



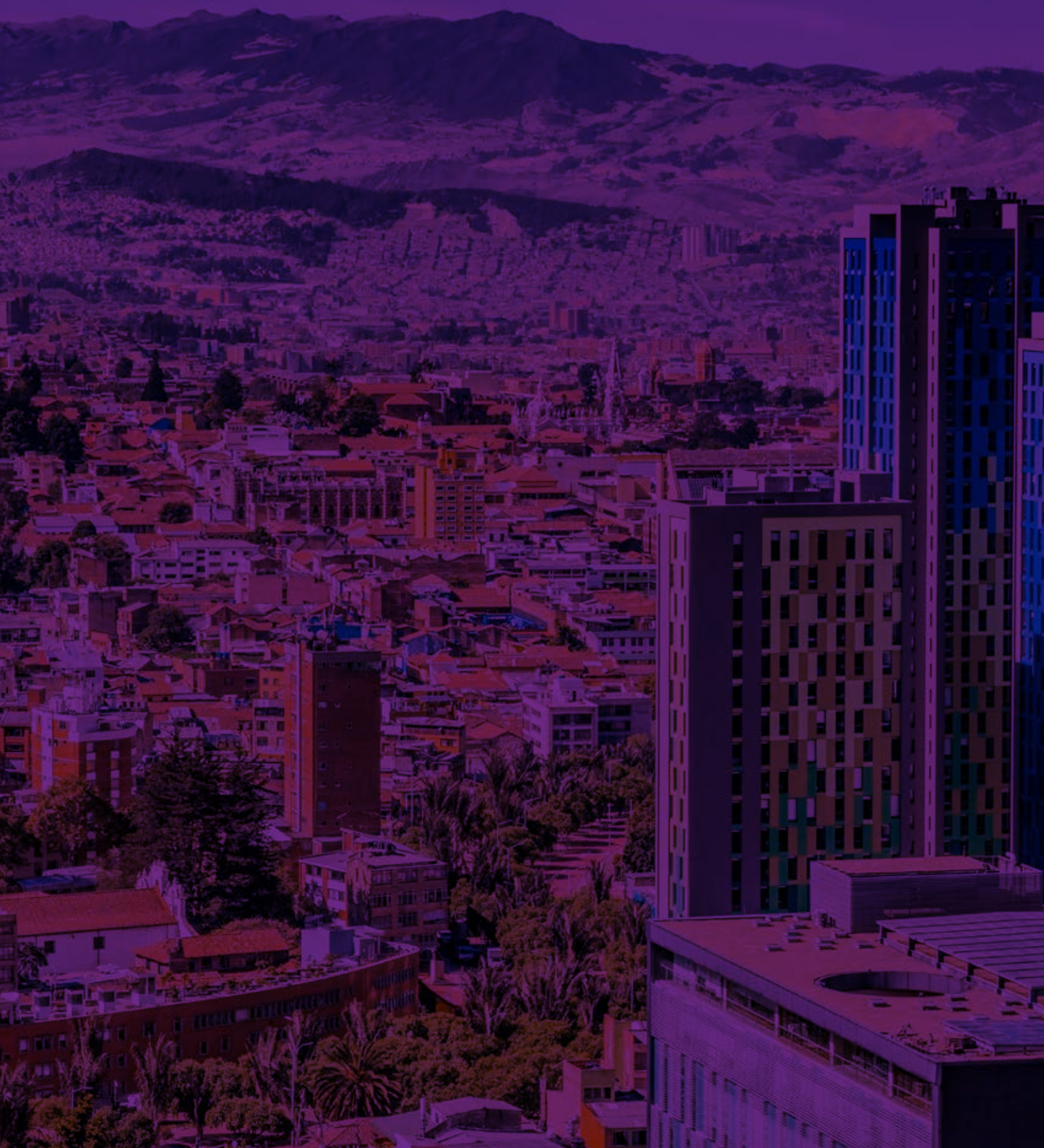
大成 DENTONS

A Guide to **Doing business in Colombia 2020**

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Introduction



Investment environment and business opportunities in Colombia

Colombia offers:



A dynamic and stable economy.



A growing market located strategically to facilitate business transactions with the region.



A trade platform with over 10 Trade Agreements enabling investors to reach third markets with preferential access.



Multiple development centers and regions coupled with a growing middle class securing greater product and services demand.



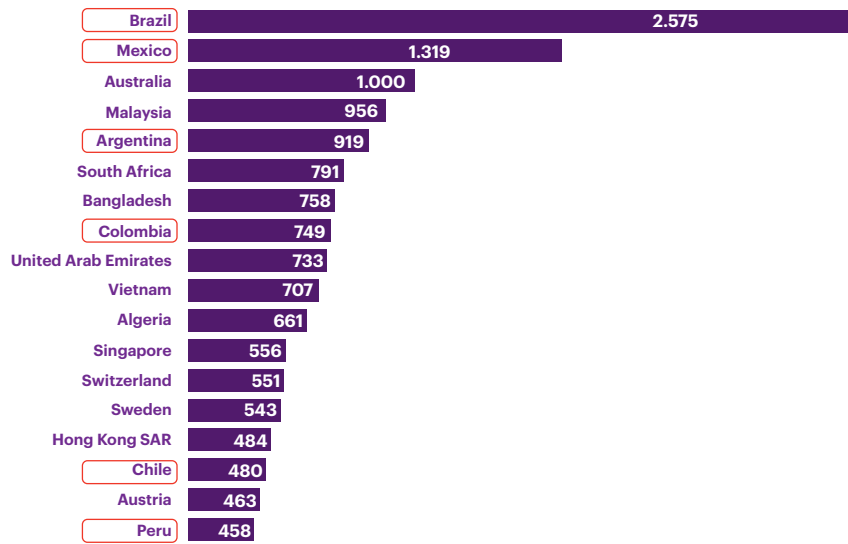
A growing pool of qualified Colombian companies able to partner with international investors to reach out to regional markets.



Diverse opportunities for investment in a wide variety of sectors.

Colombia ranks as the 32 largest economy in the world and the fourth largest in Latin America

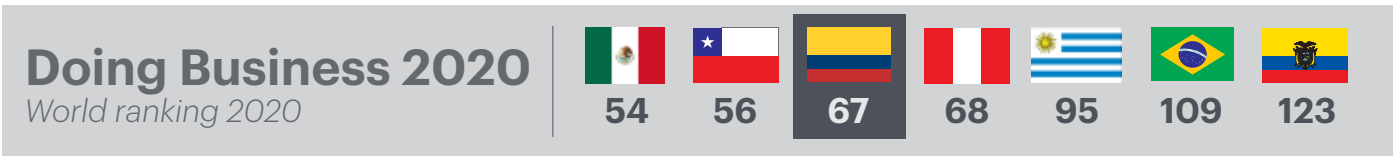
GDP PPP 2018 (US\$ billion)



 Latin American Economies

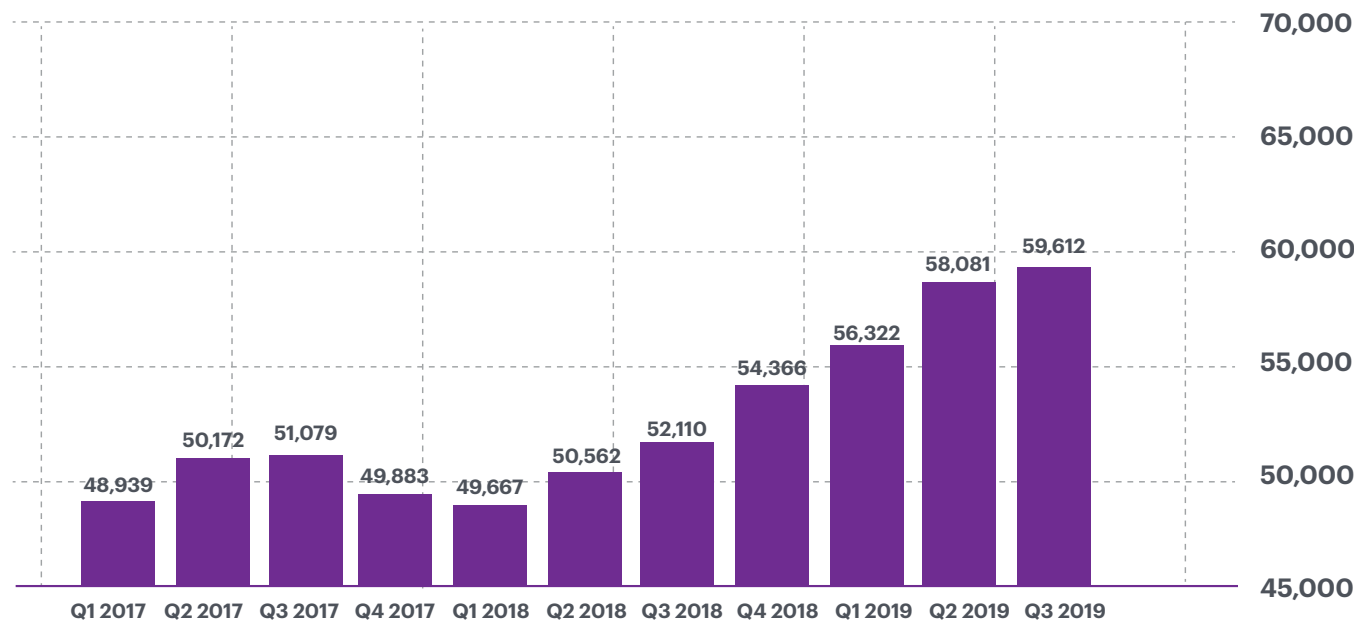
Source: https://www.gc-research.com/pdf/Colombia_Presentation_2019.pdf

Colombia: A dynamic and stable economy



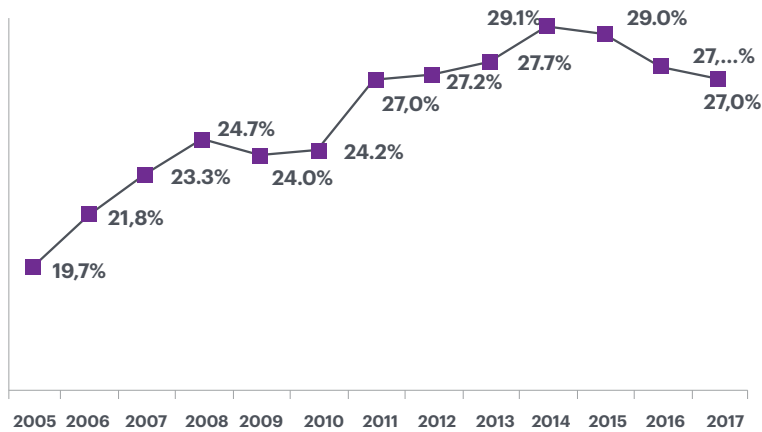
Source: https://www.doingbusiness.org/content/dam/doingBusiness/pdf/db2020/Doing-Business-2020_rankings.pdf
World Bank, Doing Business 2020

With a constant gross fixed capital formation, where companies are the most willing to invest in fixed capital

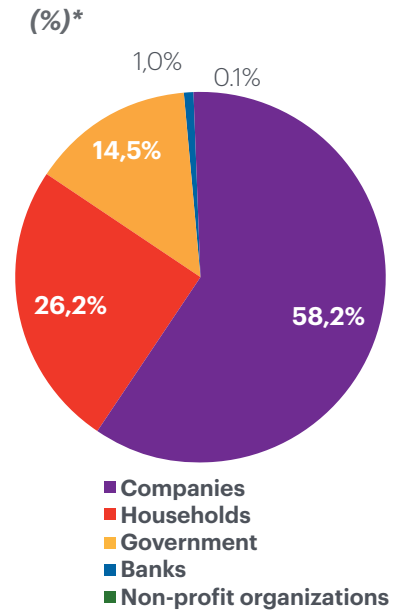


Source: <https://www.economy.com/colombia/nominal-fixed-investment-gross-fixed-capital-formation>

Gross fixed capital formation (investment as GDP%)



