date of the investment.

2.3.10. Substitution of the Colombian investment abroad

The substitution of Colombian direct investments abroad must be registered by the investor or his authorized agent before the International Exchange Department of the Colombian Central Bank, with the presentation of a written communication, within a 12 month period as of the completion of the substitution.

Substitution of Colombian investments abroad can be of two types: A change of ownership of the Colombian investment to other Colombian investors, or the change in the destination or a change of the company receiving the investment.

When the substitution involves a change of ownership of the investment, it must be registered by both the Colombian grantor and the new Colombian investor or their agents.

Furthermore, substitution of financial investment and investment in assets located abroad will have to be registered by the assignee before the International Exchange Department of the Colombian Central Bank, with the presentation of a written communication, within the month following the substitution⁶.

2.3.11. Cancellation

The cancellation, in whole or in part, of Colombian investment abroad must be reported by the investor or his agent to the International Exchange Department of the Colombian Central Bank with a written communication that must be submitted within the twelve months following the cancellation of the investment.

6. Chapter 7.3.5.1. Circular Reglamentaria Externa DCIN 83 of the Colombian Central Bank.

2.3.12. Obligations of Colombian investors – Colombian capital investment abroad

A) Registration Obligation before the Colombian Central Bank:

DESTINATION	TERM
In foreign currency	Automatic
Contributions for loans granted abroad or fund required to be repatriated	12 months after the date of the accounting registration of the capital contribution
Tangible asset contributions	12 months after the date of the export return
Intangible asset contributions	12 months after the date of the accounting registration of the intangible asset by the company

B) For this type of investment, the registration update is not applicable.

The breach of any of the foreign investment regime's obligations will give place to the imposition of penalties by the Superintendency of Companies.

2.4. Foreign indebtedness

Residents and the intermediaries of the Foreign Exchange Market may obtain credits in foreign currency from: (i) Colombian foreign exchange intermediaries; and (ii) non-residents. Foreign indebtedness granted by foreign individuals is limited to financial leasing transactions and debts resultant from international reorganization procedures. Additionally, they may obtain credits in foreign currency by placing bonds in foreign stock markets. On the other hand, the foreign exchange regime allows Colombian residents to grant loans to nonresidents.

The entrance and exit of foreign currency in connection with foreign indebtedness must be completed through the Foreign Exchange Market. The breach of this obligation, may be considered an infringement of the Foreign Exchange Regime, and may cause the imposition of penalties by the Superintendency of Companies.

Currently, the payment of interests derived from foreign indebtedness is subject to income tax withholdings at a 14% rate for credits granted for a term of more than one year, and a 33% rate for credits granted for a term of less than one year. Reduced withholding rates may apply as a result of double taxation agreements. Additionally, some interests are not subject to withholding tax, such as short-term loans generated in the import of goods.

2.4.1. Loans granted to residents

Foreign loans must be reported to the Colombian Central Bank by means of filing out an exchange Form N.º 6 "Report of foreign debt granted to residents." Additionally, a copy of the relevant loan agreement has to be submitted. Disbursement of the loan may be registered through a Form N.º 6 "Report of foreign debt granted to residents" if the registration of the loan and the disbursement takes place at the same time. Otherwise, the disbursement of the loan must be registered by means of filing out an exchange Form N.º 3 "Foreign indebtedness exchange declaration."

On the other hand, the exit of foreign currency for the payment of capital or interests of debt must be reported to the Colombian Central Bank by means of filing out an exchange Form N.º 3 "Foreign indebtedness exchange declaration."

For the transmission of the foreign indebtedness report (Form N.º 6), when the foreign exchange loans have been granted by nonresidents which have not been previously assigned code by the Colombian Central Bank, the resident must, beforehand request the code to the foreign exchange intermediary, who will require the documentation that support the existence, financial references and compliance of regulations for the prevention of money laundry in the nonresident's country.

2.4.2. Loans granted to nonresidents

The loan granted must be reported to the Colombian Central Bank by filing out an exchange Form N.º 7 “Report of foreign debt granted to nonresidents” upon the remittance of the funds from Colombia. Additionally, a copy of the relevant loan agreement has to be submitted. Disbursement of the loan may be registered by filing out Form N.º 7 “Report of foreign investment granted to nonresidents” if the registration of the loan and the disbursement takes place at the same time. Nonetheless, if disbursement is made after the registration of the loan, it must be reported by filing out an exchange Form N.º 3 “Foreign indebtedness exchange declaration.”

Furthermore, the entrance of foreign currency for the payment of the loan must also be reported to the Colombian Central Bank by filing out an exchange Form N.º 3 “Foreign indebtedness exchange declaration.”

2.5. Import of goods

Colombian residents must conduct, through the foreign exchange market, the payment of their imports. For these purposes, they must submit an exchange Form N.º 1 “Exchange declaration for imports of goods” using in each case, the corresponding exchange numeral, depending on the moment the payment is done.

In the case of imports paid with international credit cards, importers must submit an exchange Form N.º 1 “Exchange declaration for imports of goods” when remitting abroad the payment through the exchange market intermediary or when channeling the payment through a compensation account.

Chapter four of this “Legal Guide to Do Business in Colombia 2014” on customs procedures contains a detailed explanation of the obligations related to the import of goods.

2.6. Export of Goods

The export of goods is an operation of mandatory completion through the Foreign exchange market, for this purpose an exchange Form N.º 2 “Exchange declaration for the exportation of goods” must be filled. Colombian residents must channel foreign currency received from

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

Chapter four of this “Legal Guide to Do Business in Colombia 2014” on customs procedures contains a detailed explanation of the obligations relating to the export of goods.

2.7. Endorsements and warranty bonds in foreign currency

The Foreign Exchange Regime includes endorsements and warranty bonds in foreign currency as operations of mandatory channeling through the Foreign Exchange Market. This regime also establishes different procedures and restrictions for the granting of endorsements and warranty bonds in foreign currency, depending on whether or not the grantor is a Colombian resident.

2.7.1. Endorsements and warranty bonds granted by Colombian residents

Colombian residents are permitted to grant endorsements and warranties in foreign currencies to backup any obligations abroad. These operations must be informed to the Colombian Central Bank by filing a Form N.º 7 for Active Foreign Debt, when the warranty is made effective and given that it endorses non-residents’ operations.

In case the endorsement or warranty becomes effective, for the sale of foreign currency, a foreign exchange declaration must be presented through the same type of form as the one used for the principal

operation guaranteed and with the certification from the guarantor covering the obligation. If the principal obligation guaranteed relates to a transaction between non-residents, an exchange Form N.º 7 “Foreign Debt” must be filed along with a Form N.º 3 when the money is sent abroad. When the endorsed non-resident pays back the warranty, the operation has to be registered with a Form N.º 3 as a cancellation of the obligation guaranteed abroad.

2.7.2. Endorsements and warranty bonds granted by non-residents

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

These guarantees and collaterals must be registered through a foreign exchange intermediary with the Colombian Central Bank prior to the total or partial expiration of the obligation guaranteed. In order to complete the registration, an exchange Form N.º 8 “Registration of endorsement or warranty in foreign currency” must be filed out with a copy of the document of the warranty.

Furthermore, an exchange Form N.º 3 “Exchange declaration for foreign indebtedness” including the number issued by the Colombian Central Bank which identifies the warranty, must be submitted at the moment of receipt of the disbursement of the amount guaranteed, and/or at the moment of remittance abroad of funds owed to the grantor.

For guarantees issued to support the fulfillment of transactions that must be reported to the Colombian Central Bank (e.g.: external indebtedness operations for working capital or financing of imports), the guarantee will be considered informed by the nonresident, with the presentation of the document which evidences the granting of the endorsement or warranty, along with the exchange Form N.º 6 “External debt granted to residents.” The purchase or sale of foreign currency generated by this operation will require the use of exchange Form

N.º 3 “Exchange declaration for foreign indebtedness,” which will indicate the number assigned by the foreign exchange intermediary to the guaranteed debt.

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

The Foreign Exchange Regime regulates the procedure to transfer foreign currencies through the exchange market, which are related to endorsements and warranties granted by foreign exchange intermediaries, to endorse operations such as bid bonds for public or private biddings; obligations derived from export of goods or services (other than financial services) and obligations of foreign residents.

The Foreign Exchange Regime also regulates the procedure to inform and transfer foreign currencies through the exchange market, which are related to endorsements and warranties granted to cover the fulfillment of residents’ obligations in foreign currency; in connection with the acquisition of locally produced crude oil and natural gas to foreign companies that carry put exploration and exploitation activities in the oil and gas sector. Hence, branches of foreign companies regulated by the Special Exchange Regime, can order and also benefit from the foreign currency endorsements and warranties issued by the intermediaries from the exchange market. The funds received in foreign currencies from the execution and payment of the endorsements and warranties must be received and paid through free market accounts or accounts of the parent company abroad.

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

2.8. Derivatives

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

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

2.8.1. Authorization to enter into derivative transactions

Colombian residents and foreign exchange intermediaries may enter into financial derivative transactions with other foreign exchange intermediaries and agents abroad duly authorized to execute this type of transactions in a professional manner⁷, as long as the operations relate to: (i) interest rates; (ii) exchange rates; and (iii) stock exchange indexes.

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

Underlying operations may result from payment obligations abroad resultant from foreign debts, the purchase of goods or rights abroad resultant of export transactions or international investments.

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

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

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

Additionally, branches of foreign companies that are part of the Special Exchange Regime are allowed to execute derivatives with foreign exchange intermediaries as long as such derivatives are nondelivery, due to the fact that their liquidation is done in COP.

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

2.8.2. Settlement of derivative transactions

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

- COP – foreign currency or foreign currency – foreign currency transactions entered into by and between residents and foreign authorized agents or between intermediaries of the Foreign Exchange Market must be, as a general rule, settled nondelivery and paid in foreign currency.
- COP – foreign currency or foreign currency – foreign currency transactions between residents and foreign exchange intermediaries must be, as a general rule, settled nondelivery and paid in Colombian pesos. The effective compliance of the operation can only be done

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

in the stipulated currency or in Colombian legal tender when related to an underlying transaction of mandatory channeling through the Foreign Exchange Market.

- Derivative transactions between foreign exchange intermediaries must be, as a general rule, settled nondelivery and paid in COP.

2.9. Compensation accounts

Compensation accounts are savings or checking accounts opened by Colombian residents in foreign financial institutions and registered with the Colombian Central Bank. Compensation accounts are used to make and receive foreign currency payments for transactions required by law to be completed through the Foreign Exchange Market, without resorting to the intermediaries of the Foreign Exchange Market.

These accounts were created due to the impossibility of crossing or “compensating” operations of mandatory channeling through the Foreign Exchange Market; therefore, they can record foreign currency of the Foreign Exchange Market or foreign currency of the Free Market, and can be used to pay foreign exchange market operations or free market operations. It is worthwhile noting that through these accounts it is permitted to: i) transfer foreign currency from the Foreign Exchange Market to the Free Market and vice versa, and ii) pay internal transactions between residents, which should be reported with the forms and corresponding numerals.

Compensation accounts are subject to registration with the Colombian Central Bank and are subject to the following special report obligations:

- Compensation accounts must be registered before the Colombian Central Bank through an exchange Form N.º 9 “Registration of compensation accounts.”
- The registration of the account as compensation account must be done within the month following the execution of the first operation subject to foreign exchange market regulations.

The titleholder of the account is required to submit before the Colombian Central Bank on a monthly basis a so-called Form N.º 10 “Compensation account transactions balance.” The obligation to report the movements of the compensation accounts to the International Exchange Department of the Colombian Central Bank will exist up to the date in which the registration of the account is canceled.

This information must also be submitted, on a quarterly basis, to the Colombian Tax Authority, by means of filing foreign exchange information through magnetic media.

Furthermore, compensation accounts can only be used for transactions of the same account holder.

2.10. Payments in foreign currency between Colombian residents

As a general rule, except for some very specific cases, payments in foreign currency between residents are forbidden, except for companies carrying out exploration and extraction of oil, natural gas, carbon, ferronickel, and uranium or engaging exclusively in the provision of services related to the oil and gas sector, who are only permitted to execute payments in foreign currency among themselves with funds resulting from their operation. Likewise, other payments among Colombian residents can be done in foreign currency if they correspond to freights, international transportation, credit cards, and some types of insurance.

As an exception to the general rule, the payment in foreign currency of obligations arising from local operations among residents, which are not subject to special regimes (those related to the oil and gas sector, mining, and services involved) can be done through compensation accounts.

REGULATORY FRAMEWORK

REGULATION	SUBJECT
Law 9 of 1991 (modified)	Law on foreign exchange
Decree 1735 of 1993	Issues foreign exchange regulations
Decree 2080 of 2000 (modified)	General regime for foreign capital investment in Colombia and Colombian capital investment abroad
External Resolution 8 of 2000 (modified)	Foreign Exchange Regime
Regulatory Circular DCIN 83 (modified)	Foreign exchange market regulation
Regulatory Circular DODM 144 (modified)	Derivatives operations
Decree 1746 of 1991	Penalty regime applicable to the Superintendency of Companies for foreign exchange operations supervised by such entity
Decree 2245 of 2011	Penalty regime applicable to the Colombian Tax Authorities for foreign exchange operations supervised by such entity
External Resolution 1 of 2013 of the Board of Directors of the Colombian Central Bank	Issues foreign exchange regulations

A vertical photograph on the left side of the page shows a man in a dark suit and striped tie, looking down at a document. He is holding a pair of glasses over the paper. Another person's hand is visible at the bottom, also pointing at the document. The image has a blue tint and is partially obscured by a dark purple abstract shape on the far left.

———— CHAPTER 3 ————

CORPORATE REGULATIONS

3 CORPORATE REGULATIONS

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

1. Corporate law in Colombia enjoys great legal stability by means of a stable legislation that has progressed with time.
2. Investors who wish to engage in permanent business in Colombia must, as a general rule, channel their investments through a legal vehicle, such as a subsidiary or a branch of a foreign company.
3. Colombian commercial law is flexible and modern with regard to subsidiaries, and it allows the creation of sole shareholder investment vehicles, whereby the liability of the sole shareholder is limited to the amount of the corresponding contribution.
4. To carry out businesses in Colombia, foreign investors do not need a local partner or investor. With few exceptions¹, the entire equity of a corporate entity can be foreign-owned and there are no legal restrictions on its subsequent repatriation.
5. The incorporation of a legal vehicle is, in general terms, simple and expeditious, and does not require prior Government authorization.

In Colombia, constitutional principles such as the right of association², the right to equality³, and the protection of free enterprise and private initiative, enable the creation of entities that receive local and foreign investments. This chapter summarizes the most relevant legal aspects about the most commonly used types of legal entities in Colombia.

3.1. Most common legal vehicles to carry out permanent activities in Colombia

The most frequently used vehicles by foreign investors to channel their investments to Colombia are commercial companies and foreign company branches. This chapter describes the main aspects that regulate each type of legal vehicle⁴.

3.2. Commercial companies

The most frequently used commercial companies to channel investments in Colombia are: (i) Simplified Stock Company ("S.A.S.", by its acronym in Spanish); (ii) Limited Liability Company; and (iii) corporation.

The S.A.S has been welcomed by the business community since its legal creation⁵ in 2008, particularly, because of its flexibility in terms of the incorporation process, administration and the ample freedom its shareholders have to establish the terms and conditions for its functioning and internal structure. Thus the S.A.S. privileges the shareholders' will, which is manifested through the company's bylaws as the primary source to such entity's regulation, as a result of law operating

1. See Chapter 2 on foreign investment.

2. Article 38 Political Constitution.

3. Article 13 Political Constitution.

4. There are other legal vehicles such as limited partnership and sole proprietorships. These are not commonly used by foreign investors because of the unlimited liability of the partners and wide special rules for administration and underwriting limitations for certain contracts.

5. Law 1258 of 2008.

only in a subsidiary way. The possibility to be the branch of a foreign company is also noteworthy, particularly for the mining and hydrocarbon sectors, due to foreign exchange advantages and the flexibility it offers to fund the exploration stage.

3.2.1. Document of incorporation

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

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

3.2.2. Commercial registration

Commercial corporations must register in the commercial registry kept by the corresponding Chamber of Commerce of the city where the company is to be based⁶.

To register the company, the corporation's bylaws have to be submitted, as well as other documents that the Chamber of Commerce may request, and the letters of acceptance of the persons appointed as managers and statutory auditor (in the event the company requires one). Additionally, in order to obtain the company's registration the corresponding fees and taxes must be paid before the Chamber of Commerce.

3.2.3. Obtaining of the National Tax Registry (RUT in Spanish)

The companies that register before the commercial registry kept by the chamber of commerce must obtain the RUT, by filing the following documents in the corresponding office:

1. Form created for this purpose and may be downloaded from the website of the Colombian Tax Authority ("DIAN" in Spanish) at www.dian.gov.co. This document must be issued before the registration in the chamber of commerce.
2. Copy of the identification card of the person who will be filing the request before the DIAN, for

which the exhibition of the original identification card will be required. If the person who files the request is an attorney, a copy of the Power of Attorney must also be presented and the original copy must be exhibited as well. If the Power of Attorney is granted for a period that exceeds six (6) months, a certificate of its state of being in force is also requested by the authorities.

3. Certificate of ownership of an active bank account, issued within the previous month or a recent bank statement. This document is required to activate the provisional Tax ID Number (NIT), reason for which it must be presented within the next fifteen (15) days after it is assigned.

Once the corresponding RUT has been obtained, an update of the commercial registration must be requested at the chamber of commerce.

3.2.4. Power of attorney and other documents issued abroad

If the prospective partners or shareholders cannot be in the country in order to attend the incorporation procedures, they must grant a duly legalized written power of attorney. If the investor country is signatory to the 1961 Hague Convention, the document may be apostilled. Additionally, a document certifying its incorporation and legal representation (issued by a public notary or a competent official) must be included. This certificate must also be duly apostilled. If the country of the investor is not signatory of the Hague Convention; the power of attorney must be legalized by a public notary as described above and submitted before the Colombian consulate where the consular officer will certify the incorporation and legal representation of the company, granting the corresponding power of attorney, as well as the fact that the company is exercising its corporate purpose in accordance to the laws of such country⁷.

Documents issued in a language different to Spanish must be translated by an official translator duly authorized in Colombia and whose signature is legalized by the Ministry of Foreign Affairs⁸.

6. Article 28, Code of Commerce.

7. Articles 65 and 259 of the Civil Procedure Code and 480 of the Code of Commerce.

8. Article 260 of the Civil Procedure Code.

3.2.5. Payment of capital and registration of the foreign investment

By general rule, Colombian legislation does not require a minimum capital contribution to incorporate commercial companies⁹. The capital contribution is set by the shareholders or partners, with regard to the activities that the company plans to carry out in Colombia.

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

Depending on the legal nature of the company to be incorporated, there are rules applicable to the time of payment of the company's capital. In this manner, for branches and limited liability companies, the capital must be paid at the time of its incorporation; while for corporations, at least one third of the value of each stock paid at the time of incorporation; nonetheless, the outstanding placed capital has to be entirely paid within a year. With respect to the simplified stock companies S.A.S., there are no capital ratios that determine the proportion in which shares have to be paid at its incorporation, yet the placed capital must be paid within a maximum period of two years.

Foreign currency entering the country on behalf of nonresidents, which is destined to capital contributions of a company, must be registered as foreign investment with the Colombian Central Bank, by means of the channeling of such currency through intermediaries of the exchange market duly authorized in Colombia for that purpose, or through bank accounts held abroad known as compensation accounts registered with the Colombian Central Bank. Accordingly, the corresponding foreign exchange declarations must be filled, this is, Form N.º 4 "Exchange declaration for international investments"¹⁰. The correct filing out of the declaration will be sufficient to obtain the automatic registry of the foreign investment. Conversely, if the investment is made through a contribution of assets, its registration should be directly requested before the Colombian Central Bank. Chapter two of this "Legal Guide to Do Business in Colombia 2014," regarding foreign exchange regime contains a detailed explanation of the foreign investment registration process.

It should be taken into consideration that the registration of the foreign investment has to be updated on a yearly basis before the Colombian Central Bank no later than June 30. This obligation does not apply to companies that are

under the obligation to submit financial statements before the Superintendency of Companies¹¹.

3.2.6. Operations and bylaws amendments of commercial companies

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

As for the bylaws amendments, which must always be approved by the governing body of the company, the general rule is that an authorization from the state authorities is not required. As an exception, amendments to bylaws associated to mergers or spin-offs may require the prior authorization of the Superintendency of Companies (governmental entity in charge of supervising and controlling companies), provided certain conditions are met¹², or of the corresponding supervisory entity and on certain cases from the Superintendency of Industry and Commerce. In any case, amendments involving reduction of capital with reimbursement of capital contributions in any type of company (except for those that are not supervised by the Superintendency of Companies or any other Superintendency and that do not meet certain conditions) are always subject to prior authorization of the Superintendency of Companies and the Ministry of Labor.

Bylaws amendments of S.A.S. and of other companies incorporated by means of a notarized private document¹³ are also carried out by means of a notarized private document. On the other hand, bylaws amendments of companies incorporated through public deeds¹⁴ must also be formalized through a public deed. Under no circumstance an amendment involving the increase of capital as a result of an asset contribution that requires to be transferred by means of a public deed may be done through a private document.

9. With some exceptions, such as financial entities.

10. See Chapter 2 on foreign investment.

11. Numeral 7.2.1.6 of the Colombian Central Bank's DCIN 83 circular.

12. Superintendency of Companies - Circular 001 of 2007.

13. Law 1014 of 2006.

14. Code of Commerce, Article 110.

3.2.7. Appointments

The appointment of the companies' administrators by the competent corporate bodies set forth in the bylaws, such as the appointment of legal representatives, tax auditors, and members of the board of directors among others, must be registered in the commercial registry kept by the chamber of commerce¹⁵.

For such purposes, the document notifying the appointment, the letter of acceptance, and a photocopy of the appointed person's identity document shall be submitted.

Except for statutory auditors, who must be Colombian public accountants, the managers of the company may be foreigners not domiciled in Colombia.

3.2.8. Regulation of parent Companies, subordinate companies, and business groups

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

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

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

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

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

The existence of a situation of control and/or corporate group¹⁶ must be registered before the commercial registry of each one of the related companies, meaning before the commercial registry of the controlling company and of the controlled one, in order for such situation to be disclosed to third parties. Registration must be completed within 30 days after the date the control situation or corporate group became existent. In this extent, the situation of control and/or business group produces other obligations with regard to accountability and preparation of consolidated information under the company administrator's responsibility.

3.2.9. Financial statements

The purpose of financial statements is to provide information to those who have no access to the company's records about the controlled assets, the liabilities that may require a transfer of resources, changes in equity, and the annual results.

Commercial companies must close their books and issue certified¹⁷ and audited¹⁸ general-purpose financial statements at least once a year, on December 31. However, the partners or shareholders may agree, within the terms of the bylaws, to issue the financial statements on different and additional dates. It is important to note that in the event of a merger, spin-off or transformation, the company must prepare extraordinary financial statements¹⁹.

General-purpose financial statements are those prepared at the end of a specific period to provide information to undetermined users interested in evaluating the capacity of an economic entity to generate positive cash flows. The financial statements include: The balance sheet, the income statement, the statement of changes in equity, the statement of changes in financial position and the cash flow statement. Financial statements must be clear, concise, neutral, and readily available.

¹⁵. Code of Commerce, Article 28.

¹⁶. Law 222 of 1995, Article 30.

¹⁷. Certified financial statements are those for which the legal representative and the accountant of the company declare that the contents of the financial statements have been previously verified according to the regulations and that said contents have been drawn directly from the company's records.

¹⁸. Audited financial statements are certified financial statements that are accompanied by the auditor's professional judgment or of the independent accountant that elaborated them, regarding the fact that all the information provided is in accordance with generally accepted auditing standards.

¹⁹. Article 29, Decree 2649/1993.

The financial statements shall be annually deposited in the Chamber of Commerce of the company's domicile²⁰, if the company is not under the obligation to submit them before the Superintendency of Companies²¹.

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

Chapter 14 of this "Legal Guide to Do Business in Colombia 2014," regarding accounting regime, contains a detailed description of the accounting regulations applicable in Colombia.

3.2.10. Profits

Profits are distributed on the basis of true and reliable financial statements prepared in accordance with generally accepted accounting principles, after setting aside the legal, statutory and occasional reserves²², as well as the appropriations for the payment of taxes, in proportion to the paid portion of the value of the stocks, shares, or equity stake of each partner or shareholder, if the bylaws do not provide otherwise. It must be noted that for the S.A.S., the legal reserve is not mandatory, provided such reserve is not contemplated in the company's bylaws.

Clauses, which deprive any shareholder or partner of full participation in the profits, will be disregarded²³.

3.2.11. Tax payments by the shareholders of a company in Colombia

Pursuant to the current tax legislation, the profits of a company are liable to tax only once, either by the company or by the shareholder. Thus, if the company pays the corporate income tax on profits, the shareholder does not have to pay an additional tax on the received dividends. If the corporate income tax is not paid by the company, the distributed dividends on behalf of non-resident individual or companies will be subject to a 33% income tax rate, which will be withheld by the company. However, if a treaty to avoid double taxation with the country that receives the dividends is in force, the withholding rate could be lower than the general 33% rate.

20. Article 41, Law 222/1995.

21. Article 150, Decree 19/2012.

22. Article 451, Code of Commerce.

23. Article 151, Code of Commerce.

24. Article 218 of the Code of Commerce and Article 34 of Law 1258 of 2008.

25. Article 222 of the Code of Commerce.

26. Article 263, Code of Commerce.

3.2.12. Dissolution and winding-up

The extinction of a legal entity occurs as a consequence of the dissolution and subsequent liquidation of a company. Therefore, the dissolution marks the initiation of the winding-up process, which ends with the actual liquidation of the entity and the cancellation of the commercial registration of the company. Dissolution can come about by the expiration of the period agreed to by the equity holders for the corporate life of the entity, or by the occurrence of certain circumstances (prescribed by law or the bylaws) that prevent continuation of activities in furtherance the corporate purpose. These circumstances could be, for example, a decision by the highest corporate body or the relevant authorities, or the extinction of the object which exploitation constitutes the corporate purpose, or the accumulation of losses that reduce the company's equity below 50% of its capital, when such situation is not solved within the legal term, among others²⁴.

When the company has been dissolved and is in process of liquidation, its corporate purpose is restricted to a single objective, that is: To liquidate the assets to pay any outstanding liabilities, namely, to proceed with all steps necessary to wind up the legal entity²⁵. However, once initiated the winding-up process, there are certain mechanisms that allow termination of such process in order for the company to continue performing its social purpose. These mechanisms correspond to the reactivation, the improper merger and the reconstitution of the company, each of which provide for different conditions and times in order to be viable.

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

Once the final liquidation statement of the company is registered in the commercial registry kept by the Chamber of Commerce, the company must also file income tax return for the corresponding portion of the year and proceed to cancel the RUT before the DIAN and the foreign investment with the Colombian Central Bank.

3.3. Foreign company branch

Branches from foreign companies are ongoing concerns opened by a company for the development of its corporate purpose²⁶, for this reason branches do not have an independent legal personality different from that of the company, which means that the branch and the foreign company (main office) are the same legal entity and, therefore, the branch will never have legal capacity greater than or different from that of its main office. The Colombian

Code of Commerce²⁷ sets forth that if a foreign company wishes to carry out business in Colombia on a permanent basis, it must establish a branch in the country²⁸.

The following are considered permanent activities, yet are established by the law in a merely enunciative manner²⁹: (i) opening commercial establishments or business offices, even if they only offer consulting services; (ii) participation as a contractor in projects or the provision of services; (iii) participation in any way in activities related to the management or investment of funds obtained from private savings; (iv) participation in any of the segments or services of the extractive industries; (v) obtain a concession from the Colombian Government, or, that this concession was assigned to it at any title, or, that in any way it participates in the exploitation of the concession; and (vi) holding shareholder, partner or board of directors meetings, or managing, or administrating in Colombia.

For these purposes, in addition to this list of activities, it is also worth noting that the Colombian law does not provide for a specific criteria or term of duration to define whether an activity is permanent or not, therefore permanence will depend on the particular circumstances in which the activity is performed in Colombia, such as the nature or scope of activity, the infrastructure that is required to in Colombia for its execution, its regularity, the recruitment of personnel in Colombia, among others.

3.3.1. Creation

To create a foreign company branch in Colombia, the bylaws of the foreign main office must be formalized by means of a public deed and the following must also be submitted: (i) a copy of the main office's decision to open a branch in Colombia, approved by the competent corporate body; and (ii) the documents that certify that the officers have the authority to represent the company. These documents must be duly legalized³⁰ or apostilled in the country of origin, and, if issued in a language other than Spanish, they must also be translated into Spanish by an official translator.

3.3.2. Creation resolution

The resolution authorizing the creation of the branch is issued by the main office and it must include, at least, the following info:

- The name of the branch.
- The business it intends to pursue.
- The amount of the assigned capital and of capital from other sources, if any.
- The domicile of the branch.
- The duration of its business in the country and the causes for termination.
- The appointment of a general representative, with one or more alternates, to represent the branch in the business activities that it intends to pursue in Colombia.
- The appointment of the tax auditor who must be a Colombian resident.

3.3.3. Registration

The foreign company branch must register in the commercial registry kept by the Chamber of Commerce in the jurisdiction where the branch will be based, under the same terms and conditions stated above for commercial companies.

3.3.4. Registration of foreign investment

Foreign currency entering the country, which is destined to the allocated capital of the branch, must be registered as a foreign investment before the Colombian Central Bank, by means of its channeling through exchange market intermediaries in Colombia duly authorized to do so, or through compensation accounts registered with the Colombian Central Bank. Consequently, Form N.º 4 "Exchange declaration for international investments" must be filed. Proper filing out of Form N.º 4 will be sufficient to obtain automatic registration of the foreign investment.

Additional money remittances from the main office may be channeled as supplementary investment to the assigned capital³¹, which constitutes direct foreign investment, with the obligation to be registered before the Colombian Central Bank according to the above mentioned.

²⁷ Article 471.

²⁸ Pursuant to Article 471 of the Code of Commerce and the Expert Opinion N.º 220-065654 of 18 November of 2005 of the Superintendency of Companies, a foreign company may carry out its permanent activities in Colombia by opening a single branch.

²⁹ Code of Commerce, Article 472.

³⁰ The documents will be submitted to apostille or legalization depending if the country where the foreign company is incorporated is a member or not of the Hague Convention.

³¹ The additional investment to the allocated capital is an equity account that functions as a "current account" between the branch office and the main office for the management of resources between the two entities. Article 207 of the Code of Commerce.

If the branch (other than those part of the Special Exchange Regime) is not under the obligation to submit financial statements before the Superintendency of Companies, it must update on a yearly basis to the Colombian Central Bank the registration of the direct foreign investment by filing out a Form N.º 15 "Equity conciliation for companies and branches – general regime" no later than June 30 of every year.

For Special Exchange Regime branch, is mandatory to update and inform to the Central Bank the supplementary investment made to assigned capital, no later than June 30 of each year, through the filing out of Form N.º 13 "Registry of supplementary investment to assigned capital and updating of equity accounts--Special Exchange Regime branch." This obligation is independent from financial reports that have to be submitted before the Superintendency of Companies.

3.3.5. Amendments

Amendments to the bylaws of the main office or to the incorporation resolution of the Colombian branch must be formalized before a public notary in the domicile where the branch is based. The documents issued abroad must be legalized as indicated above for the powers of attorney.

3.3.6. Appointments

The appointment of the representatives and the statutory auditor of the branch must be registered in the commercial registry kept by the Chamber of Commerce. For such purposes, the document notifying the appointment duly legalized or apostilled, the letter of acceptance and a copy of the appointed person's identity document shall be submitted. The representatives of the branch may be foreigners not domiciled in Colombia.

3.3.7. Corporate bodies

The foreign company branch is an ongoing concern. Therefore, its main corporate bodies are the same as those of the main office. However, the branch has a general representative, who manages the establishment and represents the foreign company in transactions

before third parties. Additionally, the law provides that it is mandatory for foreign companies' branches, to appoint a statutory auditor who must carry out the external audit according to the functions stated by the law³².

3.3.8. Decisions

Except for the general agent's authority to make administrative decisions and those relating to the ordinary course of business assigned to the general agent, the decision-making authority is held by the appropriate corporate body of the main office, in accordance with applicable corporate regulations in the country of origin of the main office.

3.3.9. Special causes for winding-up

Based on the fact that a branch is an extension of the main office and depends on it to subsist, a branch will be liquidated in accordance with the same causes provided and applicable to the main office.

The grounds for liquidation that apply to Colombian companies can also apply to a foreign company branch, provided they are compatible with its legal nature.

A foreign company branch may also be reactivated at any time after the winding-up process has been initiated, provided that the external liabilities are not greater than 70% of the corporate assets and that the remaining assets have not been distributed to the main office³³.

3.3.10. Profits

All profits generated by the branch will be distributed according to the results of the end of year balance sheet. Thus, the branch may not make advance payments or remittances to the main office on the basis of presumed profits. For tax purposes, the transfer of profits from the branch to its main office is assimilated to dividends.



32. Article 207, Code of Commerce.
33. Article 29 of Law 1429 of 2010.

3.4. Steps and related costs of setting up the vehicles

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

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

N.º	ACTIVITY AND/OR DOCUMENT	COST
1	Personal appearance of the attorney in fact or the shareholder before a public notary to formalize the incorporation through a private document	Notary's fee COP 4,000 (approx. USD 2)
2	Registration of the private incorporation document (bylaws) in the Chamber of Commerce of the city where the company is to be based. Bylaws must be accompanied by all documents required by the Chamber of Commerce. Registration duties and taxes must be paid	0.7% of the subscribed capital value of the company (registration tax) + COP 31,000 (approx. USD 17) (registration fees)
3	Pre-Rut request for the acquisition of a bank account in Colombia	No charge
4	Processing the RUT before DIAN	No charge
5	Update request of the certificate of incorporation and legal representation of the company before the Chamber of Commerce to include the definitive tax identification number (NIT, in Spanish). A copy of RUT issued by DIAN must be attached	No charge
6	Request the certificate of incorporation and legal representation issued by the Chamber of Commerce	COP 4,100 (approx. USD 2)

3.4.2. Foreign company branch

N.º	ACTIVITY AND/OR DOCUMENT	COST
1	The bylaws of the main office and any other document required by the Colombian Code of Commerce must be formalized by means of a public deed	0.3% over the assigned capital to the branch (notarial fees) + 16% VAT over such notarial fees
2	Registration in the Chamber of Commerce of the public deed indicated above	Up to 0.7% of the assigned capital value of the company (registration tax) + COP 31,000 (approx. USD 17) (registration fees)

3	Pre-Rut request for the acquisition of a bank account in Colombia	No charge
4	Processing the RUT before the DIAN	No charge
5	Request update of the certificate of incorporation and legal representation of the company before the Chamber of Commerce to include the definitive NIT. A copy of RUT issued by DIAN must be attached	No charge
6	Request the certificate of incorporation and legal representation issued by the Chamber of Commerce	COP 4,100 (approx. USD 2)

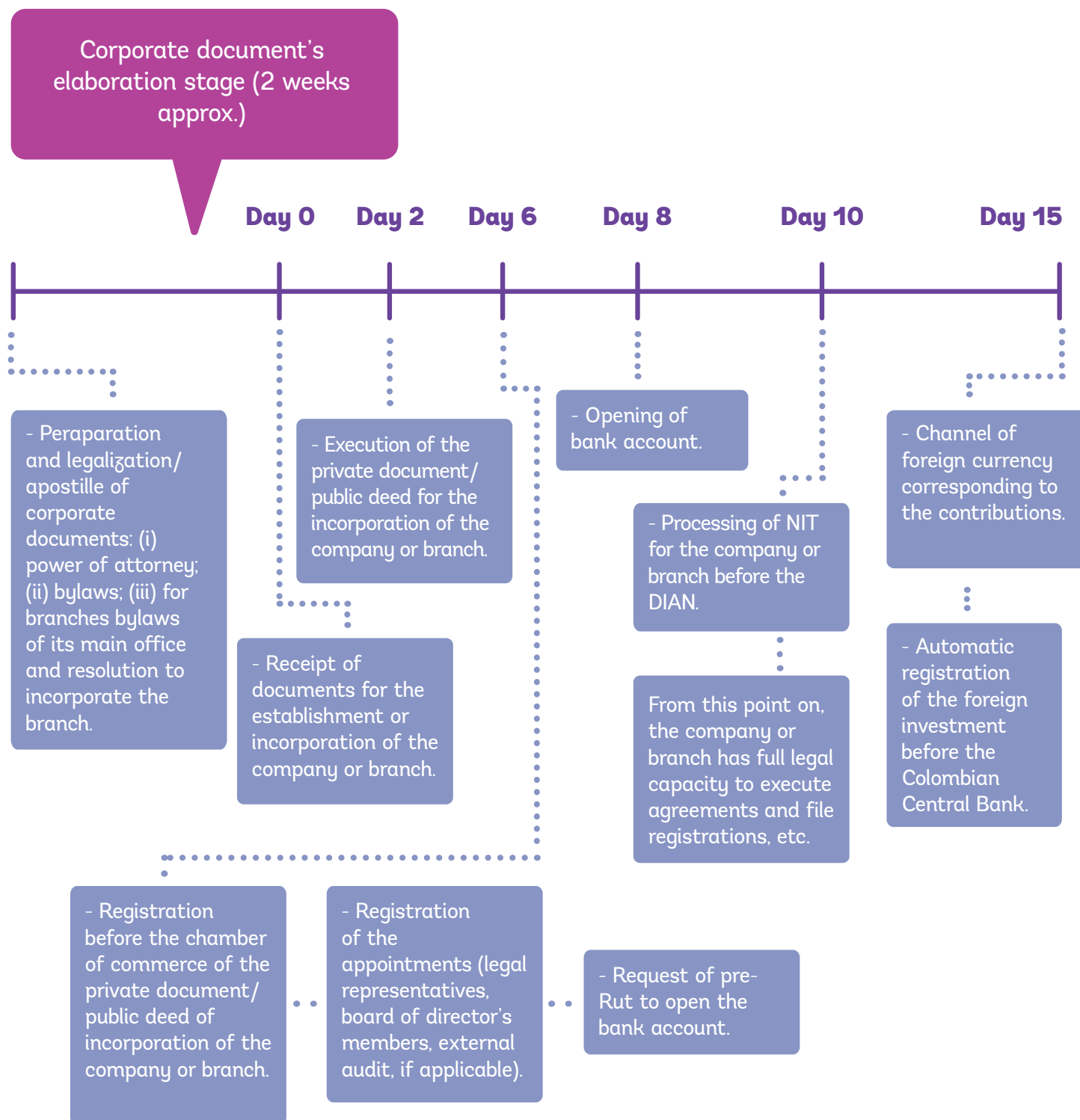


3.4.3. Corporations and Limited Liability Company

N.º	ACTIVITY AND/OR DOCUMENT	COST
1	The bylaws must be formalized by means of a public deed or by a notarized private document of incorporation, in the event the company meets the requirements set forth in Law 1014 of 2006	0.3% over the social capital or subscribed capital (notarial fees) + 16% VAT over notarial fees, in the event of the public deed. In the case of notarization of a private document of incorporation, COP 4,100 (approx. USD 2)
2	Registration of the public deed before the Chamber of Commerce of the jurisdiction where the company is to be based. Bylaws must be accompanied by all documents required by the Chamber of Commerce. Registration duties and taxes must be paid	0.7% of the social capital or subscribed capital value of the company (registration tax) + COP 31,000 (approx. USD 17) (registration fees)
3	Pre-Rut request for the acquisition of a bank account in Colombia	No charge
4	Processing the RUT before the DIAN	No charge
5	Request update of the certificate of incorporation and legal representation of the company before the Chamber of Commerce in order to include the definitive NIT. A copy of the RUT issued by DIAN must be attached	No charge
6	Request the certificate of incorporation and legal representation issued by the Chamber of Commerce	COP 4,100 (approx. USD 2)

3.5. Time for the incorporation of legal vehicles in Colombia

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



3.6. Steps and costs for the voluntary winding-up of vehicles

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

3.6.1. Simplified Stock Corporation (S.A.S., in Spanish):

N.º	ACTIVITY AND/OR DOCUMENT	COST
1	Shareholder's meeting approving the dissolution of the company. This corresponds to an amendment to the company's bylaws, therefore should be done by means of a private document with personal appearance before a notary public and register with the Chamber of Commerce	Notary fees COP 4,000 (about USD 2) + 16% VAT. Registration tax at nominal value: COP 109,600 (approx. USD 60) + COP 31,000 (approx. USD 17) (entry fee)
2	Appointment of liquidator and registration of this appointment with the Chamber of Commerce	Registration tax - COP 109,600 (approx. USD 60) + COP 31,000 (approx. USD 17) (entry fee)
3	Written submission to the DIAN notifying the liquidation. Notification to creditors and third parties about the liquidation by means of a published notification in a newspaper of the company's domicile	Approximately COP 500,000 (approx. USD 278) (publication)
4	Elaboration of the company's inventory and determination of external liabilities	No charge
5	Sale of corporate assets and payment of external liabilities	No charge
6	Approval of the final liquidation account by the shareholders' meeting. Determination of the liquidation sur-plus	No charge
7	Registration in the Chamber of Commerce of the final settlement account and cancellation request to mercantile registry	With liquidation sur-plus. 0.7% of the liquidation sur-plus. Value + COP 31,000 (approx. USD 17) (entry fee). No liquidation sur-plus. COP 109,600 (approx. USD 60) + COP 8,300 (approx. USD 5) (cancellation request)
8	In case of liquidation sur-plus, it should be distributed to shareholders	No charge
9	Filing of income tax return for the corresponding fraction of the year	Value of taxes determined
10	Filing of NIT cancellation request before the DIAN	No charge