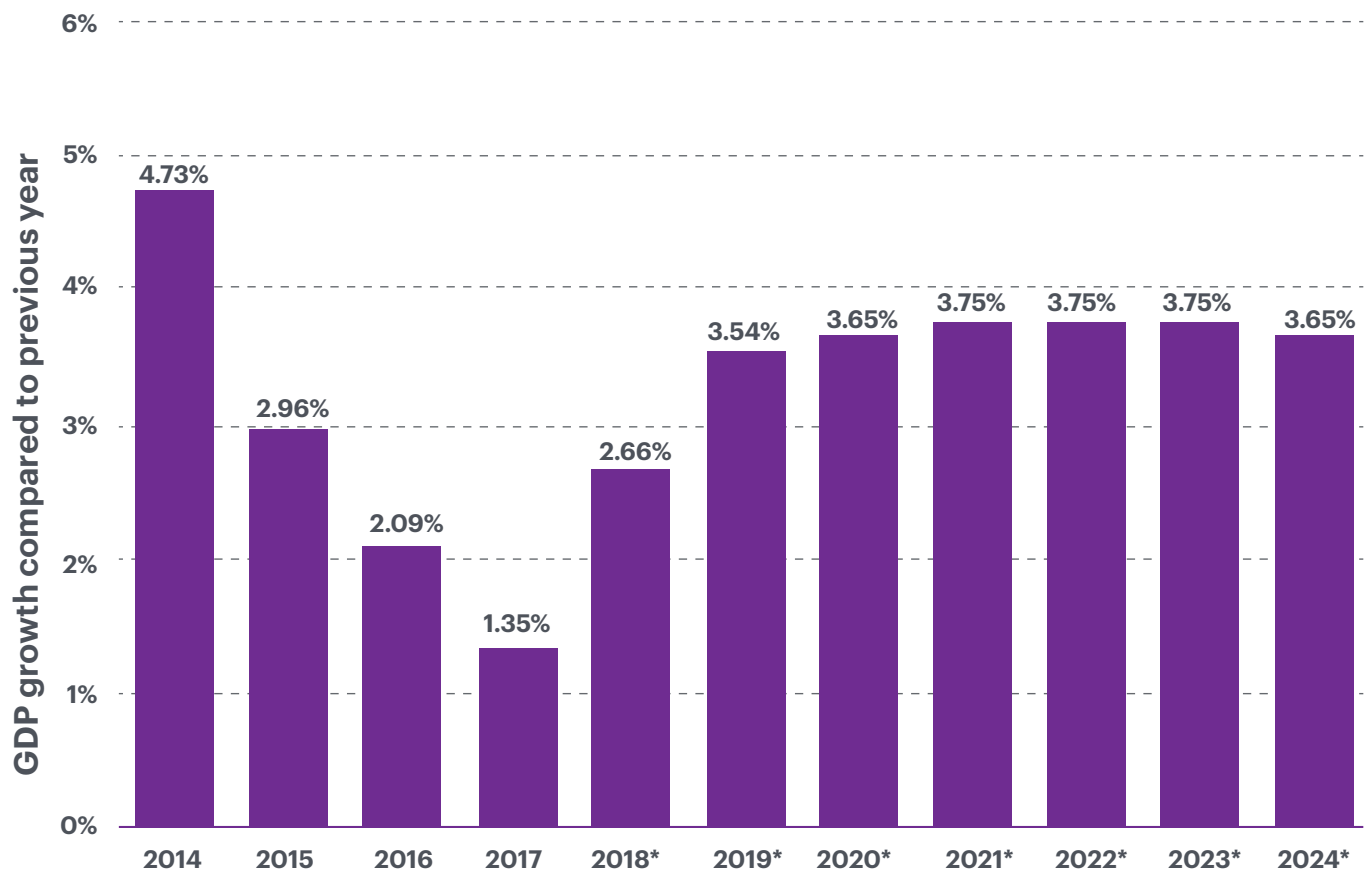
Investment Sources 2017



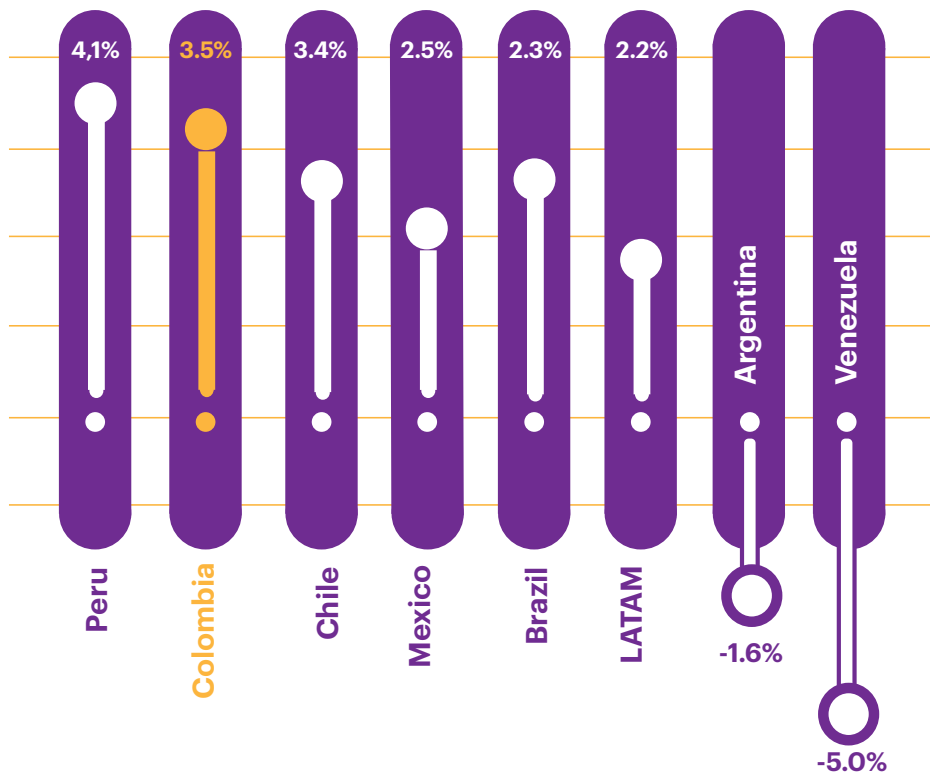
Gross fixed capital formation
USD \$71 billion

Gross domestic product estimated growth 2019

Colombia is **one of the top growing economies in 2019**, among the largest Latin American countries



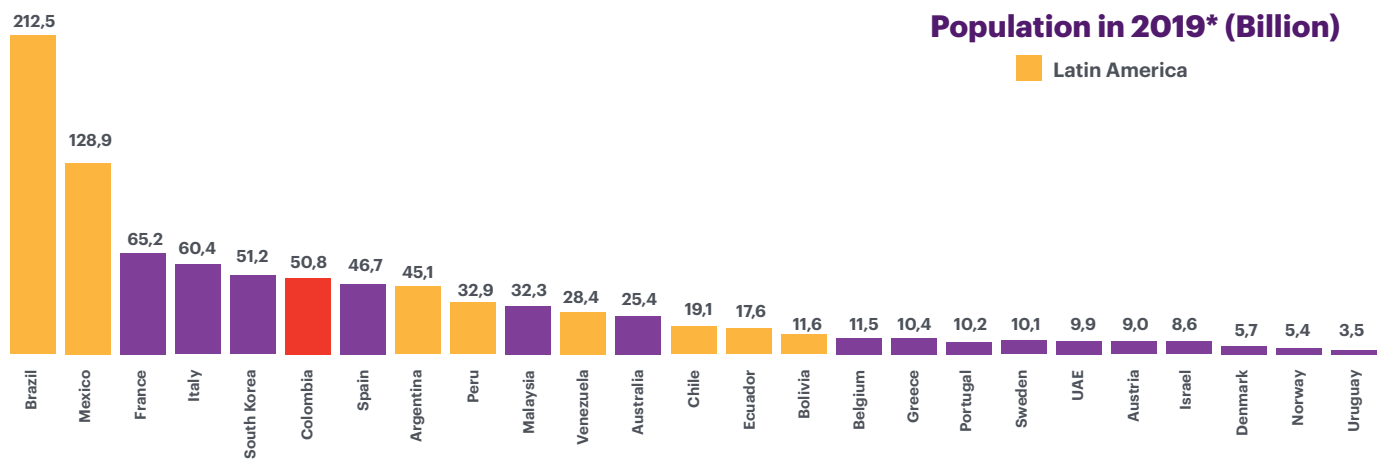
Source: Statista



Source: IMF, January 2019 - https://www.gc-research.com/pdf/Colombia_Presentation_2019.pdf

Colombia is the 29th most populated country in the world and the 3rd most populated in Latin America

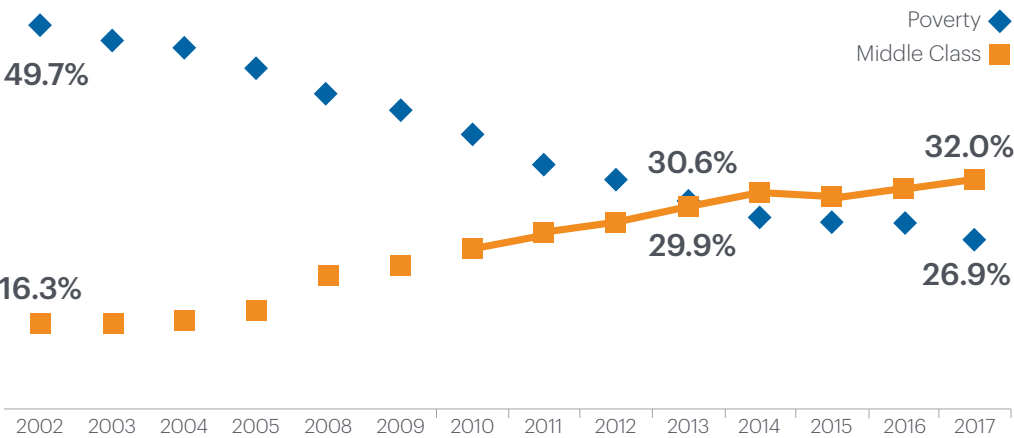
(Source: <http://worldpopulationreview.com/countries/countries-by-gdp/>)



Source: <https://www.worldometers.info/world-population/population-by-country/>

Remarkable reduction in poverty rates and strong growth of the middle class Colombia has continuously decreased its poverty levels

Percentage of people in poverty
2002-2017



Source: DANE
Info: <https://www.dane.gov.co/index.php/estadisticas-por-tema/pobreza-y-condiciones-de-vida/pobreza-y-desigualdad/pobreza-monetaria-y-multidimensional-en-colombia-2018>

	Standard & Poors	Fitch Ratings	Moody's
Term	Long term - Foreign Currency	Long term - Foreign Currency	Long term - Foreign Currency
Rating	BBB	BBB	Baa2

Source: Reuters
Info: <https://datosmacro.expansion.com/ratings/colombia>
<https://www.reuters.com/article/colombia-bonds/colombia-2-part-bond-offer-highly-oversubscribed-banking-source-idUSL1N1ZN125>
<https://es.tradingeconomics.com/colombia/rating>

Colombia has the lowest barriers for FDI in LAC

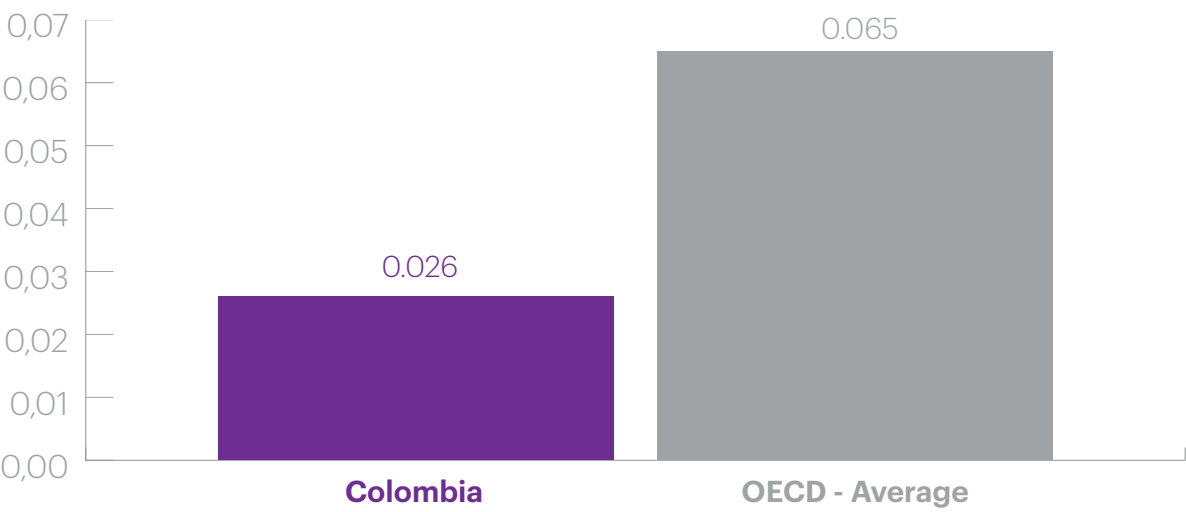
FDI Regulatory Restrictiveness Index 2018



Source: <https://data.oecd.org/fdi/fdi-restrictiveness.htm>

FDI Restrictiveness

2018, Closed = 1, Open = 0

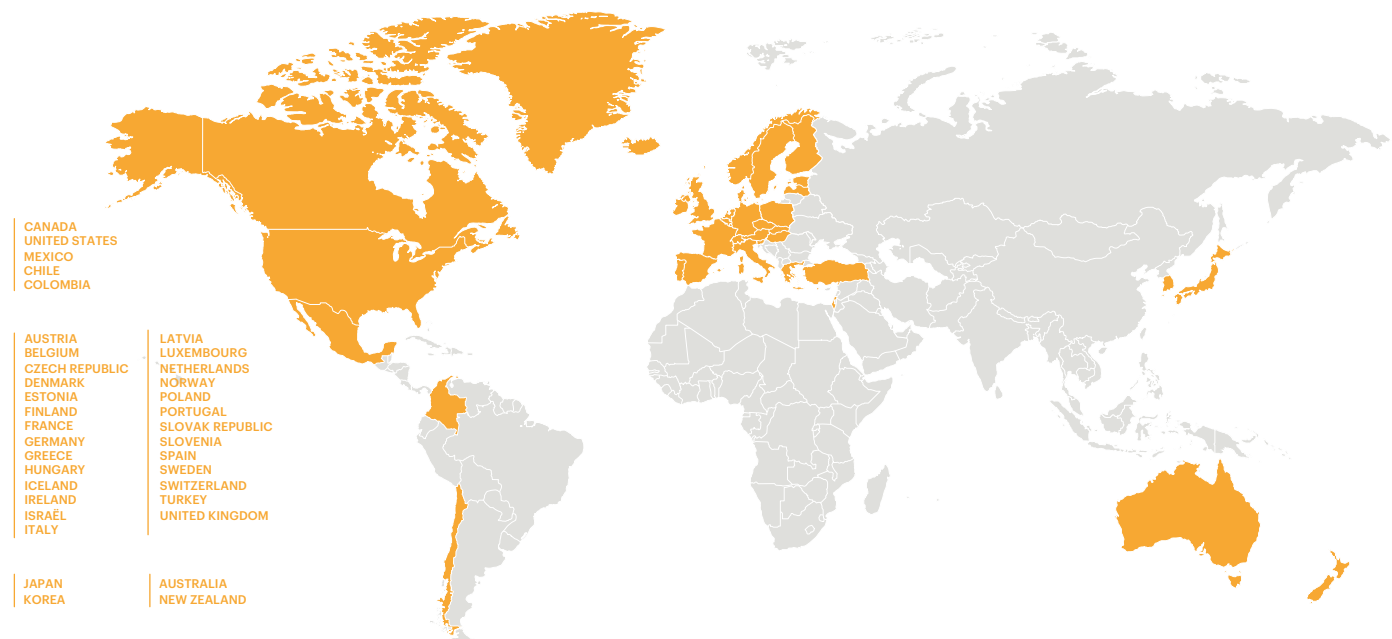


Source: <https://data.oecd.org/fdi/fdi-restrictiveness.htm>

Colombia in the OECD



COLOMBIA IS THE 37TH MEMBER OF THE OECD



Being part of the OECD countries means that public institutions in Colombia will meet standards of the developed world more confidence for investors.

“The OECD investment policy review examines Colombia's achievements in developing an open and transparent investment regime and its efforts to reduce restrictions on international investment” **OECD**



Being part of an organization such as the OECD is a sign of economic stability, transparency and government discipline.



Thanks to the recommendations made by the OECD, the national government has promoted concrete reforms for the facilitation of trade.



OECD gives guidelines and investment barriers, allowing Colombia to be in a process of continuous improvement, peer evaluation, and institutional strengthening.

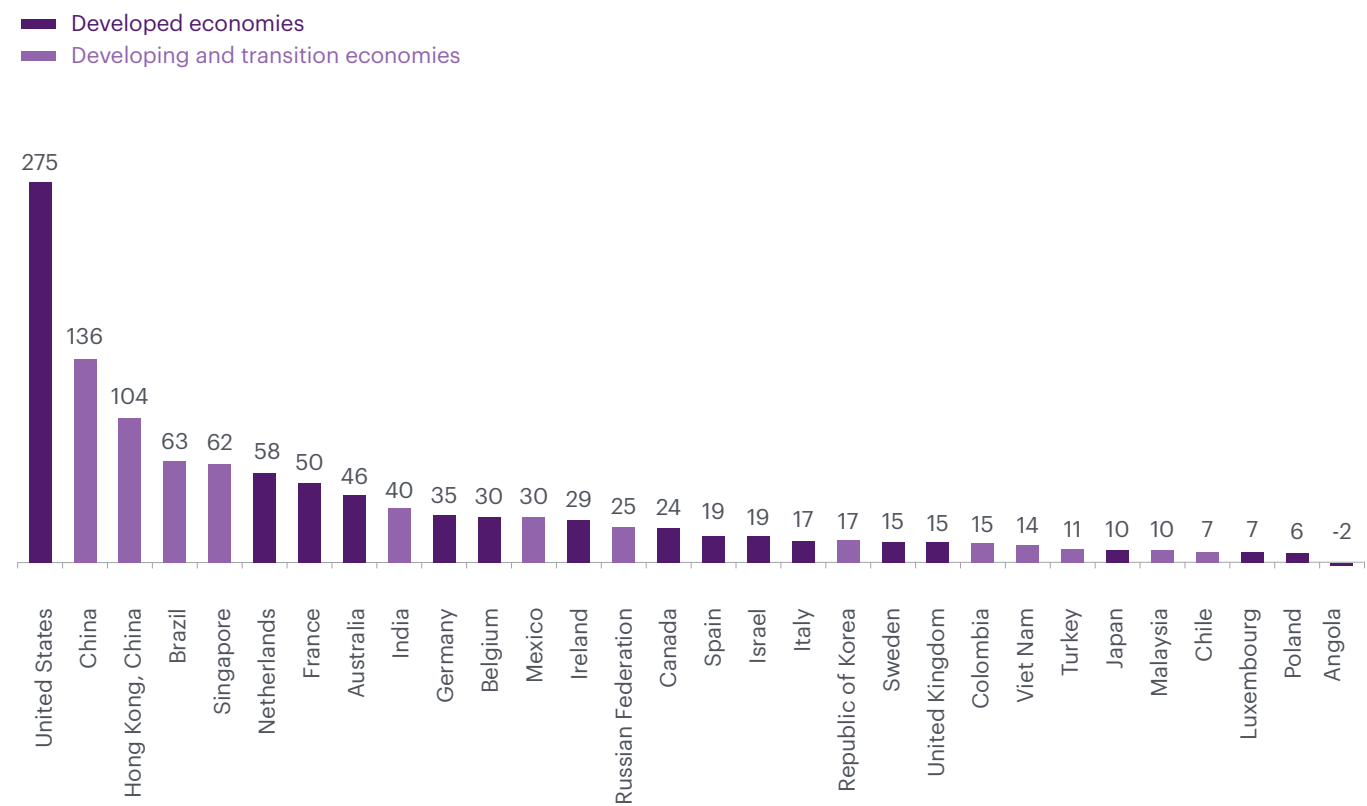


The OECD provides a seal of quality for direct foreign investment: by having to meet policy standards to become a member, these improve. This results in increased confidence of foreign investors.

Source: https://www.gc-research.com/pdf/Colombia_Presentation_2019.pdf ProColombia
Info: <https://www.oecd.org/centrodemexico/laocde/colombia-y-la-ocde.htm>
<https://www.oecd.org/newsroom/los-paises-de-la-ocde-acuerdan-invitar-a-colombia-a-ser-su-miembro-numero-37.htm>

Colombia is one of the top 30 destinations for FDI

Top 30 host economies in 2017 (USD billion)



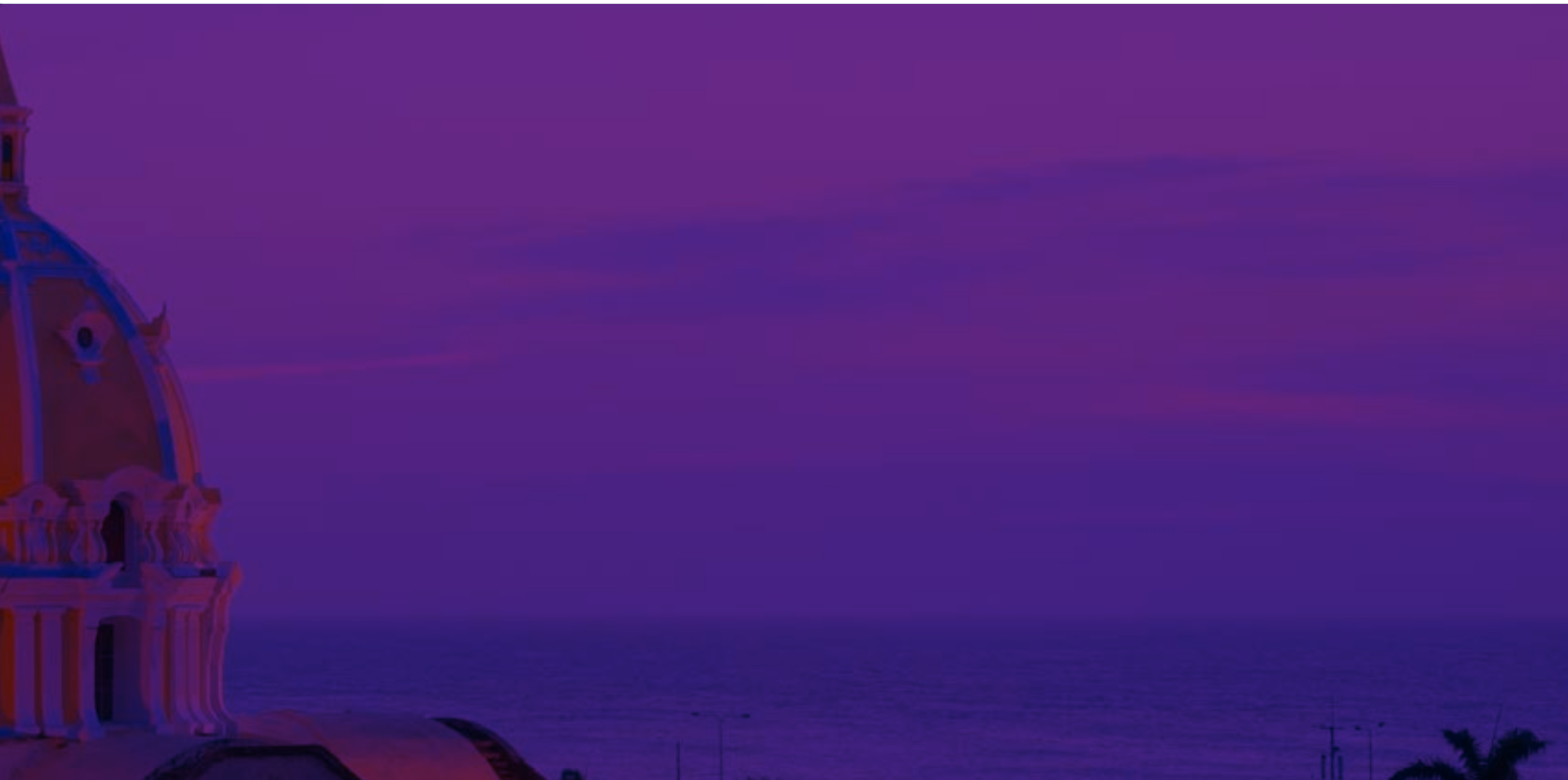
Source: UNCTAD 2017.



Outflows top 5 economies in LAC



Source: <https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2117>



Colombia Foreign Investment

FDI in Figures

According to UNCTAD's 2019 World Investment Report, country's FDI inflows decreased in 2018, to USD 11 billion, compared to USD 13.8 billion in 2017. Total stock of FDI reached to USD 188 billion in 2018, representing 56.7% of the Colombia's GDP. Colombia was also ranked the 24th top exporting developing economy in the world. While security conditions have improved in Colombia, investment remains dependent on extractive industries (mining and energy projects). In this context, the fall in commodity prices has slowed FDI inflows over the last few years. The United States are the largest investor in the country while the European Union is the largest FDI provider geographically.

The country ranked 65th out of 190 economies in the World Bank's 2019 Doing Business report. Opportunities in the infrastructure sector are numerous since the Colombian government launched in 2012 the "4G" plan, Latin America's biggest infrastructure program, amounting to around USD 5.5 billion. The city of Bogota is particularly dynamic. Over the past ten years, it has received USD 16.77 billion in FDI, mainly in financial services and communications, making the city one of Latin America's leading business centers. FDI benefits from an attractive legislative framework in Colombia. The ratification of a bilateral free trade agreement with the U.S. in October 2011 and the establishment of special regulations in the free-trade zones have contributed to improving the country's attractiveness. Moreover, the richness of its natural resources and a significant domestic market are Colombia's main assets. The peace agreement with the rebel group FARC is supposed to accelerate FDI flows to the country. In 2018, FDI in Colombia increased by 5% to USD 14.5 billion, supported by the recovery in oil prices, infrastructure investment and rising domestic demand. Flows to the oil sector particularly increased (45% growth), while FDI in transport, storage and telecommunication more than doubled. Pharmaceutical FDI was also important in 2018, as the country received the highest investment in the field in Latin America. In 2019, the legalisation of medical cannabis production is set to give it a further boost. Several prominent projects into Colombia in 2018 have been in the medical sector, such as the Cronos Group's plan to establish medical cannabis cultivation and manufacturing operations in the country and MYM Nutraceuticals' joint venture agreement to set up jointly owned manufacturing operations in Colombia.

Source: https://santandertrade.com/en/portal/establish-overseas/colombia/investing?&actualiser_id_banque=oui&id_banque=0&memoriser_choix=memoriser

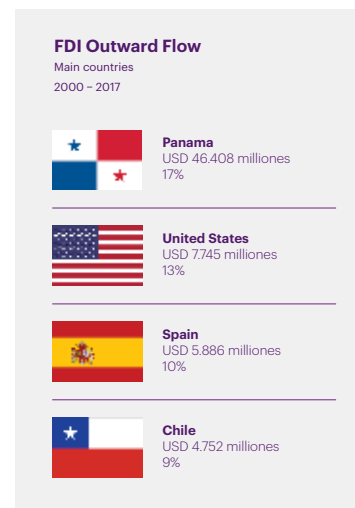
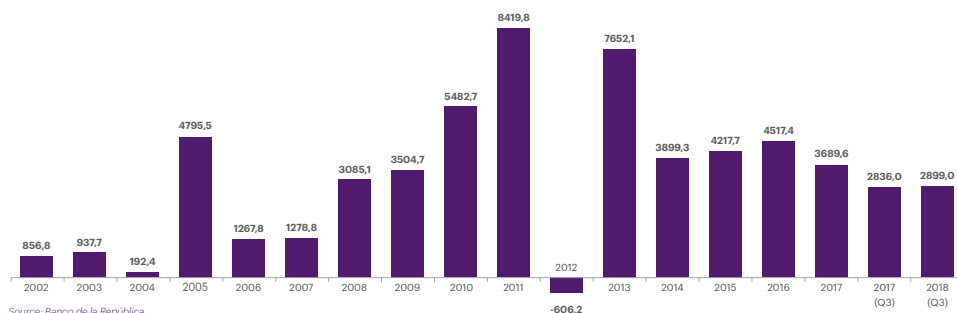
Reduced income tax and VAT exemptions allowing access to local market (Free Trade Zones)

- No import duties; VAT exemption for goods sold from Colombia to FTZ
- Benefit from international trade agreements
- Free trade zones for different investor styles
- Allows sales to the local market



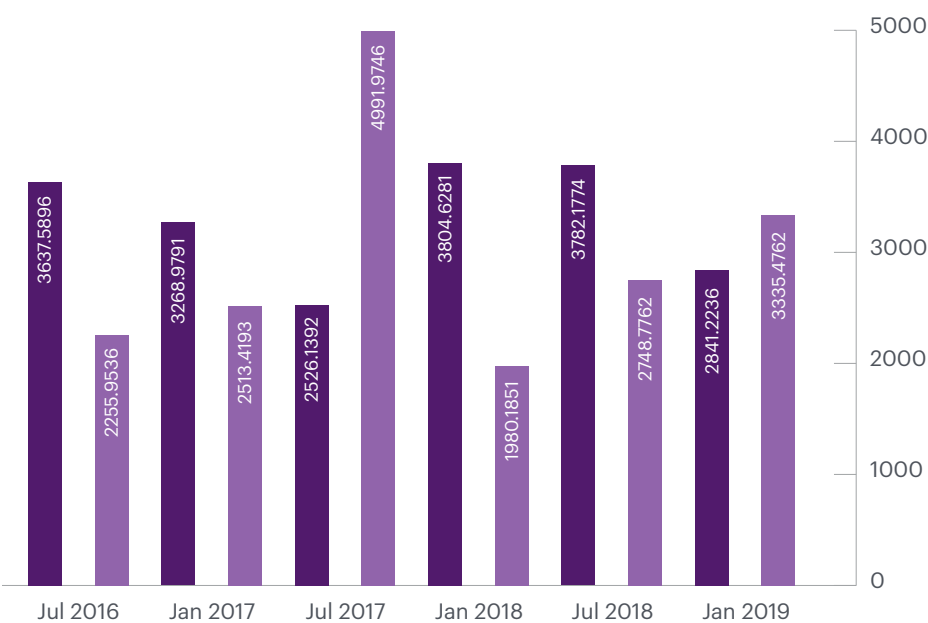
Source: Directorio de Zona Francas 2017-2018 DANE
file:///Users/alejandroparra/Downloads/ddi-documentation-spanish-543.pdf
http://microdatos.dane.gov.co/index.php/catalog/543
Stock investment flows from Colombia

Stock of outward FDI (USD millions)



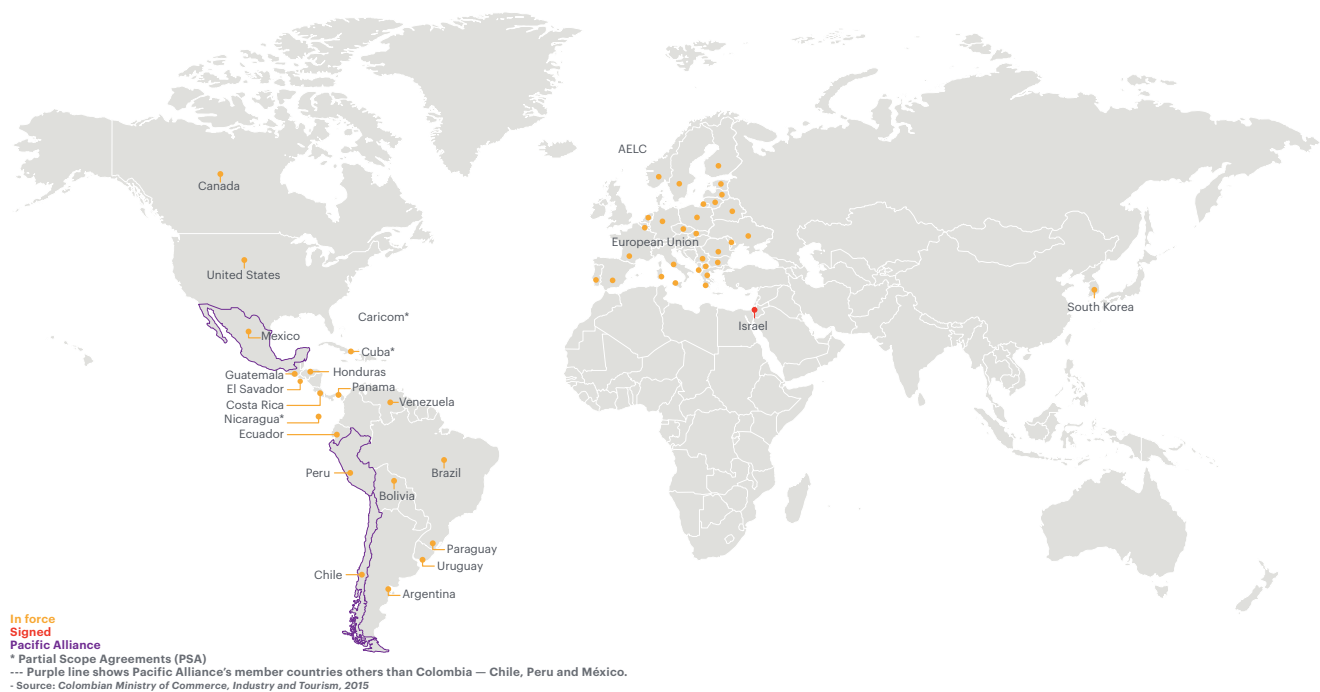
Source: https://www.gc-research.com/pdf/Colombia_Presentation_2019.pdf
(remitiéndose al Banco de la Republica)
Info: <http://www.banrep.gov.co/es/inversion-directa>
<https://tradingeconomics.com/colombia/foreign-direct-investment>