3.6.2. Foreign company branch

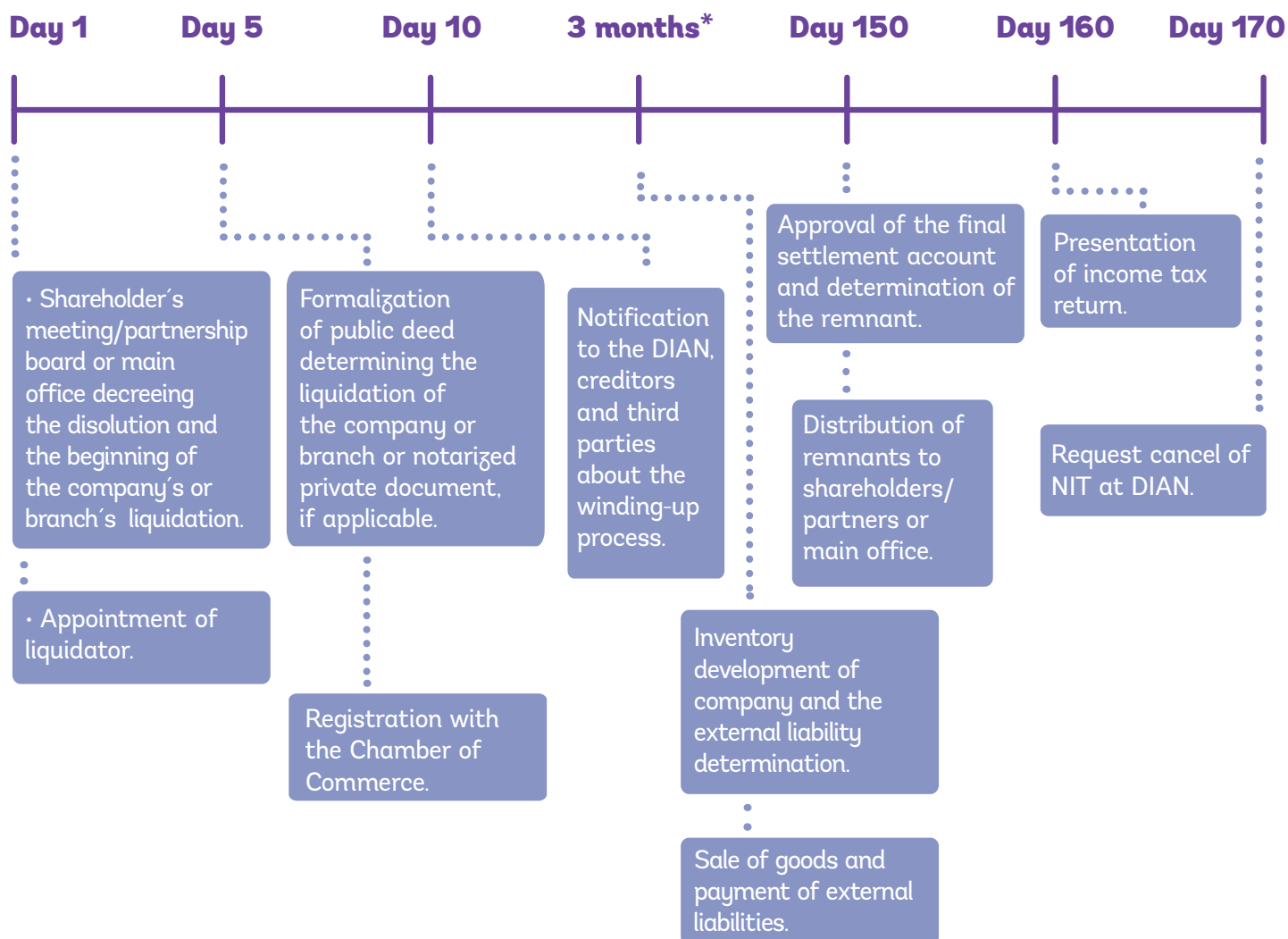
N.º	ACTIVITY AND/OR DOCUMENT	COST
1	Resolution of the main office providing the dissolution of the branch; incorporation of such resolution in a public deed and registration before the Chamber of Commerce	Notary fees + 16% VAT Chamber of Commerce Registration COP 109,600 (approx. USD 60) + COP 31,000 (approx. USD 17) (entry fee)
2	Appointment of liquidator and registration of this appointment before the Chamber of Commerce	Registration tax - COP 109,600 (approx. USD 60) + COP 31,000 (approx. USD 17) (entry fee)
3	Written submission to the DIAN notifying the liquidation. Notification to creditors and third parties about the liquidation by notice published in a newspaper of the branch's domicile	Approximately COP 500,000 (approx. USD 278) (publication)
4	Elaboration of the branch's inventory and determination of external liabilities to pay	No charge
5	Sale of corporate assets and payment of external liabilities	No charge
6	Approval of the final liquidation account by the main office. Determination of the liquidation sur-plus	No charge
7	Registration in the Chamber of Commerce of the final settlement account and cancellation request to mercantile registry	With remaining: 0.7% of the remaining value + COP 31,000 (approx. USD 17) (entry fee). No remnants, COP 109,600 (approx. USD 60) + COP 8,300 (approx. USD 5) (cancellation request)
8	In case of liquidation sur-plus, it should be remitted to the main office	No charge
9	Filing of income tax return for the corresponding fraction of the year	Value of taxes determined
10	Filing of NIT cancellation request before the DIAN	No charge

3.6.3. Corporation and Limited Liability Company

N.º	ACTIVITY AND/OR DOCUMENT	COST
1	Shareholder's meeting or partnership board approving the company's dissolution. This corresponds to an amendment to the company's bylaws; therefore, it should be done by means of a public deed or notarized private document if the requirements of Law 1014 of 2006 are fulfilled. Such document should be registered before the Chamber of Commerce	Notarial fees at nominal value + 16% VAT notarial charges COP 4,000 (about USD 2) Registration tax at nominal value: COP 109,600 (approx. USD 60) + COP 31,000 (approx. USD 17) (entry fee)
2	Appointment of liquidator and registration of this with the Chamber of Commerce	Registration tax - COP 109,600 (approx. USD 60) + COP 31,000 (approx. USD 17) (entry fee)
3	Written submission to the DIAN notifying the liquidation. Notification to creditors and third parties about the liquidation by notice published in a newspaper of the company's domicile	Approximately COP 500,000 (approx. USD 278) (publication)
4	Development of the branch's inventory and determination of external liabilities to pay	No charge
5	Sale of corporate assets and payment of external liabilities	No charge
6	Approval of the final liquidation account by the shareholders' meeting. Determination of the liquidation sur-plus	No charge
7	Recording in Chamber of Commerce of the final settlement account and cancellation request to mercantile registry	With liquidation sur-plus. 0.7% of the liquidation sur-plus + COP 31,000 (approx. USD 17) (entry fee). No liquidation sur-plus. COP 109,600 (approx. USD 60) + COP 8,300 (approx. USD 5) (cancellation request)
8	In case of liquidation sur-plus, it should be distributed among the shareholders	No charge
9	Filing of income tax return for the corresponding fraction of the year	Value of taxes determined
10	Filing of NIT cancellation request before the DIAN	No charge

3.7. Time for dissolution and winding-up of legal vehicles

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



*This time is estimated as it depends on the assets, liabilities and/or particular conditions of each vehicle.

3.8. Comparative analysis of the different vehicles from a legal perspective

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

SUMMARY TABLE OF TYPES OF COMMERCIAL COMPANIES AND FOREIGN COMPANY BRANCH

	LIMITED LIABILITY COMPANY	CORPORATION	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
INCORPORATION	Usually, by means of a public deed. However, it may be incorporated by a private document if the company meets the requirements set forth in Law 1014 of 2006	Usually, by means of a public deed. However, it may be incorporated by a private document if the company meets the requirements of Law 1014 of 2006	Usually by means of a private document. Nonetheless, if the contributions include assets that according to the applicable law require public deed for its assignment, incorporation must be formalized by means of a public deed	Resolution from the main office must be formalized by means of a public deed
NUMBER OF PARTNERS / SHAREHOLDERS	Minimum two partners, maximum 25	Minimum five shareholders, none of which may have 95% or more of the outstanding capital stocks of the company	Minimum one shareholder, no maximum limitation provided by law	Does not apply
LIABILITY	Limited to the amount of the capital contribution for any obligation, unless the bylaws stipulate a greater responsibility for all or some of the partners. Partners are not liable for payment of any debt, except for tax obligations or labor liabilities, for which they are severally and jointly liable with the company	The company's liability for any obligation is limited to the amount of the shareholders equity. By general rule, shareholders are not liable for credit obligations, unless a specific guarantee has been provided. Shareholders shall be liable beyond the value of their contributions for fraud, or the parent or controlling company is liable in a subsidiary manner with regards to the company it controls when the latter is insolvent or undergoing judicial liquidation due to actions of the parent or controlling company	The company's liability for any obligation is limited to the amount of its equity. By general rule, shareholders are not liable for any debt incurred into by the company. Shareholders are jointly and severally liable only when the company is used to violate the law or cause damage to third parties	The foreign main office is liable for the activities in Colombia. Accordingly, if the branch's equity is not enough, the main office may be liable

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

	LIMITED LIABILITY COMPANY	CORPORATION	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
FOREIGN INVESTMENT	Investment of private capital in money is automatically registered before the Colombian Central Bank when the corresponding exchange declaration (Form N.º 4) is processed with an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank	Investment of private capital in money is automatically registered with the Colombian Central Bank when the corresponding exchange declaration (Form N.º 4) is processed with an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank	Investment of private capital in money is automatically registered with the Colombian Central Bank when the corresponding exchange declaration (Form N.º 4) is processed with an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank	Investment of private capital in money is automatically registered with the Colombian Central Bank when the corresponding exchange declaration (Form N.º 4) is processed with an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank. If the main office forwards additional funds as supplementary investment to the assigned capital, such foreign currency shall be channeled through the foreign exchange market
TAX LIABILITY	The partners and the company are severally liable towards the tax authorities for the non-payment of taxes, in proportion to their participation and the period of time during which they have been acting as partners. In the event a tax abuse is committed or if the company is used with the purpose of defrauding the tax administration or unfairly as a mechanism of tax evasion, the tax authority may pierce the corporate veil, and partners will be jointly and severally liable before the DIAN for the company's obligations resulting from such acts and for the damages caused	In the event a tax abuse is committed or if the company is used with the purpose of defrauding the tax administration or unfairly as a mechanism of tax evasion, the tax authority may remove the corporate veil, and shareholders will be jointly and severally liable before the DIAN for the company's obligations resulting from such acts and for the damages caused	In the event a tax abuse is committed or if the company is used with the purpose of defrauding the tax administration or unfairly as a mechanism of tax evasion, the tax authority may pierce the corporate veil, and shareholders will be jointly and severally liable before the DIAN for the company's obligations resulting from such acts and for the damages caused	The main office and the branch are severally liable for the branch's tax payments

	LIMITED LIABILITY COMPANY	CORPORATION	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
TAX AUDITOR	Not required, except when (i) the value of the gross assets is equivalent to or greater than 5,000 times the current minimum legal monthly wage (approx. USD 1,621,000) ³⁴ , or (ii) the gross income for the immediately preceding year is equivalent or greater than 3,000 times the current minimum legal monthly wage (approx. USD 972,600) ³⁵	Mandatory for stock companies	Not required, except when (i) the value of the gross assets is equivalent to or greater than 5,000 times the current minimum legal monthly wage (approx. USD 1,621,000) ³⁶ , or (ii) the gross income for the immediately preceding year is equivalent or greater than 3,000 times the current minimum legal monthly wage (approx. USD 972,600) ³⁷	Mandatory for branches
DIVIDEND REMITTANCES	If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to pay dividends based on real and reliable financial statements	If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to pay dividends based on real and reliable financial statements	If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to pay dividends based on real and reliable financial statements	If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have exchange rights to pay profits based on real and reliable financial statements
BOARD OF DIRECTORS	The company is not required to have a board of directors. This body is optional	The board of directors is a mandatory corporate body	The company is not required to have a board of directors. This body is optional	Does not apply

34. Based on the minimum legal monthly wage for 2014, COP 616,000.

35. Based on the minimum legal monthly wage for 2014, COP 616,000.

36. Based on the minimum legal monthly wage for 2014, COP 616,000.

37. Based on the minimum legal monthly wage for 2014, COP 616,000.

	LIMITED LIABILITY COMPANY	CORPORATION	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
GOVERNMENT CONTROLS	<p>Limited Liability Companies are supervised by the Superintendency of Companies only if their assets or revenues are equal to or greater than 30,000 times the current minimum legal monthly wage (approx. USD 9,825,000)³⁸. Government control is exercised over financial aspects and requires that the annual financial statements be submitted to the Superintendency. Additionally, some changes to the bylaws require prior authorization from this entity</p>	<p>Stock companies are controlled by the Superintendency of Companies only if their assets or revenues are equal to or greater than 30,000 times the current minimum legal monthly wage (approx. USD 9,825,000)³⁹. Government control is exercised over financial aspects and requires that the annual financial statements be submitted to the Superintendency. Additionally, some changes to the bylaws require prior authorization from this entity</p>	<p>Simplified Stock Companies are controlled by the Superintendency of Companies only if their assets or revenues are equal to or greater than 30,000 times the current minimum legal monthly wage (approx. USD 9,825,000)⁴⁰. Government control is exercised over financial aspects and requires that the annual financial statements be submitted to the Superintendency. Additionally, some changes to the bylaws require prior authorization from this entity</p>	<p>Branches are supervised by the Superintendency of Companies when (i) the amount of its assets or revenues is equal to or greater than 30,000 times the current minimum legal monthly wage (approximately USD 9,825,000, (ii) when it is within a process of reorganization or restructuring and (iii) if the main office which established the branch is under control situation or is part of a corporate group registered in Colombia</p>
REPATRIATION OF CAPITAL	<p>If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to repatriate the invested capital after liquidation of the company or capital reduction provided certain requirements are met</p>	<p>If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to repatriate the invested capital after liquidation of the company or capital reduction provided certain requirements are met</p>	<p>If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to repatriate the invested capital after liquidation of the company or capital reduction provided certain requirements are met</p>	<p>If the foreign investment has been duly registered with the Colombian Central Bank, the investor will have foreign exchange rights to repatriate the invested capital after liquidation of the branch or capital reduction (both for assigned capital and supplementary investments to the assigned capital) provided it meets certain requirements</p>

38. Based on the minimum legal monthly wage for 2014, COP 616,000.

39. Based on the minimum legal monthly wage for 2014, COP 616,000.

40. Based on the minimum legal monthly wage for 2014, COP 616,000.

REGULATORY FRAMEWORK

REGULATION	SUBJECT
Code of Commerce	General and specific regulation on corporations and foreign company branch
Law 222 of 1995	Amends the Code of Commerce in matters pertaining to corporations and regulates aspects such as spin-offs, corporate groups, duties of managers, preferred stocks with dividends and without voting rights, majority required for the stock corporation and one-person business
Law 1014 of 2006	Whereby the possibility and the requirements to set up an entrepreneurial company, by means of a private document is established
Law 1258 of 2008	The Simplified Stock Company (S.A.S.) is created and the applicable norm for this kind of corporation is set forth
Regulatory Circular DCIN 83 issued by the Colombian Central Bank	Foreign Investment
Law 1429 of 2010	Law on Formalization of Employment and Job Creation
Decree 19 of 2012	Whereby provisions for the elimination and reform of procedures in the public administration are set forth
Law 1607 of 2012	Whereby regulation in tax matters are set forth
External Circular 001 of 2007 of the Superintendency of Companies	Whereby the provision for general authorization of mergers and spin-offs are set forth

A large cargo ship is shown from a high-angle perspective, sailing on a calm sea under a hazy, orange-tinted sky. The ship's deck is densely packed with numerous white and yellow shipping containers. A red vertical bar is positioned on the left side of the image, and a white curved shape is on the right. The overall color palette is dominated by warm, orange and red tones.

CHAPTER 4

FOREIGN TRADE REGIME

4 FOREIGN TRADE REGIME

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

1. Colombian customs regulations provide a special import-export program for the manufacturing, agriculture, and services sectors, which is known as Plan Vallejo.
2. Colombia has signed 13 free trade agreements with 61 countries in the past few years, thereby providing a broad spectrum of potential markets for Colombian companies.
3. Colombia uses different types of importation regimes designed to satisfy most of the needs of companies established in Colombia.
4. Colombia has a free trade zone regime, which allows companies established therein to benefit from special tax, customs, and foreign trade regulation.

Colombia enjoys a strategic and privileged geographic location to access international markets by means of commercial agreements and tariff preferences that guarantee the best competitive conditions to sell Colombian products in foreign markets. Additionally, Colombia uses flexible, efficient, and modern customs procedures controlled by the Colombian Tax and Customs Authority (DIAN, in Spanish).

trade operations. The VUCE has four separate sections: (i) imports; (ii) exports; (iii) The Single Foreign Trade Form (FUCE, in Spanish), that allows online transactions such as electronic payments to speed up the procedures (www.vuce.gov.co); and the (iv) Simultaneous Inspection System – (SIIS) which simplifies the process of exporting contained cargo. More information on VUCE may be obtained at the website.

4.1. Foreign trade procedures

Since 2005, Colombia implemented the Single Window for Foreign Trade (VUCE, in Spanish), managed by the Ministry of Commerce, Industry and Tourism. The VUCE, based on electronic and internet media, has the purpose of centralizing all the Government procedures related to foreign

4.2. Authorized customs warehouses

Public or privately owned spaces approved by the DIAN for the storage of goods under customs control¹. The goods may remain temporarily stored in the authorized customs warehouses, without payment of customs duties (VAT and tariffs) for the duration established by law,

1. Article 47 of Decree 2685 of 1999.

which varies according to the type of warehouse, while their customs situation is determined.

Among the privately-owned customs warehouses are:

- Private warehouses for transformation or assembly².
- Private warehouses for industrial processing³.
- Private warehouses for international distribution⁴.
- Private warehouses for aviation⁵.
- Transitory private warehouses⁶.
- Warehouses for urgent deliveries⁷.

Among the tax benefits for ALTEX are:

- No VAT is imposed for regular imports of industrial machinery that is not produced in the country and is used to transform raw materials.
- Possibility of obtaining authorization from the DIAN to operate an industrial processing warehouse that allows the import of supplies and raw materials with suspension of customs duties and of VAT, as long as such supplies and materials are used in the production of export products.

4.3. Declaring parties

4.3.1. Highly exporting users

Companies recognized as High Volume Exporters (ALTEX, in Spanish)⁸ by the DIAN enjoy a series of tax and administrative benefits. To be recognized as ALTEX, they must meet the following requirements:

■ To have exported during the 12 months prior to the filing of the request, an amount equal to or higher than USD 2,000,000.

■ The value of exports, directly or through an international marketing agent, must represent at least 30% of the amount of its total sales in the same period.

■ If the conditions established above are not met, the entity seeking ALTEX recognition must certify that prior to the filing of the request for recognition as ALTEX, such entity exported directly or indirectly FOB amounts of at least USD 21,000,000, without regard to the percentage of exports against domestic sales.

4.3.2. Permanent customs users

Are recognized as such by the DIAN for up to five years if they have either carried out foreign trade operations in the previous 12 months for a FOB value equal to USD 5,000,000 or they have reported such value as a yearly average during the past three years and have filed at least 100 import or export declarations in the past 12 months. The value of USD 5,000,000 may be reduced by 60% if the taxpayer is already classified as a major taxpayer.

Organizations that have used Plan Vallejo, as will be explained further on in this chapter, in the previous three years from the filing date and show exports of at least USD 2,000,000 in the previous 12 months will also be considered permanent customs users.

Permanent customs users must provide either a bank or an insurance company warranty, as requested by the DIAN, equal to 2% of the FOB value of the imports during the 12 months prior to the presentation of the request for recognition and inscription as a permanent customs user; or the 1 x 1,000 of the FOB value of the exports of the 12 months prior to the filing of the request for recognition and registration as a permanent customs users. The guarantee must be delivered within 15 days of the recognition and registration.

The permanent customs users are entitled the following benefits once they are recognized and registered:

2. Article 53, Ibidem.
3. Article 54, Ibidem.
4. Article 55, Ibidem.
5. Article 56, Ibidem.

6. Article 52, Ibidem.
7. Article 58, Ibidem.
8. Article 35, et seq, Ibidem.

- Automatic imported merchandise release. Possibility of importing raw materials or inputs as temporary imports for industrial processing regimes without paying custom duties when those raw materials or inputs are used to manufacture goods to be exported.
- Possibility of providing a single global guarantee that covers all the foreign trade operations before the DIAN.

4.3.3. Authorized economic operator

Is an individual or legal entity established in Colombia and recognized by the DIAN as part of the international supply chain that fulfills the minimum conditions set forth by the National Government⁹, and consequently, guarantees safe and reliable foreign trade operations. The following are the advantages of being an authorized economic operator.

- Reduction in the amount of recognitions, physical, and documentary inspections performed by the DIAN relating to operations of imports, exports, transit; and a reduction of physical inspections by the antinarcotics police for exportation operations.
- Use of special and simplified procedures when conducting recognition and inspection procedures.
- Exporters and importers may directly conduct exportation and importation operations by acting as declarants before the DIAN in the imports, exports, and transit regime.
- Reduction in the value of global guarantees.

In addition to these, the benefit that ALTEX have for importing industrial machinery that transforms raw materials without paying VAT will be applicable to the authorized economic operators as long as new modifications to the ALTEX figure are introduced in the customs regime.

The application to be acknowledged as authorized economic operators must be filed by the foreign trade user before the DIAN, and it will be granted upon the fulfillment of previous and minimum conditions:

Previous conditions:

- Legal entities and branches of foreign entities must have a minimum record of three years in conducting the above-mentioned activities in Colombia.
- Obtain a favorable qualification in the risk management system of the DIAN.
- Have no debts regarding customs, tax, and foreign exchange obligations as well as not being subject of penalties in the past.
- The interested party or individual with the capacity of representing the company: (i) must not have a criminal record relating to economic assets, public faith, the economic and social order and public security; (ii) must not appear in databases provided by national and international entities in relation to money laundering, terrorisms, drug trafficking, and other related offenses; (iii) have not been involved in security incidents regarding international supply chain; and (iv) have not represented companies that have been subject to cancellation of licenses or authorizations in the past five years.

Minimum conditions:

- Demonstrate that their safety standards in the international supply chain, meet the minimum requirements set by the Government for the following topics: (i) administration and safety management; (ii) business partners, (iii) security in the container and other load units, (iv) physical access controls, (v) staff security, (vi) security in the conducting of processes, (vii) physical security, (viii) training in security and awareness of threats, (ix) safety in animal and plant health, and (x) health security.

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

⁹ Decree 3568 of 2011, Resolution 11434 and 11435 of 2011, and Resolution 091 of 2012.

4.4. Customs planning

4.4.1. Imports

Are defined as the entry of goods into the “national customs territory” from the rest of the world, or from a free trade zone, permanently or temporarily for a specific task or purpose¹⁰.

The 10 digit custom subtariff codes are listed in the Colombian customs tariff schedule governed by Decree 4927 of 2011. This schedule lists the applicable tariffs with respect to each subheading. The value added tax (VAT, or IVA in Spanish), which is also part of the customs duties, is regulated in the Colombian Tax Code.

This decree was modified by Decree 1755 of August 15 of 2013, which provides for a zero (0) tariff rate for the importation of a series of products listed in this decree.

Regarding tariffs, Colombia has different types of rates that, in general, range between 0% and 15%. In certain specific cases, generally for agricultural products, these rates may be higher.

4.4.2. Ordinary imports

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

Import returns may be subject to revisions three years after the filing and acceptance date, and constitutes the document that evidences the legal entry of goods to the national customs territory¹¹.

4.4.3. Temporary imports

(a) Temporary imports for subsequent re-export under the same conditions¹²

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

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

(i) Short-term¹³

Applicable when goods are imported to meet specific needs. The maximum import term will be six months, extendable for up to three additional months, and in exceptional situations for up to three additional months with prior authorization from DIAN. VAT or customs duties are not payable on this type of temporary imports.

(ii) Long-term¹⁴

Applies to the imports of capital goods and any accessory or spare parts, as long as they constitute one single shipment. The maximum term for these imports is five years. Customs duties will be deferred in biannual installments, which must be paid only while the goods are within the national customs territory.

10. Article 1 of Decree 2685 of 1999.
11. Article 131 of Decree 2685 of 1999.
12. Article 142 of Decree 2685 of 1999.
13. Article 144 of Decree 2685 of 1999.
14. Article 145 of Decree 2685 of 1999.

(b) Temporary imports for inward processing¹⁵

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

(i) Temporary import for inward processing of capital goods¹⁶

Customs duties will be suspended to allow the temporary imports of capital goods, their spare and repair parts, for repair and reconditioning for a term of no more than six months, which can be extended for an additional six-month term, after which, the goods must be re-exported. The local sale of such goods is restricted according to the customs provisions in force.

(ii) Temporary import for inward processing¹⁷

Allows the temporary imports of raw materials and supplies that will be subject to transformation, processing, or industrial manufacture by industries recognized as "Highly Exporting Users" (ALTEX, in Spanish) and "Permanent Customs Users" (UAP, in Spanish). The local sale of such goods will be restricted according to the customs provisions in force.

(iii) Temporary import under a special system of importation (Plan Vallejo)¹⁸

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

Benefits of Plan Vallejo are granted due to:

- Direct operation, to the importer of goods such as capital goods, raw materials, inputs, and parts, that, using these goods, produces and exports final goods.

- Indirect operation, to the importer or producer of intermediate goods sold to the exporter or whoever provides services related to the production of the goods to the exporter.

The following are among the current applicable kinds of Plan Vallejo:

A) Plan Vallejo for raw materials

Grants total or partial suspension of customs duties, of raw materials, to be totally or partially exported after having undergone transformation or manufacture.

B) Plan Vallejo for capital goods of the agriculture sector

This modality allows importing capital goods and spare parts with no tariff and deferring the payment of the VAT for products of the agricultural sector that are not subject to any government subsidies.

C) Plan Vallejo for services export

Allows the temporary import of capital goods and spare parts listed in Decree 2331 of 2001, with total or partial suspension of tariffs and deferment of the VAT payment.

Those having access to this program must export services, for an amount equivalent to 150% of the Free On Board (FOB) value of the imported capital goods and spare parts. In addition, users of Plan Vallejo for services export must provide proper use of the capital goods and spare parts temporarily imported and may not sell them or give them a use different from that authorized, while the goods are under the program restrictions. Usually this type of Plan Vallejo is applicable to the export of services provided by companies whose main activity consists of one of the following:

- Services of transmission, distribution, and commercialization of electric energy

- Special design services, value added telecommunications and software exports

¹⁵ Article 162 of Decree 2685 of 1999.

¹⁶ Article 163 of Decree 2685 of 1999.

¹⁷ Article 184 of Decree 2685 of 1999.

¹⁸ Decree 444 of 1967, Article 168 et seq., Decree 2685 of 1999 and Resolution 1860 of 1999.

- Lodging services
- Human health
- Passenger air transportation
- Research and development
- Consulting and management
- Engineering

It is worth mentioning that only legal persons and joint ventures may apply to this program.

D) Junior Plan Vallejo

This Plan grants the exporter of goods the right to replace, through a new import, with the suspension of custom duties, the raw materials or inputs that have been used in the production of such goods, when all customs duties were originally paid (tariffs and VAT) upon the initial import. This reposition right must be requested within a term of 12 months after the shipment of the exported products.

(c) International leasing¹⁹

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

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

Regarding foreign leasing companies without a permanent domicile in Colombia, interests, and financial costs paid to the leasing company under the figure of international financial leasing, are subject to an income and windfall tax withholding 14%.

¹⁹. Article 153 of Decree 2685 of 1999.

4.4.4. Other types of imports

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

- Imports with franchise
- Urgent deliveries
- Re-imports after repair or alteration
- Re-imports in the same condition
- Imports for warranty compliance
- Imports through postal traffic and urgent deliveries
- Travelers

4.5. Tariff preferences

4.5.1. Generalized preference system with the European Union (GPS Plus)

At the end of 2005, the general preference system was approved by means of the European Commission Bylaw N.º 980 of 2005, which includes three types of preference systems: The general GPS, GPS Plus and the regime in benefit of the least developed countries PMA. Colombia has the right to access to the GPS and the GPS Plus. The first applies for a system of generalized preferences for the period 2006-2015. On the other hand, GPS Plus is no longer available.

4.5.2. Commercial agreements

In addition to the commercial preferences mentioned above, Colombia has been structuring a policy of open integration, thanks to which it has reached a great number of foreign markets. Particularly in the Latin American arena, this integration has been achieved in the framework of the Latin American Integration Association (ALADI, in Spanish).

Moreover, within the various agreements signed by Colombia, in addition to those described in the free trade agreements table in the chapter one of this "Legal Guide to Do Business in Colombia 2014," the most relevant commercial agreements are:

(a) Andean Community (CAN, in Spanish)

One of the most strategic integration plans for Colombia is the CAN that works under the auspices of ALADI. By virtue of this agreement, Colombia is part of a free trade area with Bolivia, Ecuador, and Peru, which entails an exemption of levies and restrictions for trade operations within that area.

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

On the other hand, on September 2006, the Council of Ministers of Foreign Relations of the Andean Nations granted the status of associated member country to Chile, thereby reaffirming the economic commitments established with that country and further expanding the commercial relationships in the region.

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

(b) Colombia – Mexico Free Trade Agreement

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

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

In August 2009, after two years of negotiations, Colombia and Mexico finally finished the implementation of the agreement and signed five decisions that were included in a modifying protocol regarding market access, rules of origin adequacy, regional committee on inputs, extraordinary faculties for the administrative committee, and the change in the name of the treaty. This protocol has been in force since August 2 of 2011.

It is expected for this agreement to provide new commercial opportunities such that Colombian products may increase its competitive conditions against other Latin American competitors (such as Chile and Uruguay), which already have preferential access to the Mexican market.

(c) Economic Complementary Agreement CAN–MERCOSUR

On October 18, 2004, the economic complementation agreement was signed between Argentina, Brazil, Paraguay, and Uruguay, the contracting parties of MERCOSUR, and all members of the 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, determined subitems for immediate tariff elimination and periods for gradual tariff elimination of between six and fifteen years for critical products such as vehicles, auto parts, and electric appliances.

(d) Colombia – Chile Free Trade Agreement

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

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

Since January 1, 2012, 99% of the tariffs were 100% reduced and the 1% left had a fixed tariff reduction. Currently the price band system is still applicable.

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

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

(f) Colombia – Canada Free Trade Agreement

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

By virtue of this agreement, 84.3% of the industrial trade coming from Canada is liberalized, as well as the 99.6% of the Colombian industrial products exported to the northern country. The treaty also includes agricultural commerce, public procurement, and services, including telecommunications and financial services, among others.

(g) Colombia – Northern Triangle Free Trade Agreement

The free trade agreement between Colombia and the Republics of El Salvador, Guatemala and Honduras (Northern Central American Triangle) was signed in Medellin on August 9, 2007 and entered into force with Guatemala on November 12, 2009, with El Salvador on February 2, 2010 and with Honduras on March 27, 2010.

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

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

With the entry into force of this agreement, about the 55% of the commerce between Colombia and the country members of the Northern triangle are free from tariff.

Due to the tariff reduction process (between three and twenty years), Colombia is currently providing to the country members of the Northern Triangle a tariff free application

to the 68% of the subheadings, 13% is in process of tariff reduction and a 1% has fixed tariff preferences and the 18% left is excluded from the agreement. On the other hand, the country members of the agreement provide to Colombia about a 51% of its subheadings a tariff free application, 25% is in process of tariff reduction and a 1% has a fixed tariff preference and the 23% left is not included in the agreement.

(h) Colombia – Venezuela Economic Complementary Agreement

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

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

The agreement determines a preferential treatment in tariffs based upon the historical trade of the parties during the years 2006 and 2010.

Colombia provides custom duty preferences for approximately 4,921 headings while Venezuela provides for 4,731 headings. Furthermore, 100% preferences were granted to certain products, for both countries sensible products were defined which have a preferential rate between 40% and 80%.

The customs duty preferences will apply to new and unused products of origin.

Specific rules for the importation of agricultural and livestock products are applied since they are considered as sensitive products.

(i) Caribbean Community (CARICOM)

The Partial Agreement N.º 31, on trade, economic and technical cooperation adopted within the frame of article 25 of the ALADI, was signed in Cartagena on July 24, 1994. According to the agreement, on May 21, 1998 in Georgetown (Guyana) the first Protocol that modifies the rules of origin was adopted, and includes for the first time immediate custom preferences in favor of Colombia since July 1, 1998 and a gradual preference (25% each year) starting as of January 1, 1999.

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

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

(j) Colombia – United States Free Trade Agreement

More than 80% of American exports related to industrial and purchase products is considered to be duty free within the scope of this free trade agreement. Furthermore, 99% of the exportable Colombian portfolio is considered to be at zero duty under this agreement. This free trade agreement also includes chapters of investments, financial services, communications, public purchases and e-commerce, among others.

(k) Colombia – European Union Free Trade Agreement

By means of Law 1669 of 2013, this FTA entered into force. This agreement allowed the immediate entry without the payment of customs duties for the 99.9% of the products and industrial goods that Colombia currently exports to the European Union.

The European Union is the world biggest trading partner with a market with more than 503 million consumers with a consumption capacity of approximately USD 32,000.

(l) Pacific Alliance

The 28 of April of 2011, leaders of Chile, Colombia, Mexico and Peru summoned in Lima in order to issue the Lima

Declaration (Declaración de Lima), an initiative which would later establish the alliance that is now known as Pacific Alliance (Alianza del Pacifico). The main goal of this initiative was to progressively reach towards the free movement of goods, services, capital and people. Later, the creation of the alliance was agreed upon by the country leaders on the 4 of December of 2011.

Currently, the member states of the alliance are Chile, Colombia, Mexico and Peru; while France, Spain, Portugal, Turkey, China, Japan, Korea, Australia, New Zealand, Canada, United States of America, Guatemala, Honduras, Dominican Republic, El Salvador, Costa Rica, Ecuador, Panama, Paraguay and Uruguay are listed as "observers." It is intended that under the partnership of these countries free trade, economic integration, Visa-free travel area, a common stock exchange, and common diplomatic representation will be achieved.

The Pacific Alliance represents a collaboration initiative and cooperation agreement, which encourages greater regional trade and investments in hopes of improving competitiveness and the exploration of business opportunities in regions and high growth economies in the world. As mentioned by leaders of the member states, The Pacific Alliance clearly points to modernity, pragmatism and political will to establish an initiative of far-reaching economic integration, one that is up to the challenges of the current international economic environment.

4.6. Colombia and the World Trade Organization (WTO)

The WTO Agreement came into force for Colombia on April 30, 1995. For this reason, annexes 1, 2, 3 of the Marrakesh Agreement, adopted on April 15, 1994, are applicable. These are:

Annex 1: Multilateral agreement on trade of goods (includes GATT 47), the general agreement on trade of services (GATS) and the agreement on trade-related aspects of intellectual property rights (TRIPS).

Annex 2: Understanding on rules and procedures governing the settlement of disputes.

Annex 3: Trade policy mechanism.

4.7. International trade companies²⁰

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

The most important benefits of these companies are:

Exemption from VAT on their purchases of movable tangible goods, as long as these are effectively exported or transformed.

Additionally, the intermediary production services that these companies may provide are equally exempt from VAT, as long as the final product is effectively exported.

Exonerated from withholding tax in the payment or credit to account for the acquisition of goods, destined to be exported, provided a certificate of purchase is issued to the seller in which a declaration is made regarding the future export of the product.

- No paying of customs duties on goods entering to the free zone as long as they remain there.
- VAT exemption for sales from the national customs territory to the industrial users of the free trade zone, or among them. This exemption is not applicable to food, cleaning products, among others, that are not essential for the execution and development of the social purpose of the industrial user.
- Exportation from a free trade zone can benefit from the free trade agreements signed by Colombia.

It is worth noting that free trade zones can be developed under two schemes: The industrial park (permanent zones) in which various companies operate in a same physical space, or as a single company located anywhere in the country (special permanent zones).

4.8. Free trade zones²¹

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

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

- Application of a special income tax rate of 15% for industrial users and the operator user. Commercial users (storage work) are taxed at the general rate. The CREE tax is not applicable to companies declared as free trade zones before December 31, 2012, or those who submitted the relevant request before the Intersectorial Commission of Free Trade Zones, and the users that were qualified or will be qualified as such, in these free trade zones.

4.9. Exports

Exports constitute foreign trade operations through which goods exit the national customs territory and are sent to the rest of the world or to a free trade zone in Colombia²².

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

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

Special export and import programs (Vallejo Plan).

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

Special export programs for tax reimbursements.

²⁰. Decree 2766 of 2012, Decree 380 of 2012, and Decree 1727 of 2012.

²¹. Law 1004 of 2005, Decree 380 of 2007, Decree 4051 of 2007 and Resolution 4240 of 2000.

²². Article 1 of Decree 2685 of 1999.

REGULATORY FRAMEWORK

REGULATION	SUBJECT
Decree 2685 of 1999 amended	Customs Statute
Decree 624 of 1989 amended	Tax Statute
Resolution 4240 of 2000 amended	Customs Statute Regulation
Decree 4927 of 2011	Custom Tariff
Law 1004 of 2005	Provides for basic conditions and procedures in order to access the free trade zone regime
Decree 4051 of 2007	Provides special procedures for free trade zone users
Decree 383 of 2007	Establishes conditions for declaring the existence of a free trade zone, among others
Decree 780 of 2008	Regulates the regime applicable to industrial users and operators
Decree 2595 of 2010	Indicates which departments may declare free trade zones
Decree 711 of 2011	Modifies the functions of the intersectorial commission for free trade zones
Decree 1446 of 2011	Incorporates new articles to Decree 2685 of 1999
Decree 1769 of 2010	Modifies the conditions for establishing a free trade zone
Decree 2696 of 2010	Incorporates articles to Decree 1197 of 2009
Decree 4285 of 2009	Modifies the conditions for being a free trade zone operator
Decree 4584 of 2009	Complements and partially modifies Decree 2685 of 1999 in relation to free trade zones
Decree 4801 of 2010	Incorporates new rules to the Customs Code in relation to rules applicable to free trade zones
Decree 4809 of 2010	Modifies rules applicable to the intersectorial commission of free trade zones
Decree 1142 of 2010	Indicates which departments may declare free trade zones
Decree 1769 of 2010	Modifies an article that establishes the conditions that free trade zone must fulfill
Decree 2129 of 2011	Establishes the conditions for declaring the existence of a special permanent free trade zone for the departments of Putumayo, Nariño, Huila, Caqueta, and Cauca
Decree 4927 of 2011	Harmonized system
Decree 3568 of 2011	Creation of the figure of authorized economic operator (OEA)
Decree 1755 of 2013	Which provides for a zero (0) tariff rate for the importation of a series of products
Law 1669 of 2013	Which approves the Free Trade Agreement between Colombia and the European Union



— CHAPTER 5 —

LABOR

5 LABOR

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

1. Employment contracts executed in Colombia, regardless of the nationality of the parties, are governed by the Colombian law.
2. Every year the value of the monthly legal minimum wage ("SMLMV"), is set either by agreement in the Commission comprising representatives of employees, employers and Government or if there is no agreement, unilaterally by the Government.
3. Under Colombian labor law, there are payments that must be considered as being part of the salary base, regardless of the willingness of the parties, such as commissions or bonuses for meeting targets.
4. Both national and foreign employees, resident in Colombia and legally bound by an employment agreement are required to join and contribute to the Integral Social Security System, except for the affiliation to the pension system of foreign employees which is voluntary.
5. In addition to the employee's monthly salary, the parties can agree on extralegal benefits, which are not considered part of the base to calculate payroll taxes destined to the National Learning Services (SENA, in Spanish), the Colombian Family Welfare Institute (ICBF, in Spanish) and the Family Compensation Fund. Additionally, such extralegal benefits will not be part of the base to calculate contributions to the Integral Social Security System, in the portion that does not exceed 40% of the employee's total remuneration.

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

Labor law is applicable to all labor relationships developed in Colombia, regardless of the nationality of the parties (employer or employee) or the place where the contract is executed¹.