Colombia Foreign Direct Investment



Source: tradingeconomics.com | Banco de la República de Colombia

Colombia has access to 60 countries and more than 1.5 billion consumers through its network of trade agreements



Source: Chamber of Commerce, Industry and Tourism, Colombia. 2017

Colombia is less than six hours away by airplane from the main cities in the Americas



Colombia: A gateway to the Pacific Alliance



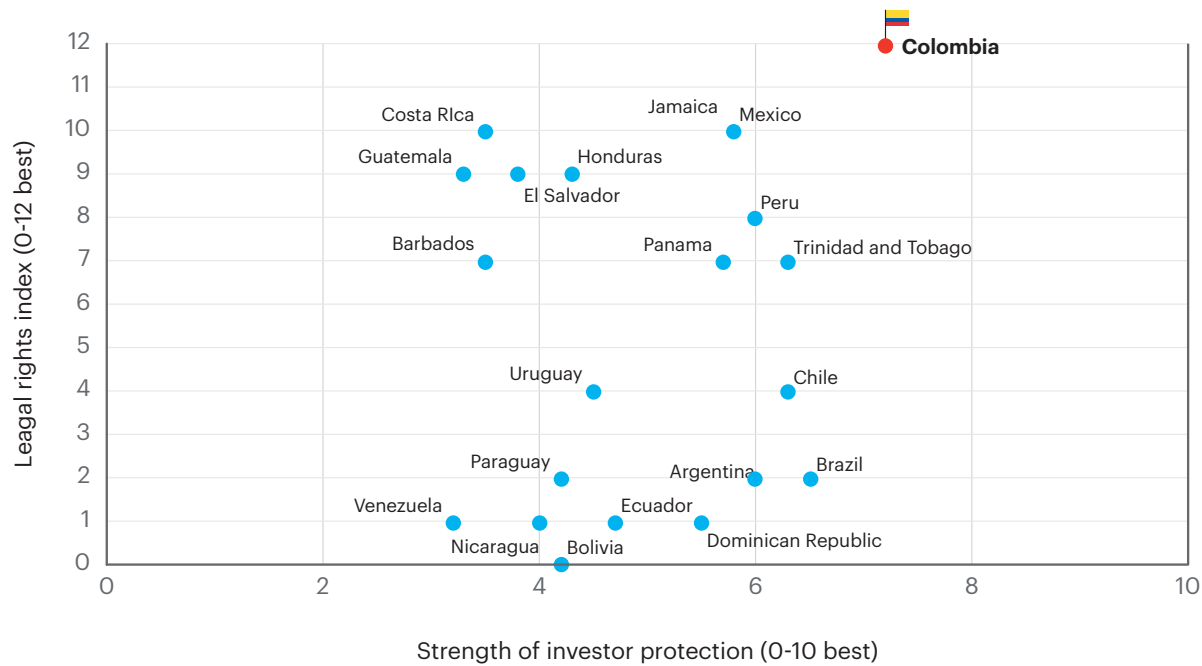
Source: ProColombia

Colombia compared with:

Colombia: First destination for safe investment

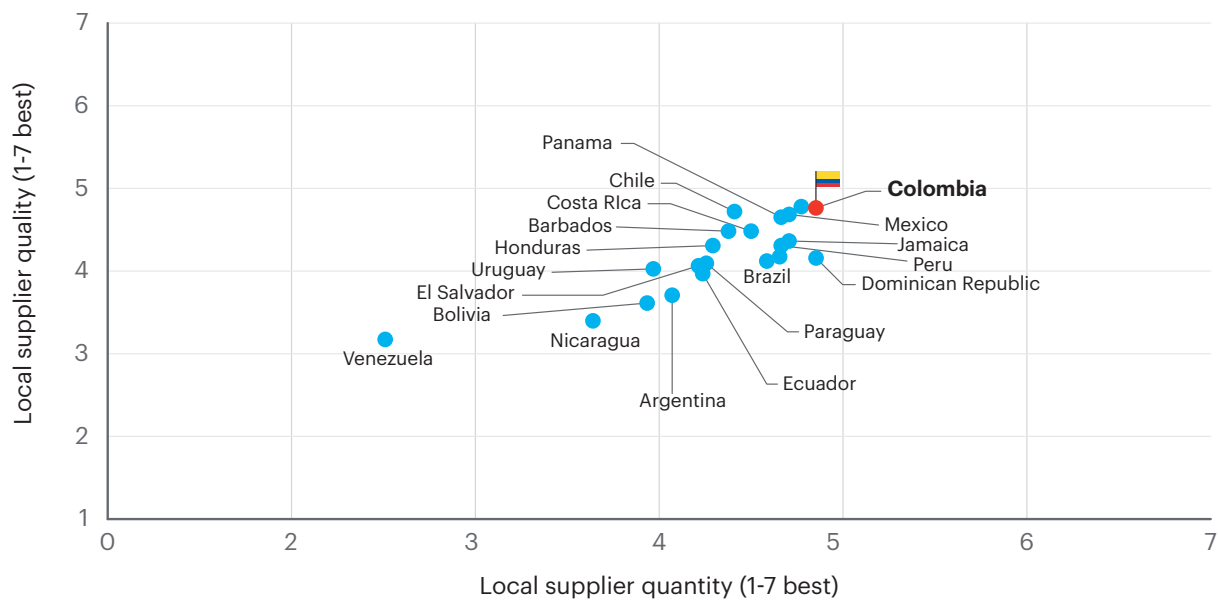
Colombia ranks:

- First in the legal rights index (worldwide)
- First in the strength of investor protection index (LAC region)



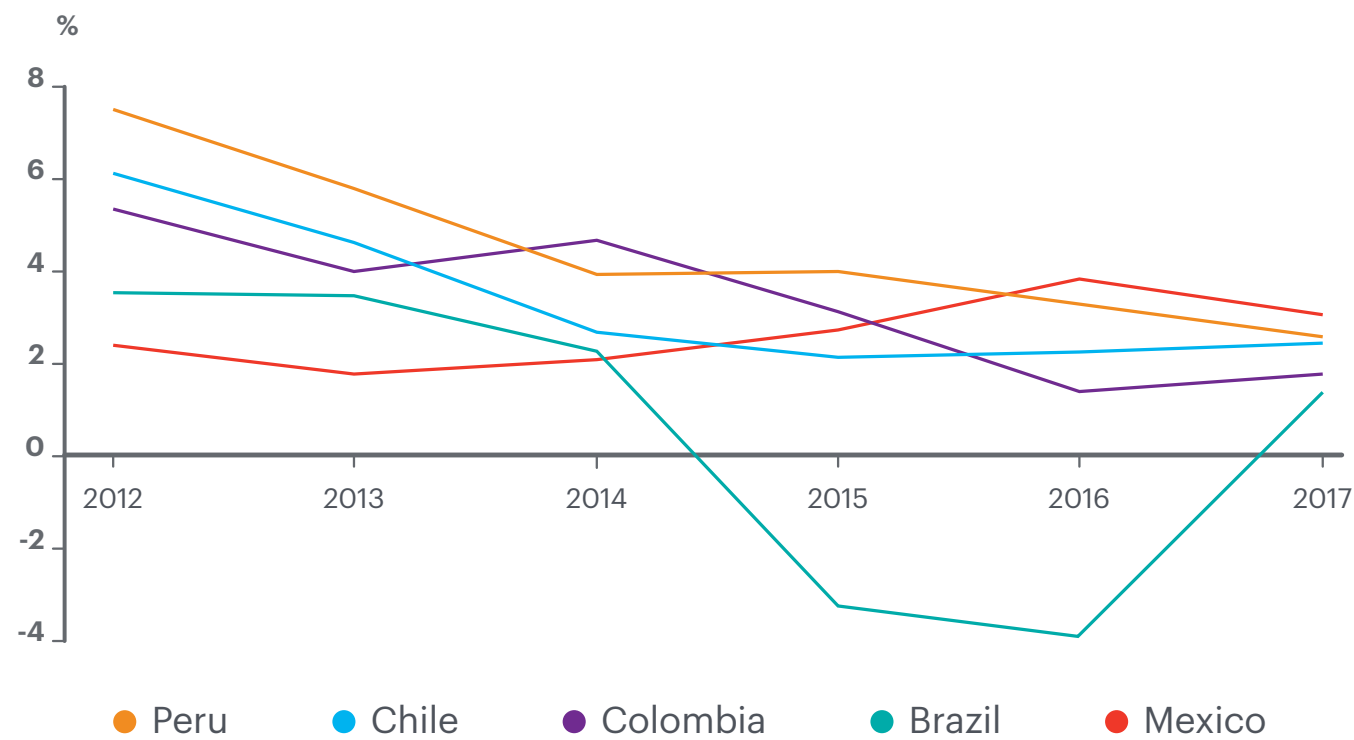
Source: Colombia competitiveness Index, 2017

Colombia: A destination with outstanding local suppliers in the LAC region



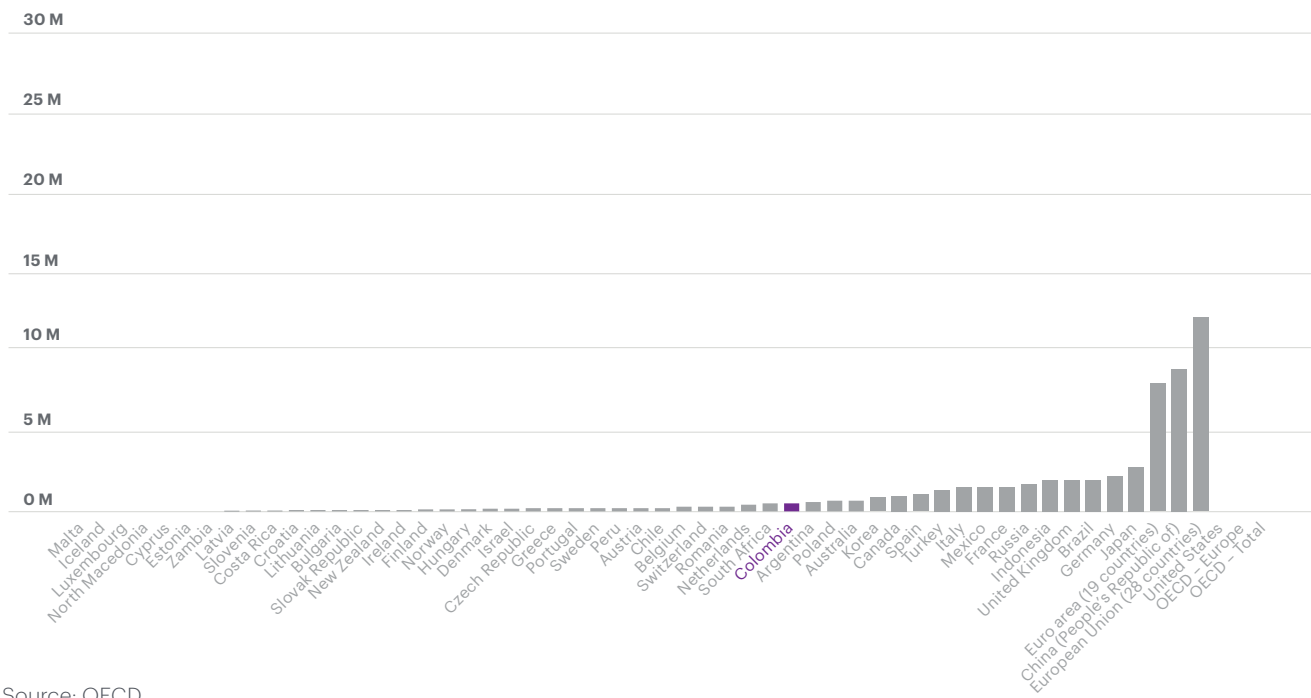
Source: Global Competitiveness Index, 2017

Colombia: A growing market in the LAC region



Source: World Bank, 2017. (Households and NPISHs Final Consumption expenditure (annual % growth))

Household spending



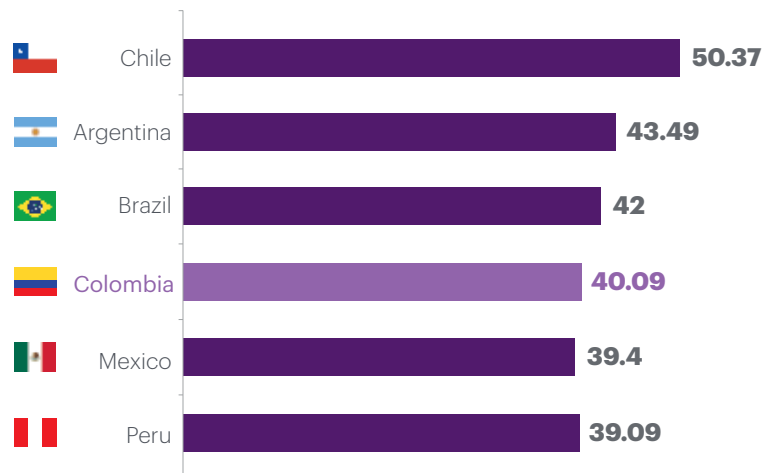
Source: OECD

Colombia: Committed to invest in human capital

Colombia was ranked third in Latin America by the Human Talent Report

Employee training in Latin American countries

(Worldwide ranking)



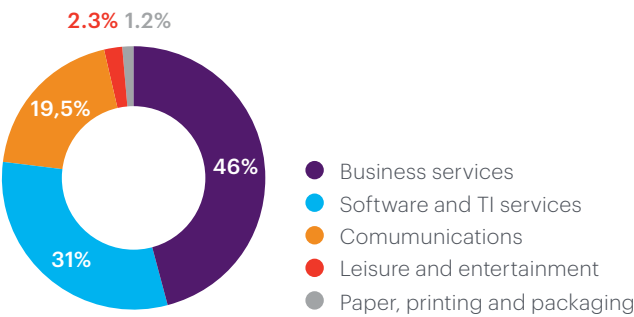
Info: https://www.gc-research.com/pdf/Colombia_Presentation_2019.pdf

Creative Industries in Colombia

OVERVIEW OF THE INVESTMENT PROJECTS IN CREATIVE INDUSTRIES, COLOMBIA
2003-2018 (JUNE)

Number of projects	87
Jobs created	8,079
Average of Jobs created per project	92
Capital invested(USD million)	USD 895.1
Average capital invested per project (USD million)	USD 10.3

INVESTMENT PROJECTS IN CREATIVE INDUSTRIES, SECTORS
2003-2018 (JUNE)



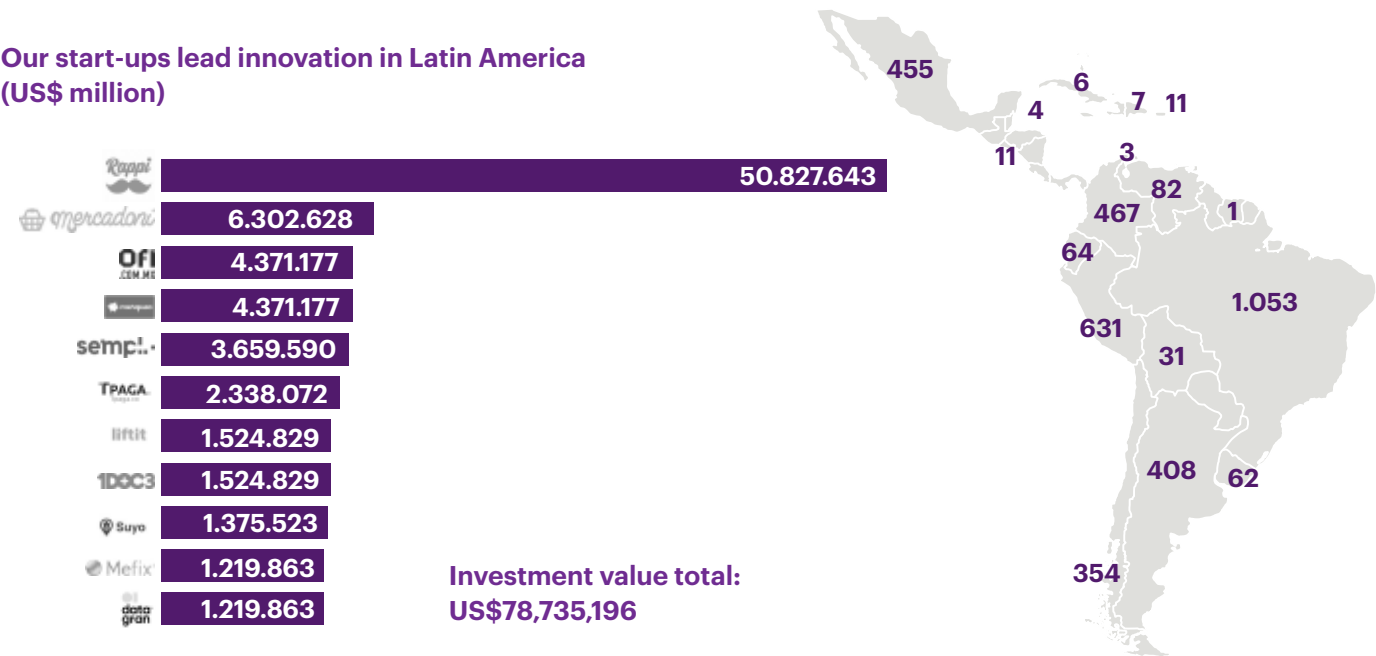
Some success stories of investment



Source: fDi intelligence from The Financial Times Ltd

Entrepreneurship

Our start-ups lead innovation in Latin America
(US\$ million)



Source: Cálculos MINCIT, Start up ranking 2018, Statista

Major multinational corporations have chosen Colombia as an investment project destination

Sectors of opportunity: Infrastructure—a major driver for growth

- USD \$5.6 billion in rehabilitation, expansion and modernization of 31 airports (2015 – 2018).
- The Fluvial National Plan consists of 13 river projects with an investment of USD \$2.9 billion.
- Until 2035, USD \$17 billion will be invested to increase road infrastructure:
 - 7,000 kms of new highways
 - 1,370 kms of double lane highways
 - 141 tunnels
 - 1,300 viaducts
- USD \$3.3 million investment to recover more than 1,769 kms of railways network.



Airports



Ports



Roads



Step Railways



**Fluvial
National Plan**

Source: Intermodal Transport Master Plan 2015 – 2035 (PMTI, Ministry of Transport – Exchange rate: USD = COP\$3,000

Sectors of opportunity: Infrastructure—a major drive for growth



Spain



In 2014, Iridium awarded two road concession projects in the government’s “highway concession program (4G).” Those projects total 78Km.



Austria



Strabag will be in charge of 75 Km of new highways, the modernization of a 65 km section



Israel



Shikun & Binui awarded the project “Corredor Perimetral de Oriente de Cundinamarca = 153 km length”



China



HEC will build “The mar 2 highway” that will improve the logistic development at the northeast region of the country. Total project length 246 km.

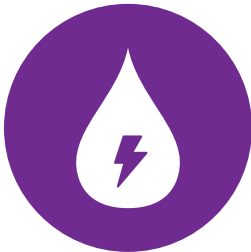
Sectors of opportunity: Energy—a diversified source base and a strategic location in the Americas

Colombia was ranked first in Latin America and eighth in the world according to the Energy Architecture Performance Index 2017. WEF, 2017

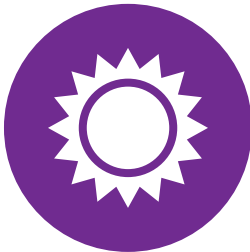
- 546 power generation projects in different stages: Installed capacity of 15,940 MW*
- 22 Open public bids for power transmission projects in Colombia
- High potential in biofuels and alternative energies
- Projects that focus on renewable energy will have special VAT exemption, deduction from taxable income and customs exemptions.
- World Economic Forum 2016 and UPME / * UPME (Colombian Planning Unit of Mines and Energy)



Geothermal



PCH



Solar



Wind



Biomass

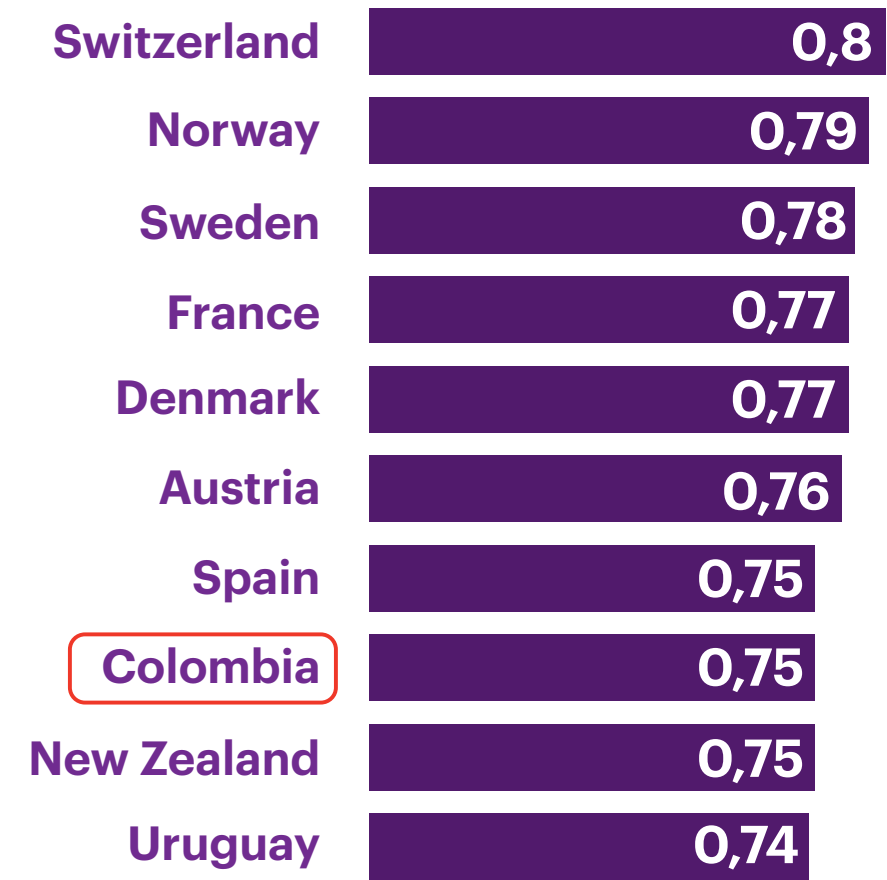


**Transmission
Network**


Source: World Economics Forum 2016 and UPME / * UPME (Colombian Planning Unit of Mines and Energy). MW approx.

**Bids open by UPME


The Global Energy Architecture Performance Index 2017




Sectors of opportunity: Infrastructure—a major drive for growth




Italy




Between 2017 - 2019, the Italian multinational Enel will invest close to USD 561 million in energy projects in Colombia.




Germany



The low-grade thermal coal plant Termopaipa located in Paipa, was the first power plant planned overseas, financed and built by Steag.



United States



Colombia subsidiary of AES Corporation (Applied Energy Services). Chivor is one of the country's largest power generators with a total effective installed capacity of 1,000 MW.

Sectors of opportunity: Services—IT, BPO, ITO, Shared Services, Apps

Colombia is one of the three major providers of IT services in the region

- Between 2001 and 2015, 3,405,211 graduates in different levels of education
- 1.3 million bilingual people in Colombia in 2016.
- 1st place in South America in labor qualification, according to IMD (2015)
- 6th place in the region in level of companies' bilingualism in 2016.
- Colombia has 10 submarine cables, with eight exits through the Caribbean Sea and one through the Pacific Ocean.



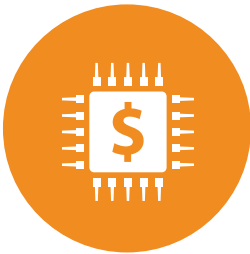
BPO back office - finance



Data centers



UBO telemedicine



Fintech



Big data analytics



Smart cities



Shared service centers



United States



IBM opened its third data center in Colombia offering a processing power of 5 petabytes. It's one of the most advanced centers for cloud computing and big data analytics companies in the country.



Spain



It had two operations centers where it manages a diversified portfolio of blue ribbon clients, with the capacity for up to a thousand positions.



United States



AT&T acquired DirecTV Colombia and will increase the telecoms offered Colombia through new service and packages.



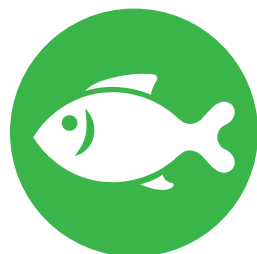
Japan



Its BPO operation currently has more than 1,400 credit processes, customer service, and document management active positions.

Sectors of opportunity: Agribusiness

- Expansion of cultivated areas with a high global demand of agricultural products, construction of collection centers and assembly of processing plants (IQF, pulps, jams).
- Construction of cocoa processing plants for cocoa butter, cocoa liquor and chocolate products.
- Colombia has the fourth dairy herd and largest dairy production in the region, which guarantees easy access to raw materials for the subsequent transformation of dairy products.
- Build specialized industrial facilities to transform natural rubber into value added elements.



Aquaculture



Cocoa



Cereals



**Fruits and
vegetables**



Meat



**Processed
food**



Rubber



Biofuels



Forestry



United States



The American investment fund specialized in the agribusiness sector, invested in the company “Cacao de Colombia,” by setting up a second production plant in Popayán.



Brazil

Minerva Foods

Brazilian company dedicated to the production and commercialization of beef, leather, live animals and its by-products. The company acquired freezers from Red Carnica S.A.S. located in Córdoba.



Chile

CCU

Alliance between CCU and Postoban: Construction of a production plant with the aim of boosting the beer market sector through production, commercialization and distribution of beer and non-alcoholic beverages based on malt.

Sectors of opportunity: Tourism—Infrastructure, real estate and retail

Investment opportunities

- Colombia ranks 25th in the ICCA ranking (International Congress and Convention Association)
- Luxury and wellness hotels can take advantage of the Colombian biodiversity to offer high-quality services.
- Luxury and wellness hotels can take advantage of the Colombian biodiversity to offer high quality services.
- VAT exemption for health tourism services.

Some niche opportunities:



Nature and
adventure



Wellness

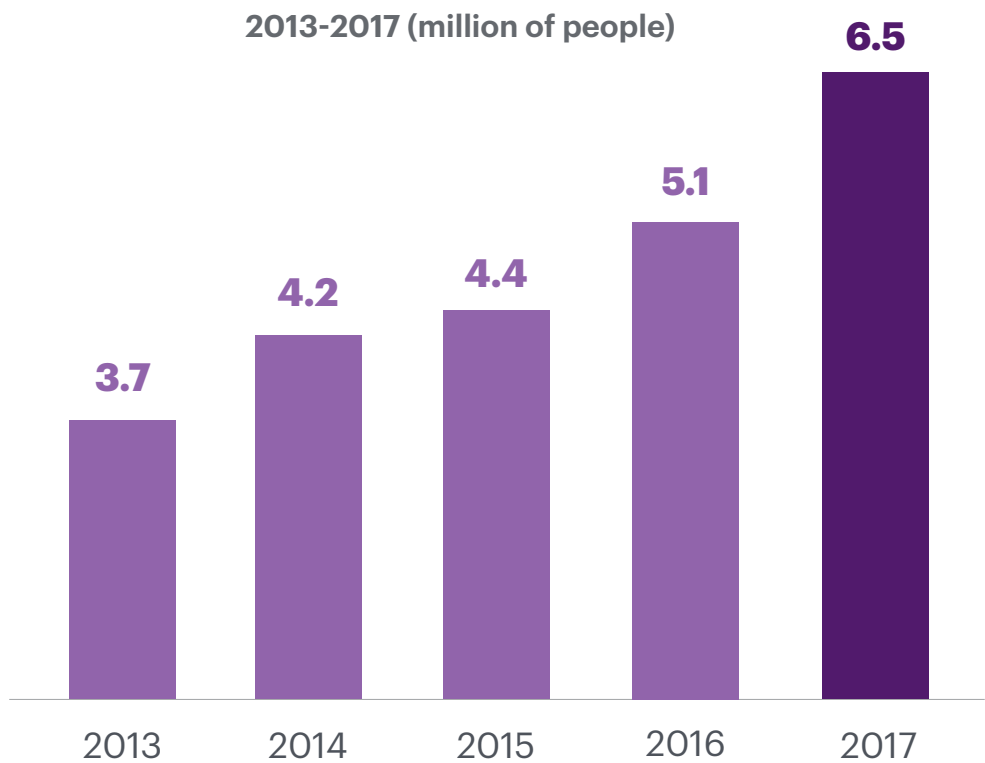


Entertainment



City hotels

Inbound tourists



*Inbound tourist includes; resident Colombians abroad, foreign nonresident in Colombia, special cross borders, and cruise visitors.
Source: Migration Colombia and MinCIT, ProColombia calculations.

 <p>United States</p>  <p>This American chain has 15 hotels in Colombia with more than 1,850 rooms.</p>	 <p>United Kingdom</p>  <p>Holiday Inn hotels opened in Bogota and Cartagena, totaling 331 rooms.</p>	 <p>Spain</p>  <p>Holiday Inn hotels opened in Bogota and Cartagena, totaling 331 rooms.</p>	 <p>Canada</p>  <p>Holiday Inn hotels opened in Bogota and Cartagena, totaling 331 rooms.</p>
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Sectors of opportunity: Services—Capital funds

- Colombia offers several benefits to invest in capital funds.
- Colombia was ranked fourth in Latin American and the Caribbean due to its favorable conditions for development of the PEF industry.
- Nineteen international general partners in Colombia.
- Capital funds such as Advent International and Victoria Capital have chosen the country as a hub to service other countries in the region.

Some niche opportunities:





Canada

Brookfield

Investments mainly in the sectors of infrastructure, energy and real estate.

Investments in the Colombian power company SA as part of its expansion plan in the region.



United states



Mainly infrastructure investments.

In Colombia its investments have been focused in companies such as Intertug and Ocesa.



United states



Latin American fund that invested more than \$20 million for the development of three cancer treatment centres of the medical society Oncologists of the West. In the Coffee culture Landscape and Valle del Cauca.

Colombia's government, laws and regulatory bodies



Colombia is a democratic, unitary, and decentralized republic. It has a population of more than 49 million and it is territorially divided into 32 departments. The departments are divided into districts, municipalities and indigenous territories that have political, fiscal and administrative autonomy within the limits set by the political constitution and the law.