5.1. Overview

An employment contract does not require special formalization and only three conditions must be met: (i) that the services are rendered personally by the employee; (ii) under the subordination of the employer; and (iii) in return for remuneration².

1. See Article 20, Colombia Labor Code.
2. See Article 23, Colombia Labor Code.

5.2. Employment contracts

5.2.1. Types of contracts by duration

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

TYPES OF CONTRACTS BY DURATION	
Indefinite term ³	The duration of this type of contract is not defined by a term or condition. Thus, its term is indefinite. Verbal contracts are considered to be indefinite term contracts, regardless of whether the parties have agreed otherwise
Fixed term ⁴	The parties establish a term for the duration of the contract, not exceeding three (3) years. This type of contract must be in writing or at least there should be other regular evidence methods to prove their existence and conditions. Fixed term employment contracts with a term of less than one (1) year can be renewed for three equal or shorter terms, after which any further renewal shall be for one (1) year. Fixed-term contracts of one (1) year to three (3) years duration may be renewed indefinitely. Fixed-term employment contracts do not become ever-indefinite term contract, unless the parties decide so. If a renewal is not desired, prior notice of at least thirty (30) calendar days must be given to the other party, before the expiration date of the contract, however the fixed term employment contracts with a term equal or less than thirty (30) days does not require a prior notice ⁵
For the duration of the work or hired service ⁶	The term of the contract depends on the duration of the work that has been hired. It is necessary to describe in detail the duties or work object of the contract and for this reason it must be a written contract. Contracts for the duration of the work may not be renewed
Occasional, casual or temporary ⁷	This type of contract is celebrated for tasks that are not part of the regular activities of a company and its term is of less than one month

5.2.2. Trial period

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

The duration of the trial period must be stated in writing. During this time either party may terminate the employment contract without prior notice and the employer is not obligated to pay an indemnification. The duration of the trial period depends on the type of employment contract, but in any case it cannot exceed two (2) months. For the fixed-term employment contracts the trial period cannot exceed of the fifth ($\frac{1}{5}$) part of the agreed fixed term, never exceeding two (2) months⁸.

5.2.3. Foreign employees

Foreign employees have the same rights and obligations as Colombian employees. However, when foreign nationals celebrate an employment contract in Colombia, both the employer and the employee must also meet additional requirements in connection with immigration procedures and the control of foreign nationals during their stay in Colombia. Foreign employees hired through employment contract in Colombia are voluntary affiliates to the Pension System according to the second (2) paragraph of the article 15 of the Law 100 of 1993.

3. See Article 47, Colombia Labor Code.

4. See Article 46, Colombia Labor Code.

5. See Article 1, Decree 1127 of 1991.

6. See Article 45, Colombia Labor Code.

7. See Article 6, Colombia Labor Code.

8. See Articles 76 and 80, Colombia Labor Code.

5.3. Payments arising from the labor relationship

5.3.1. Salary

The salary is the direct compensation that the employee receives for the services rendered to the employer⁹.

(a) Types of salary

(i) Ordinary salary

An ordinary salary remunerates the regular work. In addition to the regular pay, the employee may receive: (i) overtime pay, (ii) pay for work on mandatory rest days, (iii) percentage on sales and commissions, (iv) habitual bonuses such as the ones determined by the employee's individual performance, (v) permanent travel expenses for employee's meals and lodging, and (vi) in general, any payment made as direct compensation of the employee's services.

At the end of each year, the Government determines the minimum legal monthly wage. For 2014, the MLMW was set at COP 616,000 (approx. USD 342).

(ii) Integral/all inclusive salary

Under this modality, the salary covers the regular work hours, and it also remunerates beforehand all legal and extralegal benefits, severance, and their corresponding interests, service bonuses, overtime pay, pay for work on mandatory rest days, provisions in kind, and generally all fringe benefits, except vacations. The employee only receives twelve monthly salary payments per year. An integral salary arrangement must be stated in writing. Additionally, this modality can only be adopted for those employees earning more than ten times the current MLMW plus a payroll benefits factor that cannot be of less than 30% of the total salary. In this system, social security contributions are calculated over the 70% of the integral salary. For the year 2014, the minimum integral salary is COP 8,008,000 (approx. USD 4,448).

(b) Nonsalary covenants

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

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

(c) Traveling expenses (Per Diem)

Traveling expenses include both travel costs, and meals, and other expenses when the employee is traveling for the benefit of the employer to perform a particular task. Regardless of how a company agrees, treats, and manages them (advance payment, reimbursement, travel expenses, corporate credit card, etc.) they are considered travel expenses. The portion of permanent per diem payments destined to lodging and meals constitute part of the salary. The occasional per diem payments, and/or those habitually granted but not intended to lodging and meals are not considered salary under any circumstances¹⁰.

⁹ See Article 127, Colombia Labor Code.
¹⁰ See Article 130, Colombia Labor Code.

5.3.2. Fringe benefits

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

ITEM	PAY PERIOD	DESCRIPTION
Severance	Annual	Employers must make an annual direct deposit to a severance fund on behalf of every employee, equivalent to one (1) monthly salary for every year of service and proportionally for a fraction thereof. This deposit must be made in the corresponding fund chosen by the employee, before February 15 of the following year. Upon termination of the employment contract, the employer must pay the employee the accrued severance until the date of termination. The employer may request an advance payment of the severance fund if the intention is to use it for housing, when the modality of salary changes from ordinary salary to integral salary, or when there is an employer substitution. Failure to make the deposits on time generates a penalty of one day of salary for each day of delay on the payment during the term of employment contract until the payment is made ¹¹
Interest on severance	Annual	Equivalent to 12% per annum on the balance of each year's severance owed to the employee as of December 31 of the preceding year, which must be paid no later than January 31 of each year ¹²
Services bonus	Semi-annual	Equal to fifteen (15) days of salary for each semester of service, and must be paid no later than June 30 and December 20 of each year ¹³
Transportation aid	Monthly	The employer must pay to employees with a salary of no more than two times the MLMW a monthly aid for transportation expenses (for 2014, it is of COP 72,000, approx. USD 40). In the events of illnesses leaves, holidays, and licenses, there would not be the obligation for the employer of paying the transportation aid. This aid shall be included in the base to calculate and pay fringe benefits ¹⁴
Dress and footwear	Every four months	It is an endowment of one pair of shoes and one work outfit, to be provided three times per year to every employee, in accordance with the task to be performed (no later than April 30, August 31, and December 20). Employees entitled to this benefit are those who earn up to two times the MLMW (COP 1,232,000 – USD 684) and that have been employed for at least three months ¹⁵

11. See Article 249 Colombia Labor Code.

12. See Article 1, Law 52, 1975.

13. See Articles 306 and 308, Colombia Labor Code.

14. See Article 2, Law 15, 1959.

15. See Article 235, Colombia Labor Code.

5.3.3. Contributions to the integral Social Security System

It was created in 1993 by Law 100 of 1993. The Social Security System integrates the general pensions system (Pensions), the general health system (Health) and the general labor risks system (Labor Risks). Every employer is under the obligation to enroll its employees to the Social Security System and to make the corresponding monthly

contributions on time. Foreign employees are not obligated to be enrolled and to pay monthly contributions to the Pension System, according to the second paragraph of the Article 15 of the Law 100 of 1993¹⁶. The percentages that the employer and employee must pay to the Social Security System are the following:

System	Contributions (% of salary)	
	Employee	Employer
Pensions	4%	12%
Health***	4%	8.5%
Labor Risks*	-----	Between 0.348% and 8.7%
Pension Solidarity Fund**	Between 1% and 2%	-----

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

** The percentage of the contribution to the pension solidarity fund varies according to the employee's salary.

*** As of **January 1, 2014**, the companies will not be obligated to pay this contribution for the employees who by then earn up to ten (10) MLMW.

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

5.3.4. Voluntary affiliates to pensions

Applies to the following individuals: Independent employees and in general all individuals residing in Colombia or abroad, who are not classified as mandatory affiliates or expressly excluded by Law 100, 1993 or any other amending legislation, and foreign employees in Colombia with employment contracts, not covered by any pension regime in their country of origin or any other. This situation according to the possibility of the voluntary affiliation that applies for foreign employees as it is mentioned in the second paragraph of the Article 15 of the Law 100 of 1993.

¹⁶ See Article 15, Law 100, 1993, Law 797, 2003, and Law 1438, 2011.

5.3.5. Payroll taxes

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

Entity	% of Payroll	
	< 10 MLMW	> 10 MLMW
CCF ¹⁷	4%	4%
SENA ¹⁸	0% ¹⁹	2%
ICBF ²⁰	0% ²¹	3%

The CCF grants the employees whose remuneration does not exceed four MLMW an aid for goods or services. Its fundamental purpose is to alleviate the economic burdens represented in the support of the family as the basic nucleus of society.

5.3.6. Payroll benefits

Currently, there are several benefits regarding taxes, payroll taxes, and other payroll contributions available to employers that create new positions for employees belonging to vulnerable groups, defined as people under the age of 28, internally displaced populations, individuals in process of social reintegration, disabled individuals, and women over the age of forty who have not had an employment contract in the previous twelve months.

Law 1429 of 2010, as regulated by Decree 545 of 2011, determines that individuals and legal entities that set up small businesses with less than fifty employees and which gross assets do not exceed an amount of 5,000 times the MLMW, at present equivalent to COP 3,080,000,000 (approx. USD 1,711,111), and have registered the business before the Commercial Register of the corresponding

Chamber of Commerce after entered into force, shall make their contributions to SENA, ICBF and CCF according to the following parameters:

Contribution	Exempted Period
0% of total contributions	The first two years of business activities
25% of total contributions	The third year of business activities
50% of total contributions	The first four years of business activities
75% of total contributions	The first five years of business activities
100% of total contributions	From the sixth year onwards

5.4. Working hours

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

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

Night work is defined as the work performed in the period between 10:00 p.m. and 6:00 a.m., which is compensated by a surcharge of 35% of the ordinary hour value. Also, overtime during the day shall be paid with a surcharge equivalent to 25% of the ordinary hour value. Overtime pay for night work is equivalent to 75% of the ordinary hour value²².

17. See Articles 1-12, Law 21, 1982.

18. See Articles 30-34, Law 119, 1994.

19. Article 25, Law 2607 of 2012. This exemption of contributions entered into force as from May 1, 2013 pursuant to Decree 862 of 2013, which regulates the withholding tax mechanism for the income tax for equality – CREE.

20. See, Articles 1-4, Law 89, 1988.

21. Article 25, Law 2607 of 2012. This exemption of contributions entered into force as from May 1, 2013 pursuant to Decree 862 of 2013, which regulates the withholding tax mechanism for the income tax for equality – CREE.

22. See Articles 158 and 163, Colombian Labor Code.

5.4.1. Statutory paid rest entitlements²³

(a) Mandatory paid weekly rest and public holidays

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

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

(b) Annual vacations with pay

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

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

5.5. Special obligations of the employer

5.5.1. Apprenticeship contracts²⁴

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

5.5.2. Statutory leaves

(a) Maternity leave²⁵

Every pregnant or adoptive mother is entitled to fourteen (14) weeks of paid leave which can begin two weeks prior to the anticipated date of birth. Of the 14 weeks of paid leave, the week prior to the anticipated date of birth is mandatory. For multiple pregnancies, the paid leave entitlement is of sixteen (16) weeks. Maternity leave is paid by the Social Security System, provided that the employee has been enrolled during the time of the pregnancy or a proportion thereof. Employment cannot be terminated on the ground of pregnancy or breastfeeding. A pregnant woman may be dismissed for just cause, if it has been approved by a labor inspector. Female job applicants may not be asked to submit pregnancy tests.

(b) Paternity leave²⁶

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

23. See Articles 172 and 178, Colombian Labor Code.

24. See Articles 32-42, Law 789 of 2002.

25. See Article 236, Colombian Labor Code.

26. See Article 236, Colombian Labor Code and Law 1280, 2009.

(c) Bereavement leave²⁷

Employees are entitled to five (5) working days of paid bereavement leave on the death of a spouse, partner, a relative to the second degree of kinship, first degree of affinity, first degree of civil relationship (grandparent, parent, child, sibling, spouse, in laws, partner), regardless of the modality of employment. Regarding kinship through adoption, relatives to the second degree are included, that is, the adoptive parent to the adoptive child and vice versa, siblings and grandparents.

5.6. Regulations

Employers are required to issue the following regulations:

5.6.1. Internal work regulations²⁸

Any business with more than five permanent employees for commercial businesses, or more than 10 employees for industrial businesses, or more than 20 employees for agricultural, cattle breeding, or forestry businesses must issue internal work regulations.

5.6.2. Industrial health and safety regulations

Companies that have 10 permanent employees or more must establish an industrial health and safety regulations²⁹.

5.7. Termination of the employment contract

In general, with some legal and constitutional exceptions (e.g.: Pregnant and lactating women, unionized employees, employees who are in a vulnerable health condition, or employees entitled to be rehired in the event of dismissal), employment agreements may be terminated without prior notice by any of the parties. However, the effects of the termination vary depending on the type of contract and whether the contract is terminated with or without just cause³⁰.

5.7.1. Indemnification

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

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

Type of Employment Contract	Indemnification
Fixed term	The indemnification is equivalent to the salaries corresponding to the remaining period of the contract
For the duration of the work	The indemnification is equivalent to the salaries corresponding to the remaining period of the duration of the work, but in no event less than 15 days of salary
Indefinite term	<p>For employees earning a salary of less than ten (10) times the MLMW COP 6,160,000 for year 2014 – USD 3,422):</p> <ul style="list-style-type: none"> • Thirty (30) days of salary for the first year of employment plus 20 additional days of salary for each subsequent year and pro rata for fractions. <p>For employees earning a salary equivalent to ten (10) times the MLMW or more:</p> <ul style="list-style-type: none"> • Twenty (20) days salary for the first year of employment plus 15 additional days of salary for each subsequent year and pro rata for fractions;

27. See Article 236, Colombian Labor Code and Law 1280, 2009

28. See Article 104, Colombian Labor Code.

29. See Articles 249 and 250, Colombian Labor Code.

30. See Articles 61-64, Colombian Labor Code.

Type of Employment Contract	Indemnification
Indefinite term	<p>The law provides for a special indemnification for employees who as of December 27, 2002 had ten (10) or more years of continuous work, whereby they are entitled to an indemnification equivalent to forty five (45) days for the first year of employment and forty days (40) days for each subsequent year and pro rata for fractions.</p> <p>Another additional indemnification for those employees that by January 1, 1991, had 10 or more years of services, consisting of forty five (45) days for the first year and thirty (30) days for each subsequent year and pro rata for fractions. In this event, the employees cannot make effective their right to be rehired</p>

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

If at the time of termination of employment, the employer fails to pay the employee the sums owed for salary or additional benefits in due time and manner, the employee is entitled to indemnification pay of one day of salary for every day of delay in payment for the first 24 months. From the 25-month onwards, default interests begin to accrue at the maximum legal interest rate until the payment is completed³¹.

31. Ibidem.

32. See Articles 353 - 354, Colombian Labor Code.

33. See Article 432, Colombian Labor Code and Law 1453, 2011.

5.8. Employment stability

Pursuant to constitutional and legal provisions, some employees cannot be terminated unless authorized by a labor authority. The employees covered by these provisions include: (i) pregnant and lactating women; (ii) unionized employees; and (iii) employees who are in a vulnerable health condition.

5.9. Collective labor law

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

5.9.1. Right of association in trade unions

Colombian employees are entitled to unionize as part of their enjoyment of labor rights. This constitutional right aims to protect the creation and development of unions, as well as to guarantee the enjoyment on the part of the employees of the defense of their labor and union interests³².

5.9.2. Trade unions

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

5.9.3. Collective bargaining and collective agreements³³

It is a fundamental right for unionized and nonunionized employees. The procedure for unionized employees is a collective agreement. Nonunionized employees subscribe a collective

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

5.9.4. Strike

It is the temporary collective and peaceful work stoppage of the workers of a company. It is only legitimate and possible within the process of collective bargaining as an option for employees, provided that they work for an employer in the private sector that does not carry out activities that are considered under the law as an essential public service³⁴.

5.10. Other special employment forms

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

5.10.1. Services agreements

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

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

5.10.2. Temporary services companies (TSCs)

These are companies that provide recruitment of temporary employees. The employees are directly hired by the TSC, which for all legal purposes is the actual employer. Companies using these services may only employ temporary employees as provided by law. Hiring temporary personnel has a limit of six (6) months, which can only be extended once for another six (6) months³⁵.

5.10.3. Associated labor cooperatives (CTA)³⁶

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

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

34. See Article 444, Colombian Labor Code.

35. See Article 34, Colombian Labor Code, Articles 71-94, Law 50, 1990, and Decree 4369, 2006.

36. See Law 79, 1988, Decree 4588, 2006, Law 1233, 2008, Law 1429, 2010 and Decree 2025, 2011.

REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
Article 37 of the Labor Code	Verbal contracts
Article 39 of the Labor Code	Written contracts
Article 46 of the Labor Code, Article 1, Decree 1127 of 1991	Fixed-term contracts
Article 45 of the Labor Code	Contract for the duration of the work
Article 47 of the Labor Code	Indefinite-term contracts
Article 6 of the Labor Code	Temporary contracts
Article 76-80 of the Labor Code	Probation period
Article 127 of the Labor Code	Wages
Article 128 of the Labor Code	Payments not equivalent to wages
Article 249 of the Labor Code	Severance assistance
Article 1 of Law 52 of 1975	Interests on severance
Article 306-308 of the Labor Code	Legal bonus
Article 2 Law 15 of 1959	Transport allowance
Article 230-235 of the Labor Code	Dress and footwear for employees
Law 100 of 1993, Law 797 of 2003, Law 1438 of 2011	Contributions to the social security system
Article 172-178 of the Labor Code	Paid holidays
Article 186 of the Labor Code	Paid annual vacation
Article 32-42, Law 789 of 2002 30 - 41 of the Labor Code	Apprenticeships
Article 236 of the Labor Code	Maternity leave
Article 236 of the Labor Code, Law 1280, 2009.	Paternity leave
Article 57, Section 10 of the Labor Code, complemented by Law 1280 of 2009	Bereavement leave

REGULATIONS	SUBJECT
Article 104 of the Labor Code	Internal labor regulations
Article 249, 250 of the Labor Code el CST	Industrial health and safety regulations
Article 61-66 of the Labor Code	Termination of employment agreement-indemnifications
Article 353, 354 of the Labor Code	Right of association in trade unions
Article 432-4 75 of the Labor Code, Law 1453, 2011.	Collective negotiations and collective agreements
Article 444 of the Labor Code	Right to strike
Articles 71 to 94 of Law 50 of 1990, Decree 4369 of 2006, Article 34 of the Labor Code.	Temporary services companies
Law 79 of 1988, Decree 4588 of 2006, Law 1233 of 2008, Law 1429 of 2010 and Decree 2025 of 2011.	Associated labor cooperatives



———— CHAPTER 6 ————

MIGRATION

6 MIGRATION

Four things an investor should know about Colombian immigration law:

1. All foreigners who enter Colombia must show their passport before the immigration authority with the corresponding Colombian Visa, if it is required.
2. In those cases in which a foreigner does not need to apply for a Visa in order to enter Colombia, the immigration authority, may grant entry and permanence permits to foreign visitors who have no intention to reside in the Country.
3. The migration policy promotes the entry of those foreigners with technical, professional or intellectual qualifications and experience who can contribute to the development of economic, scientific, cultural or educational activities that may benefit the Country. Likewise, promotes the entry of foreigners who can contribute with capital to be invested in the incorporation of new companies or in lawful activities that may generate employment and increase exports, providing that the activities are considered of national interest.
4. Colombia currently has three types of Visa and 17 categories.

Through immigration laws, Colombia controls and regulates the entry, residency and departure of foreigners. This chapter summarizes the Colombian legal framework with respect to immigration, including permits and the main categories of Visas that may be requested by a foreigner intending to establish relationships, provide services, trade, or engage in investment activities in Colombia. Thanks to the agreements executed by Colombia, citizens of more than 90 countries, considered as foreigners of unrestricted nationalities do not require a visitor Visa nor have to carry out previous procedures before the Colombian authorities. Among them are:

List of countries not requiring Visa¹

Andorra	Liechtenstein
Antigua and Barbuda	Lithuania
Argentina	Luxemburg
Australia	Malaysia
Austria	Malta
Bahamas	Mexico

List of countries not requiring Visa

Barbados	Micronesia
Belgium	Monaco
Belize	Norway
Bolivia	New Zealand
Brazil	Palau
Brunei-Darussalam	Panama
Canada	Papua New Guinea
Czech Republic	Paraguay
Chile	Peru
Cyprus	Poland
Costa Rica	Portugal
Croatia	Rumania
Denmark	Russia
Dominica	Saint Kitts and Nevis
Dominican Republic	Samoa
Ecuador	San Marino
El Salvador	Saint Lucia

1. Article 1, Resolution 5707 of 2008.

List of countries not requiring Visa	
<i>Estonia</i>	<i>Saint Vincent and the Grenadines</i>
<i>Fiji</i>	<i>Singapore</i>
<i>Finland</i>	<i>Slovakia</i>
<i>France</i>	<i>Slovenia</i>
<i>Germany</i>	<i>Solomon Islands</i>
<i>Granada</i>	<i>South Africa</i>
<i>Greece</i>	<i>South Korea</i>
<i>Guatemala</i>	<i>Spain</i>
<i>Guyana</i>	<i>Sweden</i>
<i>Honduras</i>	<i>Switzerland</i>
<i>Hong Kong (SAR-China)</i>	<i>Surinam</i>
<i>Hungary</i>	<i>Taiwan</i>
<i>Indonesia</i>	<i>The Philippines, Trinidad y Tobago</i>
<i>Ireland</i>	<i>Turkey</i>
<i>Island</i>	<i>United Arab Emirates</i>
<i>Islas Marshall</i>	<i>United Kingdom of Great Britain and Northern Ireland</i>
<i>Israel</i>	<i>United States of America</i>
<i>Italy</i>	<i>Uruguay</i>
<i>Jamaica</i>	<i>Vatican City</i>
<i>Japan</i>	<i>Venezuela</i>
<i>Latvia</i>	

6.1. Government entities responsible for immigration affairs

6.1.1. Ministry of Foreign Affairs and consulates abroad

Assembles coordinating units or divisions covering several specialized areas, such as apostille, legalization, passport renewals and the granting of Visas. The Visa and Immigration Division of the Ministry of Foreign Affairs and the Colombian consulates abroad have the discretionary authority to issue, deny, or cancel Visas. The Ministry of Foreign Affairs and the consulates have up to four working days after the application has been filed to issue, comment on, or deny a Visa².

6.1.2. Special Administrative Unit Migration Colombia

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

Some of the functions of this entity are: (i) to perform migratory control and supervision of nationals and foreigners in the Country; (ii) to keep the identification record of foreigners, such as immigration verification; (iii) to issue documents such as foreign identity cards, safe passage, permanence and extension permits, permits to leave the Country, certificates of migratory movements, entry permits, foreigners' register, and all other required procedures regarding migration and the status of foreigners; (d) to handle and collect the penalties and sanctions for the non-compliance of immigration law³; (e) to cancel a Visa and/or permit at any time; this decision must be written in a document against which no appeal proceeds; (f) to verify that the foreigner is performing the occupation, trade or activity which was stated in the Visa application form, or the one stated in the correspondent permit⁴.

The costs for the year 2014 for the different procedures before the immigration entities are the following:

COST		
Procedure	USD (approx. cost)	COP
Foreign identification card	82	156,300
Entry and permanence permit PIP	Free of charge	Free of charge
Temporary permanence permit PTP	41	78,300
Permanence or departure safe passage	25	47,100
Certificate of migratory movements	25	47,100

2. Article 16, Decree 834 of 2013.

3. Article 4, Decree 4062 of 2011.

4. Article 16, Decree 834 of 2013.

6.1.3. Professional councils

Regulate and supervise professional activities in Colombia for nationals and foreigners. In relation with strictly regulated professions and/or activities such as medicine, law, accountancy, psychology, business administration, engineering, and others, the approval from the corresponding professional council is required. The authorization to develop the profession and/or activity is obtained by means of a license, professional card or a temporary permit, issued by the competent professional council depending on the profession or activity that the foreigner intends to practice or perform in the country.

6.1.4. Ministry of National Education

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

6.2. Permits

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

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

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

The entry and permanence permit (PIP) will be issued by the Special Administrative Unit Migration Colombia to those foreigners that do not require Visa, for a period of time of 90 calendar days⁵, except for the permit to entry and stay as technical visitor (PIP-7) which will be granted only for 30 calendar days. These are the PIP categories:

- (i) **PIP-1.** This permit will be issued for those foreigners that intend to enter into the Country and whose presence is important for the Colombian Government, or when the nature of the entry is related with the development and implementation of international agreements or treaties.
- (ii) **PIP-2.** This permit will be issued for those foreigners that intend to enter into the Country in order to develop non-regular academic programs that do not exceed one academic semester, given by education or training centers in the Country, or under an agreement of academic exchange, as well as student practices. Likewise, when the foreigner is entering the Country to be trained in a skill.
- (iii) **PIP-3.** This permit will be issued for those foreigners that intend to enter into the Country to receive medical treatment.
- (iv) **PIP-4.** This permit will be issued for those foreigners that intend to enter into the Country to clarify personal, juridical or administrative situations.
- (v) **PIP-5.** This permit will be issued for those foreigners that intend to enter into the Country for leisure and recreation activities.
- (vi) **PIP-6.** This permit will be issued for those foreigners that intend to enter into the Country to attend or participate, without an employment relationship, in academic, scientific, artistic, cultural, sports events, to have an interview at a recruitment process in public or private entities, business training, business negotiations or business contacts and journalistic coverage.

⁵ Article 20, Decree 834 of 2013.

(vii) **PIP-7.** This permit will be issued for those foreigners that intend to enter into the Country urgently, in order to provide specialized technical assistance to public or private entities and it is granted for 30 calendar days per year. If the specialized technical assistance involves an additional time and the foreigner has applied for this kind of permit during the calendar year, he/she must apply for the appropriate type of Visa.

(viii) **PIP-8.** This permit will be issued for those foreigners that intend to enter into the Country as a crew member of an international transport company; this permit will be granted for 72 hours⁶.

(ix) **PIP-9.** This permit will be granted to foreigners that require entering the country in order to make transit to a third country. This permit will be granted for 12 hours⁷.

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

The temporary permanence permit (PTP) will be granted for those foreigners that intend to remain in the Country after having made use of an entry and permanence permit (PIP), for the foreigners who have entered the Country as visitors and that have to clarify in the Colombian territory any administrative or judicial situation. In the two conditions mentioned above, the permit will be granted for 90 calendar days and it may be extended in accordance with the provisions of the immigration authorities for those foreigners that entered the Country to clarify any administrative or judicial situation⁸. These are the PTP categories:

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

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

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

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

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

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

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

The transit group permit (PGT) will apply for those foreigners that are passengers of tourist cruise ships, that are visiting Colombian ports, and that will stay on the same ship. In this case, they will not require a Visa or immigration card to be filed out by the passengers and it will not be necessary to print an entry or exit stamp in their passports or travel documents. The Immigration Authorities will control each cruise ship that intends to visit Colombian ports and to travel

6. Article 21, Decree 834 of 2013.

7. Article 2, Decree 132 of 2014.

8. Article 20, Decree 834 of 2013.

to another Country⁹. Those foreigners from countries that require a Visa to enter the Country must have it stamped on their passports and must show it to the immigration authorities at the Immigration Office.

The Special Administrative Unit Migration Colombia will control and register the number of days that each foreigner is allowed to stay in Colombia with PIP or PTP permits, in order to verify that each foreigner is not exceeding the term of 180, continuous or discontinuous, calendar days per year¹⁰.

It can also grant PIP and PTP permits, to the same foreigner, if he/she does not exceed a period of 180 calendar days within the same calendar year¹¹; or make changes to PIP and PTP permits, recognizing it as extensions of stay as the following:

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

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

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

When there has been made a change on those permits, the initial terms will not be modified by the new permit, and the foreigner will be authorized to stay in the Country only for 180 days in the calendar year, except for PIP-7 and PTP-4 permits¹².

(d) Cancellation of Permits

The Special Administrative Unit Migration Colombia may cancel a PIP or PTP permit at any time, for which must be stated on a document, against appeals do not proceed.

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

6.3. Visas

Authorization granted to a foreigner in order to approve his/her entrance or permanence for a period of time in Colombia. The responsible authority for granting Visas is the Visa and Immigration Division of the Ministry of Foreign Affairs in Bogota. There are about 130 Colombian Consulates around the world in which foreigners can apply for a Colombian Visa, regardless of their nationality. Visa applications can be processed directly abroad by the foreigner who wants to travel to Colombia, or through a representative. It is also possible to request a Visa throughout the Ministry of Foreign Affairs web page. The foreigner has to pay USD 50 for the study of the Visa application. Once it is approved, an additional fee according to the Visa must be paid.

6.3.1. Types of Visa

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

Currently, there are three types of Visa (i) business Visa; (ii) temporary Visa and (iii) resident Visa. Some type of Visas will be divided in categories. The main Visas and categories that a foreigner can apply for are the following:

9. Article 20, Decree 834 of 2013.

10. Article 23, Decree 834 of 2013.

11. Article 24, Decree 834 of 2013.

12. Article 25, Decree 843 of 2013.

(i) Business Visa (NE for its Spanish acronym)

The business Visa will be divided into the following four categories:

(a) NE-1. This Visa will be granted to the foreigner that intends to enter into the Country in order to conduct trade and business efforts, promote the economic exchange, make investments and create business. This type of Visa will be valid for three years with multiple entries, notwithstanding that the foreigner could request his Visa for less time, due to the activity that is going to be developed in the Country.

The foreigner could stay up to 180 continuous or discontinuous days per year, he/she cannot be domiciled in Colombia and the activities that are going to be carried out are not able to generate the payment of wages in Colombia¹³.

(b) NE-2. This Visa will be granted to the foreigner that intends to enter into the Country as a businessperson in the context of a current international instrument, including: Free trade agreements, international partnership and under Pacific Alliance Agreement. With the purpose of advancing business management activities, promote his/her business, develop investments, establish commercial presence of a company in the Country, to promote trade in goods and services across borders or other activities that are defined in international instruments. This Visa will be granted for four years with multiple entries, without prejudice that the foreigner could request his Visa for less time, due to the activity that is going to be developed in the Country.

The foreigner could stay in the Country up to for two continuous or discontinuous years, for the entire term of the Visa and may establish domicile in the Country. The activities carried out by the foreigner are able to generate on its holder the payment of wages in Colombia. For this class of Visa applies the beneficiary Visa.

(c) NE-3. This Visa will be granted to the foreigner that intends to enter into the Country as chief of a governmental foreign commercial representative office or who represents him, for the promotion of economic and

trade exchanges in or with Colombia. This type of Visa will be valid for four years with multiple entries and the foreigner may remain for four continuous or discontinuous years for the entire term of the Visa and may establish domicile in the Country. The activities carried out by the foreigner will be able to generate the payment of wages in Colombia. For this type of Visa applies the beneficiary Visa.

(d) NE-4. This Visa will be granted to the foreigner that intends to enter into the Country as president or senior executive of a multinational company with the intention of investing and generating business. This Visa will be granted for five years with multiple entries, notwithstanding that the foreigner could request his Visa for less time, due to the activity that is going to be developed in the Country. The foreigner could stay up to 180 continuous or discontinuous days per year. The foreigner cannot establish domicile in the Country and the activities carried out will not be able to generate the payment of wages in Colombia. For this class of Visa applies the beneficiary Visa.

(ii) Temporary Visa (TP for its Spanish acronym)

(a) TP-1. This Visa will be granted to the foreigner that intends to enter into the Country and his/her presence is important for the Colombian Government, or when the nature of the entry is related with the development and implementation of international agreements or treaties. It also applies to relatives of the owner in the first degree of consanguinity or affinity, as well as spouses or partners, permanent diplomatic officials and consulate of the Republic of Colombia; Relatives in first degree, relatives of the official diplomatic community in the Country, the student, student-practitioner, educational, professional or qualified technician that is intended to do internships, language lecturer or assistant, entering the Country under existing cooperation treaties to which Colombia is a State part or promoted by the Colombian Institute of Educational Credit and Technical Studies Abroad "Mariano Ospina Pérez" ICETEX, or if is shown that they are part of programs or activities of cultural and academic exchange; to a diplomatic passport holder in order to enter the Country temporarily to develop different diplomatic activities, international jurors in master's or doctoral thesis, or as a speaker or expert, invited to be part of processes related with the strengthening of research activities, or internationally recognized personality invited

13. Article 6, Decree 834 of 2013.

in developing projects and programs that promote the transfer of knowledge and new technologies in different disciplines, with no labor link, in the framework of the Law 1556 of July 9, of 2012, "by which the Country is promoted as an scenario for the shooting of films", the artistic staff, technical and foreign production in order to make the production projects of foreign films.

This type of Visa will be valid for one year with multiple entries and terminate if the foreigner leaves the Country for more than 180 consecutive days.

(b) TP-2. This Visa will be granted to the foreigner that intends to enter the Country as a crew member of an international transportation company, a fishing vessel or a dredge. This Visa will be valid for one year with multiple entries, notwithstanding that the foreigner could request his Visa for less time, due to the activity that is going to be developed in the Country.

This Visa will be cancelled if the foreigner leaves the Country for more than 180 consecutive days. The foreigner can stay in Colombia only for 90 days per entry.

(c) TP-3. This Visa will be granted to the foreigner that intends to enter the Country developing an academic program with scholarship or not, provided by an education or training center in the Country duly certified for that purpose, or pursuant to an agreement of academic exchange and student internships. It also applies when the foreigner enters the country to receive any training. This Visa will be valid for up to five years taking into account the total duration of the academic program and allows multiple entries.

This Visa will be cancelled if the foreigner leaves the Country for more than 180 consecutive days. The foreigner can stay in Colombia for the entire term of the Visa. For this type of Visa applies the beneficiary Visa.

(d) TP-4. This Visa will be granted to the foreigner that intends to enter the Country under an employment relationship or independent contract to provide services to an individual or corporation domiciled in Colombia, or arts, sports or cultural groups entering the Country with

the purpose of providing public performance. This type of Visa is issued without prejudice to the legal requirements for the exercise of each profession or trade in the Country. The validity of the Visa will be equal to the duration of the employment contract or independent contract to provide services without exceeding three years. This Visa may have multiple entries.

This Visa will be cancelled if the foreigner leaves the Country for more than 180 consecutive days. The foreigner can stay in Colombia for the entire term of the Visa. For this type of Visa applies the beneficiary Visa and allows to study.

(e) TP-5. This Visa will be granted to the foreigner that intends to enter the Country as member of a cult or religious creed duly recognized by the State of Colombia. This Visa will be granted for two years with multiple entries.

This Visa will be cancelled if the foreigner leaves the Country for more than 180 consecutive days. The foreigner can stay in Colombia for the entire term of the Visa. For this class of Visa applies the beneficiary Visa.

(f) TP-6. This Visa will be granted to the foreigner that intends to enter the Country as a volunteer aid worker or a non-governmental or non-profit organization recognized by the State of Colombia. This Visa will be valid for one year with multiple entries.

This Visa will be cancelled if the foreigner leaves the Country for more than 180 consecutive days. The foreigner can stay in Colombia for the entire term of the Visa.

(g) TP-7. This Visa will be granted to the foreigner that intends to enter the Country as pensioner or investor, partner or owner of a corporation, to receive medical treatment and for the companion of who is receiving medical treatment, a property owner, for the exercise of independent activities or occupations not established in this Decree. This Visa will be valid for one year with multiple entries.

This Visa will be cancelled if the foreigner leaves the Country for more than 180 consecutive days. The foreigner can stay in Colombia for the entire term of the Visa. For this class of Visa applies the beneficiary Visa.

(h) TP-8. This Visa will be granted to the foreigner that intends to enter the Country in order to adopt a child or to be part of a judicial or administrative process. This Visa will be granted for one year with multiple entries.

This Visa will be cancelled if the foreigner leaves the Country for more than 180 consecutive days. The foreigner can stay in Colombia for the entire term of the Visa.

(i) TP-9. This Visa will be granted to the foreigner that intends to enter the Country as a refugee by the Colombian Government, at the request of the Advisory Committee for Determining Refugee Status, and in accordance with existing international instruments on the subject. This Visa will be valid for five years.

This Visa will be cancelled if the foreigner leaves the Country for more than 180 consecutive days. The foreigner can stay in Colombia for the entire term of the Visa. This person will be authorized to perform any legal activity, including those that must be done under an employment relationship or independent contract to provide services to an individual or corporation domiciled in Colombia. For this type of Visa applies the beneficiary Visa.

(j) TP-10. This Visa will be granted to the foreigner that intends to enter the Country as spouse or permanent partner of a Colombian national. This Visa will be valid for three years with multiple entries.

This Visa will be cancelled if the foreigner leaves the Country for more than 180 consecutive days. The foreigner can stay in Colombia for the entire term of the Visa.

(k) TP-11. This Visa will be granted to the foreigner that intends to enter the Country as a tourist. This Visa will be valid for one year with multiple entries. Notwithstanding that the foreigner could request his Visa for less time.

This Visa allows the foreigner to remain in the Country up to 180 continuous or discontinuous days during the Visa validity.

(l) TP-12. This Visa will be granted to the foreigner that intends to enter the Country to assist or participate with or without an employment contract, in academic, scientific, artistic, cultural, and sportive events; to present interviews in a recruitment process with public or private entities, business training, business contacts or journalistic coverage. This Visa will be valid for 90 days, with multiple entries.

This Visa will be cancelled if the foreigner leaves the Country for more than 180 consecutive days. The foreigner can stay in Colombia for the entire term of the Visa.

(m) TP-13. This Visa will be granted to the foreigner that intends to enter the Country to provide specialized technical assistance with or without an employment contract to public or private entities. This Visa will be valid for 180 days, with multiple entries.

This Visa will be cancelled if the foreigner leaves the Country for a more than 180 consecutive days. The foreigner can stay in Colombia for the entire term of the Visa.

(n) TP-14. This Visa will be granted to the foreigner that requires entering the country in order to make transit to a third country and require an entry Visa. This Visa will be granted for 1 day¹⁴.

(iii) Resident Visa (RE for its Spanish acronym)

This Visa will be granted to the foreigner that intends to enter the Country on the following situations or activities:

- (a)** When the foreigner is a parent of a Colombian national.
- (b)** When both parents are foreigners of a Colombian national.

¹⁴. Article 1, Decree 132 of 2014.

The child will be considered a Colombian national when at least one of the parents has been domiciled in the Republic at the time of the birth of the child. (Foreigners are domiciled in Colombia when they are holders of valid resident Visa).

- (c) In accordance with the Law 43 of 1993, when having been abroad Colombian by adoption or by birth, has renounced to the Colombian citizenship. In this case the validity of the Visa will be undefined.
- (d) When the foreigner has been the holder of one of the Visas TP-3, TP-4, TP-5, TP-7, TP-9, for a minimum of five continuous and uninterrupted years.
- (e) When the foreigner has been the holder of the Visa TP-10 for a minimum of three continuous and uninterrupted years.
- (f) When the adult foreigner (more than 18 years old) has been beneficiary of a RE Visa for at least five continuous and uninterrupted years.
- (g) When, in his capacity as foreign investment investor, the foreigner has registered at the Colombia's Central Bank an amount over 650 legal monthly minimum wages. (approx. USD 211,000).

The RE Visa will be valid for five years, except for the one establishes in paragraph (c).

The foreigner that holds a RE Visa and leaves the Country for more than two or more continuous years will lose his/her Visa. The foreigner can stay in Colombia for the entire term of the Visa. This person will be authorized to perform any legal activity, including those that must be done under an employment relationship or independent contract to provide services to an individual or corporation domiciled in Colombia. For this type of Visa applies the beneficiary Visa¹⁵.

6.3.2. Mercosur

Nationals of Bolivia and Chile which are countries part of Mercosur may benefit from a temporary resident Visa. This Visa is valid for two years and authorizes the following activities: Home and/or student/to work as an independent contractor and/or to be hired as an employee, after complying with the rules governing this matter. In case the foreigner plans to develop a regulated profession under his/her resident status he/she must apply for permits and/or licenses corresponding to the competent professional councils. The Mercosur Visa requirements will be the same as the temporary Visa TP-10.

6.3.3. Beneficiary

The Decree 834, 2013, states that this type of Visa may be granted as beneficiary to the spouse, the permanent partner, parents and children under 25 years old who are financially dependent on the Visa holder. Relationship or economic dependence must be proved. When the foreigner has children who are more than 25 years and he/she has a disability in which he/she cannot assert himself, will hold a beneficiary Visa. The Visas that allow the issuance of Visa as beneficiary are: NE-2, NE-3, NE-4, TP-3, TP-4, TP-5, TP-7, TP-9, RE.

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

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

6.4. General Requirements for Any Kind of Visa

The following are the general requirements for the most common Visa applications¹⁶.