Being a unitary republic, Colombia's president is the head of state, head of government and supreme administrative authority. Colombia's central government is in charge of regulating matters that are of relevance for the nation as a whole, including defense, commerce, taxation, customs, banking, natural resources and foreign affairs, among others.

The autonomy of its territorial entities is mainly embodied in their capacity to elect their local officials and regulatory bodies, manage their own funds and regulate certain tax rates that pertain to their scope according to national tax law.

Colombia is a civil law jurisdiction; a business established in Colombia will be bound by national laws and local regulations.

KEY REGULATORY BODIES

Directorship of National Taxes and Customs (Dirección de Impuestos y Aduanas Nacionales - DIAN)

The DIAN is a national entity ascribed to the Ministry of Finance (Ministerio de Hacienda y Crédito Público) that guarantees the compliance of fiscal, customs and exchange rate obligations.

The DIAN is in charge of collecting and managing national taxes and customs rights. The entity also addresses customs management, including seizure, forfeiture or declaration in abandonment in favor of the nation of goods, as well as its administration and disposal.

Central Bank (Banco de la República)

The Central Bank is the monetary, exchange rate and credit authority. The Central Bank's main functions include regulating currency, international exchange and credit, issuing Colombian legal currency and managing international reserves.

Pension and Payroll Taxes Entity (Unidad de Gestión Pensional y Parafiscales - UGPP)

The UGPP is an administrative entity ascribed to the Ministry of Finance in charge of verifying the adequate, complete and timely liquidation and payment of the contributions to the social security system and payroll taxes.

Superintendence of Industry and Commerce (Superintendencia de Industria y Comercio - SIC)

The SIC is a technical administrative entity ascribed to the Ministry of Commerce Industry and Tourism (Ministerio de Comercio, Industria y Turismo) and its purpose is to strengthen business development and satisfaction levels of consumption.

The SIC provides for consumer protection, protects free and fair competition and is the national authority of industrial property and all matters related to data protection. It is also in charge of the surveillance of the chambers of commerce and addresses in company mergers and acquisitions.

Superintendence of Companies (Superintendencia de Sociedades - SC)

The SC is a technical entity ascribed to the Ministry of Commerce Industry and Tourism that exercises the inspection, surveillance and control of companies.

The SC addresses insolvency and mercantile proceedings, including corporate disputes regarding stock purchase agreements, shareholders' agreements, mergers and spin-offs, among others.

Superintendence of Finance (Superintendencia Financiera de Colombia - SFC)

The SFC is a technical entity ascribed to the Ministry of Finance. The SFC is tasked to preserve public confidence and financial stability, maintaining the integrity, efficiency and transparency of the stock market and other financial assets and ensuring respect for consumer rights and the proper financial service.

The SFC is in charge of exercising surveillance, inspection and control functions of the entities conducting financial intermediation and entities who carry out financial, stock market and insurance activities and any other activities related to management or investment of funds collected from the public.

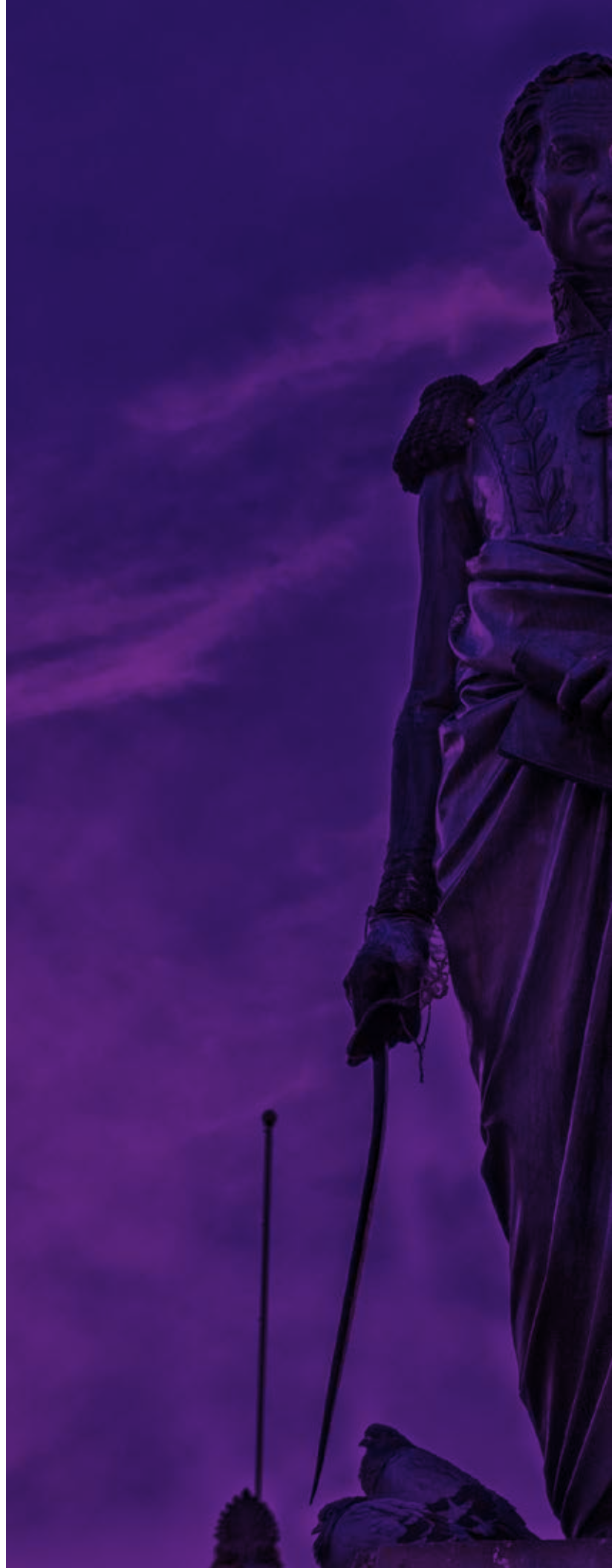
Stock Market Self-regulator (Autorregulador del Mercado de Valores - AMV)

The AMV is a private entity authorized by the SFC as a self-regulatory body of the stock market. The AMV aims to protect investors, free and fair competition among the stock market and maintaining market transparency and integrity.

The AMV is in charge of supervising the compliance of the obligations of the stock market and sanctioning conducts such as insider trading.

Chambers of Commerce (Cámaras de Comercio)

Chambers of Commerce are private entities under the supervision of the SIC. The Chambers of Commerce, among others, run the Merchant's Registry and the Unified Offeror Registry (Registro único de Proponentes) for individuals or companies that are interested in concluding contracts with the Government. The Chambers of Commerce of the country's most important cities have a Center of Arbitration and Conciliation.





Foreign Investment in Colombia



REGULATORY FRAMEWORK

The Colombian foreign investment regulation aims to promote economic and social development and a balanced foreign exchange. Foreign investment in Colombia is regulated by the Law 9 of 1991; the Decree 1068 of 2015 (second Book, Part 17, Titles 1 and 2) modified by Decree 119 dated January 26, 2017, and the External Resolution 8 of 2000 and the Regulatory External Circular DCIN-83 (Ch. 7) from the Central Bank (BR).

The foreign investment regulation is governed by the equal treatment principle; thus, besides the obligation to register the investment before the BR, foreign investment cannot be treated differently than national investments, and no advantages will be granted to one over the other. Moreover, if the investment is lawfully registered, the foreign investor will be entitled to remit abroad the profits from the investment and to reimburse the invested capital, interest and capital gains.

Consequently, foreign investors are allowed to invest in all industries except on matters of national security and defense, and of processing and disposal of toxic, hazardous and/or radioactive waste.

FOREIGN INVESTORS

Foreign investors are companies and charities incorporated under the laws of a foreign country, foreign governments, individuals who reside in a foreign country, and individuals who stay in Colombian territory less than six months, continuous or discontinuous, during a 12-month period.

SPECIAL REGIMES

Colombian law does not require foreign investors seeking to make direct investments in companies, real estate, trust funds, and private equity funds, or seeking to enter into contracts with nationals, to have a previous authorization—except in the following cases in which special regimes apply.

Finance and insurance

The Decree 663 of 1993 establishes that foreign investors can participate without any limitation in the equity of all the companies subject to the control and vigilance of the Colombian Superintendence of Finance (SFC). However, any investor, foreign or national, who seeks to have shareholding of 10 percent or more in one of these types of companies, must have previous approval of the SFC.

Mining, oil and gas

Branches of foreign companies whose business is the exploration and exploitation of oil, natural gas, coal, ferronickel or uranium benefit from a special foreign exchange regime, which allows such branches to keep the revenues arising from sales abroad instead of having to repatriate them into the country and convert them into Colombian currency. Additionally, such branches may buy foreign currency in Colombia to transfer money overseas from local sales and to repatriate capital and gains. Foreign Investors providing specialized services to the mining and oil and gas industries can apply to the foreign investment special regime by obtaining an exclusive dedication certificate before the Ministry of Mines and Energy.

Portfolio investment

Portfolio investment is an investment made by a foreign investor in securities registered before the Securities and Issuers National Register (RNVE) (eg. securities listed in a Colombian exchange), acquiring rights in collective investment trusts, or in securities listed in foreign securities quotation systems. These types of investments must be made through a “manager” who will be in charge of tax, exchange and information obligations set forth by the authorities. Only investment banks, trust funds and investment management companies are allowed to act as managers of foreign investors’ portfolios.

REGISTRATION

Foreign investors must have a proxy in Colombia and are required to register their initial and additional investments before the BR in the following manner:

- a. Direct and portfolio investments in foreign currency will be registered automatically by filing a form known as the minimum information and data form required for exchange operations verifying that the investment was channeled through the exchange market (local banks).
- b. The other forms of investment have to be registered before the BR within the 12 months following the effecting of the investment.
- c. For the special regime, the supplementary investment in branches from the mining, oil and gas industries has to be registered within the six months following the accounting closure of the period in which the investment was made.
- d. For the general regime, the foreign investment has to be updated by means of Form No. 15 on a yearly basis on or before June 30 each year.
- e. Changes in the holder, purpose or company beneficiary of the investment have to be registered within the 6 months following the relevant change.

Registration forms

The BR uses different registration forms according to the type of investment effected or the action related to that investment. The most widely used are:

- Form 11: Foreign investment registration
- Form 12: Foreign investment registration cancellation
- Form 13: Supplementary investment registration special regime

SANCTIONS

All foreign investors must register investments with the BR or risk incurring sanctions. Not registering the foreign investment timely and in the appropriate manner constitutes an exchange offense punishable by a fine of up to 200 percent of the amount of the non-registered investment. The amount is reduced to 70 percent if the offender admits its liability. Other penalties are imposed if foreign exchange regulations are not followed.

PROTECTION OF FOREIGN INVESTMENTS

Colombia is signatory of numerous treaties with different countries including for protection of investments for nationals of one signatory country into the other, framed as bilateral investment treaties (BATs) and free trade agreements (FTAs). A separate chapter describes such instruments.



Establishing a business in Colombia



TYPES OF BUSINESS ENTITIES

A foreign investor who intends to engage in permanent activities in Colombia must incorporate a company or establish a branch.

Primarily the Commercial Code and Law 222 of 1995 regulate both branches and companies; however, other laws will apply depending on the type of entity incorporated. Simplified stock companies (SAS) have a particular regulation set forth in Law 1258 of 2008. In addition, depending on the industry or corporate purpose, other special might be applicable.

Along with the companies' regulation, Law 222 of 1995 imposes duties and prohibitions to officers and directors (referred to as "managers"). Hence, managers can be personally responsible for breaches of these duties and prohibitions.

The business entities mainly used by foreign investors in Colombia are: simplified stock companies (Sociedad por Acciones Simplificada "SAS"); limited liability companies (Sociedad de Responsabilidad Limitada); corporations (Sociedades Anónimas); and branches of foreign companies (Sucursal de Sociedad Extranjera).

Regardless of the type of business entity chosen by the foreign investor, the vehicle has to appoint a legal representative or a general proxy (for branches). Legal representatives and general proxies are not required to reside in Colombia.

Generally, there are no minimum capital requirements on such entities; however, depending on the activity, some business entities are required to have a certain minimum capital.

If the local entity at incorporation will have a controlling shareholder, or if the foreign investor establishing a branch has a controlling shareholder, the incorporator will be required to register the control or group of companies situation at incorporation. If the company is acquired, and will have a controlling shareholder, the control or group of companies situation has to be registered before the chamber of commerce within the 30 days following the acquisition.

Simplified stock company (SAS)

An SAS is the most widely used type of corporate entity for local and foreign investors, as only one shareholder is required to incorporate it. In addition, no board of directors is required, the subscribed shares can be paid during the two years following its incorporation, and it is not necessary to pay a minimum amount of the subscribed shares at the incorporation.

Limited liability company

This type of company must have at least two partners and no more than 25. Any change in the capital composition has to be approved by partners representing at least 70 percent of the capital. The total amount of the contributions shall be paid when the company is incorporated. Unless otherwise agreed at the incorporation, all partners carry out the representation of the company.

Corporations

Corporations are required to have at least five shareholders, none of whom may have 95 percent or more of the outstanding shares of the company. A board of directors with a minimum of three members, with their respective alternates, is mandatory. The shareholders are required to subscribe at least 50 percent of the authorized capital and to pay at least one-third of the subscribed shares at the incorporation. The remaining balance has to be paid during the year following the incorporation. Foreign company branch.

Branches

Foreign investors may establish branches in Colombia by means of a public deed, including (i) a document stating the business that the branch will perform in the country; (ii) the capital assigned to the branch; (iii) the domicile of the branch; (iv) the term during which the branch will conduct business in the country and the grounds to terminate them; (v) the appointment of a general proxy, with one or more alternates; and (vi) the external auditor, who shall be an individual residing in Colombia. The assigned capital has to be paid entirely before the branch starts its operation. Additional capital may be contributed as supplementary investment.

Private equity funds investments

Foreign entities may participate as investors in domestic private equity funds. Securities brokerage and trading companies, trust management companies or investment managing companies supervised by the Superintendence of Finance are the only types of entities allowed to manage these funds, but may appoint an independent manager to undertake investment decisions. Funds are required to invest at least two-thirds of their resources in non-publicly traded securities (start-ups, infrastructure, amongst others) and the minimum investment at its incorporation is 600 minimum monthly wages (approx. US\$150,000). Private equity funds are required to have at least two investors, an investment committee and an audit committee. Private equity funds may be comprised by more than one separate investment compartment.

COMPANY AND BUSINESS NAMES

Company names

A company name must indicate the company's legal status and the liability of its members (e.g., S.A, S.A.S. Ltda. or in liquidation). For a company name to be registered, it must not be identical or similar to another name already registered in the Unique Companies Register (Registro Único Empresarial—UES).

Business names

According to the Colombian Code of Commerce and Decision No. 486 of 2000 of the Andean Community, business names are protected by industrial property laws, which grant exclusivity of the name's usage for its owner. This right is acquired by the first usage of the name, thus no other formality is required. However, a company can, and is advised to, register its business name in the Industrial Property Public Register administered by the Superintendence of Industry and Commerce, which creates a presumption of first use as of the day of request for registry.



Colombia's tax system



OVERVIEW

The Colombian tax system is comprised of taxes at a national, Departmental (State) and Municipal levels.

In addition, Colombia has increased the number of signed double taxation treaties (DTTs) with several countries and has implemented certain Base Erosion and Profit Shifting (BEPS) measures. The treaties generally follow the OECD model.