¹⁵. Article 8, Decree 834 of 2013.

¹⁶. Resolution 4130 of 2013

REQUIREMENTS/ TYPE OF Visa	BUSINESS NE-1	BUSINESS NE-2	BUSINESS NE-3	BUSINESS NE-4
Visa application form duly filed by the applicant	X	X	X	X
Valid passport or travel document, in good condition, with a minimum of two blank pages and a validity of at least 180 days	X	X	X	X
Recent front 3x3 centimeters photograph, in color and white background	X	X	X	X
Copy of the biographical page of the passport, as well as a copy of the page where the last Colombian Visa (in case the foreigner has had one), or the copy of the last departure or entrance seal (if it is applicable) was stamped	X	X	X	X
Documents that confirm the foreigner's economic solvency to remain in Colombia during his/her stay				
Letter or document that specifies the activities that the foreigner will undertake in Colombia and confirming the foreigner's economic solvency to remain in Colombia during his/her stay	X	X	X	X
Copy of the electronic information on the respective ticket of entrance and departure				
Certificate of existence and legal representation or a valid document that evidences the legal corporate existence. When the contracting party or employer is a legal person, the certificate must be issued within three months prior to the Visa application	X	X	X	X
Company's bank statements, for the last six months, which shows a minimum average of 100 legal minimum salaries (approx. USD 32,421)				
Company's last income tax return with the seal of the tax authorities				
Contract summary form DP-FO-68, duly filed and signed by the parties				
Written communication given by the International Exchange Department of the Colombian Central Bank which certifies the registry of the direct foreigner investment on behalf of the Visa holder, in a higher amount than 650 minimum legal salaries. (approx. USD 211,000)				
Copy of the temporary Visas that demonstrate five continuous and interrupted years in Colombian territory				

TEMPORARY TP-3	TEMPORARY TP-4	TEMPORARY TP-12	TEMPORARY TP-13	RESIDENT	BENEFICIARY
X	X	X	X	X	X
X	X	X	X	X	X
X	X	X	X	X	X
X	X	X	X	X	X
X					
		X			
		X	X		
	X	X	X		
	X				
	X				
	X				
				Applies for resident Visa of capital investment.	
				Applies for resident Visa with temporary visas during five continuous and interrupted years.	

REQUIREMENTS/ TYPE OF Visa	BUSINESS NE-1	BUSINESS NE-2	BUSINESS NE-3	BUSINESS NE-4
Certificate of migratory movements issued by the Special Administrative Unit Migration Colombia				
Copy of the resignation to Colombian nationality				
Letter from the Visa holder requesting the beneficiary's Visa. In case of minors, parents must request the Visa				
Cost of the Visa study in USD	50	50	50	50
Cost of the Visa in USD	250	100	150	150

* The civil records of birth and marriage or similar, diplomas and transcripts and other public documents issued abroad must be officially translated into Spanish, authenticated by the respective Consulate and legalized by the Colombian Ministry of Foreign Affairs of Colombia, pursuant to the Civil Procedure Code, or *apostilled* as the case may be¹⁷.

Ecuador citizens are exempted from visas fees. Ecuadorian nationals will only have to pay the Visa study.

to evade compliance with legal requirements deceptive in issuing a Visa. In these cases, the situation will be reported to the competent authorities.

After the notification of the cancellation of the Visa, the foreigner must leave the Country within the next 30 calendar days. Otherwise, the foreigner may be deported. The foreigner whose Visa has been canceled may only submit a new application, as required by the resolution that will be subscribed by the Ministry of Foreign Affairs¹⁸.

6.5. Cases for a Visa cancellation

Visas may be cancelled on the following situations:

- (a) The Ministry of Foreign Affairs or the Special Administrative Unit Migration Colombia, may cancel a Visa at any time, for which shall subscribe a written document, against which no appeal proceeds.
- (b) For deportation or expulsion.
- (c) When there is evidence of the existence of fraudulent or intentional acts by the applicant

6.6. Migratory register and control

All foreigners holding a valid Visa for more than three months must register the Visa before the Special Administrative Unit Migration Colombia within the following 15 calendar days to the date in which the Visa is granted and/or the foreigner enters the Country with the Visa granted. Actually after the registration,

¹⁷. Article 260, Civil Procedure Code.
¹⁸. Article 16, Decree 834 of 2013.

TEMPORARY TP-3	TEMPORARY TP-4	TEMPORARY TP-12	TEMPORARY TP-13	RESIDENT	BENEFICIARY
				Applies for resident Visa with temporary visas during five continuous and interrupted years.	
				Applies for resident Visa for the one who has renounced to the Colombian nationality.	
					X
15	50	50	50	50	50
20	200	60	60	160	Same price as the holder

the foreigner will receive a foreign identification card as identification in the Country. Registration is required every time the foreigner has a new Visa or if there is a change in the Visa status. Foreigners must notify any change of address to the Special Administrative Unit Migration Colombia within fifteen days after moving to the new address. Likewise, it is the obligation of every company, to inform to the Special Administrative Unit Migration Colombia the foreigner's initiation or finalization of activities that generate any kind of benefit to the company, within 15 calendar days as from the occurrence. For foreigners who exercise a regulated profession, the company must accompany the permit / license / registration / concept issued by the competent Professional Council, to the report of initiation of activities¹⁹.

The Special Administrative Unit Migration Colombia will begin issuing foreign identification cards for minors between seven to 17 years old. This process will start to be done from the 1 of January 2014. Since this date, it will be mandatory for minors to process this card. All children under seven years of age must be identified with their passport. The Special Administrative Unit Migration Colombia will enable the Visa registration

electronically. However, the application of the foreign identification card will remain to be done in its offices and will have to be made up within three working days of such electronic registration²⁰.

The Special Administrative Unit Migration Colombia may impose financial penalties to foreign companies that breach their obligations pursuant to immigration regulations. The amount of the economic sanctions varies according to the severity of the breach, but can go from half a minimum legal month wage (approx. USD 165) to fifteen times its value (approx. USD 4,863). Likewise, foreigners according to the seriousness of the offense may be subject to deportation or expulsion from the Country as set forth in a motivated decision.

19. Article 45, Resolution 1112 of 2013.
20. Article 33, Decree 834 of 2013.

REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
Decree 4000 of 2004	General provisions on the issuance of Visas and control of foreigners, among others. (Partially revoked by Article 76 of Decree 834 of 2013)
Resolution 5707 of 2008	Lists of countries that do not require Visa for the three types of visitors
Resolution 4700 of 2009	Requirements for each type of Visa
Decree 2622 of 2009	Amendments and additions to Decree 4000, 2004. (Revoked by Article 76 of Decree 834 of 2013)
Decree 4062 of 2011	Functions of the Special Administrative Unit Migration Colombia
Decree 019 of 2012	Rules to suppress or reform unnecessary regulations, procedures, or proceedings
Decree 834 of 2013	Which establishes migratory rules in the Republic of Colombia
Resolution 4130 of 2013	Requirements for each type of Visa
Resolution 1112 of 2013	Regulates the Decree 834 of 2013



———— CHAPTER 7 ————

TAX REGIME

7 TAX REGIME

Five things investors should know about the Colombian tax system:

1. The general income tax rate is 25%.
2. The income tax rate is progressive for companies going into business or taking their previous activities to formality as from January 1, 2011; this progressiveness applies to companies deemed “small” on the grounds of their assets and number of employees.
3. The rate of the income tax for equality (“CREE”) is 9%.
4. Income tax for companies established in a Colombian free trade zone regime is 15%, which applies for both the export of goods and services and for national operations.
5. Tax regulations have incorporated several tax benefits (exemptions, special credits, additional deductions, etc.) which seek to encourage priority sectors for the national economy, improve infrastructure and assets of the country’s companies as among other which aim to generate more formal employment.

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

TAX TYPE	MAIN ASPECTS
Income tax	General rate: 25% Industrial uses and operators of free trade zones: 15% Foreign companies not having a branch or permanent establishment of business in Colombia: 33%
Capital gains	10%
Income Tax for Equality - CREE	9%
Offset of tax losses	To be offset in future years, without time or percentage limitation (for losses incurred as from 2007).
Offset of excess presumptive income over net income	Compensation is permitted within the following five years.
Tax credits	Tax credits are permitted for certain operations, such as the following: (i) taxes paid abroad; (ii) payroll taxes of new employees; (iii) VAT paid in the import of machinery and equipment for basic industries. Certain requirements and limitations shall be observed.
Tax consolidation	N/A
Double taxation agreements (DTA) with Canada, Chile, Mexico, Spain, Switzerland, and the Andean Community (Bolivia, Ecuador, and Peru).	Please refer to chapter one of this "Legal Guide to Do Business in Colombia 2014," on protection of foreign investment.
Transfer pricing	Applies to transactions with foreign related parties, including branches and permanent establishments and transactions between free trade zone users and related parties in the national customs territory.
VAT	General rate 16% Special rates 0%/5%
Consumption tax vehicles /telecommunications/ food and beverages	4% / 8% and 16%
GMF (debit tax)	0.4%
Industry and commerce tax (ICA)	From 0.2% to 1.4%, depending on the municipality
Real estate tax	From 0.3% to 3.3%, depending on the municipality
Registration tax	According to the act, between 0.1% and 1%

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

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

7.1. Income and capital gains tax

This tax is levied on revenues being capable of increasing the taxpayer's net equity.

The capital gain tax is levied on similar revenues arising from the disposal of fixed assets owned for more than two years as well as from revenues from inheritances, estates, donations, and similar acts as well as those received as a spouse's participation in a marital community property.

7.1.1. Tax general information

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

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

A domestic company is that (i) incorporated in Colombia, (ii) having its main place of business in Colombia, or (iii) having its direction or place of management in Colombia.

A Colombian resident is an individual who: (i) stays in the country during more than 183 days, whether continuous or not, including the days of entry and leaving the country, during any period of 365 consecutive days, being it understood that wherever the stay in the country, continuous or not, lapses during more than one taxable year or period, the individual shall be deemed a resident during the year in which he/she reaches the mentioned 183 days; (ii) is a Colombian national and a resident or that during the taxable year or period has his/her vital, financial, or business center in the country¹.

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

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

7.1.2. Domestic-source income

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

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

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

- Financial yields arising from foreign indebtedness granted to residents in the country, as well as the financial cost of rental installments under international leasing agreements.
- Revenues from the provision of technical services, technical assistance, or consultancy services to residents in Colombia, regardless of whether they are provided in the country or from abroad.

¹ Section 10 of the Colombian Tax Code, amended by Law 1607 of 2012.

7.1.3. Revenues not deemed of domestic source

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

- Loans arising from the import of goods provided the term thereof does not exceed 24 months.
- Revenues arising from repair and maintenance technical services rendered abroad for equipment.
- Revenues arising from the disposal of titles, bonds, or other titles of debt issued by a Colombian issuer, which are traded abroad.
- Loans obtained abroad by financial institutions, financial cooperatives, financing companies, Colombian Foreign Trade Bank (BANCOLDEX), FINAGRO, FINDETER, and the banks incorporated pursuant to Colombian regulations in force.
- Revenues arising from the training of Government staff provided abroad to public entities.
- Revenues arising from the disposal of foreign goods owned by foreign companies or individuals not resident in the country, entered from abroad to international logistic distribution centers located at sea ports authorized by the National Tax and Customs Authorities (DIAN).

12.50% during the fourth year, and 18.75% for the fifth year. They shall be subject to the general rate as from the sixth year of operation. Additionally, an income tax rate of 33% is applicable to foreigners that do not carry out their activities in Colombia by means of a permanent establishment or branch.

“Small companies” that started their economic activity after 2011 having its corporate domicile and performing all of their economic activity in the departments of Amazonas, Guanía and Vaupes, shall have a special income tax rate, as follows: 0% during the first eight years, 16.50% for year nine and 24.75% for year ten. They shall be subject to the general tax rate from the 11th year onwards.

Current legislation dictates that, revenues arising from some services and activities performed in the Archipelago of San Andrés, Providencia and Santa Catalina will be exempt from income tax purposes. There are also exempted revenues for other particular industries.

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

7.2.1. Ordinary system

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

7.2. Tax rate and taxable base

The general income tax rate is 25% for national or foreign persons with a permanent establishment or branch in Colombia. For legal entities that are users of free trade zones (with exception of commercial users), the applicable income tax rate is 15%. Certain companies deemed “small” on the grounds of their asset volume and number of employees² which started operations as from 2011 and following, shall have a special income tax rate as follows: 0% during the first two years, 6.25% during the third year,

Ordinary and extraordinary revenues
(Revenues not deemed income or occasional gains)
(returns, rebates, and discounts)

Net revenues
(costs)

Gross income
(deductions)

Net income

2. For the purpose of applying the progressivity in the income tax rate for new companies (starting operations during 2011 onwards), new companies are those with 50 employees or less and with assets not to exceed COP 3,080,000,000 for fiscal year 2014 (approx. USD 1,600,000).

7.2.2. Presumptive income system

Under this system, assumption is made that the taxpayer's net ordinary income is never less than 3% of his/her net equity held on the last day of the immediately previous taxable year. Should the net income be lower than presumptive income, the income tax is assessed on the latter.

The presumptive income system is not applied to "small companies" incorporated after 2011 during their first five taxable years, and if such companies incorporate and perform their activities in the departments of Amazonas, Guanía and Vaupés, the benefit shall be extended to ten years.

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

- Domiciliary utility services.

- Investment fund, security fund, common fund, pension, or severance fund services.

- Passenger massive urban public transportation service.

- Utilities supplementary to electric power generation.

- Official entities operating waste water treatment and cleaning services.

- Companies under debtor reorganization plan.

- Companies under liquidation during the first three years.

- The entities subjected to control and supervision by Financial Superintendency that have been authorized to be liquidated or subject matter of possession taking.

- Land banks of district and municipalities, regarding land devoted to become urban with social interest housing.

- The event and convention centers in which the chambers of commerce have a major interest and those incorporated as industrial and commercial companies of the State or as partially government owned corporation in which the Government participation in the company's capital exceeds 51%, provided that they are duly authorized by the Ministry of Commerce, Industry and Tourism.

- Public corporations whose main object is the procurement, alienation, and administration of nonproductive assets belonging to them, or acquired from credit establishments of same nature.

- Assets linked to entities entirely devoted to mining activities (excluding hydrocarbons). Health, education, sports, research activities, among others, performed by non-for-profit foundations, corporations, and associations.

- Hotel services rendered in new hotels or in hotels that have been remodeled or enlarged.

- Ecotourism services certified by the Ministry of Environment.

Net equity as of December 31 of the previous year (Net equity value³ of contributions and shares in domestic companies). (Net equity value of assets affected by events of force majeure). (Net equity value of assets attached to companies undergoing non-productive stages) *3%.

Initial presumptive income.

Taxable income arising from exempted assets.

Presumptive income.

If and when the tax to be paid has been determined based on the presumptive income, taxpayers are entitled to a deduction, during the five following years, equal to the excess of presumptive income over ordinary income, adjusted for tax purposes.

3. The net equity value results from multiplying the equity value of the asset by the percentage resulting from dividing the net equity by the gross equity.

7.2.3. Equity comparison system

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

7.3. Revenues not deemed income for tax purposes

The law provides for some special tax treatment that allows excluding certain revenues when estimating the taxable base. Such revenues include, among other, dividends and participations (provided they arise from profits already taxed in the name of the Colombian company distributing them); profits from the disposal of shares listed on the stock market that do not exceed 10% of the corresponding company's capital, during the same taxable year, by the same beneficial owner, proceeds from damage insurance, and the distribution of profits upon liquidation of companies, up to the amount of the capital investment.

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

of an economic entity. Expenses must fulfill the same criteria set for costs regarding causality, proportionality, and necessity. They are recognized upon payment or credit to account.

As from 2014, costs and expenses related to the payment of obligations in cash are not fully deductible. Deductibility of these type of expenses is limited to the lower amount between the following reference values: (i) a percentage of the payments made in cash in the corresponding tax year; (ii) a determined value expressed in Tax Value Units ("UVT" for its acronym in Spanish⁵); and (iii) a percentage of the total costs and expenses incurred by the tax payer in the relevant tax year.

7.4. Costs, deductible expenses, and other deductions

Costs are expenditures directly related with the acquisition or manufacturing of goods or the provision of services. These costs directly related with the taxed income-producing activity of the taxpayer are deductible from the income tax, provided they are necessary, proportionate and accrued⁴ or paid during the relevant taxable year.

Expenses are expenditures that contribute to the development of the taxpayer's taxed activities, such as administration, research, and financing

4. Obligation to pay arises, even if payment has not been made.
5. UVT for the year 2014 is COP 27,485 (USD 14 approximately).

The reference values will vary depending on the tax year, as follows:

The amount that can be deductible, will be the lowest of the following three reference values:

For taxable year	% Of the cash payments	USD (approximately)	% Total costs & deductions incurred by the tax payer in the relevant tax year
2014	85%	1,446,579 ⁶	50%
2015	70%	1,157,263 ⁷	45%
2016	55%	867,947 ⁸	40%
2017 onwards	40%	578,632 ⁹	35%

These limitations are not applicable to other type of deductions which may involve payment of obligations through other means (payment in kind, offsetting, among others).

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

7.4.1. Salaries and payroll taxes

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

7.4.2. Taxes paid

- Of all taxes payable by a taxpayer at the national, regional or municipal levels, only the following are deductible:
 - 100% of the industry and commerce tax and real estate tax paid during the relevant taxable year.
 - 50% of the debit tax paid during the relevant year.

7.4.3. Interests

Interests accrued on obligations with entities supervised by the Colombian Financial Superintendency are fully deductible.

Interests accrued in favor of other individuals or entities are only deductible in the portion not exceeding the highest interest rate authorized to be charged by banking entities during the relevant taxable period.

⁶ This value is expressed as 100,000 UVT.

⁷ This value is expressed as 80,000 UVT.

⁸ This value is expressed as 60,000 UVT.

⁹ This value is expressed as 40,000 UVT.

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

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

7.4.4. Expenses incurred abroad

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

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

- Payments to foreign brokers arising from the purchase or sale of goods or commodities, raw materials, or other goods in the amount not exceeding the percentage of the transaction value set by the Ministry of Public Finance and Credit for the taxable year.
- Interests on short-term loans (less than one year) arising from the import or export of goods or bank overdrafts.
- Costs and expenses incurred abroad arising from transactions with residents in jurisdictions with which Colombia has entered DTAs containing nondiscrimination clause.
- Costs and expenses incurred abroad related with foreign-source taxable income for Colombian taxpayers.
- The purchase of movable goods abroad.
- Acquisition of assets that need to be capitalized for further depreciation.

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

7.4.5. Donations

Donations to certain entities expressly set by law are deductible for income tax purposes during the taxable period of the donation, upon fulfillment of the particular legal requirements. Some of these entities are foundations and non-for-profit associations, and entities developing activities of social interest such as health, education, and research activities.

7.4.6. Investments and donations for scientific and technological development

Income taxpayers who directly or indirectly invest in, or give grants to, projects qualified as technological research and development (which can be scientific, technological, or technological innovation projects), or in professional education projects of public or private higher education institutions, acknowledged by the National Government shall be entitled to deduct from their net income 175% of the amount invested during the taxable period during which the investment was made. Such deduction shall not exceed 40% of taxable income, as estimated prior to subtracting the amount invested.

7.4.7. Investment in environmental control and improvement

Legal entities making direct investment in environmental control and improvement shall be entitled to deduct the amount invested during the taxable year they were made. Amounts so deductible shall not exceed 20% of taxable income as estimated prior to subtracting the amount invested. Investments made upon the request of environmental authorities are not eligible for this benefit.

7.4.8. Offset of tax losses

Tax losses assessed by taxpayers as from taxable year 2007 can be offset against ordinary net income obtained during any subsequent taxable period without limitation in time or amount, without affecting the presumptive income for the period. Such tax losses cannot be transferred to the partners or shareholders.

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

7.4.9. Amortization of investment

Is the distribution of the cost of a certain investment recognized as assets, during its useful life or during any other time period set with valid criteria. Pursuant to the tax regulations in force, investments for the purposes of the taxable business or activity inherent to taxpayer, other than investments in real estate property or depreciable fixed assets, may be amortized. This is the case of disbursements related to the activity capable of losing value and should be recorded as assets to be amortized during one year or more according to the accounting technique, or which should be treated as deferred assets such as preliminary installation, organization, or development expenses, or costs related to exploration and mining.

General methods of depreciation are straight-line and reducing balance. In the case of non-renewable natural resources depreciation can be performed based on the method of unit costs or operating the straight-line method.

These investments are to be amortized in a term not less than five years, except if due to the nature or duration of the business amortization is due within a shorter period of time¹⁰.

7.4.10. Depreciation

Reasonable values of depreciation arising from the wear, normal decline or obsolescence of fixed assets used in income-producing business or activities are tax deductible.

Useful lives are set by the regulations in 5, 10, and 20 years, as a general rule, even though they may be extended or reduced upon the authorization of tax authorities.

Description	Useful live
Computers and vehicles	5 years
Machinery and equipment	10 years
Real estate, pipelines	20 years

There are mechanisms to accelerate tax depreciation of assets, which allow for differences between the tax and accounting (trade) treatment of such depreciation

Pre-authorized methods of depreciation are the straight line method and the declining balance method.

7.4.11. Exchange difference

Payments made in foreign currency are estimated at the acquisition price in Colombian currency. When debts or assets in foreign currency exist, their value is adjusted to the market representative exchange rate (TRM, in Spanish) in force on the last day of the year, and differences arising therefrom shall be taxable or deductible, as the case may be.

7.5. Tax exempt income

Income arising from the following activities is tax exempt¹¹:

Domestic publishing companies which purpose is the publication of books, magazines, booklets, or serial collectable booklets of a scientific or cultural nature are exempt until 2033.

Payment of capital and interests, commissions, and other fees associated with external public credit transactions and the like is exempt from all national taxes, levies and contributions, provided the recipient has no domicile or is not a Colombian resident.

The sale of electric power generated using wind based energy, biomass, or agricultural waste is exempt during 15 years, provided the company itself undertakes the sale, issues, and negotiates greenhouse gas reduction certificates.

Income arising from the exploitation of new slow growing crops such as cacao, rubber, palm oil, citrus and other fruits, as determined by the Ministry of Agriculture and Rural Development, is tax exempt. In

10. Sections 142 and 143 of the Tax Code.
11. Section 207-2 of the Tax Code.

order to obtain the exemption the owner must seed between 2003 and 2014. The benefit applies for a 10 year term counted as from the first harvest.

The provision of fluvial transportation services with boats and slabs of shallow draught is exempt during 15 years as from 2003¹². Those boats and slabs, which loaded depth, is equal to or less than 4.5 feet qualify as shallow draught.

Hotel services provided at new hotels built until December 31, 2017 are exempt during 30 years, counted as from the beginning of operations.

Hotel services provided at hotels remodeled and/or enlarged until December 31, 2017 are exempt during 30 years, in the proportion of the remodeling and/or enlargement in the tax cost of the so-remodeled or enlarged real estate.

Ecotourism services are exempt for 20 years from the date on which the operations begin.

Income arising from investment in new forest plantations sawmills and timber-yielding tree plantations are tax exempt.

Software created in Colombia and protected with new patents registered with the relevant authorities, having a significant content of domestic scientific and technological research, are exempt until December 31, 2018.

Yields arising from the stabilization reserve of retirement and severance fund administration companies as set forth in section 1 of Decree 721 of 1994, are tax exempt.

Income obtained by new companies incorporated in, and effectively located and developing its activities in the department Archipelago of San Andres, Providencia and Santa Catalina, arising from the provision of tourism services, stockbreeding, fish farming, sea culture, maintenance and repair of ships, health, data processing, call center, financial brokerage service, technological development programs approved by Colciencias, education, and maquila activities are exempt provided the companies taking advantage of

this exemption hire under a labor agreement at least 20 employees and increase the job posts by 10% per year, as compared to the number of employees of the immediately preceding year.

7.6. Tax discounts

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

Some of the main discounts applicable are:

- Discount for taxes paid abroad (tax credits). Residents in Colombia and domestic companies and entities that are income-tax taxpayers, who receive income from a foreign source subject to income tax in the country of origin, are entitled to deduct from the Colombian income-tax, the tax paid abroad, no matter its designation, estimated on such income.

In the event of income arising from dividends are perceived abroad, the tax to be discounted is the result of applying the tax rate applicable to the distributing entity or its subsidiaries when the distributing entity obtained profits, (indirect credit), plus the tax applicable to dividends or profits upon distribution (direct credit). Taxpayers must evidence their direct interest in the company or entity from which they receive the dividends and, as regards the indirect credit, must have an indirect interest that is a fixed asset owned as part of their equity for more than two years.

The tax credit not used in a given taxable year may be used within the four following years.

Taxpayers shall evidence taxes paid abroad by means of a tax payment certificate or other valid evidence.

In any event, the tax credit shall not exceed the income tax, plus the CREE, payable by the taxpayer in Colombia over the same income.

- Other discounts applicable are: Discount to Colombian air or sea transportation companies; discounts on the grounds of tree growing in reforestation areas; discount of the VAT paid upon the import of heavy machinery for basic industries; and discount for companies in the agriculture industry quoted on stock exchanges.

¹² The provision of fluvial transportation services with boats and slabs which loaded depth is equal to or less than 4.5 feet, until January 1, 2018.

7.7. Transfer pricing

Those income-tax taxpayers, whether natural person, legal entity or permanent establishment, who (i) carry out transactions with foreign related parties; (ii) have its domicile in the national customs territory (Territorio Aduanero Nacional - "TAN", in Spanish) and carry out transactions with related parties located at any of the free trade zones; or (iii) carry out transactions with related parties resident in Colombia as regards the permanent establishment of one of them out of the country; or carry out transactions with persons or entities located or domiciled in tax havens¹³ shall be subject to transfer pricing. Consequently, they shall estimate their revenues, costs and deductions at market value and under the arm's length principle.

For the purposes of the income tax, and particularly for the purposes of applying the transfer pricing system, the law sets forth the relationship criteria¹⁴ as follows: (i) subsidiaries; (ii) branches; (iii) agencies; (iv) permanent establishments; and (v) other economic bonding situations, including the cases wherever the transactions are carried out between related parties through an independent third party, wherever more than 50% of the gross revenues arise individually or jointly from their partners or shareholders, or wherever there exist consortiums, temporary unions, association in participation agreements, and other association models that do not give rise to legal entities.

Colombian regulations regarding transfer pricing enacted as from taxable year 2004, follows in general terms the guidelines of the Organization for Cooperation and Economic Development (Organización para la Cooperación y el Desarrollo Económico - OCDE, in Spanish); nevertheless, such guidelines are a subsidiary source of interpretation and do not have a binding effect.

7.7.1. Obligations arising from the transfer pricing regulations

Income taxpayers, including persons, entities and permanent establishments (i) with gross equity higher than 100,000 tax value units (Unidades de Valor Tributario - "UVT", in Spanish) (approximately USD 1,391,000 for

taxable year 2013) or (ii) with gross revenues higher than 61,000 UVT (approximately USD 848,000 for taxable year 2013) in the taxable year immediately preceding¹⁵ shall submit a yearly statement including all transactions carried out with economic or other related parties.

On the other hand, entities subject to transfer pricing regulations shall prepare and send documents evidencing that each of the transactions carried out complies with the transfer pricing regime. Such documents shall be retained during five years, as from January 1 of the taxable year following their creation.

The transfer pricing model sets penalties as regards these obligations. Regarding evidencing documents, penalties are applied on the grounds of: (i) late submission of documents; (ii) lack of consistency (mistakes, content not related to that requested or which does not allow verifying application of the model); (iii) omission of information to be shown in supporting documents; and (iv) correction of supporting documents.

Regarding the information statement, penalties shall be imposed on the grounds of: (i) late submission; (ii) lack of consistency in the information contained in the statement and the evidencing documents; (iii) omission of information in the statement; and (iv) failure to submit the information statement.

7.7.2. Scope of the transfer pricing model

The transfer pricing model is also applied to other activities carried out by income taxpayers in Colombia. They are, among others: (i) the contribution of intangible assets, which shall be included in the transfer pricing information statement, regardless of the contribution amount; (ii) the estimation of income and capital gains associated with permanent establishment, on the grounds of functions, assets, risks, and headcount; and (iii) evidence to contradict tax abuse, where the price or agreed upon compensation must fit in the market range pursuant to the transfer pricing methodology.

¹³. In accordance with Decree 2193 of 2013, inter alia, Bahamas, Hong Kong, Isle of Man, Cayman, BVI, Seychelles, Trinidad and Tobago.

¹⁴. Section 260-1 of the Tax Code. The relationship principle is applied to all companies and non-company vehicles or entities making up the group, even if the parent is domiciled abroad.

¹⁵. To determine whether a taxpayer is subject to the transfer pricing model for taxable 2013, UVT for such year shall be used, e.g.: COP 26,841.

7.8. Capital gains tax

As supplementary to the income tax, the capital gains tax is levied on income obtained from certain transactions as expressly defined by law.

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

Most relevant transactions subject to the capital gains system include:

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

Regulations foresee some exceptions for capital gains arising from the disposal or transfer of real estate, provided certain conditions are met and within certain previously set amounts.

For domestic and foreign companies and entities, as well as for resident or nonresident individuals, the unique rate on capital gains is 10%, regardless of the origin of the capital gain or type of asset.

7.9. Tax withholding

Colombian tax laws define withholdings as an early tax collection mechanism. This means that withholdings are only applicable if the activity is taxed.

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

Main obligations of withholding agents are: Applying the relevant withholdings; deposit the amounts withheld at the places and within the terms set by the Government; submit the monthly withholding tax returns; and issue the relevant withholding certificates.

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

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

Transaction	Income tax withholding rate
Payment for technical services, technical assistance, or consultancy services (rendered in Colombia or abroad)	10%
Payment for services rendered in Colombia (other than those mentioned above) ¹⁶	33%
Payment of services rendered abroad (other than those mentioned above).	Not applicable
Administration fees (overhead expenses) for general services rendered abroad	Not applicable
Royalties on the acquisition and exploitation of intangible assets	33%
Software licensing	26.4%

16. If the services are rendered by an entity or a person domiciled in Colombia or resident of a jurisdiction deemed as tax haven by the Colombian Government, the applicable withholding rate is 33%. If no withholding is applied, such expenditure cannot be deemed as deductible cost or expense for income tax and CREE purposes.

It is important to highlight that the withholding rate applicable to a certain transaction depends on the nature thereof. Therefore, each transaction should be analyzed on a case-by-case basis. Also, there may exist additional formal requirements to be met to gain entitlement to deduct the payment abroad (e.g.: Registering certain contracts with the DIAN or complying with foreign exchange rules; also, there may be limitations to deductibility if payments are not subject to withholding at the source.)

7.10. Income Tax for Equality (CREE)

7.10.1. General considerations

The taxable event as regards the income tax for equality (CREE) is the receipt of revenues capable of increasing the net equity of taxpayers during the taxable year or period.

7.10.2. Taxpayers

Companies and legal entities and the like (as defined by law), under the obligation to file returns, as well as foreign companies who are income taxpayers obliged to file returns on the grounds of their domestic-sourced revenues obtained through branches and permanent establishments.

7.10.3. Taxable base

CREE's taxable base shall be estimated taking all of the taxpayer's gross revenues capable of increasing the net equity realized during the taxable year, including capital gains, minus returns, rebates and discounts, and subtracting only those revenues that are not deemed income, certain exempt income, costs and deductions expressly authorized by law, that are proportionate, necessary and are linked to the income generating activity, including labor payments, social security contributions, payroll taxes.

There are express limitations regarding certain items, for instance presumptive income excess over ordinary income and tax losses, which cannot be deducted from the taxable base.

In any event, the taxable base shall not be less than 3% of the taxpayer's net equity on the last day of the immediately preceding taxable year (same as the presumptive income base).

7.10.4. Tax rate

Tax rate is 9% for taxable years 2013 through 2015, and 8% as from taxable year 2016

7.10.5. Exemption from payroll taxes

Companies and legal entities and the like (as defined by law), which are income taxpayers obliged to submit returns, will be exempt from payroll taxes to the National Apprenticeship Service (Servicio Nacional de Aprendizaje -“SENA,” in Spanish) and to the Colombian Family Welfare Institute (Instituto Colombiano de Bienestar Familiar -“ICBF,” in Spanish) for certain employees. Such taxpayers shall be exempt from contributing to the health social security system for the same employees as from January 1, 2014. For further explanations please see chapter five of this “Legal Guide to Do Business in Colombia 2014.”

The following are the mentioned contribution exemptions:

Item	2014 and following years	
Health	<10 MLMW	<10 MLMW
	0%	8.50%
ICBF	<10 MLMW	<10 MLMW
	0%	3%
SENA	0%	2%

7.10.6. Withholding Tax

For purposes of the collection and administration of the CREE, all taxpayers are qualified as self-withholding agents.

The CREE self-withholding rates range between 0.4% and 1.6% of the payment or credit to account, and is determined by the main economic activity of the taxpayer that applies the self-withholding, pursuant to the list of economic activities published by the Government.

Self-withholders of CREE that obtained gross income equal or higher than COP 2,469,372,000 (approx. USD 1,280,000) as to December 31, 2012, must file the CREE self-withholding return on a monthly basis, those who earned a gross income below that amount to the aforementioned date must file said return on a quarterly basis.

Further, CREE taxpayers that are constituted during the year shall, during that fiscal year, file quarterly retention returns, regardless of their partial gross income during such fiscal year.

7.11. Sales Tax

7.11.1. General

The value added tax ("VAT") is an indirect tax levied on:

- The sale of movable tangible property in Colombia.
- The provision of services in Colombia.
- The import of movable tangible goods into the national customs territory; and
- The sale of tickets or entry passes and the operation of games of chance, except lotteries.

There are certain activities that are deemed levied with VAT in Colombia, even if they are carried out abroad, on behalf of a beneficiary in the country. It is the case of consultancy or technical assistance services, licensing, or authorization to exploit intangible property in Colombia, insurance and reinsurance, and satellite TV services, among others.

The disposal at any title of fixed assets is not taxed with VAT.

Other transactions are qualified as exempt (rate 0) or excluded (not taxed with VAT but the VAT paid for inputs will be a higher cost of the corresponding input).

7.11.2. Parties responsible of paying the VAT

Entities or individuals carrying out sales, rendering services or importing goods are responsible of paying the VAT, as follows:

- Sellers of goods either distributors or manufacturers.
- Services providers not excluded from this tax.
- Importers of moving tangible assets not expressly excluded from the tax.

There are two VAT models: (i) common VAT regime, applied to all taxpayers not included in the simplified regime, and (ii) the simplified regime, applicable only to individuals who are traders, farmers, artisans, and providers of services complying with the conditions of revenues, equity, and operation as set forth in the regulation.

7.11.3. Taxable base

The taxable base corresponds to the total value of the transaction, including goods and services required for the provision thereof. Additionally, there are particular taxable bases for certain sale or service transactions.

7.11.4. Tax rate

The general VAT rate is 16%, but there are reduced rates of 5% and 0% for certain goods and services.

7.11.5. VAT recovery

VAT taxpayers may take the VAT they pay on the purchase of goods, services, and imports other than fixed

assets (discountable VAT) that allow for recognition of costs and/or expenses in the estimation of income tax as a credit against the VAT they charge, up to a limit of the VAT rate charged by such taxpayers.

VAT paid may be discounted during the taxable period associated with the date of accrual or during any of the two bimonthly periods immediately subsequent, and be included in the tax return of the period during which it was booked.

VAT credit balances for excess of discountable taxes arising from rate differences, not applied to the VAT during the taxable year or period of accrual, may be requested upon compliance with the formal obligation of filing the income tax return for the income taxable period during which the excess was originated.

In the case of taxpayers carrying out exempted transactions (0% rate), the reimbursement of credit balances included in the VAT return may be requested every two months.

VAT paid on the acquisition of fixed assets shall give rise to a discount in the income tax return in a percentage cumulative per year as decided by the National Government during the first quarter of each year.

The party responsible before the tax authority in Colombia of collecting and paying this tax is that who performs any taxable event, even if it is the final consumer who finally supports the VAT.

7.11.6. Goods and services excluded from VAT

The following transactions are not levied with this tax; nonetheless, they do not allow discounting VAT from purchases.

(a) Excluded goods

- Most of live animals of species used for human consumption, vegetables, seeds, fruits, and other farmed products, fresh or frozen.

- Products such as cereals, flour, cacao, handmade products, salt, natural gas, vitamins.

- Certain machinery for use in the primary sector, some medical articles, among others.

- Personal computers of less than 82 UVT (COP 2,254,000 approx.) (USD 1,168 approx.) and smart mobile devices (cell phones, tablets) not exceeding 34 UVT (COP 934,000 approx.) (USD 484 approx.).

- Crude oil for refining.

- Gasoline and motor oils.

- Food for human consumption donated to food banks legally incorporated.

- Food for human and animal consumption, wardrobe, cleaning elements, and medicines for human or veterinary use and construction materials introduced to and commercialized in the Amazonas, Guainia and Vaupes departments, provided they are finally consumed within the same department.

- Contributions to domestic companies and the transfer of assets via acquisition or reorganization mergers and spin-offs.

- National or imported equipment and elements devoted for the construction, installation, assembly, and operation of environmental monitoring and control systems.

- The import of raw materials and consumables under import and/or export special programs – Plan Vallejo – wherever such materials and consumables be incorporated in products to be subsequently exported.

- Temporary imports of heavy machinery not manufactured in the country for use in basic industries. Basic industries are mining, hydrocarbons, heavy chemicals, iron and steel, metallurgy, extractive, generation, and transmission of electric power and the obtaining, purification and handling of hydrogen oxide.

- The import of machinery and equipment not manufactured in the country for use in the recycling and processing of garbage and waste and those used in the purification or treatment of wastewaters, atmospheric emissions or solid waste to recover rivers or basic sewage for environmental improvement.

- Common imports by Highly Exporting Users (Usuarios Altamente Exportadores - ALTEX, in Spanish) of industrial machinery that is not manufactured in the country, for its use in the transformation of raw materials, for an indefinite term.

- The import of articles for use by the official service of the mission and diplomatic or consular agents entitled to privilege or prerogative pursuant to legal regulations on diplomatic reciprocity.

- The import of guns or ammunition for national defense.

- The import of goods and equipment in development of agreements, treaties, or international cooperation agreements in force in Colombia, to be used by the National Government or national public entities.

- The import of machinery and equipment devoted to the development of projects or activities that are exporters of carbon emission reduction certificates and help reducing the emission of greenhouse gas and consequently make a contribution to sustainable development¹⁷.



(b) Services excluded from VAT payment

- Sale of food and beverages, with exception of institutional or business feeding, provision of food to education institutions and such activities carried out under franchise, authorization, royalties, or any other means involving the exploitation of intangible assets.

- Public or private transportation, domestic, and international freight.

- Land, sea, or river public transport of passengers in the national territory.

- Agriculture activities associated with the preparation of lands for farming or stockbreeding, or those associated with the production and commercialization or derivative products there from.

- National air passenger transportations to domestic destinations where there is no organized land transportation.

- Transport of gas and hydrocarbons.

- Interests and financial yields on credit transactions and financial leasing.

- Medical, dental, hospital, clinic, and laboratory services for human health.

- Electric power, water and sewerage, street cleaning, garbage collection, and domiciliary gas services.

- Home internet access for social levels one, two, and three.

- Education services provided by preschool, primary, high school, higher, special, or nonformal institutions, recognized as such by the Government, and education services provided by individuals to such institutions.

(c) Imports excluded from VAT payment

Imports excluded from this tax are specifically defined by law. Among imports excluded from VAT are those not intended for nationalization (temporary import), the temporary import of heavy machinery for basic industries, the import of machinery for the treatment of garbage and environmental control and monitoring, imports into the special customs regime zones, guns and ammunition for national defense, and the goods provided in section a) above mentioned.

7.11.7. Exempt transactions

There are transactions with a 0% VAT and consequently they grant the right to discountable VAT in the acquisition of taxed goods and services directly associated with such exempt transactions. The most significant are:

17. Section 428 of the Tax Code.

- Export of goods and services, under the conditions set by the law and the regulations, including goods sold to international commercialization companies.
- Touristic services provided to residents abroad used in Colombia, sold by travel agencies and hotels registered with the National Tourism Register.
- Raw materials, spare parts, consumables, and finished products sold from the domestic customs territory to industrial free trade zone users of goods or services, or among them, provided they are necessary for the development of the corporate purpose of said users.
- Services or connection and access to the Internet from fixed networks of home subscribers of social levels one and two.
- The sale of beef, pork, sheep, and goat meat; certain poultry, shrimp, eggs, milk, fish, fresh, cooled by the producers of such goods.

Also, services provided in Colombia to be used or consumed exclusively abroad by companies or individuals without businesses or activities in the country are VAT exempt. Certain substantive and formal requirements are to be met in order to have right to the exemption.

7.11.8. Estimation of the tax payable

The payable tax is estimated as the difference between the tax generated by taxed transactions and the legally authorized deductible taxes, as follows:

VAT estimation	
Taxed transaction revenues	Times: Tax rate
Tax generated (limited at the same rate of the generated VAT)	
Minus: Deductible taxes	
Estimated payable tax	

7.12. Consumption tax

A national consumption tax is levied on the following activities:

- The provision of mobile phone services.
- The sales of certain movable tangible goods either locally manufactured or imported.
- The sale of food and beverages at restaurants, coffee shops, self-services, ice cream saloons, fruit stores, pastry shops, and bakeries for consumption at the premises, take away or delivered; food services under contract, and the service of food and alcohol beverages for consumption in bars, taverns, and discos.

The tax is accrued upon nationalization of the asset imported by the final consumer, the actual delivery of the asset, the provision of the service or the issuance of the relevant bill, cash register ticket, invoice, or equivalent document by the responsible party to the final consumer.

Parties liable for the consumption tax are the provider of mobile phone services, the provider of the service of food and beverages, the importer as final user, the seller of goods subject to the consumption tax, and as regards the professional intermediary for sale of second-hand vehicles.

The national consumption tax does not give rise to deductible taxes for VAT purposes.

Rates range from 4% to 16%, depending on the relevant activity.

7.13. Debit tax

The debit tax (GMF, by its acronym in Spanish) is an indirect tax on the carrying out of financial transactions by means of which the funds deposited in current or savings accounts, as well as deposit accounts with the Central Bank, are disposed of, and also the issue of cashier's checks. Being an immediate tax, it is accrued upon disposal of the resources under the financial transaction.

Tax rate is 0.4% of the total value of the financial transactions by means of which resources are disposed of. Up to 50% of the GMF is deductible from the taxpayer's income tax, estimated on the amounts paid as GMF, regardless of the relation of cause and effect with the taxpayer's income producing activity.

This tax shall be gradually reduced as from 2014 to 2018, as follows:

Year	Tax rate
2014	0.4%
2015	0.2%
2016-2017	0.1%
2018 and following	0%

This tax is collected via withholdings applied by the Central Bank and the entities under the control of the Colombian Financial Superintendency or the Superintendency of Companies where the relevant current or savings accounts and collective portfolios are deposited, or where the accounting entries involving the transfer or disposal of resources are recorded.

The law sets forth a series of transactions exempt from this tax, reason why they should be analyzed on a case-by-case basis.

7.14. Industry and Commerce Tax and Billboard Tax

7.14.1. Industry and commerce tax

Is a municipal tax on gross revenues obtained from the performance of industrial, trade and service activities carried out, directly or indirectly, by individuals, legal entities, or unincorporated companies in the relevant municipal jurisdiction.

Taxable base is the gross amount received by the taxpayer, minus authorized deductions and exemptions.

Tax rate is defined by each of the municipalities within the following ranges set by law:

■ For industrial activities from 0.2% to 0.7%.

■ For commercial and service activities from 0.2% to 1%.

■ Notwithstanding the aforementioned, at some municipalities there are rates exceeding the above limits, for they were established prior to the enactment of the regulating law, and may be as high as 1.4%.

This tax is 100% deductible provided it has a relation of cause with the taxpayer's income generating activity.

7.14.2. Tax on billboard advertising

This is a municipal tax whose taxable event is the placement of advertising boards on public spaces. This tax is assessed on and collected from all individuals, legal entities or unincorporated companies carrying out industrial, trading and/or service activities at the relevant municipal jurisdictions, which use public space to advertise their business or trade name through advertising boards.

Taxable base is the amount payable as industry and commerce tax, and the rate is 15%.

7.15. Real Estate Tax

The real estate tax is levied on the property, possession or exploitation of lands or real estate located in urban, suburban, or rural areas with or without constructions.

All owners, holders or beneficial owners of real estate at the relevant municipal jurisdiction must pay this tax.

The taxable base for this tax is determined by: (i) the outstanding cadastral appraisal, which may be generally updated by the relevant municipality as a consequence of the review of new conditions, or through the urban and rural real estate valuation index (IVIUR, in Spanish), or (ii) the self-appraisal made by the taxpayer.

Applicable rate depends on the condition of the property, which in turn depends on facts such as floor space, location, and destination. The rate ranges from 0.3% to 3.3%, considering the economical destination of each property.

This tax is 100% deductible as long as it has a relation of cause and effect with taxpayer's income producing activity.

7.16. Registration Tax

7.16.1. General considerations

The registration tax is levied on all documentary acts, contracts or legal business to be registered with the chambers of commerce or with the public instrument registration offices.

7.16.2. Taxable base

The taxable base is the value included in the document containing the act or contract. When the levied act refers to the incorporation of companies, bylaws amendments, or acts involving an increase of corporate capital or subscribed capital, the taxable base is the total value of the relevant contribution, including the corporate capital and the subscribed capital, as well as the premium on the placement of shares or social quotas.

As regards documents without a specified amount, the taxable base is determined case by case.

For the purposes of estimation and payment of the registration tax, the mergers, spin-offs, and transformation of companies, and the consolidation of branches of foreign companies are deemed acts without a specified amount provided they do not involve capital increases or assignment of quotas or part-interest.

Wherever the act, contract or legal business refers to real estate, the amount shall not be less than the value of the cadastral appraisal, the self-appraisal, the auction, or awarding price as the case may be.

- Acts or contracts with a specified amount to be registered with the chambers of commerce, between 0.3% and 0.7%.
- Acts, contracts, or legal business with a specified amount to be registered before the chambers of commerce involving the incorporation with and/or the increase of premium on the placement of shares or social quotas of companies, between 0.1% and 0.3%.
- Acts or contracts without a specified amount to be registered with the public instrument registration offices or chambers of commerce, between two and four legal daily minimum wages (Between USD 22 and USD 44 approximately).

Whenever the act, contract or legal business is subject to both registration at the public instrument registration office and the chamber of commerce, the tax is to be rated and paid only at the public instrument registration office.



7.16.3. Tax rates


- Acts or contracts with a specified amount to be registered with the public instrument registration offices, between 0.5% and 1%.

REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
Colombian Tax Code (Decree 624 of 1989)	<ul style="list-style-type: none"> • Defines tax elements (tax authorities, person liable to pay the tax, taxable event, taxable base, tax rate, tax exemptions) • Income tax: Rules authorized deductions, tax residence, the transfer pricing model, capital gains, among others • Value-added tax: Defines who is liable to pay the VAT, the rate applicable to certain goods and services, exemptions and exclusions, requirements to request deductions, common regime, simplified regime, import and export of goods regime, estimation of proportionality, among others • Debit tax: Defines de taxable events, applicable exemptions and withholding agents • National registration tax: Defines taxable events, tax rate, and taxable base • It also sets the main formal (procedural) aspects associated with compliance with tax obligations: <ul style="list-style-type: none"> - Withholdings at the source - Tax procedure - Penalties upon failure to comply with tax obligations - Structure of DIAN
Law 223 of 1995	<p>Contains the most significant regulations associated with tax rationalization, among others:</p> <ul style="list-style-type: none"> • Goods that do not trigger VAT • Goods exempted from VAT • Imports exempted from VAT
Law 14 of 1983	<p>Defines detailed rules regarding the core elements of the most significant territorial taxes, such as:</p> <ul style="list-style-type: none"> • Real estate tax • Industry and commerce tax (ICA) • Consumption tax on alcoholic beverages • Tax on cigarettes
Law 97 of 1913	Sets the regulation on the street lighting territorial tax
Law 84 of 1915	Sets the regulation on the powers vested in Municipal Councils and Departmental Assemblies, as regards the management or territorial taxes
Law 633 of 2000	Modifies national taxes (Income tax, VAT, GMF)
Law 788 of 2002	Modifies the procedural tax regime (tax regimes, penalty imposing procedures, goods exempted from VAT, tax rates, among others)
Law 1430 of 2010	<p>Deletes the special deduction from the investment in productive tangible fixed assets and additionally:</p> <ul style="list-style-type: none"> • Modifies the taxable event and exemptions from GMF • Modifies aspects associated with persons liable to pay territorial taxes
Law 1607 of 2012	Introduces several changes to the Colombian Tax Code in general. Enacts the CREE; amends the registration tax; enacts the consumption tax and modifies the tax on gasoline and fuel oil, among others
Decree 2193 of 2013	Introduces the tax heavens list for Colombian tax purposes
Decree 3026 of 2013	Introduces permanent establishment regulations in Colombia

REGULATIONS	SUBJECT
Decree 3027 of 2013	Introduces thin capitalization rules in Colombia
Decree 3028 of 2013	Introduces regulations concerning tax residence for foreign individuals and entities deemed as nationals for having their effective management headquarters in Colombia
Decree 3030 of 2013	Introduces changes to transfer pricing regime in Colombia
FIRST EMPLOYMENT ACT	
Law 1429 of 2010	Enacted special tax benefits for: The formalization and creation of “small companies” and hiring of employees younger than 28, women older than 40, disabled people, among others
Decree 4910 of 2011	Defines the requirements and procedures to obtain benefits of Law 1429 of 2010
FREE TRADE ZONES	
Law 1004 of 2005	Defines the core elements, requirements and procedures to gain access to the free trade zone regime
Decree 4051 of 2007	Sets the special procedures applicable to users of the free trade zones
Decree 383 of 2007	Defines the requirements to declare a free trade zone, among other provisions
Decree 780 of 2008	Sets the regulations applicable to the industrial users and operators, among other provisions





———— CHAPTER 8 ————

ENVIRONMENT

8

ENVIRONMENT

Four things that an investor should know about Colombian environmental laws and regulations:

1. Projects or activities that may severely affect natural resources require an environmental license. Said projects activities are defined in the applicable regulations. Additionally, any project or activity that requires accessing or using natural resources, must obtain the required environmental permits.
2. Colombia has a National System of Protected Areas (SINAP, in Spanish) and accordingly there are multiple areas where it is prohibited to develop industrial projects, works, or activities.
3. The National Environmental System ("SINA", in Spanish) consists of: (a) the Ministry of Environment and Sustainable Development as the national environmental authority; (b) Autonomous Regional Corporations and Urban Environmental authorities; (c) the National Environmental License Authority ("ANLA", in Spanish).
4. If the extraction or use of natural resources is located in or affects the territories of indigenous, Roms, Raizals or Afrodescendant communities, it is compulsory to carry out a prior and informed consultation process with these communities with the purpose of discussing and analyzing the economic, environmental, social and cultural impact that can be caused within their territory. The Colombian Constitutional Court considers that the existence of the above mentioned communities is not limited to the territory, since the areas of influence close to the communities should also be involved.

Colombia has extensive environmental legislation which includes national and international legal instruments, which provide for the duty of the State and of individuals regarding the protection of: (i) natural riches of the nation to guarantee the protection of rights, such as the right to enjoy and live in a healthy environment; (ii) to protect and maintain ecological balance and also to ensure rational management and use of natural resources; (iii) to protect public health and safety; and (iv) to prevent foreseeable disasters.

Therefore, the aim is to guarantee sustainable development, preservation of the diversity and integrity

of the environment, the protection of natural resources, of the landscape and of human health, the preservation of special areas of environmental significance, and the rational planning, management, and use of natural resources.

Following, we present a brief summary of the most relevant aspects of the Colombian environmental regulations and institutions for foreign investors.

8.1. Environmental Licensing Regime

For any project, industry or activity that may severely harm renewable natural resources or the environment, or introduces major modifications to the landscape, an environmental license is required¹. Environmental licenses can be granted by the National Environmental License Authority (“ANLA”), the autonomous regional corporations and some municipalities and districts, depending on the nature and scope of the project or activity².

The environmental license is an authorization to carry out the project or activity, subject to the implementation of environmental impact mitigation measures, required by the competent environmental authority based on the environmental impact study (EIS) submitted by the applicant. As a general rule, only those projects or activities explicitly listed in the applicable law require an environmental license³ which must be granted prior to the beginning of the project or activity.

To obtain an environmental license, it is compulsory to follow a process where among others, the applicant must submit an environmental analysis of alternatives (except when the competent environmental authority certifies that such study is not required, as is the case for mining projects and hydrocarbon exploration and production) presenting the information required to evaluate and compare the different options under which it is possible to develop a project or activity⁴. Additionally, an EIS must be prepared following the general terms of reference published by the National Environmental License Authority (“ANLA”), for the most common sectors and activities (hydrocarbons, mining, power generation, and others) or ad hoc terms of reference for a particular activity when no general terms of reference are available.

The competent authority that grants or denies the license may be the ANLA or one of the regional environmental authorities mentioned below,

depending on the nature and scope of the project or activity.

In no event shall the same project or activity require more than one environmental license. The duration of the environmental license shall be that of the project.

According to the legislation, processing an environmental license takes up to 120 working days, although, in practical terms it may take longer (up to a year), depending on the competent authority and the complexity of the project, work, or activity.

The interested party must pay a fee determined by the Government for the evaluation services and submit environmental compliance reports every six months, thus allowing the environmental authority to monitor the project.

8.2. Other Environmental Permits

The environmental license includes all the permits, authorizations and/or concessions required for the use or affectation of the natural resources necessary to develop the project.

Nonetheless, if the project, work, or activity is not subject to an environmental license, each of the permits must be obtained separately. These permits are granted by the regional or municipal environmental authorities with jurisdiction over the area, as follows:

1. Such obligation is established in Law 99 of 1993.

2. Article 51 of Law 99 of 1993.

3. The full list of works, projects, or activities that require an environmental license is contained in a Decree issued by the National Government, being the current one Decree 2820 of 2010. Additionally, there are some exceptions to the explicit list, such as certain mining activities that require an environmental license pursuant to the Mining Code.

4. Article 17 of Decree 2820 of 2010.

Air

The emission of gases into the atmosphere is regulated, as well as the emission of noises and offensive smells. In some cases, a permit may be required for atmospheric emissions; in any case, the project, activity that emits gases into the atmosphere must comply with the permissible limits provided by the law for that particular kind of industry or activity.

The permit shall identify the kind of project that will be carried out, the authorized emission, the quantity, and quality thereof. It will be valid for a maximum of five years⁵.

Water

Regarding this resource, the authority may grant the following permits:

Concessions: Concessions grant the right of using and taking water from rivers and underground wells. Generally, this type of permit will be granted for 10 years. In some exceptional circumstances, it may be granted for up to 50 years for works related to the provision of public services or for the construction of works of social interest.

Permits for discharge of tailings: These permits allow to discharge tailings into bodies of water. The permit is granted according to the conditions of the project, for a maximum of 10 years⁶.

Occupation of riverbeds: A permit to occupy riverbeds is required in the event of any intervention of riverbeds. This permit will also be necessary for the construction and operation of hydraulic works in order to protect and preserve the riverbeds and the slopes and lands along rivers, streams, or of any other body of water.

Groundwater: A special permit is required for the exploration of wells and groundwater if the applicant wants to explore the subsoil to search for water.

Hazardous waste

Special regulations deal with the proper handling, treatment, transport and final disposal of hazardous waste. In general, whoever produces hazardous waste must have a contingency plan that has been approved by the environmental authority and is jointly and severally liable with other agents along the chain until the final disposal of the waste. Likewise, the applicant must register with the environmental authority and inform the characteristics of the waste that is being produced⁷.

Visual outdoor advertising

This kind of publicity is subject to prior registration with the municipality in charge. The applicant must pay the corresponding fee.

Forestry products

A permit will be required if forestry products are to be extracted for the execution of any activity. It is also necessary to obtain an authorization for felling, pruning and for the use and transport of trees⁸.

5. Article 86 of Decree 948 of 1995.
6. Decree 3930 of 2010.
7. Law 430 of 1998.
8. Decree 1791 of 1996.

8.3. Consultation with Indigenous, Rom, Raizals and Afro-Colombian Communities

The ILO Convention N.º 169, Law 70 of 1993 and Decree 1320 of 1998 provide rules in the event that the planned project or activity is to be developed in indigenous reservations, in areas permanently occupied by Indigenous communities or in areas appointed to Afro-Colombian, Rom or Raizals communities. In such cases, a prior consultation process must be carried out in order to develop an economical, environmental, social and cultural impact analysis of the project to ensure the participation of the community in the use, management and conservation of natural resources.

It must be highlighted that the consultation is carried out as the EIS is being produced and it is a prior condition for the granting of the environmental license. The competent authority for consultation processes with Indigenous, Rom, Raizals or Afro-Colombian communities is the Ministry of the Interior.

According to high court rulings, the fundamental and constitutional right of indigenous communities to be consulted can be protected by means of a special and preferential legal action called *acción de tutela*.

As a rule, the consent of the communities is not necessary in order to develop the project. However, there must be evidence of the good faith of the interested party to reach an agreement with the communities.

Afro-Colombian, Rom and Raizals communities are entitled to the same right to prior consultation, by virtue of Law 70 of 1993.

8.4. Protected Areas

Colombia has a National System of Protected Areas (SINAP, in Spanish), which consists of different kinds of environmentally protected areas. Additionally, there are areas declared as forest reserve to protect, preserve, and restore forests.

The SINAP and the forest reserves cover a large extension of the country's surface and it is very important, particularly for the extractive industries, to understand that there may be restrictions and prohibitions to the economic activities they intend to carry out in these areas.

As a rule, extractive activities are completely forbidden in natural parks (both national and regional), which constitute one of SINAP's strictest conservation categories. Likewise, it is prohibited to carry out extractive activities in forest reserves, although some of these reserves (created by Law 2 of 1959) can be removed from the system to allow activities considered of public benefit or social interest, such as mining and the oil industry. This procedure must be carried out in addition to the environmental license; therefore, it must be undertaken as early as possible in order to prevent delays in the projects.

Due the aforementioned, undertaking due diligence of the areas where projects are to be developed is highly advisable.

8.5. Environmental Authorities

8.5.1. Ministry of Environment and Sustainable Development (MADS in Spanish)

MADS is the agency responsible for managing the environment and the renewable natural resources. As such, MADS defines the public policies regarding the recovery, conservation, protection, management, use and exploitation of natural resources and is in charge of the National Environmental System.

8.5.2. National Environmental License Authority ("ANLA")

The ANLA is the special administrative unit, at national level, responsible for granting and supervising the environmental licenses granted to projects or activities subject to environmental licensing, permit, or procedure.

8.5.3. Autonomous Regional Corporations and the Corporations for Sustainable Development (CAR, in Spanish) and Urban Environmental Authorities (AAU, in Spanish)

Are public entities with jurisdiction over areas that constitute a same ecosystem or that make part of a same geopolitical, bio-geographic or hydro-geographic unit. These entities are responsible for the environment and the renewable natural resources within their jurisdiction, and for the promotion of sustainable development.

8.6. Administrative Responsibility and Environmental Sanctioning System

Any act or omission that breaches any of the provisions contained in the Renewable Natural Resources Code, in other environmental provisions in force and in all administrative acts issued by the competent environmental authorities, as well as any harmful act committed on the environment, provided there is harm, negligence, or willful misconduct, and a cause-effect relation between the two can be established, constitutes an environmental infringement⁹.

The alleged offender is presumed guilty and the burden of proof rests on the offender to prove that no negligence or willful misconduct was intended. Besides the administrative penalty, the offender could be held liable for damages caused to third parties due to the intended action or omission under civil law.

The environmental authorities may impose penalties of up to 5,000 minimum legal monthly wages (approx. USD 1,621,050) as well as sanctions such as revoking or cancelling the environmental license or permit (even as a preventive measure), the temporal or permanent cancelling of the establishments and the demolition of projects¹⁰. These and other preventive measures may be imposed by means of an administrative act not subject to appeal. Nonetheless, they can be lifted ex officio or at the request of the concerned party after proving that the causes that led to the sanctions have ceased.



⁹. Law 1333 de 2009.
¹⁰. Article 40 of Law 1333 of 2009.

REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
PRINCIPLES AND INSTITUTIONAL FRAMEWORK	
Renewable Natural Resources Code (Decree Law 2811 of 1974)	The code establishes detailed regulations regarding management of renewable natural resources such as forests, soil, water, and the atmosphere.
Political Constitution	The right of all individuals to a healthy environment.
Law 99 of 1993	This law includes the basic principles and creates the environmental institution system by means of the National Environmental System (SINA for its initials in Spanish).
Decree 1299 of 2008	By which the obligation is created to have, in certain circumstances, a department for environmental management in some companies.
Decree 2372 of 2010	Regulates SINAP.
Law 133 of 2009 and Resolution 415 of 2010	By which the Integrated Environmental Offender Registry (RUIA) is created and regulated.
Law 1450 of 2011 (Law on the National Development Plan)	By which the <i>paramo</i> ecosystems (high elevation neotropical ecosystems between the upper forest line and the lower snow line) are declared areas in which agricultural activities or hydrocarbon and mineral exploration and/or exploitation cannot be carried out.
HAZARDOUS WASTE	
Law 1252 of 2008, Decree 4741 of 2005 and Law 142 of 1994 and Law 430 of 1998.	Integral management of hazardous waste.
ENVIRONMENTAL PERMITS	
Decree 948 of 1995 and Resolution 910 of 2008	Air quality and atmospheric emission permits.
Decree 1791 of 1996	Forestry use.
Decree 1541 of 1978 and Decree 3930 of 2010	Regulation on the use of no-maritime waters, water management, water quality criteria, and discharge permits.
ENVIRONMENTAL LICENSING	
Decree 1753 of 1994, Decree 1728 of 2002, Decree 1180 of 2003, Decree 1220 of 2005 and Decree 2820 of 2010	These decrees regulate the environmental licensing regime depending on when the activity was initiated.
ENVIRONMENTAL SANCTIONS	
Law 1333 of 2009	This law establishes the procedure for environmental sanctions.
Criminal Code	The code regulates offenses against the environment.



———— CHAPTER 9 ————

INTELLECTUAL PROPERTY

9 INTELLECTUAL PROPERTY

Five things an investor should know about intellectual property:

1. The mere use of a trademark does not confer exclusive rights over it. The corresponding registration must be obtained in order to acquire protection.
2. A trademark registration can be cancelled on the grounds of lack of use at the request of an interested party, if the registration of the corresponding trademark has been in force for more than three consecutive years.
3. Colombian legislation provides the assignment of author's economic rights and industrial property rights, by means of an employment or service agreement. In fact, there is a legal assumption according to which, unless indicated otherwise, said rights are assigned to the employer or the commissioner.
4. The contracts by means of which intellectual property rights are negotiated must be registered before the competent national authority in order for its provisions to be enforceable against third parties.
5. Patents protect technical innovation, which may be products or processes. Improvements upon such products and processes may eventually become patentable.

Most of the intellectual property regulations in Colombia are issued by the Andean Community of Nations (CAN in Spanish), whose member countries are Colombia, Bolivia, Ecuador, and Peru. However, certain aspects are regulated by local legislation. Even though regulations issued by the CAN are common and prevail over national legislation, each member country has independent and autonomous authorities and registration systems. Intellectual property rights are temporary and linked to the territory in which the protection is granted. It is therefore necessary to apply for their registration in Colombia, in order to obtain protection.

Consequently, although CAN member countries have a common intellectual property regime (Decision 485 of 2000 for industrial property and Decision 351 of 1993 for copyrights), there is no common registration system providing protection in all countries. Thus, applications must be filed in each CAN member country to ensure adequate protection of intellectual property rights.

9.1. Industrial Property

Decision 486 of 2000 of the CAN, unified the applicable regulations for industrial property regarding distinctive signs for goods and services: Trademarks, slogans, trade names, trade emblems and geographical indications, as well as new creations: Patents, industrial designs, and layout designs of integrated circuits). Regarding patents, the Patent Cooperation Treaty (PCT), which facilitates the process of obtaining patent protection in different countries, is applicable in Colombia.

9.1.1. Distinctive signs

As a general rule, in CAN member countries protection and rights may only be obtained through registration before the competent agency (which in Colombia is the Superintendence of Industry and Commerce "SIC" in Spanish). Thus, the mere use of a distinctive sign does not confer any rights or protection in Colombia, the only exception being trade names and trade emblems whose rights derive from their proven, public, and continuous use.

Exclusive right to the use of a distinctive sign is granted by means of its registration, as well as the prerogative to prevent third parties from using identical or similar distinctive signs, provided that such use generates likelihood of confusion or likelihood of association.

(a) Trademarks

Trademarks are distinctive signs that distinguish goods and services from one manufacturer or provider from those of another. The Nice International Classification of Goods and Services is applicable in Colombia, so goods or services protected by a trademark must follow this classification. Thus, protection is granted only to products or services included under the classes registered for the corresponding trademark, with few exceptions, such protection may not be extended to products or services not included under the registered classes. The application for registration of the trademark may cover several different classes in accordance with the international classification of Nice, without requiring the filing of an independent application for registration for each class¹.

Trademarks may be nominative, graphic, word and design, or tridimensional. Additionally, Decision 486 foresees the possibility of registering certain sounds, odors, a combination of colors or colors delimited by a given shape, the shape of a product, and its packaging or wrappings, as trademarks, provided that they are perceptible by the senses².

The exclusive right to use a trademark becomes effective once its registration is granted, for an initial term of 10 years, which may be renewed indefinitely for subsequent 10-year terms.

In addition, pursuant to trademark applicable regulations in Colombia, the following provisions should be taken into consideration:

i. Priority claim

A priority claim is granted to the owner of a trademark application originally filed in any member country of the Paris Convention for the Protection of Industrial Property. Accordingly, the holder may file an application for the same trademark in any other member country, preserving the filing date of the initial application, provided that the subsequent applications are filed within a six-month term after the filing date of the initial application.

ii. Andean opposition

The holder of a trademark registration or application filed in any CAN member country may file an opposition against trademark applications filed in another member country. In order to prove its legitimate interest in the local market, the opponent must simultaneously file an application for registration in the country where the opposition is being filed³.

iii. Cancellation of a registration on the grounds of lack of use

This is a procedure by means of which any interested party may seek the cancellation of a trademark, which has been registered for more than three years, provided that its titleholder cannot evidence any significant use in any of the CAN countries during the three-year period prior to the date when the cancellation was requested.

1. Article 168, Decree 019/2012.
2. Article 134, Decision 486/2000.
3. Article 147, Decision 486/2000.

Adequate use of the trademark in any country member of CAN, with regards to all goods or services covered by the registration is sufficient to prevent cancellation. The titleholder of a trademark is under the obligation to supply evidence of use, failure to submit evidence leads to total cancellation of the registration⁴. In case evidence of adequate use for some goods or services is submitted, partial cancellation will be ordered. In this case, the registration of the trademark will be limited to cover exclusively the goods or services that are being used.

Use of the trademark by an authorized third party (through franchise, distribution agreements, license agreement, etc.), is considered valid to prove use in the event of lack of use cancellation procedure. It is however advisable to register the corresponding agreement for the use and exploitation of the trademark before the SIC.

Whoever obtains a favorable decision in a lack of use cancellation action in a CAN member country, will acquire the preferential right to register an identical trademark as the cancelled one. The application must be filed within the following three months after the notification date of the cancellation decision⁵.

iv. International trademark application

Colombia is part of the Madrid Protocol, which entered in force on August 29, 2012. Under the provisions of this protocol, it is possible to obtain registration of a trademark independently in multiple states, with the filing of a single international application before the competent national agency (SIC for Colombia) and the payment of a standardized rate. This application system represents for the applicant considerable advantages, particularly in terms of costs, time and resource optimization for trademark management.

Thus, under the Madrid Protocol, it is possible to file a single international application in order to obtain the registration of the trademark in the member countries of this international treaty. However, the trademark registration and protection itself will be granted or denied independently by each of the states indicated in the application.

(b) Slogans

A slogan is the word, phrase, or wording which is used together with a trademark. Slogan applications must indicate the trademark registration or application which they are associated⁶ with and its validity is subject to such trademark's validity.

The title of Decision 486 regulating trademarks, including the provisions for nonregistrability, is applicable to slogans.

(c) Trade names and trade emblems

Trade names protect the designation of the economic activity of an entrepreneur, which is known by consumers and competitors. In some cases, the trade name may not correspond to the denomination on the good standing certificate. On the other hand, trade emblems identify commercial establishments, defined as the set of goods and assets that have been organized together in order to attain the objectives of a company.

The rights on trade names and trade emblems are acquired by their first use in the market and end when no longer used.

Consequently, the registration of trade names and trade emblems only has a declaratory value and no rights arise from it. Thus, its purpose is to introduce a legal presumption regarding the date in which the trade name or emblem began to be used, which for all intents and purposes is the date of the application for registration.

(d) Geographical indications

Geographical indications are appellations of origin and indications of origin. Appellations of origin refer to a geographical indication consisting of the name of a specific country, region, or of a denomination which refers to a specific geographical area, whose name is used to identify a product originating therein, the quality, reputation, and other characteristics of which are exclusively or essentially attributable to the geographical environment in which it is produced, including natural and human factors⁷. An indication of origin consists of a

4. Article 167, Decision 486/2000.

5. Article 168, Decision 486/2000.

6. Article 175, and 176 Decision 486/2000.

7. Article 201, Decision 486/2000.

name, expression, image, or sign that indicates or evokes a particular country, region, locality, or place for the purpose of indicating that certain products or services come from that place.

The SIC declaration of protection grants the exclusive right of use of the appellation of origin to the producers/providers in such geographic region, and includes the possibility to prevent unauthorized third persons from using the distinctive sign, or similar signs for associated goods that may lead to confusion. Likewise, the authorization of use of a protected appellation of origin may be requested for a term of 10 years, renewable for equal periods.

Likewise, titleholders of appellations of origin may oppose the registration of a trademark or a slogan that reproduces, contains, or imitates their protected appellation of origin.

9.1.2. New creations

New creations protected by means of: Patents for inventions, utility models, industrial designs and layout designs of integrated circuits. The registrations granted by the Government confer to their holders an exclusive right of enjoyment and to prevent others from manufacturing, selling and/or using their protected inventions for a certain period of time. Due to their importance for the technological development of Colombia and in order to guarantee their proper use, Colombian legislation grants new creations a paramount position.

(a) Patents

In general terms, patents grant the titleholder the right to exclusively exploit the object of creation, as well as the right to prevent third parties from manufacturing, using, selling, or commercializing the object of protection. In accordance with the Andean regulations and domestic law, Colombia recognizes two kinds of patents: i) patents on inventions; and ii) patents on utility models.

i. Patents on inventions

Patents on inventions are granted with respect to goods or processes that are new, involve an inventive step, and are industrially applicable⁸. The exclusive right on a patent is granted for 20 years from the filing date of the application⁹.

8. Article 14, Decision 486/2000.
9. Article 50, Decision 486/2000.
10. Article 61, Decision 486/2000.
11. Article 65, Decision 486/2000.
12. Article 66, Decision 486/2000.

CAN legislation states that the following shall not be considered inventions: Discoveries, scientific theories, and mathematical methods; biological or genetic processes isolated from their natural environment, copyright protected works, software and any forms of conveying information. Likewise, therapeutic and surgical methods to treat humans and animals and uses or secondary uses of already patented goods and procedures, among others, are not considered patentable.

ii. Patents on utility models

Patents on utility models are granted to any new form, configuration, or composition of elements of any device, tool, instrument, mechanism or other object, or part thereof, which allows an improved or different utilization of the object, or which enables any utility, advantage or technical effect which it did not have before. The exclusivity right of use is granted for 10 years from the filing date of the application.

iii. International patent registration

Under the patent cooperation treaty (PCT) from which Colombia is part of, it is possible to apply for the protection of a patent in multiple states simultaneously with the filing of a single application for registration before the competent national agency, which for the case of Colombia is the SIC. This allows greater speed and optimization of resources.

iv. Compulsory licenses

There are certain state powers under which it is possible to temporarily limit exclusive rights of the titleholder of a patent (on inventions and utility models) by granting compulsory licenses to third parties.

TYPE OF COMPULSORY LICENSE	FACTUAL SITUATION
Compulsory license due to lack of use	Granted if the patent had not been exploited in the terms of the law or if it has been suspended for over a year ¹⁰
Compulsory license for reasons of public interest	Granted after declaring the existence of public interest, emergency, or national security grounds as long as such circumstances remain ¹¹
Compulsory license to preserve antitrust market conditions	Granted upon performance of anticompetitive (antitrust) acts, particularly the abuse of dominant position by the titleholder of the patent ¹²

TYPE OF COMPULSORY LICENSE	FACTUAL SITUATION
Compulsory license for dependency patents	Granted upon request when it is demonstrated that for the exploitation of a patent it is required the use of another one ¹³ .

(b) Industrial designs

Industrial designs refer to the particular appearance of a product resulting from any arrangement of lines, or combination of colors, or of any two-dimensional or three-dimensional form, line, outline, configuration, texture, or material, without changing the function or purpose of the product. Thus, through the qualification as an industrial design, creations that are innovative, that have a unique character and that can be applied on an industrial scale, are protected. The exclusivity right of use is granted for 10 years from the date of filing of the application¹⁴.

9.1.3. Right to claim priority on the application for patents

Decision 486 provides the possibility of “claiming priority,” case in which, as with trademarks, the holder of a patent application and industrial design is entitled to file subsequent identical applications in other countries and claim priority for the initial application date. Consequently, patent, trademark, and industrial design applications originated in other member countries of the Paris Convention are covered by the right to claim the earliest filing date. The term to claim priority is of one year for patents and six months for industrial designs and trademarks.

9.1.4. Negotiability

The rights conferred by the registration of distinctive signs and new creations are negotiable and assignable. Accordingly, their holders will be able to make use of their rights through different means, such as assignment by sale, license of use, or use them as encumbrances and guarantees.

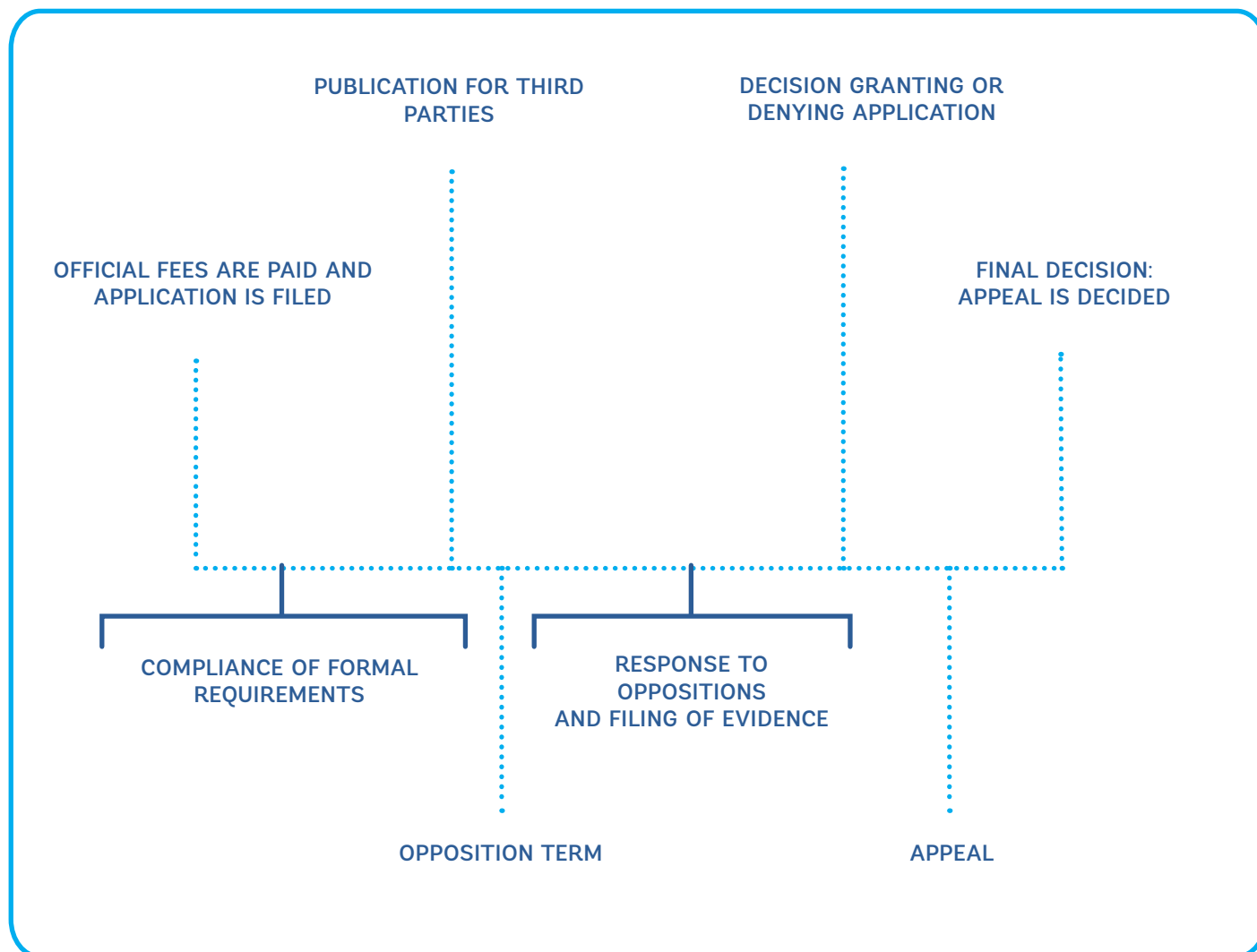
Bearing in mind that rights over trademarks and patents derive from their registration, any act of disposal or assignment, such as those mentioned above, must be recorded before the competent agency so as to become enforceable against third parties, except trademark licenses of use since their registration is optional according to Decree 729 of 2012¹⁵.

Colombian legislation allows the assignment of author's economic rights and industrial property rights by means of employment or service agreements. In fact, the transfer of said rights is presumed unless stated otherwise. In order for this presumption to operate, the contract must be written as opposed to a verbal agreement.

13. Article 67, Decision 486/2000.
14. Article 128, Decision 486/2000.
15. Article 5, Decreto 729/2012.

9.1.5. Applicable proceeding and fees

The nature of proceedings to register trademarks and patents is administrative and not judicial. Such proceedings are to be carried out with the SIC following these steps



For distinctive signs, the process may take between eight months and two years until a final decision is rendered. Regarding new creations, the process may take between five to seven years.

Applicable fees can be found at:

www.sic.gov.co

9.1.6. Commercial secret

Information possessed by an individual or company that could be used for any productive, industrial, or commercial activity and that is likely to be transmitted, can be protected through a commercial secret for an indefinite period of time, provided it complies with the following requirements:



- Being secret information
- Having a commercial value
- Having been subject to reasonable measures by its rightful owner to keep such information as secret¹⁶.

9.2. Copyright

9.2.1. General aspects

Copyright protection is granted to artistic and literary creations as well as software. Copyright protection is granted on the way ideas are expressed, not on the ideas themselves¹⁷.

Colombia has a protection system based on the concept of *droit d'auteur*, which stems from the tradition of civil law that rules in the country, in contrast to the copyright framework that exists in common law countries. Hence, the legislation protects the author of the work, that is, the individual who creates it, granting such individual moral and economic rights.

MORAL RIGHTS	ECONOMIC RIGHTS
<ul style="list-style-type: none"> • Perpetual rights claiming the authorship of the work. 	<ul style="list-style-type: none"> • Exclusive rights of the owner of the work to authorize or prohibit its use or exploitation thereof.
<ul style="list-style-type: none"> • Such rights are not assignable and may not be acquired by means of statute of limitation. 	<ul style="list-style-type: none"> • The holder is entitled to receive a payment for the exploitation and use of the work.
<ul style="list-style-type: none"> • The author is entitled to prevent the transformation, mutilation, or deformation of the work and to keep it anonymous, in order to maintain his/her honor and reputation. 	<ul style="list-style-type: none"> • They are triggered once the work or production has been disclosed by any means¹⁸. • There is an assumption of transfer of the economic rights in favor of the employer or commissioner, under a written employment or service agreement.

Registration of protected works only has declaratory value and no rights arise from it. Therefore, the registration does not grant any rights to the holder, and it only serves the purpose of making the creation public, enforceable against third parties, and it is an appropriate means to evidence ownership, originality and the time of creation of the work.

Protection of author's economic rights endures throughout the author's life plus 80 years after the author's death. When the owner of the copyright is a legal entity, protection is granted for 50 years from the date the work is published or disclosed.

9.2.2. Applicable law

Regulations on copyright law are laid down mostly in Decision 351 of 1993 of the CAN, Law 23 of 1982, and Law 44 of 1993. In the event of discrepancy between the CAN provisions and local legislation, the CAN provisions prevail, in accordance with the Colombian Political Constitution.

Furthermore, in Colombia both the Berne Convention and the WIPO Copyright Treaty (WCT), which include the Performances and Phonograms Treaty (WPPT), are applicable.

9.2.3. Negotiability

Due to their economic nature, author's economic rights may be subject to contractual arrangements for the benefit of the author or titleholder. Since these rights are freely transferable, they may be assigned through donations, purchase, sale, inheritance, etc. These rights may likewise be assigned by virtue of law and upon the death of the copyright holder. Additionally, there is an assumption of the transfer of author's economic rights to the employer or commissioner within employment or service agreements, provided that they are in writing.

¹⁶ Article 260, Decision 486/2000.
¹⁷ Article 4 and 7, Decision 351/1993.
¹⁸ Article 72, Law 23/1982.