Income tax

General income is taxed at the national level only. Resident individuals and companies, and permanent establishments of foreign companies (e.g. Branches) are taxed on worldwide income while non-resident individuals and companies are subject only to their Colombian sourced income.

The partnership agreements have neutral tax effects. The partners are subject to income tax and must report the assets, liabilities, incomes, costs and deductions in accordance to their participation.

Income tax is assessed by deducting allowable expenditures from taxable income. Some expenditures are tax deductible if they comply with the criteria of causality, proportionality and necessity.

There is a presumptive income system for income tax purposes which establishes that net income cannot be lower than 0.5 percent of the net equity (presumptive income) as of December 31 of the previous year (For taxable year 2020). From 2021, the presumptive income system will be eliminated.

As a general rule, the taxable period for income tax is a calendar year.

Companies and branches are subject to income tax at the rate of 32% (FY 2020), 31% (FY 2021) and 30% (FY 2022 and following).

In addition, financial entities with taxable income in excess of 120,000 Tax Units (approximately US\$1,28 million) are subject to a surcharge for taxable years 2020 to 2022, for a total tax rate of 36% for 2020, 34% for 2021 and 33% for 2022.

Individual tax residents are subject to a progressive income tax rate (from zero to 39%) divided in different cells (dividends, labor and pensions and other income) and individual non-residents are subject to a 35% flat income tax rate.

Tax losses may be offset within the following 12 taxable periods. Tax losses may not be transferred to shareholders or third parties, except when a merger or spin-off takes place, provided the business is the same.

Dividends distributed to resident individuals are taxed in the following manner:

- If the profits were taxed at a corporate level, the dividends are subject to a progressive rate ranging from 0% to 10%.
- If the profits were NOT taxed at a corporate level, the dividends are subject to a rate of 32%. The tax indicated in the previous paragraph will be applied over the balance once this tax has been deducted.

Dividends distributed to a local company are taxed in the following manner:

- If the profits were taxed at a corporate level, the dividends do not constitute taxable income; however, a 7.5% withholding tax rate applies to those dividends.
- The withholding will be made on first distribution and is creditable against the dividend tax applied to final beneficiaries (resident individuals and non residents).
- Additionally, distributions to CHCs or companies that are part of an economic group or control situations duly registered before Chamber of Commerce are not subject to this withholding.
- If the profits were NOT taxed at a corporate level, the dividends are subject to a rate of 32% for the year 2020; the withholding tax indicated in the previous paragraph will be applied once this tax has been reduced, resulting in an effective rate of 37.1%.

Dividends distributed to: (i) branches or permanent establishments of foreign companies; (ii) foreign individuals, companies and entities are taxed as follows:

- If the profits were taxed at a corporate level, the dividends are subject to a 10%.
- If the profits were NOT taxed at a corporate level, the dividends are subject to a rate of 32% for the year 2020; the tax indicated in the previous paragraph will be applied once this tax has been reduced, resulting in an effective rate of 38%.

Income tax exemptions

- Entrepreneurial activities so-called “orange business” will be exempted from income tax for a period of 7 years, provided they hire at least 3 employees and make an investment of approximately USD \$50,000 within 3 years.
- Agricultural activities for 10 years, provided they hire at least 10 employees and make investments of at least approximately USD\$16,000 in 6 years.
- Sale of electric power generated from non-conventional sources of energy, for a period of 15 years, provided the seller issues and negotiates Greenhouse Gas Reduction Certificates and that 50% of the income obtained in the sale of the certificates is invested in social projects benefiting the region in which the generator operates.
- Social interest or priority housing projects.

Colombian Holding Regime - CHC

Colombian companies whose purpose is to invest in securities, in shares of foreign or Colombian entities and manage these investments, can choose a new tax regime which includes the following benefits: (i) dividends distributed to foreign company shareholders are exempt from Dividends Tax in Colombia; (ii) sale of shares of CHC are exempt from Capital Gains or income tax; (iii) dividends received by CHC from Colombian entities are taxable, but not subject to Dividends Tax; (iv) dividends received by CHC from foreign companies would be exempted for Income tax or Capital Gains and not subject to industry and commerce tax.

Under CHC Regime, the companies need: (i) an authorization issued by Tax Administration; (ii) to own direct or indirect interest in at least 10% of the capital of 2 or more companies or foreign entities, for at least a 12 months period; and (iii) to have at least 3 employees and the strategic decisions be taken in Colombia. The tax regimen does not apply if the shareholder of CHC is located in a tax haven.

Capital gains tax

Capital gains are considered extraordinary income received by individuals and companies. Some capital gains are: (i) sale of assets of any type, which have been held for at least two years; (ii) inheritance, legacies and donations; (iii) liquidation of a company that has been in existence for at least two years ; and (iv) gains derived from lotteries or gaming.

Capital gains are taxed at a rate of 10%. Capital losses can be offset with capital gains only.

Withholding tax

As a general rule, companies are liable to collect the withholding tax related to payments that are Colombian sourced income.

Withholding agents must deposit the withheld amounts on a monthly basis.

Cross-border payments will be generally subject to a withholding tax at a rate of 20% (Technical services, technical assistance services, consultancy, royalties, leases, movies sales, payment made for personal services. Interests from loans with a term under one year).

Additionally, the withholding tax rate may vary depending on whether a double taxation treaty applies (i.e., 10 percent or zero percent) or whether the payee is a resident of a tax haven jurisdiction, among other circumstances.

In some cases, the withholding tax will be considered as a final tax, to the extent it satisfies the tax liability.

Value added tax (VAT)

Value added tax is an indirect national tax on (i) services rendered in Colombia and from abroad; (ii) sales and imports of physical movable goods; (iii) sales or transfer of intangible assets related to industrial property.

As a general rule, VAT does not apply to the sale of fixed assets and export of good and services.

The general tax rate is 19%; however, there are some goods or services with rates of 5% and 0%.

VAT is not applicable when the goods/services have been expressly excluded (not taxed) or exempted (0% rate)

In the case of exporters and producers of exempt goods/services, input VAT can be recovered via a tax refund.

Real estate tax

The annual property tax is a municipal tax on the ownership of real estate. The rate will vary depending on the value and authorized use of the land (0.4% and 1.6%). If the land is not urbanized, a maximum 3.3 percent tax rate might apply.

Industry and commerce tax

Industry and commerce tax accrues on the performance of commercial or industrial activities or the rendering of services within a municipal jurisdiction. The rate varies depending on the activity or service involved. The highest rate is 1.4% over the total revenues.

Financial transactions tax

This is accrued by the performance of financial transactions any time there is a debit in an account held in a local bank. The financial transactions will be subject to a rate of 0.4%.

Thin capitalization

The general rule limits the deduction of interest on debt that exceeds twice the net equity of the taxpayer (as of December 31 of the previous year) only over related parties debt. The interest that exceeds this cap is not deductible.

Registration tax applies to documents

Legal acts registered with the Chamber of Commerce are subject to 0.3% to 0.7% on transaction amounts stated in the document

Documents register before Register of Public Deed are subject to 0.5% to 1% on transaction amounts stated in the document or value of real estate

Anti-abuse Provisions

For tax purposes, the agreed value to transfer assets will not be considered a commercial value when it differs by more than 15% from assets and services market value.

For sales of shares of unlisted companies, the purchase price cannot be lower than 130% of the underlying value.

- Indirect Sales. Under tax reform, capital gains on the transfer of shares of foreign entity when such entity holds assets located in Colombia are taxable in Colombia.

Exceptions: (i) if the foreign companies are listed in a recognized stock exchange and the beneficial owner does not hold more than 20% of the outstanding listed stocks; (ii) the assets located in Colombia represent 20% or less of the book and market value of the total assets owned by the alienated entity.

Social Security contributions and payroll taxes

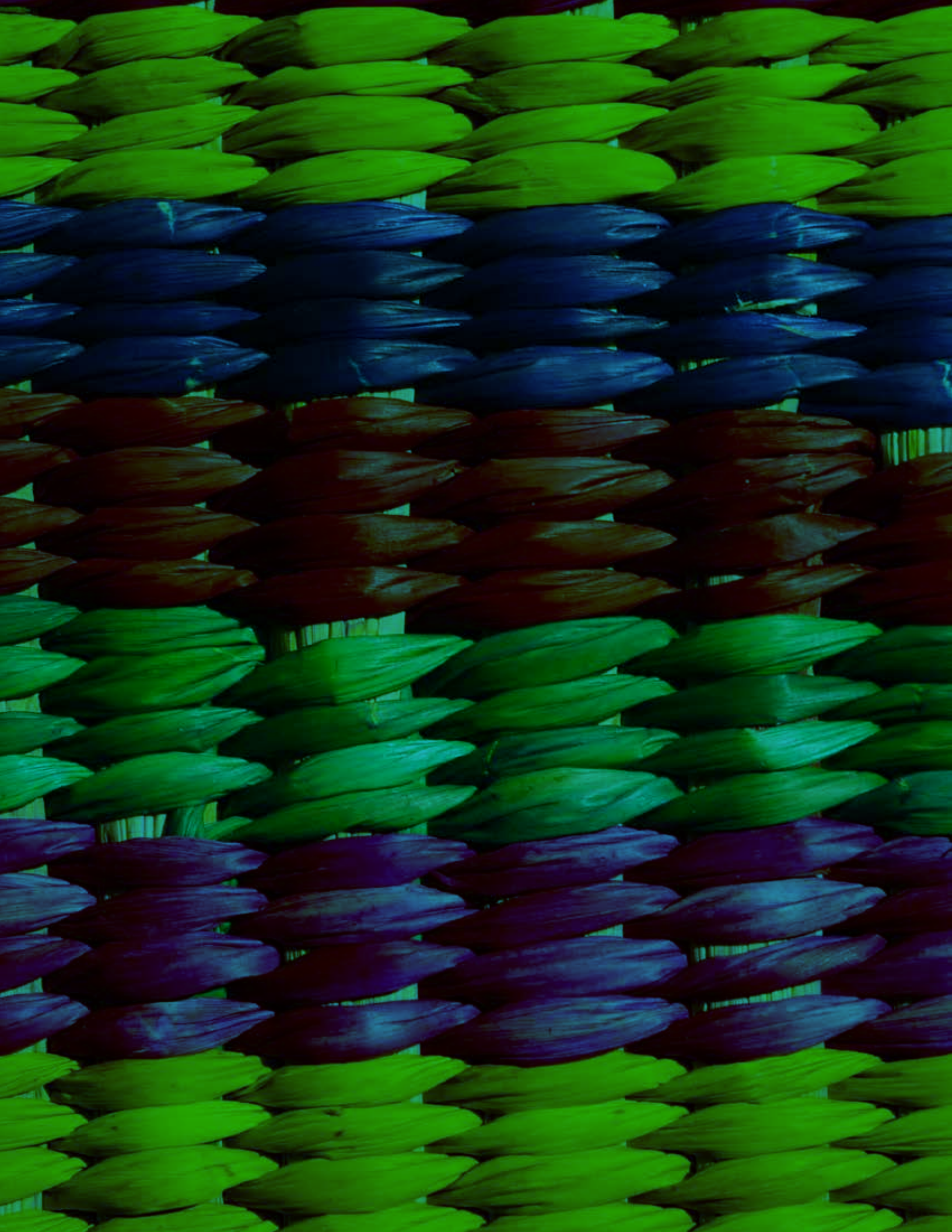
Employer and employees are liable to make contributions to the general **pension system**, the employer's contribution is equal to 12% of the monthly salary while the employee pays up to 6%. Also, the employer is responsible for withholding the employee's contribution.

The maximum contribution base is 25 minimum monthly wages which is COP \$21.945.075 (US \$6,566 at exchange rate COP \$3.342 = US \$1).

Contributions to the **Healthcare Entities** are paid on a monthly basis and are equal to 12,5% of the employee's salary, of which 8,5% is assumed by the employer and 4% by the employee.

The employers have to contribute 9% of their total payroll every month: 3% to Colombian Family Welfare Institute (ICBF); 2% to National Apprenticeship System (SENA) and 4% Family Funds.

Under specific circumstances, payroll tax is not applicable for employees who earn less 10 minimum legal monthly wage.



Transfer pricing rules



Local transfer pricing regulations are in accordance with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (publication updated on July 10, 2017) and under the OECD / G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS). Transfer pricing regime intends that taxpayers perform its intercompany transactions under the Arm's Length principle.

Colombia has had a Transfer Pricing ("TP") regime in place since 2004 and as we already mentioned above, is aligned with the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (publication updated on July 10, 2017) and with the new international standards established by Action 13 of the BEPS OECD / G20 project.

The application of the Action 13 of BEPS required adapting local regulations and now the formal duties are the following:

- Local File (same TP study prior to tax reform of 2016)
- TP Informative Return
- Master File
- Country by Country Report or the associated notification

Who is obliged?

Taxpayers must determine their ordinary and extraordinary incomes, costs and deductions, assets and liabilities, taking into account the prices that would be use with or between independent parties (Arm's Length principle).

These obligations apply to Colombian entities who have carried out transactions with: i) permanent establishments; ii) foreign related parties; iii) related entities located in free trade zones; and/ or iv) related entities or third parties located in non-cooperating jurisdictions or of low or no tax rates (tax havens).

In addition, the taxpayers should review whether accomplish one of the following requirements:

- If its gross equity of the respective fiscal year is equal to or greater than 100.000 Tax Unit Value ("TUV"), amount COP 3.427.000.000 (Approx. USD 1.035.000); or

- If its gross income of the respective fiscal year is equal to or greater than 61.000 TUV, amount COP 2.090.470.000 (Approx. USD 632.000)

If the taxpayer carries out transactions with enterprises located in tax havens, whether they are related parties or not, it must comply with the fulfillment of the formal TP obligations regardless of the gross equity and gross income caps explained above.

Permanent establishments and attribution report

On the other hand, the Permanent Establishments must take into account the formal duties that must be accomplished in Colombia when they are taxpayers of the income tax with respect to the national source incomes that are attributable to them.

For the determination of said charges, it must be carried out based on criteria of functions, assets, risks and personnel involved defined with a Revenue Attribution Report.

The law considers Permanent Establishments to be any type of business vehicle of foreign companies such as branches, agencies, offices, factories, workshops, mines, quarries, oil and gas wells, or any other place of extraction or exploitation of natural resources.