Author's economic rights or associated rights may be assigned, whereby this assignment is limited to the foreseen modalities of use or to the time and territory determined by the contract. If no period of time is stated, the assignment is limited to five years, and the territory to the country where the assignment takes place¹⁹.

The assignment of author's economic rights will only be valid if the corresponding document is in writing. The latter must be filed before the National Copyright Office (DNDA, in Spanish) in order for it to be enforceable against third parties²⁰.

9.2.4. Applicable proceeding and fees

To register copyrights before the DNDA the form provided by this agency must be filed out and submitted. However, no rights arise from the registration, but it can serve as evidence in case of litigation.

The registration before the DNDA is free of charge. Nevertheless, the applicant must assume certain costs, which may be found at www.derechodeautor.gov.co.

REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
Colombian Political Constitution	Articles 58, 61, 78, 88, 150 and 189 – regulation on intellectual property
Paris Convention of 1883	For the protection of industrial property
Rome Convention of 1961	For the protection of performers, producers of phonograms and broadcasting organizations
General Inter-American Convention for Trade Mark and Commercial Protection of 1929	Trademark and commercial protection
Locarno Agreement of 1968	International classification for industrial designs
Nice Agreement of 1979	International classification of goods and services for the purposes of the registration of trademarks.
Berne Convention of 1979	For the protection of literary and artistic works
Law 23 of 1982	On copyright
Law 26 of 1992	Treaty on the international registration of audiovisual works
Law 44 of 1993	Modifies and complements Law 23 of 1982 on copyrights

¹⁹. Article 30, Law 1450/2011.
²⁰. Article 30, Law 1450/2011.

REGULATIONS	SUBJECT
Decision 351 of 1993 of the CAN	Common provisions on copyright and related rights
Strasbourg Agreement of 1994	International Patent Classification
WIPO Treaty of 1996	On Performances and Phonograms
WIPO Treaty of 1996	On Copyright
Law 463 of 1998	Patent Cooperation Treaty (PCT)
Decision 486 of 2000 of the CAN	Common Intellectual Property Regime
PCT of 2001	Patent Cooperation Treaty
Decision 689 of 2008 of the CAN	Adjustments to Decision 486 of 2000
Law 1199 de 2008	TRIPs
Law 1343 of 2009	TLT and its regulation
Law 1403 of 2010	Fanny Mickey Law regarding copyright
Law 1450 of 2011	Issuing the National Development Plan
Law 1455 of 2011	Madrid Protocol
Decree 19 of 2012	Paperwork reduction



—— CHAPTER 10 ——

REAL ESTATE

10 REAL ESTATE

Three things investors should know about the real estate regime in Colombia:

1. The Colombian Government protects private property.
2. Colombian nationals and foreigners have equal obligations and rights regarding the purchase of real estate property. Real estate transactions do not imply for foreign investors any additional tax, legal, or financial burdens.
3. Land use in Colombia must comply with land planning regulations.

10.1. Real Estate Acquisition in Colombia

past 10 days); (ii) public deeds evidencing acquisition and any other legal acts concerning the property over the past 20 years; (iii) tax payment certificates; and (iv) the land use certificate.

The following aspects must be taken into account:

10.1.1. Due diligence

Before acquiring real estate property in Colombia, it is advisable to review the following documents in order to have a complete overview of the legal situation of the property at the time of the transaction: (i) the most recent chain of title and no-lien certificate (Certificado de libertad y tradición, in Spanish) (issued ideally in the

Analysis of title condition: This analysis is carried out by an expert lawyer in order to determine if there are any conditions or circumstances that actually or potentially affect or limit the right of ownership over the property. Basically, this analysis ensures that there are no legal risks entailed in the transaction as well as in the chain of title, verifying that the sellers are the actual owners of the property.

■ Analysis of land use: This analysis is carried out by a lawyer or technical expert to determine what type of construction (including elevation) or development activities are permitted on the property that is being acquired. The purpose of this analysis is to ascertain the possibilities of developing on the property in question the investor's plans, according to the technical specifications of the design.

■ For the acquisition of rural land, please note that there are special regulations that impose certain limitations on acquisition and development of this type of real estate property.

10.1.2. Contracts

For the acquisition of real estate property, it is common to start by executing a promise to purchase agreement before concluding the actual purchase of the real estate property. In the promise to purchase agreement, the future buyer and seller agree upon the essential elements of the purchase agreement (the specified object and the price). The promise to purchase agreement is usually signed when the parties have satisfied all the conditions of the purchase agreement and only the legal formalities are missing.

For the purchase of the real estate property, the agreement must be formalized by means of a public deed. The cost of this procedure is approximately 0.3%¹ of the purchase price.

10.1.3. Registration procedure and effects of the registration

Property rights over real estate are transferred by means of the registration of the acquisition title in the public instruments registry office (Oficina de registro de instrumentos públicos, in Spanish)². The registration of the public deed accrues a registration tax on this procedure which varies between 0.5% and 1%³ of the value of the purchase agreement contained in the public deed as well as the registration fee equivalent to 0.5% of the value of the sale. The registration taxes and fees must be paid by the purchaser⁴.

10.2. Use of Real Estate Properties

It is not necessary to be the holder of the property rights of a real estate to be able to enjoy and use it. Among other instruments, a lease agreement grants these rights to a tenant in return for the payment of a rent.

10.3. Lease Agreements

Lease agreements⁵ can be executed verbally or in writing and all that is required for their enforceability is an agreement between the landlord and the tenant regarding the following essential elements: (i) value of the rent; and (ii) the property subject to lease. Additionally, even if they are not essential for the legal formalization of the lease agreement, it is advisable that the parties agree upon the following elements: (i) payment method; (ii) date and delivery of the real state subject to the agreement; (iii) an inventory of the utilities, objects or associated uses; (iv) duration; and (v) designation of the party responsible for the payment of public utilities. It is recommended that this type of agreement is executed in writing.

10.3.1. Landlord's obligations

The landlord's main obligations are to: (i) deliver the real estate property to the tenant; (ii) maintain the property in a state that allows its use accordingly with the purpose for which it was leased; (iii) address any contingency which prevents the tenant from using the real estate for the purpose for which it was leased; and (iv) make any necessary repairs⁶.

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10.3.2. Tenant's obligations

The main obligations of the tenant are to: (i) pay the lease; (ii) use the property in accordance with the provisions of the lease agreement; (iii) ensure the preservation of the real estate property; (iv) return

1. Decree 188 of 2013 which updates notary fees for year 2013.

2. Article 756 of the Civil Code.

3. Article 188 of Law 1607 of 2012.

4. Article 1 Literal b of Resolution 126 of 2013.

5. Lease agreements are ruled by different laws: (i) civil laws regulated in the Civil Code, (ii) commercial laws that are contained in the Commercial Code, and (iii) regulations on the lease of urban housing regulated by Law 820 of 2003.

6. Article 1982 and 1985 of the Civil Code.

the real estate property upon termination of the lease agreement in the same conditions as received; and (v) make repairs related to minor upkeep, esthetic reparations, and regular maintenance (reparaciones locativas) during the term of the lease⁷.



10.3.3. Rent

Is the price that the tenant must pay to the landlord for the use of the real estate property. The rent can be stipulated in the lease agreement in any foreign currency, but it must be paid in Colombian Pesos (COP) at the market representative exchange rate established on the agreed date or the foreign exchange rate agreed between the parties⁸.



10.3.4. Contract renewal

For the lease of real estate properties that are part of an ongoing concern, the tenant who has leased such property for two years or more has the right to a renewal of the contract at the time of its expiration; nonetheless, certain legal exceptions may apply⁹.

10.4. Real Estate Investment Trusts

The growing importance of trust agreements in real estate transactions in Colombia must be highlighted. Because this mechanism offers trustworthiness and transparency to all parties, currently it is used in most real estate transactions. One of the types of trust agreements is provided for the development of real estate projects, whereby the real estate property is transferred to an equity trust managed by a trust company under surveillance by the Colombian Financial Superintendency, which is set up independently from the owner's and the trust company's equity, thus

enabling the use of the trusted assets exclusively for development of the real estate project. The purpose of a trust agreement includes: (i) the development of the real estate project; (ii) a transparent administration of the resources of third parties that have contributed towards the acquisition of one of the units; and (iii) once the works are completed, the trust shall transfer the property of the units to the purchasers¹⁰.

10.5. Urban Regulations

Municipalities have the authority to establish zoning regulations pertaining to their territories, the rational and equitable use of land, and the preservation and protection of environmental and cultural heritage located in such territories. Therefore, municipalities are required to establish a territorial zoning plan (Plan de Ordenamiento Territorial, POT) for the regulation of potential developments and land use of the district or municipality territory pursuant the Colombian Political Constitution and the Organic Law for land zoning¹¹ among others.

10.5.1. General aspects of the Territorial Zoning Plan (POT, in Spanish)

The POT is a document issued by the municipality administration that contains and describes the objectives, guidelines, policies, strategies, goals, programs, actions, and regulations adopted to guide and manage the physical development of land and land use.

The territories of the municipalities and districts are classified as urban land, rural land, or land for urban expansion. This classification should be taken into account by the investors in order to establish whether according to the environmental aspects, the zoning, and land use regulations the contemplated uses are permitted on the real estate property.

Decree 364 of 2013, amended topics related to land use, urban development transfers, re-densification process, construction priority interest housing (VIP), among others in Bogotá.

7. Articles 1985, 1996, 1998, 2000 of the Civil Code.

8. Article 19 of Law 820 of 2003.

9. However, Article 518 of Commercial Code provides three instances in which the lessee may not exercise its right to renew the lease contract: (i) when the tenant has breached the contract, (ii) when the owner needs the property for its own habitation or for a commercial establishment substantially different from that of the lessee, and (iii) if the property needs to be repaired and such repairs require it to be vacant in order to be performed; at the time of completion of the repairs, the tenant will have priority to rent the property. Except for the first occurrence, prior 6-months notice is required.

10. Financial Superintendency of Colombia. Opinion No 2010023725-002 May 21, 2010.

11. Law 1454 of 2011

10.6. Regulation for the Development of Property in Any Territory

In general, the required planning instruments are: Partial plans (Planes Parciales), rural planning units (Unidades de Planeación Rural), urbanization or parceling permissions (Licencias de Urbanización o Parcelación) and building permits.

10.6.1. Partial plans

Partial plans develop and complement the provisions of the POT for specific areas of urban land, the areas included in the territories earmarked for urban expansion and other areas that are to be developed through urban planning units (Unidades de Actuación Urbanística), macroprojects or other special urban interventions. By means of partial plans the use of private spaces is defined, as well as specific uses of land, intensity of uses, and buildings as well as the obligations for the transfer and construction, provision of equipments, spaces, and public utilities that allow the execution of specific projects of urbanization and construction in the terrains included in the planning¹².

In these partial plans, the urban regulations contained in the POT are developed for the portion of land within the scope of the POT. These instruments are approved by means of an administrative act issued by the relevant municipal or district administration.

10.6.3. Parceling permissions

Parceling permissions allow the creation of public and private spaces in one or several properties located in rural and suburban land. They are required also for the construction of roads and the building of infrastructure to ensure the self-provision of residential services, which will enable the use of the resulting properties for the purposes authorized by the relevant POT.

To build on the resulting land parcel, the corresponding building permit will be required.

10.6.4. Urbanization permits

Urbanization permits are the prior authorization required to create, on one or several properties located on urban land, public and private spaces, build roads, and infrastructure, and provide public services that enable the adaptation, allocation, and subdivision of these lands for future construction of buildings destined for urban uses, according to the POT. Licenses are granted by an urban curator or the competent municipal authority¹³.

Urbanization permits lay down the regulations regarding uses, elevation, volume, accessibility and other technical aspects based on which the building permits will be issued for new buildings in such urbanized properties. With the urbanization permission, an urban map (Plano Urbanístico) is approved, and such map will contain a graphical representation of the urbanization, identifying all its parts to facilitate its understanding, such as transfers to the planning authorities for the construction of public parks, facilities and local roads or useful areas, among others. The urbanization permits on lands earmarked for urban expansion can only be issued after the adoption of the corresponding partial plan.

10.6.2. Rural Planning Units

Rural Planning Units (UPR, in Spanish) are intermediate planning instruments for rural land that complement the POT. Through the UPRs, issues such as environmental management, activities that take place outside of city limits, decisions on occupancy and uses, management strategies and instruments, and agricultural technical assistance strategies are provided for.

10.6.5. Building permits

A building permit is the prior authorization required to develop buildings, circulation areas and communal areas in one or several properties, in accordance with the provisions of the POT, the special management and protection plans of cultural

¹² Article 1 of Decree 2181 of 2006.
¹³ Article 1 of Decree 1469 of 2010.

interest and other rules that govern such matters. Building permits determine specific uses, elevation, volume, accessibility and other technical aspects approved for the corresponding construction¹⁴.

10.7. Special Duties that Affect Real Estate Property

10.7.1. Real estate tax

The real estate tax is a duty levied on real estate located in Colombia. It must be declared and paid once a year or quarterly by owners, users, or usufructuaries depending on the municipality or district where the real estate property is located.

The taxable base is determined by: (i) the current appraisal value which can be updated by the municipality as a consequence of new conditions, or through the urban and rural real estate valuation index (IVIUR, in Spanish), or (ii) a self-appraisal value made by the taxpayer.

The applicable tax rate depends upon the conditions of the real estate, which also depends upon elements such as constructed area, location, and destination of the real estate property. The tax rate varies between 0.3% and 3.3% depending on the economical destination of the real estate.

Real estate tax is 100% deductible for income tax purposes, considering that a cause-effect relation exists with the income producing activity of the taxpayer.

10.7.2. Surplus value

The surplus value (plusvalía) is a contribution derived from zoning actions and specific authorizations destined to improve land use or to give the property a more profitable use¹⁵.

Acts involving transfer of property rights and the issuance of building permits generate surplus value, ranging between 30% and 50% of the higher value per square meter that befalls to the benefited property¹⁶.

10.7.3. Recovery contribution

Is a lien on real estate properties that benefit from the public interest works carried out by the State.

10.7.4. Urban Lineation Tax

Urban lineation tax is levied on the issue of construction licenses for executing new real state works, extensions, modifications and repairs on real state.


¹⁴. According to article 7 of Decree 1469, 2010, there are different types of building permits: New construction, expansion, upgrading, alteration, restoration, structural reinforcement, demolition, reconstruction, and closing.

¹⁵. Article 74, Law 398 of 1997.

¹⁶. Article 79, Law 398 of 1997.

REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
Civil Code	Contracts
Code of Commerce	Contracts
Law 820 of 2003	Urban Leasing Law
Decree 2811 of 1974	National Code for Renewable Natural Resources and Environmental Protection
Law 44 of 1990	Real Estate Tax
Law 9 of 1989 and 1469 of 2011	Municipal development plans, acquisition, and expropriation
Law 388 of 1997	Amendment of Law 9 of 1989
Law 507 of 1999	Modifications of Law 388 of 1997
Law 810 of 2003	Planning sanctions
Decree 564 of 2006 (partially removed)	Planning permits
Decree 2181 of 2006	Partial plans
Decree 0097 of 2006	Planning permissions on rural land
Decree 4300 of 2007	Partial plans
Decree 3600 of 2007	Rural land zoning regulation
Decree 4065 of 2008	Urbanization and development of lands and areas on urban land and expansion and applicable legislation on calculation of participation in surplus value
Decree 4066 of 2008	Modifications to Decree 3600 of 2007
Decree 3641 of 2009	Modification to Decree 3600 of 2007
Decree 1469 of 2010	Planning permissions
Law 1450 of 2011	National Development Plan 2010-2014
Law 1454 of 2011	Organic rules for area zoning
Law 1469 of 2011	Promotion of developable land and access to housing
Decree - Law 0019 of 2012	Paperwork reduction
Law 160 of 1994	Acquisition of rural land



— CHAPTER 11 —

GOVERNMENT CONTRACTING

11 GOVERNMENT CONTRACTING

Five things an investor should know about government contracting in Colombia:

1. In Colombia, objectivity in the selection process is the guiding principle of government contracting in order to achieve the goals of the State. This implies that public entities must always choose the most favorable offer for the public interest.
2. Foreigners may participate in the selection processes of contractors conducted by governmental entities under the same conditions as a Colombian would participate in a selection process in the country of origin of the foreign bidder. For this to happen, an agreement between the Colombian Government and the country of the foreigner participating in the selection processes must be entered providing that the same treatment to nationals of such country will be granted to Colombian bidders.
3. All individuals and legal persons, whether Colombian or foreign, based in Colombia or established through a branch in the country, wishing to execute contracts with governmental entities must register in the bidder's registry. However, foreign entities without domicile or branch in Colombia are not obliged to have such registration.
4. The contractors must submit a performance bond to guarantee compliance with the obligations of the contract, except in the case of loan agreements, inter-administrative contracts, insurance contracts, and contracts for less than 10% of the budget allocated to the particular entity.
5. In Colombia, private initiatives are possible for public-private partnerships, regardless of whether public resources are required to develop them. For projects from private initiative, economic resource from the public entity cannot exceed 20% of the project and a public tender must be carried.

11.1. General Aspects

In Colombia, government contracting legislation¹ has been designed to achieve the State's purposes through the collaboration with nonpublic entities that under certain agreements get to carry on social functions and their obligations².

1. This is mostly contained in Law 80 of 1993 and in Law 1150 of 2007, and its regulatory decrees.
2. Article 3 of Law 80 of 1993.

11.2. Scope of Government Contracting Laws

Generally, all governmental entities are covered by the government contracting regulations; however, there are some exceptions, which are subject to a special set of rules. A contract in which at least one of the parties is a public entity, is considered a government contract, except for financial entities or public home service companies for contracting purposes.

11.3. Parties in Government Contracts

Government contracts are executed between the contracting entity and the contractor, whereby the latter may be an individual or a legal person, national or foreign, a group of persons joined in legal structures like a joint venture or by a group or persons bound together by a contract known as “commitment to create a company.”

National and foreign legal persons wishing to execute contracts with governmental entities must demonstrate their legal capacity, pursuant to the applicable commercial legislation³. They must also demonstrate the following: That the activity that the contract would allocate is within the scope of their corporate purpose, that they have the experience, technical, and financial capacity and that they have not incurred into any of the grounds for impediment or conflict of interests.

A consortium is defined as two or more persons, who jointly submit the same proposal in order to be awarded, execute, and perform the contract, and who are jointly and severally liable for each and all obligations derived from the proposal and the contract (including the sanctions that may be imposed during its performance). A temporary union, on the other hand, is basically the same as a consortium except for the fact that the person liable for the penalties imposed during the performance of the contract will be individually the member of the joint venture responsible for the activity, according to the distribution of activities in the temporary union's contract⁴.

Other corporate alternatives to submit a bid, to a State entity are: (i) the promise of incorporating a company, whereby the parties submit a document of intention to incorporate a company as soon as the contract is awarded; and (ii) the constitution of special purpose vehicles, created with the sole purpose of executing and performing the government contract. In this case, the liability of the partners of a special purpose vehicle is the same as that of a consortium.

3. For this matter it is necessary to analyze the limits of the legal representative powers of the corresponding corporation.

4. Article 7 of Law 80 of 1993.

5. Solano Sierra Jairo Enrique, *Contratación Administrativa*, second edition, 1997, page 81.

6. Solano Sierra Jairo Enrique, *Contratación Administrativa*, second edition, 1997, page 81.

7. Article 8 of Law 80 of 1993.

8. Article 8 of Law 80 of 1993.

11.4. Grounds for Impediment and Incompatibilities

Grounds for impediment or incompatibilities are situations that by law limit the bidder's capacity to enter into contracts with the Colombian Government. Their purpose is to protect the principles of morality, transparency, and equality in government contracting. Impediments and incompatibilities have been defined as “a set of circumstances regarding the contractor and whose existence prevents the contract from being executed because it can be considered invalid.”⁵

Impediments “are legal or special inconveniences that the potential contractor may have which hinder the right to participate in the process or to be awarded or celebrate the government contract.” Incompatibilities are “prohibitions or ineligibilities to carry out the activity of the contract because the interested party is or has been for a certain period of time a public servant.”⁶

Due to the fact that there are limitations or restrictions to execute contracts with the State, impediments and incompatibilities must be explicitly indicated in the law and cannot be broadly interpreted or applied to analogous situations.

Some of the impediments stated in the law are for: (i) whoever caused an expiration declaration, (ii) whoever keeps from subscribing a State contract without just cause, (iii) whoever has been condemned by a judge to the additional penalty of interdiction in rights and public functions or has been sanctioned with a destitution; and (iv) public servants among others⁷.

On the other hand, incompatibilities to sign public contracts arise for the following persons, among others; (i) whoever made part of the board of directors or the council of administration of the public entity or whoever has been a public servant in the signing entity in a directive, consulting, or executive positions in the prior year; and (ii) whoever has a blood affinity or civil relation up to a second degree with public servants in a directive, executive, or consulting position in the public entity or with a member of the board of directors or the council of administration or a person that exercises internal controls within the entity⁸.

11.5. Bidders Registry

It is a mandatory and public registry for all national or foreign persons based in Colombia or branches of foreign companies interested in executing contracts with governmental entities and that implies its enlisting, certification of qualifications, and classification of activities.

The bidders registry (RUP in Spanish) must be filed in the chamber of commerce of the main domicile of the interested party, which must verify the information filed in order to issue a certification endorsing the qualifications of a contractor⁹ to participate in a contract selection process with governmental entities considering its financial and organizational capabilities and experience.

The renewal of the RUP shall be done on annual basis, on the fifth labor day of April of each year, at the latest¹⁰.

For the case of contractors or consultants that are legal entities incorporated for less than 60 months, such can credit experience before the RUP by means of the partners or associates experience in proportion to their participation on the corresponding entity, even if such partners or associates are foreign.

The RUP is the only document required as evidence of the qualifications and classification it certifies, since they have been previously verified by the corresponding chamber of commerce¹¹. The chamber of commerce shall verify the conditions set for the contractors such as: (i) experience, (ii) legal standing, (iii) financial capability, (iv) organizational capability¹².

The RUP is not required to execute contracts with governmental entities in the following situations¹³:

- In the event of direct contracting.
- Contracts for less than 10% of the allocated budget of the particular entity (low-value)¹⁴.
- Health care procurement contracts.

- Concession contracts and in general public-private partnerships (PPP) of any kind.
- Contracts for the disposal of State assets.
- Contracts for agricultural products or products destined for agricultural production offered by legally established commodity exchanges.
- Acts and contracts directly involved in the commercial and industrial activities of State-owned industrial and commercial companies.
- Foreign natural persons not domiciled in Colombia or foreign legal persons without a branch in Colombia that wishes to execute contracts with governmental entities.

In the above mentioned situations, and for interested foreign parties, the relevant contracting governmental entities are responsible for verifying that the bidders meet the requirements.

Since Decree 1510 was enacted on the 17 of July of 2013, the contractors that are not registered in the RUP by that date, or whose registration has not been renewed, will be able to request the registration without using the CIU classification (International Uniform Industrial Classification). As of April 1 of 2014, the registration and renewal of the RUP will require the Classification of Goods and Services.

11.6. Principles of Government Contracting

Government contracting is ruled by the following principles:

- The principle of objective selection, defined as the application of objective criteria in selecting the option that is most favorable to the interests of the entity and its goals, without personal considerations or subjective motivations¹⁵.
- Colombia follows the free competition principle and accordingly foreigners may participate in selection processes under the same conditions as nationals. Also, the reciprocity principle applies allowing the foreign bidder to receive the same treatment as a national bidder if the former proves that a Colombian proponent

9. Article 221, Decree 19 of 2012.

10. Decree 1510 of 2013.

11. Ibidem.

12. Decree 1510 of 2013.

13. Decree 1464 of 2010, Article 4.

14. Article 6 of Law 1150 of 2007.

15. Article 5 of Law 1150 of 2007.

would receive equal treatment as a national in the foreign bidder's country of origin. A foreign bidder with reciprocity will be preferred over one without it. Within selection processes, additional points are given to offers of Colombian goods and services and offers of foreign goods and services from countries where offers of Colombian goods and services receive equal treatment.

- The right to due process in government contracting applies to all public acts that imply a unilateral decision or a sanction affecting the contractor. Contracting legislation guarantees the right to a fair hearing (*audi alteram partem*) and to defense, and both rights are enacted in the Constitution and public contracting law¹⁶.

- The principles of transparency, equality, economy, and speed, which are self-explanatory, also apply¹⁷.

11.7. Modalities of Contractor Selection

To guarantee the principles of equality, reciprocity, transparency, and objective selection, different procedures have been established for the selection process, through which governmental entities ensure the selection of the best offer.

The selection procedures are: Public tender, abbreviated selection process, selection based on qualifications, direct selection, and low-value contracts.

11.7.1. Public tender

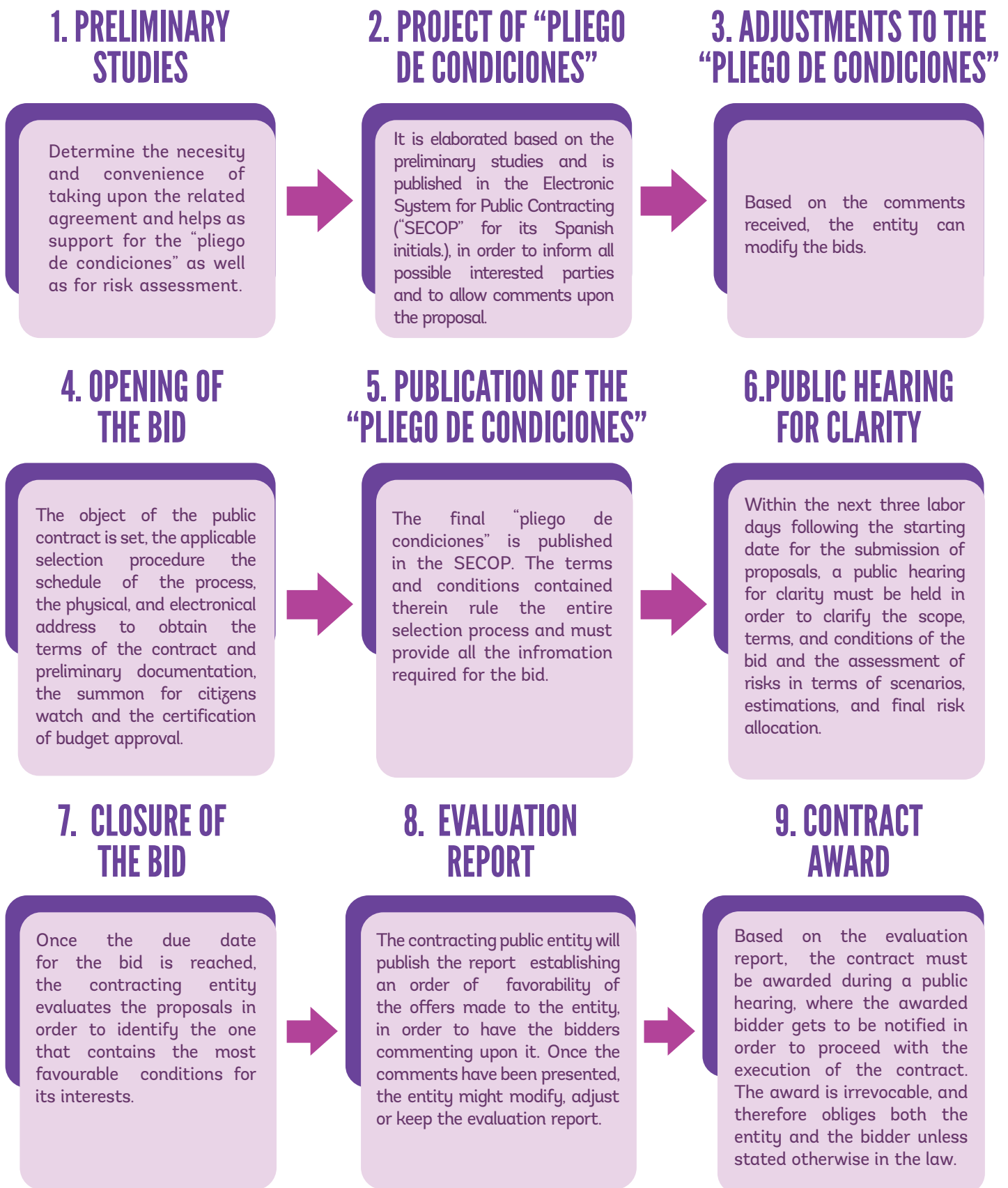
The tendering process begins with a public invitation placed by the public entity calling all interested participants to submit their bids, where the most favorable bid in terms of the goals and needs of the entity is chosen on the basis of the criteria and conditions set forth by the public entity in the terms of the bid ("pliego de condiciones").

The tender processes must adhere to the following process¹⁸:

¹⁶. Article 17 of Law 1150 of 2007.

¹⁷. Article 23 of Law 80 of 1993.

¹⁸. Law 80 of 1993, Law 1150 of 2007, Law 1450 of 2011, Law 1474 of 2011, Decree 2474 of 2008 and Decree 019 of 2012.



In Public Tender processes, a ten (10) labor days limit will be available for presenting observations and comments on the publication of the bid terms.

11.7.2. Abbreviated Selection Process

This selection alternative is faster than the public tender, and it can be applied in the following cases: (i) the procurement of goods and services which have uniform technical standards and are of common usage (e.g.: Office supplies); (ii) the procurement of products for agricultural use; (iii) low-value contracts¹⁹; (iv) health care procurement contracts; (v) contracts for the disposition of State assets²⁰; (vi) contracts directly related to the activities of State-owned industrial and commercial companies; (vii) procurement of goods and services for defense and national security; (viii) when a public tender has been opened but is not awarded due to lack of qualified bidders; and (ix) contracts with entities responsible for programs for the protection of vulnerable populations²¹. Additionally, this selection process will also be applicable in contracts with the National Institute of Roads (in Spanish "INVIAS"), for the development of security on roads programs, contracting of goods, constructions and services that are performed with resources managed by the Colombian defense sector.

In Abbreviated Selection Processes, a five (5) labor day's limit will be available for presenting observations and comments on the publication of the bid terms.

11.7.3. Selection based on qualifications

The selection based on qualifications is a procedure for the selection of consultants or projects, following stages laid down by law and considering that the contractor has to carry out an intellectual task. For this type of selection process priority is given to technical and professional considerations were economic criteria is not a deciding selection factor.

With the enactment of Decree 1510 of 2013, the selection based on qualifications can be carried in an open procedure or in a prequalified procedure.

11.7.4. Direct contracting

Direct contracting is an exceptional selection mechanism, by virtue of which public entities can enter into contracts without the need to previously carry out a competitive selection process. Therefore, its application is limited to the grounds stated in the law, which are as follows²²:

- Loans.
- Interadministrative contracts.
- Urgent need.
- Provision of professional and support services for the implementation of artistic works that can only be entrusted to certain individuals.
- Goods and services for the defense sector, the acquisition of which is confidential.
- Trust agreements entered into by certain territorial entities (e.g.: Departments or municipalities) for their liability restructuring agreements.
- Contracts for the development of scientific and technological activities.
- When there is no plurality of bidders in the market.
- Lease or purchase of real estate.

11.7.5. Low-value contracts

Low-value contracts are awarded by means of fast procedures, which can be carried out when the value of the contract is equivalent to or less than 10% of the entity's budget (see Section 11.7.2.)²³.

11.8. Publication of the Contracting Process Through Electronic Means

Government entities must publish on the website www.contratos.gov.co all the information required by law²⁴ regarding the different selection processes they are conducting²⁵, in order to inform the general public so that it can comment on it or participate in the bidding process.

Additionally, with the enactment of Decree 1510 of 2013 all public entities are obliged to publish an Annual Plan which includes all goods, constructions and services that

19. It is determined based on the amount of the annual budgets of the public entities.

20. With the exception of what is regulated in Law 226 of 1995.

21. Article 2 numeral 2 of Law 1150 of 2007.

22. Article 2 of Law 1150 of 2007.

23. Article 274 of Law 1450 of 2011.

24. Determined by Article 8 of Decree 2474 of 2008.

25. With the exception of matters expressly subject to confidentiality.

they pretend to purchase through the year. Through this publication, all purchases made by each entity will be public on annual basis.

On the other hand, all public entities (that contract with public resources) will also have to publish through the SECOP, all documentation related to the process and bidding administrative acts within the following three (3) days of its enactment.

11.9. Contents of the Government Contract

The government contract consists of the executed contract document and any annex or amendments thereto, if any, the terms of the bid and amendments thereto, the preliminary studies, the risk allocation matrix, the proposal submitted by the awarded bidder, as well as all other documents issued during the bidder selection process. Thus, government contracts consist of a group of documents that regulate the contractual relationship.

11.9.1. Term of the contract and additions

Government contracts generally establish, in addition to the term for their performance, a term for their liquidation of up to four months.

Furthermore, except for concessions and other forms of PPP (see Section 11.10.7) governmental entities can consider entering into additional contracts, that is contracts which increase the scope of the initial obligations, the only limitation being that the addition must not exceed 50% of the initial value of the contract.

11.9.2. Guarantees

Whoever submits a bid for a selection process must provide a bid bond for a value which is usually set at 10% of the value of the offer, although this value may be lower in processes involving large sums. Additionally, those awarded the contract are required to submit a performance bond to cover any failure to comply with the obligations set forth in the contract. The performance bond must offer ample coverage.

When contracting with the Government, contractors can submit different kinds of guarantees as risk coverage or multiple ones such as: (i) insurance policies; (ii) a trust as guarantee; (iii) a guarantee issued by a bank; (iv) securities endorsement as a guarantee; or (v) a cash deposit. In addition, foreign individuals or legal entities without domicile or branch in Colombia may submit, as a guarantee, standby letters of credit issued abroad.

The guarantee must cover the risks²⁶ that may arise in connection with any failure to comply with the terms of the bid or of the bid contract. The coverage amounts of the guarantees are established by law²⁷.

11.9.3. Extraordinary powers

Extraordinary powers are faculties that surpass commercial and civil law, embedded in the administration and providers of public utilities, that can be used only when the failure of a contractor to comply with the terms of the contract is so severe that the service or public utilities the entity is responsible for, are at risk of being paralyzed or seriously affected, or when such powers are required to protect the general interest. These powers are used to ensure the immediate and continuous provision of the services in question²⁸.

These extraordinary powers include unilateral modification, termination, and interpretation of the contracts, as well as the mandatory hand-over of the assets to the State at no cost at termination of contracts for the exploitation of public assets and the forfeiture of the contract. These powers can only be exercised by governmental entities in the circumstances set forth by law²⁹.

For some contracts it is mandatory to establish exceptional powers clauses in: (i) contracts to perform an activity that constitutes a state monopoly; (ii) the provision of public utilities; (iii) the exploitation and concession of State assets; and (iv) public work contracts. If the aforementioned faculties are not expressly agreed upon when mandatory, they are understood to be part of the agreement by law³⁰. Supply agreements and services agreements might contain extraordinary clauses, in all other contracts it is forbidden to include exceptional powers clauses³¹.

26. Decree 4828 of 2008, Article 4.

27. Decree 2493 of 2009.

28. Article 14 of Law 80 of 1993.

29. Ibidem.

30. Ibidem.

31. Council of State. Chamber for Contentious Administrative Proceedings. Third Section. Ruling of November 13 of 2007. Exp. 22840.

11.9.4. Fines and penalty clause

In the fulfillment of the duty that public entities have to control and supervise the performance of government contracts, these entities may impose the fines agreed in the contracts in order to demand from the contractor compliance with the agreed obligations. Likewise, public entities have the legal capacity to execute the penalty clause, as agreed in the corresponding contract³².

11.9.5. Assignment of Government Contracts

Government contracts are based on the contractor's qualifications. Therefore, once they have been executed, they cannot be assigned without prior written authorization of the contracting entity³³. In the event a contractor has an impediment or incompatibility, the contractor must assign the contract, with prior written authorization of the contracting entity, and if not feasible, then the contractor must withdraw from the contract.

If a member of a consortium or temporary union has an impediment or incompatibility, it must assign its part in the consortium or temporary union with the prior written authorization of the contracting entity. In no event may the assignment take place between members of the consortium or temporal union³⁴.

For the contracting entity to approve the assignment of the contract, the assignee must comply with all the requirements set forth in the Request For Proposal (RFP) of the awarded contract.

11.9.6. Payment method

In government contracts, governmental entities can agree to make an advance payment (anticipo) or down payments (pago anticipado) but such advances may not exceed 50% of the contract's value³⁵. Accordingly, "advance payment means the first payment of a contract agreed by the parties to be carried out over a period of time; and down payment refers to the first partial payment to a contractor for a contract to be performed immediately."³⁶

11.9.7. Conflict resolution

Government entities and contractors must seek to resolve disputes arising from their contracts in a flexible, fast, and direct manner using conflict resolution mechanisms, such as conciliation, amicable settlements, or transaction³⁷. The parties may also use alternative conflict resolution mechanisms such as national or international arbitration³⁸.

If the parties agree to resort to ordinary courts, the resolution of conflicts arising from government contracts is subject to the jurisdiction of the administrative courts³⁹.

11.9.8. Final accounts for Government Contracts

For all continuing government contracts, it is mandatory to submit final accounts upon termination. The accounts should be mutually prepared and agreed and when no agreement can be reached, the state contracting party has to unilaterally set them. Contracts for professional or support services do not need to submit final accounts⁴⁰.

11.10. Types of Government Contracts

Governmental entities may enter into any kind of agreement permitted by law. Any contract executed by a public entity is a state contract, which is a legal act from which obligations arise, derived from the exercise of free will.

Many types of government contracts have been created as a result of the diversity of needs of public entities with the aim of achieving the goals of the State. The following provide a brief summary of some government contracts.

11.10.1. Construction contract

Construction contracts are those entered into by governmental entities for the construction, maintenance, installation, and the performance of any other material works, regardless of the execution and payment modalities⁴¹.

32. Article 17 of Law 1150 of 2007.

33. Article 23 of Law 1150 of 2007.

34. Article 9 of Law 80 of 1993.

35. Article 40 of Law 80 of 1993.

36. Council of State, Chamber for Contentious Administrative Proceedings, Ruling of June 22nd, 2011. Counselor: Ricardo Hoyos Duque.

37. Article 226 of Decree 1818 of 1998.

38. Article 228 of Decree 1818 of 1998.

39. Article 75 of Law 80 of 1993.

40. Article 217 of Decree 19 of 2012.

41. Article 32, numeral 1 of Law 80 of 1993.

11.10.2. Consultancy contract

Consultancy contracts are executed by governmental entities to carry out studies related to the execution of investment projects, diagnostic studies, pre-feasibility or feasibility studies for specific programs or projects, as well as to engage technical assistance for coordination, control, and supervision. Consultancy contracts also include auditing and advisory; management of works or projects; direction, programming, and implementation of designs, blueprints, pre-projects, and projects⁴². The obligations of a consultancy contract are characteristically of an intellectual nature.

11.10.3. Service contract

This contract is executed to carry out activities related to the administration or operation of governmental entities. The contractor in this type of contract must always be an individual in situations where the State entity does not have sufficient or qualified personnel to carry out the contracted job⁴³.

11.10.4. Concession contract

Concessions have been classified as a type of PPP, a form of association described in section 11.10.7 below.

11.10.5. Trust agreements for the administration of state assets

Trust agreements (*encargos fiduciarios*, in Spanish), are contracts executed between governmental entities and trust companies authorized by the Financial Superintendency to manage the funds of contracts executed by public entities with third parties⁴⁴. The public trust agreement is a kind of “*encargo fiduciario*” as far as public funds cannot be transferred to a stand-alone trust fund. Governmental entities may set up a stand-alone trust fund in the cases explicitly permitted by law, such as securitizations⁴⁵.

11.10.6. Other contractual arrangements

Colombian legislation does not limit the types of contractual arrangements in government contracting, thereby permitting the creation of new contractual arrangements, as long as they comply with the law and the Constitution.

Other contractual arrangements not expressly regulated in the government contracting regulations are: Supply, purchase, loan, exploration and production of natural resources, *leasing, factoring, franchise, joint venture, merchandising, putting out system, just-in-time, swap, forward, and option contracts*.

11.10.7. Public-private partnership regulations

(a) Public-Private Partnerships

(i) Definition

A PPP has been defined as follows: “Public-private partnerships are mechanisms to attract private capital, that materialize in a contract that binds a State entity and an individual or legal entity for the supply of public goods and related services, which implies risk retention and risk allocation among the parties and payment methods according to the availability and the level of service of the infrastructure and/or service.”⁴⁶

PPP regulations explicitly establish that concession contracts are PPPs and that the purpose of these contracts is to grant a person the total or partial provision, operation, exploitation, organization, or management of a public service, or the total or partial construction, exploitation, or conservation of works or goods intended for public use or service⁴⁷.

The execution of the contract is the sole responsibility of the concessionaire under the supervision and control of the granting entity in return for payment, which can consist of royalties, duties, fees, value added, or profit sharing with regards to the exploitation of the goods, or as agreed between the parties.

42. Article 32, numeral 2 of Law 80 of 1993.

43. Article 32, numeral 3 of Law 80 of 1993.

44. Matallana Camacho, Ernesto, “Manual de Contratación de la Administración Pública”, Universidad Externado de Colombia, p. 935.

45. Part 6 of Article 32, numeral 5 of Law 80 of 1993.

46. Article 1 of Law 1508 of 2012.

47. Article 2 of Law 1508 of 2012.

Concession models have been addressed under the project finance schemes known as “project finance”⁴⁸ as follows:

BOT (BUILD, OPERATE, AND TRANSFER)

Under this model, the company finances, builds and operates the project, which generates income that covers the operational and investment costs. On a date previously agreed to by the parties, the company transfers (returns) all rights of the asset to the State.

BOMT (BUILD, OPERATE, MAINTAIN, AND TRANSFER)

Under this model, the company finances, builds, and operates the project, which generates income that covers the operational and investment costs. It maintains the project for a specified length of time and on a date previously agreed by the parties, transfers (returns) all the rights to the State.

BOO (BUILD, OWN, AND OPERATE)

Under this model, the contractor is contractually bound to build, own, and operate the assets with the corresponding financing of the works and in compliance with the specifications as required by the regulator. In this case, the useful life of the project refers to the time required to pay off the debt and pay the contractors. The main difference between BOO and BOT is that “the assets will always remain property of the private entity.”⁴⁹

BOOT (BUILD, OWN, OPERATE, AND TRANSFER)

Under this model, the contractor is bound to build, own, operate, and transfer the assets, and it is responsible for obtaining the corresponding financing for the project. The difference between BOOT and BOT is that the contractor owns the assets during the term of operation.

BOOMT (BUILD, OWN, OPERATE, MAINTAIN, AND TRANSFER)

Under this model, the contractor is bound to build, own, operate and maintain the project for a period of time previously agreed by the parties, to transfer the assets, and to finance the project.

BLT (BUILD, LEASE, AND TRANSFER):

This type of concession has the same features as BOT, but the financing is made through leasing.

(ii) General

PPPs are all contracts in which the entities entrust to a private investor the design and construction of infrastructure and its associated services, provided that the amount of the investment is over 6,000 times the current minimum legal monthly wage (MLMW), (approx. USD 1,945,263)⁵⁰. Pursuant to the law, the maximum term of these contracts is 30 years, including extensions. Notwithstanding the foregoing, the term may be extended for more than thirty (30) years when necessary, according to the results of structuring the respective project, and provided that the National Council for Economic and Social Policy (CONPES, in Spanish) approves such extension⁵¹.

Additional resources for PPPs through disbursements from public budget (the Nation, territorial entities or any other public fund) cannot exceed 20% of the value of the originally agreed contract. Likewise, requests for additional resources and the value of the time extensions taken as a whole cannot exceed 20% of the value of the originally agreed contract; the foregoing without prejudice to other additional requirements⁵².

(iii) Selection process

The selection process begins by carrying out a cost-benefit analysis of the project, taking into consideration its economical, social, and environmental impact for the population that

48. Revista Letras Jurídicas EPM, Vol. 12, No.1, March of 2007.

49. Ibidem.

50. Paragraph 1, Article 3 of Law 1508.

51. Article 6 of Law 1508 of 2012.

52. Article 6 of Law 1508 of 2012.

is directly affected. Special attention will be paid to the documents of this analysis and to the structural design of the project considering the ones with a technical, socioeconomic, environmental, real estate, financial legal character (Structuring) as well as risk definition, classification, calculation, and allocation by means of the preparation of the risk matrix for the project⁵³.

The private partner will then be selected by means of a prequalification process, a public call or a public tender.

The selection must follow the principles established in Law 80 of 1993 and Law 1150 of 2007, which defines an objective selection as that in which the most favorable offer to the interests of the entity is the chosen offer, based on objective factors previously determined in the RFP or any other equivalent document.

(b) Private Initiatives of PPP

(i) General considerations

Private initiatives refer to the fact that the originator of the idea or intention to carry out a project is of someone other than the State (the Originator), who must carry out all the studies required, as indicated in section 11.10.7. There are two types of private initiatives, those that require public funding and those that are privately funded.

Private initiative PPP projects, whether involving public or private funding, require that the Originator has the capacity to structure them, assuming all the implied costs. The submission of the project is confidential. The structuring process consists of two stages:

Prefeasibility: The Originator must make a complete and adequate description of the project indicating the minimum design in the prefeasibility stage, construction, operation, maintenance, organization, and exploitation of such estimated cost and financial source (Prefeasibility Stage)⁵⁴.

Feasibility: The Originator shall provide documentary evidence of its legal and financial capacity or of its financing potential, its experience in investment or structuring and the value of the project; also, it is necessary to present the financial model detailing and formulating the value of the project, a detail description of the stages and length, a justification for the contract length, a risk assessment of the project, an environmental, economical and social impact studies, and studies of technical feasibility, economical, environmental, real estate, financial, and juridical status of the project (Feasibility Stage)⁵⁵.

The Public-Private Partnership Law⁵⁶ provides terms for the state entity to determine whether or not the proposal is in line with the policies for the industry and the priorities set for projects, without granting any rights to the Originator. In case the initiative is not rejected in the Prefeasibility Stage, the Structuring of the project will continue, initiating the Feasibility Stage, in which the State analyses the Structuring submitted by the Originator.

(c) Private Initiative PPP with Public Funds

(i) Public contributions

Public contributions destined to the completion of the project may be in kind or in the form of disbursements from the public entity's budget. This implies that the entity to which the proposal is submitted must have available assets (if the contribution is in kind), the necessary funds or the authorization to commit such funds, in order to carry out the project or service proposed in the initiative.

53. Article 11 of Law 1508 of 2012.

54. Article 14 of Law 1508 of 2012.

55. Ibidem.

56. It must be considered that the public-private associations' law has not been sanctioned by the President as of the date in which the proposal is submitted, so it is still considered as a law project.

(ii) Selection process

Once the Prefeasibility and Feasibility stages have been completed, and provided that the initiative has been deemed viable, in order to guarantee the transparency in the use of the public funds and the right to equality, a selection process must be carried out in the terms set forth in paragraph (iii), subsection (a) of Section 11.7.1.

The Originator shall obtain bonus points during the selection process, ranging between 3% and 10%, depending on the complexity of the project, as compensation for assuming the burden of structuring the project⁵⁷.

If, as a result of the public tender process, the Originator is not chosen, it shall have the right to be reimbursed with the costs of the structuring previously approved by the public entity.

(d) Private-initiative PPP With Private Funds

(i) Selection process

Once the Prefeasibility and Feasibility stages have been completed and provided that the initiative has been deemed viable, in order to make the initiative public, the documents supporting the structuring of the project must be published on the SECOP website for at least one month and for a maximum of six months.

If during the time these documents are on the website, nobody expresses an interest in developing the project, aside from the Originator, then the state entity may directly contract the Originator.

However, if a third party expresses an interest in executing the project on the same basis that it shall not require public funding, it must guarantee the offer with an insurance policy, a bank guarantee or any other guarantee authorized by law and submit evidence of its legal and financial capacity and of its experience

in investment or structuring of projects to develop the project in question.

In the event that there are interested third parties, the entity must open an abbreviated selection process for a low-value contract with prequalification, which includes the Originator and all other interested parties that have submitted a guarantee.

If after the evaluation of the offers, the Originator's proposal is not the most favorable to the entity, the Originator may submit within 10 days after the publication of the evaluation report a new offer trumping the offer submitted by the best qualified bidder. If the Originator improves the proposal, it will be awarded with the contract; otherwise, the Originator is entitled to be reimbursed with the costs of structuring the project from the successful bidder⁵⁸.

11.11. Residential Utilities

The regime of residential utilities (SPD, in Spanish) is regulated by a special⁵⁹ set of regulations different from those of government contracting. Due to the importance of this industry, and the extensive development that it has had in the past 20 years in Colombia, the most relevant aspects of such regulations are explained below.

11.11.1. General aspects⁶⁰

SPDs are subject to regulations laid down by law and these services may be provided directly or indirectly by the State, by organized communities or by private entities. In any case, the State shall guarantee their provision, and has the power to regulate⁶¹, control⁶² and supervise these services.

The following are the SPD regulated by law⁶³: (i) water; (ii) sewage; (iii) waste management; (iv) electricity; and (v) gas distribution. Residential public utilities are considered essential and therefore, public utility companies' employees are not entitled to the right to strike. There is a special legal regime for the generation, interconnection, transmission, distribution and marketing of electricity. It is worth pointing out some of the aspects of this legal regime, as follows: (i) the Nation or the territorial entities may

57. Article 28 of Decree 1467 of 2012.

58. Article 30.3 of Decree 1467 of 2012.

59. Law 142 of 1994.

60. Council of State, Chamber of Consultancy and the Civil Service. Concept of June 16th, 1997. Counselor: Luis Camilo Osorio. File: 931.

61. The regulation of the SPDs is channeled through a Regulations Commission.

62. The inspection, vigilance, and control of the SPDs is exercised by the Presidency through the Superintendency of Public Utilities.

63. Basic public switching telephone network, and local wireless telephone network in the rural sector were part of the list of residential public utilities included in Law 142 of 1994, but with the enactment of Law 1341 of 2009, they are now regulated by special regulations; nowadays being regulated by the residential public utilities law, very specific aspects of the activity.

allocate the provision of electricity to a private or public legal entity, or to PPP by means of a concession contract; (ii) the contract's remuneration consists of the rate or the price that the users pay, pursuant to the regulation; and (iii) companies incorporated after 1994 for the provision of electricity may only perform one of the activities related to this service, with the exception of marketing which can be carried out simultaneously with generation or distribution⁶⁴; and (iv) the applicable contracting regulation to the provider of the services of generation, interconnection, transmission, distribution and commercialization of electric energy will be that applicable to private agreements, notwithstanding the Commission of Regulation of Energy and Gas (CREG, in Spanish) can demand the inclusion of exceptional clauses to some of the agreements executed by the entities⁶⁵.

11.11.2. General principles of residential public utilities

The provision of SPD is regulated by a series of principles that govern the performance of this activity, such as economic freedom, equality, continuity, regularity, efficiency, and freedom of entry to the market.

Some of the most important aspects of such principles are:

Economic freedom implies that duly incorporated and organized public services companies do not require any permit to develop their activities in Colombia.

In the context of economic freedom, public service companies may declare an asset to be of public utility or social interest to obtain its expropriation or the imposition of rights of way or easements⁶⁶.

The principle of equality in SPD is reflected in the concept of "rate neutrality."⁶⁷

The provision of public utilities cannot be interrupted except for reasons of *force majeure*, unforeseeable circumstances, scheduled rationings, or technical repairs⁶⁸.

Passing on to users the costs of managerial inefficiencies is absolutely forbidden.

Any national or foreign person has the right to organize and operate companies that include in their corporate purpose the provision of SPD in Colombia, as long as the Constitution and the law are respected.

11.11.3. Applicable legislation

The legal regime applicable to acts and contracts involving providers of SPD is that of private law. This means that government contracting law and the regulations on government contracting processes do not apply to residential public utilities⁶⁹.

11.11.4. Authorized providers of public utilities

Persons authorized to provide public utilities in Colombia are: Companies incorporated as public utilities companies (ESP, in Spanish), commercial and industrial companies of the State, organized communities, marginal producers, and municipalities. Note that ESPs are stock companies incorporated to provide public utilities or complementary activities and may attract capital contributions from national and/or foreign investors⁷⁰.

64. Article 74 of Law 143 of 1994.

65. Paragraph 1. Article 8 of Law 143 of 1994.

66. Articles 56 and 57 of Law 142 of 1994.

67. Article 86 of Law 142 of 1994.

68. Article 139 of Law 142 of 1994.

69. Article 32 of Law 142 of 1994.

70. Article 17 and 19.3 of Law 142 of 1994.

REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
Civil Code	Regime applicable to private parties
Code of Commerce	Regime applicable to private parties
Law 80 of 1993	Government Contracting Law
Law 142 of 1994	Public Utilities Law
Law 143 of 1994	Regime for the interconnection, generation, transmission, distribution, and trading of electric energy
Law 1150 of 2007	Amends Law 80 and forms part of the contracting statute
Law 1508 of 2012	Public-Private Partnerships
Law 1450 of 2011	National Development Plan
Law 1474 of 2011	Anti-corruption Statute
Decree 2474 of 2008	Modalities of selection, publicity, and objective selection
Law-Decree 019 of 2012	Reducing of processes
Decree 1467 of 2012	Regulation to Law 1508 of 2012 about PPP
Decree 1510 of 2013	Regulates the public contracting system



A large-scale open-pit mine with terraced levels and a drilling rig in the foreground. The image is a vertical strip on the left side of the page, showing a deep, terraced mine pit. In the foreground, a large drilling rig is visible, and a bright, circular light source is positioned behind it, creating a strong glow. The background shows the vast, terraced walls of the mine pit under a hazy sky.

———— CHAPTER 12 ————

MINES AND HYDROCARBONS

12 MINES AND HYDROCARBONS

Four things an investor should know about mines and hydrocarbons in Colombia:

1. Although there are aspects which are common to minerals and hydrocarbons, given historical differences in the manner in which the related legal and technical management has been undertaken, each sector has a separate and different legal system. Accordingly, the first determinant step in the investment is to study the applicable legislation for each case.
2. Although mines and hydrocarbons belong to the State, Colombian legislation allows private investment both in the mining and in the hydrocarbon sectors, under equal conditions as domestic investments without requiring a local partner or investor.
3. Any investor intending to carry out permanent exploration and exploitation activities in the minerals and hydrocarbons sector must incorporate in Colombia either a Colombian subsidiary or a branch office of the foreign company.
4. A great portion of our territory, onshore and offshore, has not been explored for hydrocarbons or minerals, therefore there is a huge potential for the discovery of minerals and hydrocarbons deposits due to Colombia's geological diversity.

12.1. Regulations Common to Mining and Hydrocarbons

12.1.1. General principles

The Colombian Political Constitution of 1991 provides the general legal framework and the principles that guide the regulations on the exploration and exploitation of minerals and hydrocarbons. The most relevant constitutional principles are the following:

12.1.2. Sovereignty, ownership of the resources, and management

The State owns the subsoil and all the nonrenewable natural resources, without prejudice to any rights acquired under prior law¹. This means that, unlike other countries, the person who owns the land has no right over the subsoil or nonrenewable natural resources in the subsoil. For this reason, anyone who plans to explore or exploit these resources must obtain a title or contract licensed by the State. Such title or contract does not transfer any ownership rights on the resources, but merely grants a temporary right to explore and exploit the resources in the area

¹. Article 332 of the Constitution.

and amount specified in the corresponding title or contract.

12.1.3. Economic freedom and state intervention

Economic activity and private entrepreneurship in any sectors of the economy are free in Colombia². Notwithstanding, the State is entitled and at the same time has the duty to restrict the scope of economic freedom where social interest, the environment, and the cultural patrimony of the Nation warrant an intervention³. In furtherance of this principle, and given the nature of mining and hydrocarbon operations, these economic sectors are significantly regulated by the State.

12.1.4. Public interest

Exploration and production of hydrocarbons and minerals have been declared activities of public interest and social benefit on the grounds that they relate to the satisfaction of community needs. Accordingly, they take priority over other economic and private activities and initiatives and can count on certain legal instruments to facilitate their development, such as regulations regarding land easements and expropriation.

12.1.5. Considerations given in return for exploration and production of minerals and hydrocarbons

Since the State is the owner of the minerals and hydrocarbons, the State is also responsible for determining the royalties and other fees and considerations to be paid for the exploitation or production of resources. Although the amount of the considerations vary depending upon the resources that are being exploited, as a general rule there are two types of main considerations, as follows:

(a) Surface Fee or Subsoil Use Fee

This consideration is determined mainly based upon the size of the area given under concession, and it refers to the occupation of the land surface.

(b) Royalties

The companies engaged in activities of explorations and production of nonrenewable natural resources such as minerals and hydrocarbons shall recognize to the Government, by means of the National Hydrocarbon Agency and the National Mineral Agency, royalties based on the production obtained in or besides the mine or oil well.

The royalties are settle based on a fixed or variable percentage of the extracted volume, payable in cash or in kind, as the State may decide. The specific regulations and applicable percentages depend upon application of technical variables associated with the production and marketing of non-renewable natural resource in a given period as production volumes, price settlement basis, representative market rate and participation rates in response to the natural resource associated conditions are established by law and contracts, and they are regulated by Law 1530 of 2012, Law 756 of 2002, and law 141 of 1994, which should be incorporated in the respective contracts.

Even so, being a dynamic industry, their behavior is constantly monitored and additional proposals for settlement of royalties and its treatment for tax purposes are evaluated.

The National Hydrocarbons Agency and the National Mining Agency will be defined by the competent bodies for administrative acts, the terms and conditions for determination of settlement prices based royalties and compensation product.

In a general way, royalties applied to petroleum or gas findings, after the application of Law 756 of 2002, vary between 8% and 25% depending on the levels of production.

For mining, current percentages range between 1% and 12% depending on the type of extracted mineral.

12.1.6. Regulatory authorities

Although each sector has its own specific regulatory authorities, the National Mining Agency (ANM in Spanish) and the National Hydrocarbon Agency (ANH in Spanish), the main authorities common to both sectors are the following:

- The Ministry of Mines and Energy (MME), as the main policy-setting authority for the sector.

² Articles 333 and 334 of the Constitution.
³ Article 334 of the Constitution.

- The Ministry of the Environment and Sustainable Development and the Regional Autonomous Corporations, which are the authorities responsible for the protection of nonrenewable natural resources and the environment.
- The Ministry of Interior, as the authority responsible for the protection of indigenous communities and ethnic minorities, which need special protection.
- The Mining Energy Planning Unit (UPME, in Spanish), as a special administrative unit attached to the MME, which is in charge of establishing the comprehensive planning for the sector.

12.1.7. Social considerations

In accordance with the Constitution and applicable laws⁴, the State is under the obligation to carry out prior consultation with ethnical communities about the economic, social and environmental impact that the exploration and production of mines and hydrocarbons may have upon their territory. Accordingly, it is important to review the conditions of the area where the works are to be developed in order to carry out the necessary prior consultations pursuant to the applicable regulations.

12.2. Mining Sector

12.2.1. Overview of the sector

Although over the last three decades Colombia has been a focalized country for the development of important mining projects for the production of coal, cement, nickel and iron, during the last few years foreign investment has shown increased interest in other types of nontraditional minerals such as gold, silver, columbite and tantalite, among others.

12.2.2. Authority

In addition to the aforementioned general regulatory authorities for the sector, the competent authority for

mining is the MME, which has delegated its functions to the ANM, and in some cases, depending on the specific mineral, to the offices of the secretaries of mines of certain offices of governors across the country (currently the Antioquia department⁵). The ANM, created by virtue of Decree 4134 of 2011, started its operations on May 3, 2012, as a government agency of special nature, whose purpose is to fully administer the resources owned by the State. This includes tracking private owned subsoil titles whenever this function is designated by the MME.

12.2.3. Specific applicable regulations

■ Mining activity in Colombia is regulated mainly by the Mining Code⁶, law 685 of 2001.

12.2.4. Main considerations on mining regulations

(a) Right to Explore and Exploit

Currently, the right to explore and exploit minerals is obtained through a mining concession contract that is registered in the National Mining Register (RMN, in Spanish), although there are also mining titles that were granted under prior laws, and which may still be relevant.

(b) Procedure to Acquire a Mining Title

Any person can acquire a mining title as follows:

• • (i) Directly

A mining title can be obtained directly by submitting a proposal for a concession contract before the mining authority. The proposal must satisfy the minimum technical and financial requirements as set forth in the Mining Code.

4. Convention N.º 169 of the International Labor Organization was incorporated by means of Law 21 of 1991.

5. Resolution 91818 of 2012 from the Mining and Energy Ministry.

6. This law, was partially amended by means of Law 1382 of 2010.

• • • (ii) By assignment

A mining title can be obtained by partial or total assignment of the rights and obligations of an existing mining title, duly approved by the ANM based on the approval of the Title and Contract Vice Presidency⁷.

• • • (iii) Public processes

A mining title over areas reserved by the Government can be obtained by means of a competitive selection process. One of the objectives of creating the ANM is to have an authority in charge of reserving areas to be offered to national or international companies with the required technical and financial capacity to explore them. The areas are to be allocated by means of competitive bidding processes, which require the companies to carry out a previously defined exploration program.

(c) Nature of Mining Concession Contracts

A mining concession contract is entered into between the State and a private party, whereby the latter is required to carry out, at its own expense and risk, the studies, works and activities for the exploration of the minerals that may be found within a determined area, and to exploit the resource under the terms and conditions established by the Mining Code and as set forth in the contract.

• • • (i) Contract stages

The mining concession contract is granted for a maximum term of 30 years, and it includes three main stages:

■ **Exploration:** The initial duration of this stage is three years; during which the technical exploration of the contract area must be carried out.

■ **Assembly and construction:** After the exploration stage is over, an additional three-year period will commence for the assembly and construction of the necessary infrastructure and set up production operations.

■ **Production:** The maximum term of duration of the production stage shall be the entire term of duration of the concession minus the exploration, construction, and setup stages, plus any granted extensions.

• • • (ii) Extensions

Pursuant to Law 685 of 2001, the concessionaire may request a two-year extension of the exploration stage. Likewise, it may request an extension of the construction and setup stage for a maximum term of one year. For the production stage, the concessionaire may request an extension of the contract for up to thirty (30) years, once this term has expired, it has preference to renegotiate the same area with the State.

• • • (iii) Considerations payable to the State

As indicated above, the Considerations payable to the State are surface fee or subsoil use fee and royalties as follows:

■ Surface Fee (Canon Superficial, in spanish)

This fee applies mainly to the exploration and construction and setup stages. If the requested area does not exceed 2,000 hectares, and the fee is equivalent to the Minimum Legal Daily Wage (MLDW) per each hectare per year, if the area is between 2,000 and 5,000 hectares pay two MLDW and, if the area exceeds 5,000 hectares and up to 10,000 will be paid up to three MLDW. This fee is payable as an annuity in advance.

■ Royalties

This is a fixed or progressive percentage of the pithead value of the gross product exploited of the mineral object of the mining title and its by-products, payable in cash or in kind. The percentage to be paid will depend on the type of mineral, as indicated in the chart below:

⁷ Decree 4134 of 2011, Article 15, num. 15.

MINERAL	PORCENTAGE
Coal (less than three million tons per year)	5%
Coal (more than three million tons per year)	10%
Nickel	12%
Iron and copper	5%
Gold and silver	4%
Alluvial gold, in concession contracts	6%
Platinum	5%
Salt	12%
Limestone, gypsum, clay, and gravel	1%
Radioactive minerals	10%
Metallic minerals	5%
Nonmetallic minerals	3%
Construction materials	1%

(d) Environmental Licensing

Mining concession contracts only require an environmental license for the assembly and construction and the production stages. The exploratory stage does not require environmental license. Depending on the size of the projected production stage, the competent agency to grant this license might be the Ministry of the Environment and Sustainable Development or a Regional Autonomous Corporation. The environmental license is granted on the basis of an Environmental Impact Study that must be submitted by the party interested in the project.

12.3. Hydrocarbons

12.3.1. Overview of the sector

Regarding hydrocarbons, it must be noted that since 2004 the country has sought to attract more private investment for exploration through the creation of the National Hydrocarbons Agency (ANH, in Spanish), responsible for administering the hydrocarbon reserves of the nation's property and the establishment of competitive contract terms.

12.3.2. Applicable regulations and authority

As in the mining sector, the exploration and production of hydrocarbons requires a title that is granted by the State by means of a contract. Between 1974 and 2003, it was necessary to enter into an Association contract with the state-owned oil company, Ecopetrol. Nevertheless, since the year 2004, ANH was established as the agency in charge of managing the hydrocarbon resources of the Nation. Under this scheme, Ecopetrol became just one of the agents in the market. The ANH grants two types of contracts: Oil exploration and production contracts (E&P Contracts) and technical evaluation agreements (TEAs). Ecopetrol has retained the areas that it had under direct operation and the association contracts signed up to December 31, 2003, and it can enter into any type of contract with any private parties with respect to those areas.

12.3.3. Main considerations on hydrocarbons regulations

(a) Specific Applicable Regulations

The specific regulations that apply to the hydrocarbon sector are contained mainly in the Oil Code, in the Resolutions (known as Acuerdos) issued by the Council of Directors of the ANH and in the respective exploration and production contracts⁸.



(b) Contracting and Assignment Mechanisms of Areas for the Exploration and Production of Hydrocarbons

The ANH prepares and publishes on an annual basis to the interested parties, a land map which identifies:

8. For example, association and E&P contracts, among others.

i. Allocated areas

With a technical evaluation contract

ii. Reserved areas

With an oil exploration and exploitation contract

iii. Available areas

With a special contract

Just as for mining, the title to participate in a hydrocarbon exploration and production area may be obtained in several ways:

Open Competitive Bidding (rounds)

Is a public bidding in which the ANH objectively chooses proponents that previously complied with the capacity requirements set forth in the terms of reference prepared for that specific round. The ANH shall select the most favorable offer. The last competitive process was conducted in 2012 and was named Ronda Colombia 2012. In 2013 there was no competitive process but the ANH has announced that in 2014 will be held the Colombia Round 2014.

 Closed Competitive Bidding

Is a selection process in which the ANH invites a plural number of companies that comply with capacity requirements previously set forth, in order to present the most favorable offer for the ANH based on strict equality and objective conditions.

Direct Allocation

By means of this procedure, the ANH based on a previous authorization from the board, allocates directly and exceptionally an area or areas to a specific company by means of a reasoned decision.

(i) Types of contracts that the ANH executes to assign areas

TEAs

Apply to both free and special areas. Its main purpose is to have the contractor evaluate the

potential hydrocarbon production in a given area, identify prospects and secure enhanced information to eventually turn a part of the TEA area into an E&P contract. The maximum term of duration of this contract is 36 months; under a TEA, the contractor is allowed to acquire seismic data and drill stratigraphic wells, but it is not allowed to drill any wells that may be oil-producing wells.

E&P Contracts

Apply to both free and special areas. Its main purpose is to have the contractor evaluate the potential hydrocarbon production in a given area, identify prospects and secure enhanced information to eventually turn a part of the TEA area into an E&P contract. The maximum term of duration of this contract is 36 months; under a TEA, the contractor is allowed to acquire seismic data and drill stratigraphic wells, but it is not allowed to drill any wells that may be oil-producing wells.

(c) Nature of an E&P Contract

- • (i) Contract stages

The E&P contract is awarded for a maximum of 30 years and includes two main stages or periods: (i) Exploration. It lasts for six years. This term is counted from the Effective Date and which is divided into: a) Phase 0 in which a maximum period of six months should identify the presence of ethnic groups in the areas of influence of the work exploratory at this stage in addition the contractor shall perform planning work, location of work, socialization and environmental as well as prior to the procurement of goods and services required for the execution of the exploration licenses procedures, exploratory phase of evaluation activities and b) Development should begin on the day immediately following the phase 0 business calendar, with a discovery phase evaluates and determines whether it is a commercial field that can last, in conjunction

with phase 0, a maximum of six years and, and (ii) Production. It lasts twenty-four years counted from the date the ANH receives the declaration of commerciality. The production period may be extended for successive periods of ten years and until the economic limit of the field, under certain conditions.

(ii) Compensation

Generally, the compensations comprise the surface fee and the royalties, which are determined, based on a formula that is regulated in the applicable laws and the contract.

(iii) High prices

E&P contracts have a provision according to which, when the accumulated production from each production area exceeds 5,000,000 barrels of liquid hydrocarbons (or when the field has produced during five years if it is a gas field) and the West Texas Intermediate (WTI) oil benchmark price (or the Henry Hub gas price) is higher than the base price established in the contract, as annually updated, then the contractor must pay to the ANH and additional value in accordance with a formula established in the agreement.

(iv) Environmental licensing

The drilling of exploratory wells and the development of oilfields requires an environmental license which is granted on the basis of the environmental impact study (EIS) submitted by the operator. Additionally, it is important to verify that the area does not overlap with any environmentally protected areas. If this is the case, the investor should verify if it is possible to exclude the area for exploration and production purposes. If there are any indigenous or Afro-Colombian communities in the area, they must be consulted regarding the impacts that the project may have upon their communities and the environment, and the mitigation measures to be adopted, although these communities have no veto powers.

12.4. Tax Regime

Is applicable to the Colombian petroleum and mining industry and consists of a combination of corporate income tax, equality income tax CREE (acronym in Spanish) and royalties.

Companies legally established in Colombia, and branches of foreign companies (permanent establishments), dedicated to exploration and exploitation activities are subject to the same tax regime applicable to other companies that perform different activities.

For this reason, companies legally incorporated in Colombia, and branches of foreign companies dedicated to exploration and exploitation activities are subject to the regular corporate income tax under the system of ordinary taxable income or presumptive taxable income, equality income tax CREE (this last system is not applicable to the mining activities). For purposes of determining the corporate income tax to be paid, royalties may be deducted.

Chapters two and seven of this “Legal Guide to Do Business in Colombia 2014” regarding foreign exchange and tax regimes, contain a more detailed explanation of the foreign exchange regime applicable to this economic sectors and its corresponding taxes.

12.4.1. Special incentives and obligations

Exploration

During this preoperating period, an exploring company is not required to calculate the corporate income tax under the presumptive taxable income system in accordance with some special provisions to confirm that the assets of the contract is in unproductive period.

Regional incentives

According to Article 16 of Decree 1056 of 1953 (Petroleum Code), “the exploration and exploitation of petroleum and crude oil extraction, its derivatives, transport, machinery, and objects used for its benefit, construction and maintenance of refineries and oil pipelines” are excluded from the payment of local taxes.

Furthermore, Article 27 of Law 141 of 1994 establishes that “territorial entities are not allowed to create any tax applicable to the exploitation of nonrenewable natural resources.”

This special tax treatment for the mining and petroleum activities is also applicable to turnover tax⁹. This tax does not apply for the exploitation of natural resources whenever the amount of paid royalties and contributions is equal to or higher than the turnover tax¹⁰.

Special deduction for investing in scientific development and technology

investment in projects qualified by Colciencias (Colombian institute for the development

of science and technology) as “scientific, technological or of innovative technology” can be deducted up to 175% of its value in the corresponding fiscal year, as long as certain conditions and requirements are met. Certain restrictions apply.

Special deduction for investing in the environment

Companies that voluntarily invest (not mandatory investments) in the control and improvement of the environment, have the right to deduct the amount invested in the environment during the fiscal year, subject to the fulfillment of certain conditions and requirements and under certain limits.

REGULATORY FRAMEWORK

REGULATIONS

SUBJECT

COMMON PRINCIPLES AND NORMS IN THE NATURAL RESOURCES SECTOR

Political Constitution of Colombia (Articles 332, 333 and 334, among others)

Refer to sovereignty, property of natural resources, their management, economic freedom to explore and produce them, state intervention and the declaration of public interest

Law 21 of 1991 – International Labor Organization Convention N.º 169

Incorporates the obligation to carry out prior consultation with ethnic minorities before exploration and production of natural resources in their territories

Law 1530 of 2012, Decree 4923 of 2011, law 756 of 2002 and law 141 of 1994

Refer to the royalty regime for the production of minerals and hydrocarbons through which the law 1530 of 2012 in budgetary matters and regulating the operation of the overall system is guaranteed royalties

Decree 70 of 2001

Establishes the functions of the Ministry of Mines and Energy as the ruling entity for the natural resources sector

Decree 255 of 2004

Establishes the structure of the Mining Energy Planning Unit as a special administrative unit responsible for comprehensive planning of the natural resources sector

⁹. The circumstance that activates the application of a turnover tax corresponds to the realization of direct or indirect, commercial, industrial, or services activities within a district or state jurisdiction, whether permanently or occasionally, on certain property, or without commercial establishment.

¹⁰. Article 39 of Law 14 of 1983.

REGULATIONS	SUBJECT
MINING SECTOR	
Decree 2655 of 1988	By means of which the former Mining Code, in force until Law 685 of 2001 was issued, which regulates the mining contracts executed under its rule (e.g.: Contracts by virtue of contribution and production licenses) which are in force to this day
Law 685 of 2001	Mining Code containing the main regulations on exploration and production of mining resources
Resolution N.º 180074 of 2004, Decree 252 of 2004, Decree 3577 of 2004 and Decree 4131 of 2011	Resolution N.º 180074 2005 and Decree 3577 MME established and delegated mining functions to Ingeominas, the Decree Law 4131 of 2011 changed the legal nature of Ingeominas making it the Colombian Geological Survey, attached to the MME
Decree 4134 of 2011	Creation of the National Mining Agency
Decree 2261 of 2012	By which new measures are established to regulate, register and monitor import of heavy machinery and chemical inputs that can be used in mining activities
HYDROCARBONS SECTOR	
Decree 1056 of 1953	Oil Code.
Decree 1760 of 2003	By means of which Ecopetrol was severed, its organic structure modified and the ANH created
Resolution 004 of 2012 issued by the Council of Directors of the ANH	By means of which the contracting regulations for hydrocarbon exploration and production development areas are set forth
Law 39 of 1987 and Law 26 of 1989	By means of which provisions regarding distribution of petroleum-derived are established
Law 812 of 2003 and Decree 4299 of 1995	By means of which the chain of distribution agents for petroleum-derived liquid fuels is defined and regulation is adopted
Decree 1521 of 1998	By means of which storage, handling, transport, and distribution to service stations of petroleum-derived liquid fuels are regulated
Law 693 of 2001, Law 939 of 2004, Decree 2629 of 2007	By means of which fuel alcohols are regulated and provisions are laid down for the promotion of biofuel use, as well as applicable measures for vehicles and other motor devices which use fuels to function



— CHAPTER 13 —

DISPUTE RESOLUTION

13 DISPUTE RESOLUTION

Five things investors should know about access to dispute administration and resolution mechanisms:

1. Colombian authorities guarantee the effective application of the principles, rights and duties set forth in the Colombian Political Constitution.
2. Private parties may act and appear directly before the various public authorities; however, in the cases they would want to act through a representative and when the situation is filing ordinary remedies (reconsideration petition, appeal, nonadmission complaint and reconsideration) it will be required that the representative is a lawyer.
3. In Colombia, Alternative Dispute Resolution Mechanisms (ADRM) have been established to resolve differences or disputes through different ways other than the ordinary justice system, which are divided into self-settlement and third-party settlement mechanisms. As self-settlement mechanisms there is conciliation, mediation and direct settlement; arbitration, friendly settlement and international settlement are third-party settlement mechanisms.
4. Controversies that must be brought to courts are carried out through verbal proceedings and processes that are quicker and simpler. Justice in Colombia is ruled by the principle of free access to ensure that private parties have full access to it. Notwithstanding the above, those persons who file lawsuits should pay a judicial tariff, which is a contribution, intended to meet the investment costs of the Administration of Justice.
5. Concerning tax matters, formal obligations may be complied with through electronic media, provided that the taxpayer counts with access to digital mechanism; additionally, the taxpayer is entitled to receive a cordial, considerate, fair and respectful treatment and not be subject to penalties when the fault does not affect the national collection.

The objectives of the Social State based on the rule of Law proclaimed in the Colombian Political Constitution include to guarantee the effectiveness of the principles, rights, and duties set forth in the Constitution, promote citizen participation in decisions that affect them, as well as in economic, political, administrative and cultural matters of the Nation, and finally ensure the existence of a fair order¹, which represents the core of the relationship between the State and society.

In fact, the activities and relationships among individuals

and between individuals with the State are ruled by private and public law, which guarantees the effective exercise of rights and the real possibility of discussing any disputes.

13.1. Procedural Principles and Guarantees

All authorities must interpret and apply the dispositions that regulate administrative actions and procedures in light of the principles set forth in the Colombian Political Constitution and the law² which we describe below:

1. Political Constitution of Colombia, Article 2.

2. Political Constitution, Articles 29, 31 and 209; Administrative Procedural and Administrative Contentious Code, Article 3; Decree 19 of 2012, Articles 3, 4, 5 and 6.

a) Procedural due process aims to protect individuals who are involved in judicial or administrative procedures, in order to respect their rights and to ensure that justice is properly applied. This principle must be observed both at judicial and administrative procedures.

b) The principle of contradiction and defense, which is a universal, general, and permanent guarantee to achieve justice as the highest value of the judicial order, that enables citizens to challenge ruling decisions of the authorities.

As a general rule, ruling decisions of the authorities may be challenged according to the principle of access to justice, which is based on the following three foundations: i) the possibility of request and submit the issue to a competent judge, ii) that the issue that has been submitted will be resolved, and iii) that the ruling's final decision will be effectively executed³.

c) The transparency principle foresees the need of having clear and well-defined procedures to enable society members to be informed of the course of the various proceedings and particularly government contracting processes. By virtue of this principle, administrative activities are in the public domain and consequently any person may have access to administrative proceedings, except upon legal reserve.

d) The equality principle promotes and guarantees that people will receive equal protection and treatment from the authorities, and will enjoy the same rights, freedoms and opportunities without discrimination. In addition, this principle provides that specific measures should be adopted in order to benefit discriminated and marginalized groups, thereby acknowledging the existence of differences within society. The preservation of this right is observed, i.e.: In the equality of the treatment received by nationals and foreigners.

e) The principle of appeals involves the opportunity to challenge and/or request a review of both administrative and court ruling decisions, in order to guarantee the protection of the rights under discussion. However, by exception, certain cases are considered as of single instance based on their amount.

f) Additional principles such as the free access to justice, efficiency, impartiality, procedural economy and celerity complement the foundations on which the activities of the various public authorities are performed.

13.2. Actions Before Administrative Authorities

In order to guarantee access to Public Administration, Colombian legislation establishes expedited procedures for such access, and imposes to the various entities duties of care, with the objective of satisfying the needs of individuals.

13.2.1. Individuals can act directly before the various authorities

Individuals may act directly before different authorities without requiring legal representation or granting a special power of attorney⁴. However, in the case of ordinary remedies, the representation of a lawyer will be required⁵.

13.2.2. Access mechanisms to the administration

Administrative procedures and processes may be carried out in person before the authorities, either orally or in writing.

When the procedure is performed in person, the authorities must provide special and preferential attention to people with disabilities, children, teenagers, pregnant women and senior citizens, and in general to anyone who is defenseless or has a manifest weakness⁶.

The authorities may also be addressed through electronic media. The authorities must provide adequate and appropriate mechanisms to guarantee free access to electronic media

3. Constitutional Court, Ruling T-291 of 2007.

4. Administrative Procedural and Administrative Contentious Code, Article 5.

5. Decree 19 of 2012, Article 34.

6. Administrative Procedural and Administrative Contentious Code, Article 5, point 6.

resources or enable the alternative use of other procedures⁷.

The signatures of private documents by individuals required for procedures before public authorities do not require authentication. The signature shall be deemed authentic from the person who affirms such signature⁸ belongs to him/her.

13.2.3. Submission of petitions before the various authorities

Any person has the right to submit respectful petitions before the authorities in order to obtain either a response to a specific and particular case, a response to inquiries or to obtain copies and certificates. There are four types of petition rights⁹:

CLASSIFICATION	DESCRIPTION
Petition with general interest	The purpose of the petition does not individually and exclusively affect the person making the petition; consequently, the response given is in the framework of a general situation that affects the entire community or group of citizens in the same situation. The time limit for responding is 15 business days.
Petition with private interest	The petitioner is directly and individually interested in the matter of the petition, in the framework of the specific circumstances of the petitioner. The time limit for responding is 15 business days. If no decision is notified within three months counted from the submission date of the petition, it shall be held to be a negative response ¹⁰ .
Petition for an opinion	This aims to obtain technical opinions within the scope of the matters the entity is in charge of. The time limit for responding is 30 business days.
Request for certificates and copies	This is a mechanism established to request and obtain access to information related to actions derived from fulfillment of responsibilities assigned to the entity. The time limit for responding is 10 business days. In general, the documents held on file by the various entities are public, except when according to the Colombian Political Constitution or to the Law they are classified as reserved, in which case copies cannot be provided without legal or judicial authorization.

13.2.4. Public Administration disputes

When any division of the Public Administration issues a decision of a particular and specific nature that affects the targeted parties and that runs against the Law, citizens may request the Administration itself to review the decision, in order to obtain its revocation or amendment, which in case of being a favorable decision, might avoid a future lawsuit in court.

13.2.4.1. Ordinary remedies

The remedies that can be filed against ruling decisions issued by the various administrative authorities are¹¹:

- a) Reconsideration petition: This remedy must be filed before the entity that issued the decision, requesting its clarification, amendment, complementation, or its revocation.
- b) Appeal: This remedy shall be filed before the hierarchical superior administrative or functional body, in order to confirm or revoke the decision or judgments held by the lower administrative or functional authority.
- c) Nonadmission complaint, when the appeal is rejected.

The remedies mentioned above, shall be filed in writing during the personal notification procedure, or within 10 days after such notification.

It is possible to file the appeal remedy as subsidiary to the reconsideration petition, or only the appeal remedy; however, it should be noted that an appeal remedy shall be filed when appropriate, in order to be able to file in the future a lawsuit in court in the event the decision is unfavorable.

The public officer in charge of handling the reconsideration petition under the local rules has a period of two months to make a decision. In the event that the decision is confirmed, the public officer who issued the decision should allow to file the appeal remedy by sending it to its hierarchical superior, who will also have a two-month period of time to issue the final ruling decision in the government channels.

7. Ibid., Articles 5 and 53.

8. Decree 19 of 2012, Article 36.

9. Administrative Contentious Code, Articles 13 and 14. According to Constitutional Court Ruling C-818 of 2011, Articles 13 through 33 of Law 1437 of 2011 were declared temporarily unenforceable until December 31, 2014, which is regulated through a statutory law as prescribed in Articles 152 and 153 of the Political Constitution.

10. By general rule it is understood that petitions not resolved within a legal term will be understood as negatively resolved. This is known as "Negative Administrative Silence." However, exceptionally and upon an express legal rule that so stipulates, certain petitions that are not resolved within the term by the Authorities will be understood as favorably resolved in this regard as is the case of the petitions filed with the residential utility service entities, known as "Positive Administrative Silence."

11. Administrative Procedural and Administrative Contentious Code, Arts. 74-82.

If after two months no decision has been notified, it shall be understood that the decision is negative, but even so, the Administration may issue an in-depth opinion as long as the citizen has not filed a lawsuit in court against the presumed act¹².

The nonadmission complaint remedy will be filed in the event an appeal remedy is rejected within five days as from the date the latter remedy was rejected. If the person who is responsible for receiving the complaint refuses to its reception, the complaint may be filed at the regional office of the Attorney General's Office or at the Local Government Employee Surveillance Office such as the **Bogotá's Ombudsman**.

13.2.4.2. Reconsideration remedy

When the administrative acts involve tax matters regarding decisions made by various Tax Authorities, i.e.: DIAN at the national level or departments and municipalities at the local level, the appropriate type of appeal to be filed is the remedy of reconsideration, which is submitted directly by the taxpayer or its attorney, and should be filed within two months from the date of notification of the negative decision.

The decision of the remedy shall be issued and notified by the Tax Administration within one year from the date it was filed. If no decision is issued on the filed action during the time period indicated above, the response to the remedy will be deemed positive for the taxpayer. This positive response must be declared of its own motion by the Tax Authorities or at the request of the taxpayer.

13.2.4.3. Revocation action (direct repeal)

Administrative acts must be revoked by the same authorities that issued them or by their direct hierarchic or functional superiors, on their own account or at the request of a party, in any of the following cases:

- • • A) When it clearly runs against the Colombian Political Constitution or the Law.

- • • B) When it is not in favor of or it runs against the public or social interest.
- • • C) When it causes unwarranted grievance to a person.

When a revocation action of an administrative act creates a particular and specific legal situation or recognizes a right of the same category, it cannot be repealed without prior, express, and written consent of the respective incumbent.

A direct repeal may be issued at any time, either on the authority's own account or at the request of a party, as long as no notice has been issued on filing of a lawsuit and must be resolved within two months counted from the date of the petition, in cases where the petition has been filed by citizens.

It is important to highlight that a direct repeal on the grounds that it runs against the Colombian Political Constitution or the Law, shall not proceed when appeals have been filed in ordinary court channels. On the other hand, if the remedy is filed against decisions of the Tax Administration, the repeal must be submitted within two years from the date on which the administrative act became final. This remedy must be resolved by the Administration within one year from the date in which it was filed.

13.2.4.4. Jurisprudential Extension of the Council of State

Individuals may request to the Administrative Authorities that they extend the effects of a unification ruling issued by the Council of State, whereby a right has been recognized, provided that those requesting it demonstrate that they are under the same factual and legal assumptions. For the applicability of such extension, it is necessary that the interested party files the petition before the legally competent Authority¹³.

13.3. Alternative Dispute Resolution Mechanisms - ADRM

The Alternative Dispute Resolution Mechanisms (ADRM) are means to resolve disputes other than the traditional filing of lawsuits in court, i.e.: They are alternatives created

¹² Administrative Procedural and Administrative Contentious Code, Art. 86.
¹³ Administrative Procedural and Administrative Contentious Code, Art. 102.

by law so that differences do not have to be addressed through ordinary justice channels.

In our country these mechanisms are subdivided in two major types: (i) the first are self-settlements, where the parties themselves directly resolve the issues of the dispute without the intervention of a third party; (ii) the second are third-party settlements, where the person responsible for resolving the dispute is a third party invested with powers to do so.

CLASSIFICATION	DESCRIPTION
Self-settlement ADRM	<p>Self-settlement mechanisms include conciliation, in which the parties settle their differences with the assistance of a neutral qualified person called a conciliator who does not have attributions to resolve the conflict, but only to interact with the parties. The settlement reached through conciliation is deemed <i>res judicata</i> and the agreement is enforceable <i>per se</i>¹⁴.</p> <p>The conciliation may be by law or by equity, depending on whether the conciliator is an attorney or not. Conciliation by law may in turn be either judicial if it is performed in the context of proceedings before a judge in a stage called the conciliation stage, or extrajudicial if the settlement is performed prior to court proceedings, as a prerequisite for court proceedings, or when it is reached during court proceedings but out of court.</p> <p>A second alternative mechanism is mediation, in which a third party, who does not have to meet any particular professional or personal qualifications, provides guidance to resolve the conflict.</p> <p>A third type is a direct settlement, in which the parties themselves resolve the conflict without the assistance of third parties.</p>
Third-party settlement ADRM	<p>The third-party settlement mechanisms include the arbitration, in which the parties involved in a conflict delegate the resolution of the matter to an arbitral tribunal with temporary judicial attributions and power to resolve the dispute. There are various types of arbitration (<i>Ad hoc</i>, institutional or legal) depending on where and how conflict resolution rules are applied¹⁵. This must be defined in an arbitration clause or in a commitment, depending on whether the conflict is future or present.</p> <p>Another type of third-party settlement is the friendly settlement, in which a third party acts as an amiable compositeur to settle a conflict with binding effects¹⁶.</p> <p>International arbitration is applicable when: i) the regular and permanent address of the parties involved in the dispute are located in different countries; ii) if a dispute takes place or an obligation needs to be performed in a different country; or iii) the controversy refers to a international commerce matter¹⁷.</p>

14. Decree 1818 of 1998. Conciliation. Articles 1 through 5.

15. Decree 1818 of 1998. Conciliation. Articles 1 through 5.

16. Law 1563 of 2012. Article 59.

17. Law 1563 of 2012. Article 62.

13.4. Dispute Proceedings Before a Judge

In essence the jurisdiction is the public function of delivering justice. It is a unique concept that has various manifestations depending on the area of legal specialization.

13.4.1. Jurisdictions in Colombia

In Colombia there are four major jurisdictions:



If at any time a conflict should arise between any of these jurisdictions, the Higher Council of the Judiciary is the responsible Court for resolving such jurisdiction conflict. However, in the event competence issues should arise within members of the same jurisdiction, for example, between a judge and a Higher Court, the hierarchic superior of both bodies will be responsible for settling such conflict.

CLASSIFICATION	DESCRIPTION
Ordinary Jurisdiction	Conflicts that arise between private parties and those matters that are not assigned by the Political Constitution or by law to any other jurisdiction are addressed by the various bodies of the Ordinary Jurisdiction based on competency and specialty levels. It is performed through civil, criminal, labor, and family courts, and tribunals as well as by the civil-agrarian, labor, and criminal chambers of the Supreme Court of Justice.
Administrative Jurisdiction	It addresses administrative disputes that arise from the activities of public entities and of private individuals who have responsibilities in various government bodies. Judicial control is a way for controlling the decisions made by various government authorities through judicial action. This jurisdiction is instrumented through the Council of State, the Administrative Tribunals and the Administrative Courts.
Constitutional Jurisdiction	It addresses matters related to safeguarding the Colombian Political Constitution. The Constitutional Court is the highest body in this Jurisdiction; however, ordinary and contentious judges also exercise the Constitutional Jurisdiction regarding lawsuits for the protection of fundamental constitutional rights (<i>tutelas</i>).
Special Jurisdiction	It addresses issues related to special protection by the State and is aimed at recognizing the exercise of jurisdictional responsibilities performed by authorities other than judges. This jurisdiction is exercised by the authorities of indigenous groups and by peace judges in their respective territories, based on their own rules and procedures, as long as they do not run against the Law and the Colombian Political Constitution.

13.4.2. Dispute resolution in the administrative jurisdiction

Disputes arising in connection with administrative actions may be submitted to the judges when the remedies filed before the entity itself have been exhausted and the decision is against the interests of a private party.

The procedure with the assigned judge begins by filing a lawsuit stating the claims regarding the administrative decision, supported by factual and legal argumentation.

With the expedition of the Procedure in Contentious Administrative Code¹⁸, the following characteristics are distinguished:

- a. The proceeding attends to the principle of oral hearings, whereby the presentation and response of the lawsuit are still in writing, but it allows carrying out subsequent procedural stages through oral hearings, including the issuing of the ruling.
- b. It incorporates into the judicial system the technology of virtual hearings, electronic submission of texts and notices, electronic filing systems, etc.
- c. It adopted the unification extraordinary remedy of jurisprudence which is very similar to the jurisprudential extension referred to above, with the difference that this remedy applies in court. The extraordinary remedy applies only against a single ruling and second instance where there is opposition to a ruling of unification of the Council of State.

While justice in Colombia is governed by the principle of gratuitousness, Law 1653 of 2013¹⁹ was recently issued by means of which a judicial tariff is regulated, that is a contribution intended to pay the investment expenses of the Administration of Justice. This tariff should be paid by all those persons who act in a legal process, as claimant. The taxable base of the tariff will be the lawsuit claims and, in such cases where accumulation exists, the taxable base will be the total thereof²⁰.

Nonetheless, the tariff will not be charged in penal, labour, arbitral proceeding, family, of minors, nor those derived from the exercise of protection of rights (tutelas) and other constitutional actions nor to individuals of SISBEN levels 1 and 2²¹.

13.5. Actions of Rights Protection

The Constitution and its complementary rules stipulate mechanisms which purpose is the protection of fundamental rights in such cases individuals consider they are being damaged by third parties or the Administration. One of these tools is the legal protection or “tutela”²², which may be filed against any Judge of the Republic. Other actions are: Popular action, group action and compliance action.

13.6. Access to the Tax Administration

13.6.1. Technological mechanisms of access to the Tax Administration

The Tax Authorities (Dirección de Impuestos y Aduanas Nacionales – DIAN), within the interest of rendering better services to citizens, are determined to facilitate the means for the filing of the information to the organizations and individuals who are obliged, in order to optimize time and resources.

Within the service strategy is the one to permit taxpayers who may comply with their formal tax obligations, starting with the inscription in the Single Tax Register – RUT, processes for the remittance of information and filing of tax returns by means of the entity's electronic information services, using to do so the digital mechanism assigned by the DIAN, which every year reaches a greater number of taxpayers.

13.6.2. Last regulatory changes regarding access to the Tax Administration

With Law 1607 of 2012, new provisions and amendments of procedural relevance were introduced, namely:

18. Law 1437 of 2011.

19. On the second of August, 2013, The Constitutional Court admitted a demand against this law.

20. The tariff of the parafiscal contribution is of one point five percent (15%) of the taxable base, and in any case it will not be able to exceed two hundred Minimum Monthly Legal Wages (200 MMLW).

21. Article 5, Law 1653 of 2013.

22. Decree 2591 of 1991.

■ a. It introduced an article which expressly stipulates the rights of taxpayers that should always be safeguarded, protected and observed in their relations with the Tax Authorities. The following is highlighted within these rights: (i) receive a cordial, considerate, fair and respectful treatment; (ii) have access to the case files in course in respect to their acts and that their requests, processes and petitions are resolved by the public employees; (iii) to be inspected in accordance with the procedures stipulated for the control of substantial and formal obligations, (iv) receive effective orientation and updated information on the substantial rules, the proceedings, the current doctrine and the instructions of the authority; (v) obtain at any time reliable and clear information on the status of its tax situation; (vi) obtain

written, clear, timely and effective response to the technical and legal consultations formulated; (vii) not paying taxes under discussion before having obtained a final decision through the administrative or legal instance.

■ b. It included, for the first time, in the tax legislation, a provision that expressly stipulates the principles the Tax Administration should follow in the assessment of penalties, namely: Legality, harmfulness, favorability, proportionality, graduality, economy principle, effectiveness principle and impartiality principle.

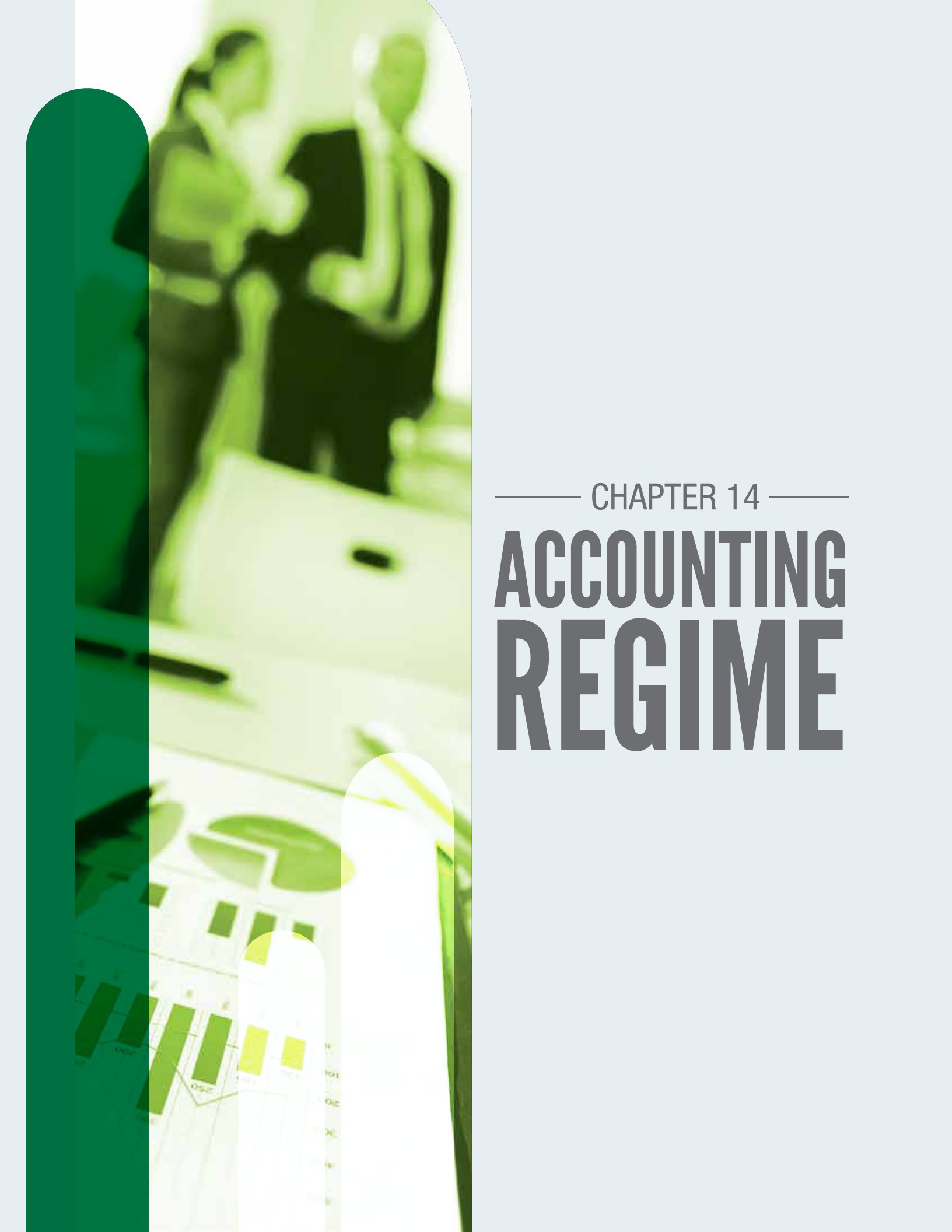
Thus, in accordance with these principles, a fact may not be penalized if it does not affect the national collection, and the penalty has to be proportional to the fault.

REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
Article 2 of the Political Constitution	Essential objectives of the State
Article 13 of the Political Constitution	Principle of Equality
Article 29 of the Political Constitution	Due Process, Right to Defense, and to Challenge
Article 31 of the Political Constitution	Appeals
Article 209 of the Political Constitution	Administrative Function
Article 229 of the Political Constitution	Access to Justice
Article 228 of the Political Constitution	Administration of Justice
Articles 234 and 234 of the Political Constitution	Ordinary Jurisdiction
Articles 236-238 of the Political Constitution	Contentious Administrative Jurisdiction
Articles 239-245 of the Political Constitution	Constitutional Jurisdiction
Articles 246-248 of the Political Constitution	Special Jurisdiction

REGULATIONS	SUBJECT
Decree 2591 of 1991	Legal protection Action (Tutela)
Point 3 of Article 3 of the Administrative Procedural and Administrative Contentious Code	Principle of Impartiality
Point 8 of Article 3 of the Administrative Procedural and Administrative Contentious Code	Principle of Transparency
Point 11 of Article 3 of the Administrative Procedural and Administrative Contentious Code	Principle of Effectiveness
Article 4 of the Administrative Procedural and Administrative Contentious Code	Actions before Administrative Authorities
Article 5 of the Administrative Procedural and Administrative Contentious Code	Direct action before Administrative Authorities
Point 6 of Article 5 of the Administrative Procedural and Administrative Contentious Code	Special and preferential assistance for people with disabilities
Point 1 of Article 5 and Article 53 of the Administrative Procedural and Administrative Contentious Code	Administrative procedures using electronic media
Point 1 of Article 74 of the Administrative Procedural and Administrative Contentious Code	Motion for Reassessment
Point 2 of Article 74 of the Administrative Procedural and Administrative Contentious Code	Appeal
Point 3 of Article 74 of the Administrative Procedural and Administrative Contentious Code	Complaint
Article 76 of the Administrative Procedural and Administrative Contentious Code	Time frames and submission of appeals
Article 93 of the Administrative Procedural and Administrative Contentious Code	Causes for revoking administrative acts
Article 97 of the Administrative Procedural and Administrative Contentious Code	Prior, express, and written consent of the incumbent to repeal acts of a specific and particular nature
Article 95 of the Administrative Procedural and Administrative Contentious Code	Time frames for revocatory action

REGULATIONS	SUBJECT
Article 102 of the Administrative Procedural and Administrative Contentious Code	Extension of jurisprudence of the Council of State to third parties by the Authorities
Article 256 to 268 of the Administrative Procedural and Administrative Contentious Code	Extraordinary remedy of unification of jurisprudence
Articles 5 and 6 of the Administrative Contentious Code	Petitions in the general interest
Articles 9-16 of the Administrative Contentious Code	Petitions of private interest
Article 25 of the Administrative Contentious Code	Submission of inquiries
Articles 135-148 of the Administrative Procedural and Administrative Contentious Code	Means for jurisdictional control
Article 720 of the Tax Statute	Motion for reconsideration
Article 732 of the Tax Statute	Time frame for resolving motions for reconsideration
Article 734 of the Tax Statute	Positive Administrative Silence
Article 736 of the Tax Statute	Revocatory action of tax matters
Article 737 of the Tax Statute	Time frame from direct repeal in tax matters
Articles 1-5 of Decree 1818 of 1998	Conciliation
Articles 53-58 of Law 1563 of 2012	Arbitration
Articles 59-61 of 1563 of 2012	Amicable settlement
Articles 62-68 of 1563 of 2012	International arbitration
Article 34 of Decree 19 of 2012	Direct action before administrative authorities except in appeals
Article 193 of Law 1607 of 2012 (Tax Reform)	Taxpayers rights
Article 197 of Law 1607 of 2012 (Tax Reform)	Principles of the Tax Penalizing Regime
Article 36 of Decree 19 of 2012	Presumption of validity of signatures
Articles 1 to 8 of Law 1653 of 2013	Legal tariff
Articles 1 and 2 of Decree 3068 of 2013	Minimum monthly legal salary for 2014



———— CHAPTER 14 ————

ACCOUNTING REGIME

14 ACCOUNTING REGIME

Six things investors should know about accounting regulations applicable to companies in Colombia:

1. Accounting regulations in force are prescriptive, that is to say, they are based on rules that give preeminence to the tax laws and external regulatory circulars issued by the Superintendencies, under supervision, surveillance and control of the companies over economic reality.
2. Colombian accounting regulations are in the process of being superseded by the International Financial Reporting Standards (IFRS).
3. The process of changing to IFRS is a holistic process and not merely an accounting process. This means that it has an effect across the organization inside companies, and not only on accounting and finance.
4. Several groups have been defined for application of the IFRS, as follows: Group 1, Group 2, and Group 3. Group 1 is made of large and/or public interest companies; group 2 is made of medium-size companies, and Group 3 is made of small companies and/or small and medium-sized enterprises (SMEs).
5. Implementation dates for group 1 and group 3 begin on January 1, 2014, with the preparation of opening financial statements as of such date, and complete financial statements under IFRS as of December 31, 2015, comparative to the same previous period (2014). For Group 2 the dates are delayed one year.
6. Auditing principles generally accepted in Colombia will be changed to the international auditing standards. Implementation dates are similar to those mentioned for the above groups.

14.1. General Rules

At present and until the accounting period's end on December 31, 2014, the accounting for commercial companies in Colombia is governed by Decrees 2649 and 2650 of 1993. The first provides the conceptual

framework of accounting in Colombia and certain technical adjustments as regards accounting relevant to the economic situation at that moment. The latter defines the Unique Chart of Accounts (Plan Único de

Cuentas, PUC in Spanish), which is not only a catalogue of accounts for commercial companies but also describes the accounting procedures to follow, that is to say, what to credit or debit to each account and to the balancing entry account.

Accounting regulations in the country are unified by instructions and external circular letters issued by controlling authorities, particularly by the Superintendencias and by the Colombian Tax Authority (Dirección de Impuestos y Aduanas Nacionales - DIAN, in Spanish).

14.2. Unique Chart of Accounts for Controlled Entities

In addition to Decree 2650 of 1993, each Superintendency in Colombia has issued its own chart of accounts, in order to better control and oversee in a comprehensive manner the entities under its respective surveillance, as well as the General Accounting Office, which regulates governmental and mixed economy entities. In summary, there are 19 unique charts of accounts currently in force in Colombia, which in addition to the regulations issued by each of the Superintendencias, make up a prescriptive or regulated accounting framework for the Colombian environment.

In fact, the entire accounting regulation bows down before tax regulations, since section 136 of Decree 2649, provides that tax regulations prevail over the Accounting Principles Generally Accepted in Colombia (Principios de Contabilidad Generalmente Aceptados en Colombia, PCGA in Spanish), embedded in Decree 2649 of 1993.

It is important to highlight that financial statements of companies legally incorporated in Colombia must comply with regulations currently in force (those mentioned above) until the accounting period to end on December 31, 2014.

In simple words, Colombia decided to have as reference the International Financial Reporting Standards (IFRS as issued by the International Accounting Standards Board - IASB). This decision was made as a result of taking into consideration the recommendations issued by the Public Accountancy Technical Board (Consejo Técnico de la Contaduría Pública - CTCP, in Spanish) and the various ad honorem technical committees established by Law 1314 of 2009. It is worth mentioning that the CTCP is the standards body established by Law 1314, jointly with the ad honorem technical committees, which are mainly conformed by representatives of Colombian companies and in general representatives of the business community in Colombia, through the various industry groups.

The above means that the process carried out by the Government as regards internationalization of financial and accounting matters has been highly participative. Under that perspective, the International Accounting Standards (IAS) as issued by the International Federation of Accountants (IFAC) were defined as the reference framework for assurance rules in Colombia.

After enactment of Law 1314, regulations have improved significantly. The most recent progress rests in:

1. Decree 3019 of December 27 of 2013, which modifies the Technical Regulatory Framework for microenterprises, annexed to Decree 2706 of December 28 of 2012.
2. Decree 3022 of December 27 of 2013, which regulates Law 1314 of 2009 regarding the technical regulatory framework for preparers of financial information that make up group 2.
3. Decree 3023 of December 27 of 2013, which partially amends the financial reporting technical regulatory framework for preparers of financial information that constitutes group 1, contained in Decree 2784 of December 29 of 2012.
4. Decree 3024 of December 27 of 2013, which modifies Decree 2784 of December 29 of 2012 and dictates further regulations.

Such decrees confirm the recommendations for moving forward to IFRS and information assurance in Colombia; such recommendations include the creation of different groups to implement the new rules on accounting and financial information. Three groups were defined, as follows:

14.3. Adoption of International Accounting Standards

On July 13, 2009, the Colombian Congress enacted Law 1314, whose purpose is to implement a top-quality unique and uniform system, understandable and mandatory, of accounting rules, financial information and assurance.

14.3.1. Group 1

Companies to fully apply the IFRS as issued by the IASB. These companies are:

- a. Securities issuers: Entities and trust businesses that have securities registered in the National Registry of Securities Issuers (RNVE in Spanish) as stipulated in Article 1.1. 1. 1 of Decree 2555 of 2010.
- b. Public interest entities and business.
- c. Entities that do not fall under the mentioned categories and meet the following conditions: (i) Head count of more than 200, or (ii) Total assets higher than 30,000 minimum monthly legal wages (SMLMV in Spanish), (iii) Which additionally meet any of the following conditions:
 1. Are subsidiaries or branches of foreign companies that fully apply the IFRS.
 2. Are subsidiaries or parent of companies mandated to fully apply the IFRS.
 3. Are parent of, associated with or make a joint enterprise with one or more foreign companies that fully apply IFRS.
 4. Their imports or exports represent more than 50% of purchases or sales, respectively.

In the case of entities whose activity covers the provision of services, the share of imports is measured by the costs and expenses abroad and exports by revenue. When importing materials for the development of its corporate purpose, the percentage of purchases will be established by adding the costs and expenses incurred abroad plus the value of imported raw materials. Purchases and sales of fixed assets are not included in the mentioned calculation.

The calculation of the number of employees and total assets, referred in this literal will be based on the average of twelve (12) months from the year prior to the period of compulsory preparation defined in the schedule laid down in Article 3 of Decree 2784 of 2012, or the year immediately preceding the period in which the obligation to implement the Technical Regulatory Framework set forth in this Decree, in periods subsequent to the period of compulsory preparation alluded.

For purposes of calculating the number of workers mentioned on literal point (i). of literal c), employees performing direct and personal services to the entity in exchange for a fee, regardless of the legal nature of the contract, shall be considered as such. Individuals providing consulting services and outside counsel shall be excluded from this consideration.

Pursuant to the provisions set out in Paragraph 1 of Article 1 of Decree 2784 of 2012, public interest entities and business are those which, upon approval by the competent state authority, capture, manage or administer public resources, and are classified as:

- a. Banking institutions, financial corporations, finance companies, financial cooperatives, top grade cooperative organizations and insurers.
- b. Capitalization societies, commission agent companies, exchange, management companies and private pension funds layoffs, trust companies, stock exchanges, exchanges of goods and agricultural products, agro industrial or other 'commodities' and its members, securitization companies, stocks of goods clearinghouses, and agriculture, agribusiness or other 'commodities' management companies centralized securities, deposits chambers risk product, central counterparty, investment management companies, brokerage exchange and special financial services companies, (funds from voluntary and mandatory pensions, unemployment funds, collective investment funds) and those set forth by Law 546 of 1999, and Decree 2555 of 2010, and others that meet this definition.

Further, paragraph 2 stipulates that portfolios managed by third party brokerage firms, business trusts and any other special vehicle managed by entities supervised by the Financial Superintendence of Colombia shall contractually establish whether or not to apply the technical regulatory framework set out in the Annex of Decree 2784 of 2012.

14.3.2. Group 2

This group of companies shall apply the IFRS for SMEs as issued by the IASB, but the application of full IFRS that is mandatory for group 1 is voluntary. This group is made of large companies that do not meet the conditions of group 1 and of medium-size and small companies with revenues equal to or higher than 15,000 MLMW.

14.3.3. Group 3

A simplified accounting system as set forth by Decree 2706 shall be applied to this group of companies. Such decree is a compilation of concepts under the IFRS for small and medium-sized enterprises (SMEs) as issued by the IASB and the ISAR rules issued by UNCTAD. This group is made of individuals or legal entities that meet the criteria set forth in section 499 of the Colombian Tax Code and subsequent regulations, and small businesses that do not meet the conditions of group 2.

In this respect, Decree 2748 reaffirms the dates of implementation for group 1 companies, that is to say, the date of full application of the IFRS shall be as from the accounting period ending on December 31, 2015, with the relevant financial statements compared to the same period of the previous year, i.e.: December 31, 2014. For such purpose the opening balance will be January 1, 2014.

Additionally, it defines the accounting standards framework, which is the conceptual framework along with standards and interpretation (IAS/IFRS, SIC/IFRIC) issued by the IASB pursuant to the translation made as of January 1, 2012.

As regards Decree 2706, and modifications introduced by Decree 3019, it is the standards framework to be applied for small companies (group 3), which is a hybrid between the IFRS for SMEs issued by the IASB and the ISAR rules issued by UNCTAD. The date of implementation for this purpose shall be the same as for companies under group 1.

As regards group 2, the date of implementation is delayed for one year after that of group 1 and group 3 companies.

To fully understand the changes involved in the “accounting and accounting information assurance” conversion, it is necessary to mention that being aware of the most significant impact on the businesses and, consequently, on financial reporting as required by the IFRS is a must.

Prior to start talking about the effects, it is necessary to mention something important. The IFRS are very demanding standards as regards the details of financial and nonfinancial information, which generally lead to the presentation of financial statements of the companies that reflect, as is basic principle, the economic reality and not the tax reality as in the Colombian case, where the GAAP have been affected by the tax regulations that prevail over them.

14.4. Considerations on the Conversion Project

14.4.1. Consequences of the change to IFRS for companies

The change to IFRS shall be the most significant change for companies in the history of Colombia. The

changes arising there from shall not be limited to the financial function of companies. Conversion is not only a technical accounting task, but a wide change that will have an effect on many business areas. Any and all business functions required to prepare financial information, or affected by financial information, potentially will change. Companies must expect changes in net earnings and in financial position. Below, we present some examples of potential results for the businesses key areas:

14.4.1.1. IT and Information Systems

- System capacity to produce two sets of financial statements (pursuant to Colombian accounting standards and IFRS) during the years of transition, maintaining security and reliability conditions.
- Extended disclosures required by IFRS and changes in the presentation of financial statements giving rise to a new set of information.
- Opportunities to automate the measure and assessment of transactions and the timing of recognition/derecognition.

14.4.1.2. Compensation plans for executives and employees (human resources)

- Performance based on recognition and executive compensation tied to profitability.
- Setting employee goals and evaluation based on the IFRS global success and the effective management of resources.
- Scarcity of IFRS resources in general, resulting in a review of compensation programs and retention of finance and accounting key personnel.

14.4.1.3. Foreign Currency and Coverage Activities (Treasury)

- Different criteria as regards to which is qualified as acceptable coverage or coverage element.
- Criteria basically different for the derecognition of financial instruments and principles regarding securitizations.

14.4.1.4. Corporate taxes (taxes)

- New accounting base for assets and liabilities and the impact thereof on future deferred tax balances.
- Tax rates to estimate the deferred taxes to be based on the form expected to realize such differences.

14.4.1.5. Financial ratios and arrangements (finance and treasury)

- Volatility of financial ratios and key indicators arising from electing between an accounting system based on cost or on fair value.
- Impact on financial arrangements arising from the changes in the balance sheet and the statement of income.

14.4.1.6. Internal controls and processes (finance)

- Changes and new documentation of internal controls associated with financial reporting, particularly as regards the following processes: Closing of financial statements, taxes, financial instruments, property, plant and equipment, and property for investment, and the relevant valuations thereof.

- Changes to accounting policies and procedure handbooks on the grounds of the election out of the policy options provided by the IFRS.

- Review of controls on disclosures and certification procedures to adjust to improved and more robust disclosures as per the IFRS.

14.4.1.7. Investor relations and communications to the capital markets (finance and investor relations)

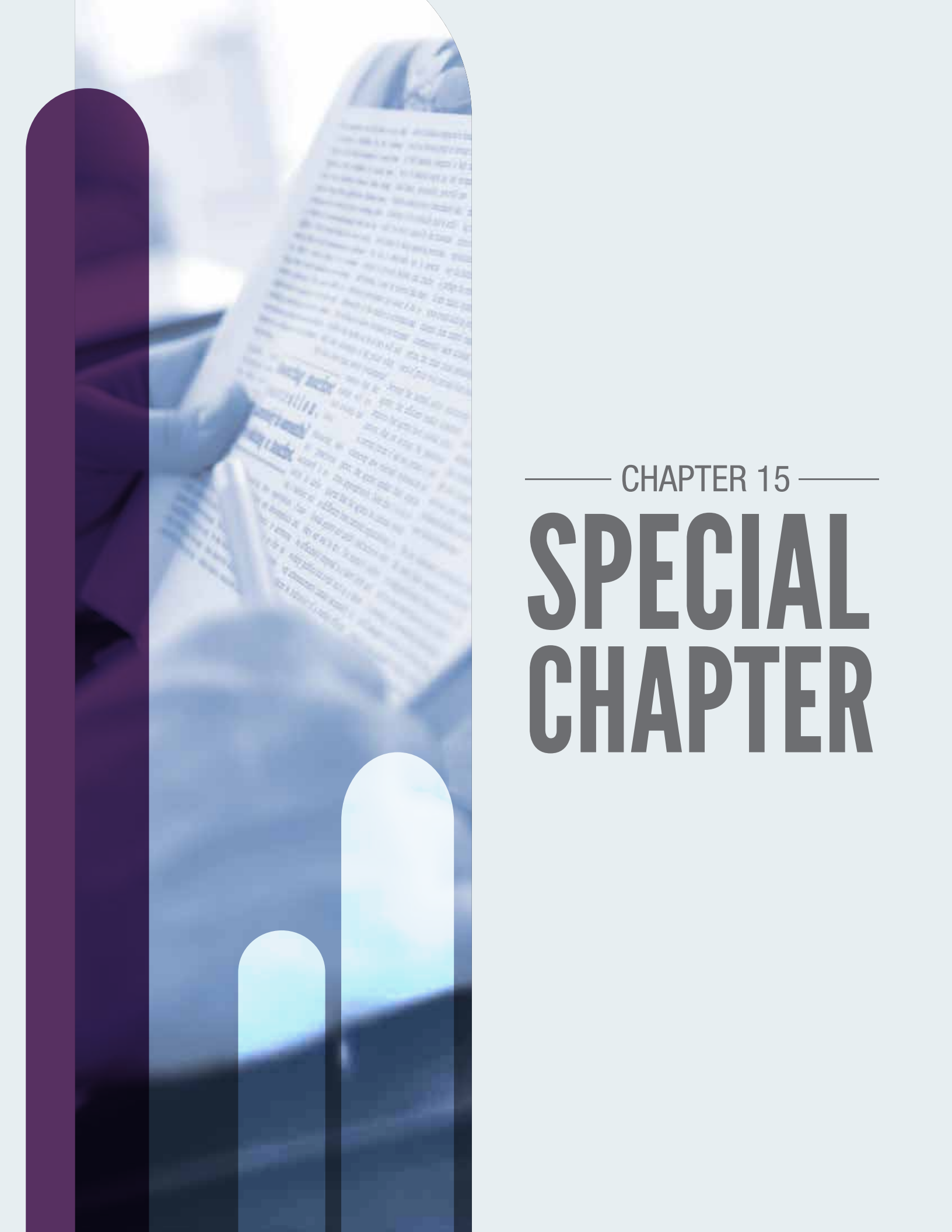
- Improved communication with analysts and investors around accounting differences and the underlying justification to elect a certain IFRS policy, among others.
- Timely communication of the company's strategy to explain the volatility of changes in its financial statements.

14.4.1.8. Management report (finance)

- Review of the company's long- and short-term strategic plans while obtaining full understanding of movements during transition years.
- Changes in plans and internal budgeting criteria on the grounds of the review of financial ratios, new recognition / derecognition in assets and liabilities and measuring rules.

REGULATORY FRAMEWORK

REGULATIONS	SUBJECT
Decree 2649 of 1993	General accounting regulations
Decree 2650 of 1993	Unique chart of accounts for merchants
Law 1314 of 2009	Colombian accounting change to International Financial Reporting Standards and Information Assurance Act



— CHAPTER 15 —

SPECIAL CHAPTER

15 SPECIAL CHAPTER

System to facilitate investment attraction

What is the System to Facilitate Investment Attraction?

The System to Facilitate Investment Attraction (SIFAI, in Spanish) is a public/private system where information regarding opportunities for improvement of the investment climate is identified and centralized for a high level technical committee (the “Committee”), created within the framework of the National Competitiveness System (SNC, in Spanish) to adopt relevant measures.

15.1. Purpose of the SIFAI

This system identifies and centralizes information regarding opportunities for improvement of the investment climate and establishes an institutional memory of the circumstances that may hinder investment in Colombia.

SIFAI analyzes and prioritizes information and provides recommendations in order to facilitate foreign direct investment (FDI) in coordination with the entities responsible for the particular issue.

SIFAI facilitates the implementation of effective measures to improve the investment climate through the Committee, which is part of the SNC and in which the competent authorities in this matter participate.

15.2. What is an opportunity for improvement?

SIFAI works on opportunities for improvement of the investment climate, whereby opportunities are defined as the norms and their application and construction or the practices of state entities, which affect the investment decisions of foreign investors in Colombia.

Opportunities for improvement, managed through SIFAI, include obstacles that may directly or indirectly affect the investment climate due to the fact that they produce any of the following effects:

- Cancellation of investment decisions. The investor decides to withdraw the project to invest in Colombia.
- Suspension of direct investment. The foreign investor decides to suspend indefinitely the decision to invest.
- Alteration of the characteristics of the investment. The sum of the investment or the number of jobs that the project would create is reduced.

- Divestment in Colombia. The impact of the obstacle leads a foreign investor who is already settled in the country to wind up its investment in Colombia.
- Delay in the time to carry out the investment.
- Increase of the cost to carry out the investment.

15.3. SIFAI'S Management

Thanks to its close contact with foreigners interested in investing in Colombia, Proexport can identify the obstacles they face in investment processes. State and private entities working on competitiveness policies are in a similar position and they follow up the different factors that affect the investment climate in order to suggest improvements. The information on the opportunities for improvement that are detected is recorded in an information system, which is placed on a web platform administered by Proexport.

SIFAI has a Committee composed of representatives from both the public and the private sector. From the public sector, the representatives are the High Presidential Counselor for Public and Private Management (ACPGPP, in Spanish) or his/her representative, the Minister of Commerce, Industry and Tourism or his/her representative, the Director of the National Planning Department or his/her representative, and the President of Proexport or his/her representative. From the private sector, the member of the Council is the President of the Private Competitiveness Council or his/her representative.

The general purpose of this Committee is to coordinate the adoption of the reforms required for the improvement of the investment climate and follow up their execution. The Committee analyzes and prioritizes the opportunities for improvement, formulates proposals, coordinates with the authorities the adoption of measures geared towards the improvement of the investment climate, and carries out a follow-up on the implementation of these measures.

The Technical Secretariat of the Committee has been entrusted to Proexport, which coordinates the identification, prioritization, analysis of opportunities for improvement, as well as the implementation of the reforms that are subsequently suggested by the Committee.

The Executive Coordinator of the Committee is the ACPGPP. This office is in charge of summoning the members of the Committee for meetings and of carrying out a permanent follow-up of the work plan. Whenever required, the ACPGPP summons the entities responsible for the issues that are to be discussed in the agenda.

Should you require more information on the work carried out by SIFAI, do not hesitate to contact the Legal Board of the Vice presidency for Investment of Proexport.

This chapter has been prepared by Proexport



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DESCRIPTION

EY is a global leader in assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies over the world. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities.

In order to meet our clients' needs, we take an integrated client-focused approach to provide each with the services they need from across our service lines. Our clients expect us to deliver high quality first and foremost, but they also expect us to be innovators, to envision and build solutions they need, supported by cutting-edge technology. Working closely with our sector centers, our service lines are constantly investing in new services and technologies.

Our Tax service line provides in Colombia specialized professional advisory services in tax, international tax services, exchange control regime and foreign investments, international trade and customs, labor law and immigration, through our tax team of more than 140 professionals, who are committed to deliver our clients solutions for every need. Our team designs and implements, from a legal and corporate standpoint, tax efficient structures for foreign investment in Colombia, as well as Colombian investment structures abroad; developing control and surveillance procedures that allow investors to comply in a safe, agile and efficient manner with the tax related obligations.

Advisory Areas

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- International Tax and M&A
- Legal Services
- Transfer Pricing
- Tax Controversy and Litigation
- Transactions and Due Diligence
- Foreign exchange control and foreign investment regime
- Customs and International Trade
- Human Capital and Immigration

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