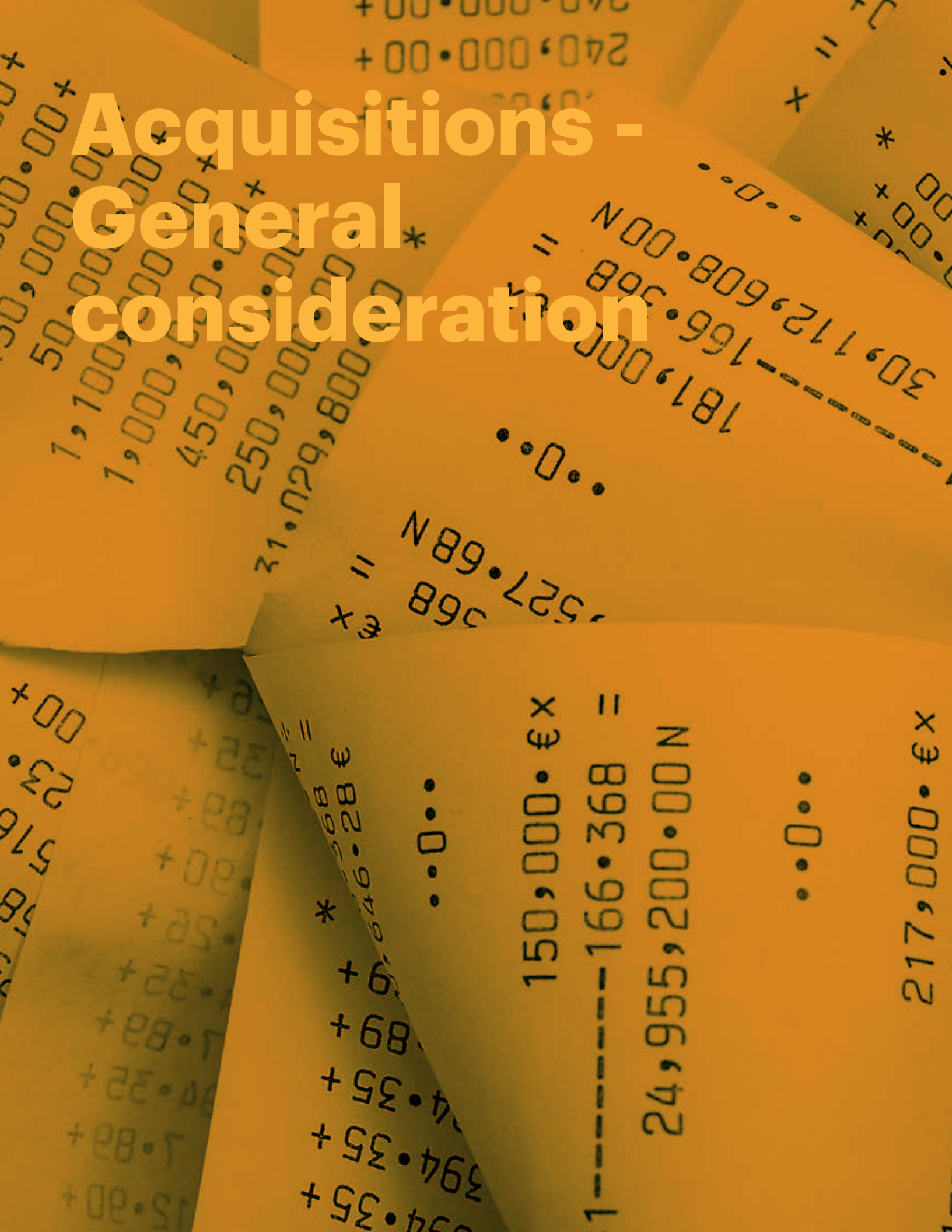
Penalties

TP regulations penalize late filing, amendments and misinformation for the supporting documentation (Local File and Master File) and the return. It is important to mention that the TP penalization regime in Colombia is one of the most onerous of the LATAM region.

Multilateral Competent Authority Agreement on the Exchange of CbC ("CbC MCAA")

The Convention on Mutual Administrative Assistance in Tax Matters requires the competent authorities to mutually agree on the scope of the automatic exchange of information and the procedure to be complied with. Against that background, the CbC MCAA has been developed, based on the Convention.

The purpose of the CbC MCAA is to set forth rules and procedures as may be necessary for competent authorities to automatically exchange CbC.



Acquisitions - General consideration

150,000.00 €

24,955,200.00N
217,000.00 €

24,955,200.00N

During the past two decades, the number of cross-border M&A transactions in Colombia has increased dramatically. As a result documents and agreements generally used in acquisitions in Colombia are fairly similar to those used in international cross-border M&A transactions, mainly New York-style share purchase agreements and similar transaction documents.

Paper-for-paper transactions are fairly uncommon unless mergers take place (which is infrequent), so cash acquisitions dominate the market. The structure of each transaction relies heavily on tax efficiencies between the buyer and the target, as both parties look to reduce tax costs. In this sense, indirect sales of shares are frequent. Listed (or public) transactions are not common (due to the size of Colombia's stock exchange) and hostile takeovers are rare. LBOs and MBOs are also rare, despite the fact that these transactions are permitted by law.

It is customary for the parties to enter into preliminary non-binding agreements (such as MOUs or LOIs) and non-disclosure agreements or similar, before initiating due diligence.

The participation of investment banks in M&A transactions is fairly common for both buyers and sellers who wish to have adequate valuations for the assets or businesses.

Discounted cash flow analysis is currently the most common method of valuing companies, and deals are structured mainly with a locked-box closing mechanism.

Due diligence on the target company and/or the assets to be acquired is customary. The parties tend to agree to a due diligence phase before agreeing on a price, but after executing non-binding preliminary agreements. It is common to find due diligence periods ranging anywhere from 30 to 90 days.

Price is usually set or agreed on only after the due diligence period has finalized and has successfully shown that there are no deal-breakers. Often the findings (or red flags) in the due diligence phase mean that the buyer should either renegotiate the price or secure indemnities to reduce exposure and risk post-acquisition.

As previously mentioned, the model documents used are mainly based on US template agreements (mostly New York-style agreements); therefore, a foreign investor should be familiar with the relevant transaction documents.

Indemnities, representations and warranties and break-up fees are common. Indemnifications and limits on liability are usual, commonly capping liability anywhere between 10 and 25 percent of the purchase price, with the standard exclusions such as breach of fundamental misrepresentations or pre-identified specific contingencies. The use of baskets or “sand-bagging” is also frequent, and escrows and holdbacks to secure indemnification are customary.

It is becoming a trend for M&A cross-border transactions to include representations and warranties regarding compliance with the Colombian anti-corruption laws, the FCPA and the UK Bribery Act.

Timing up to closing is always crucial in any transaction. Depending on the size of the transaction (in market share or otherwise), notifications or approvals from anti-trust authorities are sometimes required, which will delay closing for the parties. An analysis regarding the requirement to notify or to request approval from anti-trust authorities is commonly conducted between execution of the transaction documents and the closing of the acquisition.

Depending on the sophistication of the seller, the transaction documents are governed by local or foreign laws (commonly New York law). When using local law, arbitration is recommended.

In relation to the specific structure of the deal, the most common forms of acquisitions in Colombia are share purchases and asset purchases.

SPECIFIC MATTERS TO TAKE INTO ACCOUNT WHEN CONDUCTING AN ACQUISITION IN COLOMBIA

Restrictions on transfer of shares or assets

Generally, there are no restrictions under local law on the transfer of shares or assets in a private company. Nonetheless, depending on the sector of the economy (i.e., finance, insurance, health), the transfer of shares may require previous authorization by government authorities.

Foreign ownership restrictions are limited to the following sectors:

- National security and national defense
- Activities involving the processing, distribution and disposal of toxic, hazardous or radioactive waste not produced in Colombia
- Security services with armed guards

Moreover, under Colombian foreign exchange rules, foreign investors are required to register their foreign investment with the Colombian Central Bank (Banco de la República) by following a straightforward and fairly simple procedure.

Advantages and disadvantages of share purchases and asset purchases

Both share purchases and asset purchases are common, and widely used, in Colombia. In any event, an asset purchase is commonly structured using a local vehicle established by the foreign buyer, since a direct acquisition of assets by a foreign company has several practical and tax-related drawbacks and limitations.

- Contractual relationships. A share purchase should not alter the contractual relationships of the target company, unless change of control provisions are included. In an asset purchase, contracts have to be transferred or assigned to the purchasing entity, and generally require approvals or consents for assignment or transfer.
- Licenses. In a share purchase, the target company maintains the licenses or permits secured for its operation. In an asset purchase, licenses or permits have to be transferred or assigned, to the extent possible, to the purchasing entity (sometimes with the consent of government authorities).
- Employment relations. In a share purchase, employment relations do not vary, therefore employment agreements are maintained under the same terms and conditions. In an asset purchase, substitution or assignment of employment agreements must take place to the purchasing entity.

- **Transfer.** In a share purchase, the transaction completes with the transfer of shares recorded in the share ledger of the target company. In an asset purchase, asset sales usually require more formalities, such as public deeds or registrations with government entities.
- **Public contracts.** In a share purchase, the experience of the target company for public contracts (public tenders) is maintained by the target entity. In an asset purchase, the experience of the seller is not transferred to the purchasing entity.
- **Value added tax (VAT).** In a share purchase, no VAT is levied on the sale of shares. In an asset purchase, VAT is applicable to the purchases of inventories.
- **Liabilities.** In an asset purchase, the transfer of assets generally does not involve the transfer of liabilities and/or contingencies to the purchasing entity. In a share purchase, any liabilities and/or contingencies of the target company are indirectly acquired by the buyer. This is of particular importance in tax, labor and environmental matters.

Transaction documents

The main documents in an acquisition include preliminary agreements, acquisition agreements (i.e., share purchase agreement, asset purchase (transfer) agreement), and ancillary agreements (i.e., non-compete agreements, shareholder agreements).

In asset sales, a power of attorney is generally provided by the seller for the buyer to perform certain post-closing obligations, such as the registration of pledges and transfer of assets subject to registration.

Preliminary agreements

The most common preliminary agreements used in local acquisitions are letters of intent, memorandums of understanding, non-disclosure agreements and formal promises to enter into agreements (contratos de promesa).

- **Letters of intent and memorandums of understanding:** These types of preliminary agreements are not specifically regulated by law.

They are still agreements, so have to contain general legal provisions and cannot be contrary to law. As pre-contractual agreements, they are subject to general rules of pre-contractual liability, where the contracting parties are bound by a duty of good faith and fair dealings. These agreements are commonly used in transactions and set out the main aspects of the transaction. They are usually non-binding and no penalties apply in case binding agreements are not reached (except as otherwise agreed).

- **Exclusivity agreements:** These are not usually common standalone instruments, but more as part of letters of intent, memorandums of understanding or non-disclosure agreements. These are used when negotiations are advanced and buyers require certain bona fide guarantees from the seller to stop seeking other potential buyers before investing additional resources into a potential transaction. Remedies are in the form of monetary penalties in case of breach of contract, although further claims for damages can also be brought forward.
- **Non-disclosure agreements:** These are commonly the first agreement signed by a potential buyer and seller to initiate formal conversations, exchange documents and information and provide access to data rooms. The contents of non-disclosure agreements are no more favorable than those agreed in other jurisdictions, so they can be considered as industry standard. Remedies for breach usually include penalties and a right to claim additional damages. Injunctive relief cannot be brought under a non-disclosure agreement, since such a mechanism is not provided for under Colombian law. These agreement may include exclusivity, non-compete and/or stand still provisions.

Foreign law in acquisition agreements

In principle, share purchase agreements in which the underlying shares are in local companies should be governed by Colombian law. Nonetheless, a foreign governing law is generally considered valid when:

- a. The share purchase agreement is validly subject to international arbitration.
- b. The transaction has a material international component, such as one of the parties having its domicile abroad. Although this is not settled law, there are legal precedents to support this argument.

In any event, regardless of the choice of law under a share purchase agreement, certain mandatory legal provisions apply given their status as public order or public policy (*normas de orden público*) including, among others, tax-related matters, labor matters, and laws governing agency agreements.

Warranties and indemnities

Seller warranties are typically included in acquisition agreements, despite the fact that by law a seller of any goods is liable for any kind of deficiencies that are known or should have been known by it at the time the sale takes place. Therefore, it is presumed that liability for the assets (or shares) sold are with the seller unless otherwise expressly agreed. There are, however, no legal provisions regarding implied warranties to the underlying business or the assets, except for title to shares.

Indemnities are commonly included when the buyer has knowledge of a contingency or potential contingency related to the business, the assets or the target company. In these cases, an indemnity is included to limit the buyer's exposure to potential liability if the event that would make the contingency occur takes place.

If the seller was aware of the contingency/liability and did not disclose it to the buyer, acting in bad faith or willful misconduct, there is no limit on the seller's liability. If the seller discloses all liabilities or contingencies to the buyer, the buyer cannot claim for

any related damages because it knowingly consented to the acquisition.

Typical warranties included in acquisition agreements are very much those included in model acquisition agreements, and are mainly those adopted under New York law. Under Colombian contract law there is no particular regulation concerning warranties.

Pertaining to contractual limitations on liability, no limits apply if there is fraudulent conduct (bad faith or willful misconduct). Limitations on warranties commonly include a cap (limit) on liability and Thresholds (baskets)

Also, certain acquisition agreements include rules and procedures when a claim is brought, which could be considered as a form of limitation on warranties. However, it is debatable whether a limit can be imposed by contract against a statute of limitations set by law.

Disclosure of contingencies or liabilities by the seller should, in principle, protect the seller from any potential claim related to the items disclosed, so releasing it from liability. As such, the buyer is usually reluctant to accept all disclosures made by the seller, so it negotiates indemnities to cover potential damages. Due to recent arbitral and judicial decisions, sandbagging provisions are now standard in the local M&A marketplace.

Other qualifiers are often used when drafting acquisition agreements, such as time or knowledge. However, these qualifiers and particular common law practices have not yet been reviewed by the local courts or arbitrators, to fully understand the extent to which they apply or how effective they are.



Competition and consumer laws



COMPETITION LAWS

Colombia's competition laws are contained in Law 155 of 1959, Decree 3307 of 1963, Decree 1302 of 1964, Decree 2153 of 1992, Law 256 of 1996 and Law 1340 of 2009.

Key prohibitions

Colombia's competition laws prohibit:

- Anti-competitive horizontal arrangements: any contract, covenant, meeting of the minds, agreed, or consciously parallel practice between two or more competitors, which has the purpose or likely effect of lessening free competition in Colombia (e.g., price fixing, bid rigging, geographic sharing of markets and certain non-compete clauses).
- Anti-competitive vertical arrangements: any contract, covenant, meeting of the minds, agreed, or consciously parallel practice between two or more businesses, which has the purpose or likely effect of lessening free competition in Colombia, and mainly encompass resale price maintenance (RPM), vertical allocation of customers or territories and exclusive-dealing arrangements.
- Abuse of dominance: unilateral conduct by which a firm that possesses a dominant position in the market abuses such position (e.g., tying and bundling, predatory pricing, price discrimination, obstructing or impeding third parties' access to markets or marketing channels, refusals to deal and denied access to essential facilities and certain exclusive dealing arrangements).
- Other unilateral acts, without regard to whether a firm holds a dominant position; any other conduct tending to limit free competition and to maintain or determine unfair prices.

Merger control

With the aim of avoiding any exclusionary practice that results from a merger or an acquisition, Colombian law demands that any operation where two companies or business units are to be integrated, regardless of the legal form of the integration (merger, stock acquisition,

certain joint ventures, franchise agreements, asset acquisition or others), must be previously authorized or "cleared" by the Superintendence of Industry and Commerce (SIC), in the following circumstances:

- When the companies or business units participate in the same economic activity (horizontal operations) or are part of the same "value chain" (vertical operations); and,
- When, together or individually, they had operational revenue for the previous fiscal year that exceeds the amount established by the Superintendent of Industry and Commerce (SIC) which, for operations taking place in 2019, is 60,000 minimum monthly salaries (approximately US\$15 million); or
- When, together or individually, during the previous fiscal year, they held assets in excess of the amount established by SIC which, for operations taking place in 2019, is 60,000 minimum monthly salaries.; and,
- When the integrating companies have a combined market share that is equal to or more than 20 percent of any relevant market affected by the operation.

Nevertheless, Article 9 of Law 1340 provides an exception to the duty to request clearance in those cases where, notwithstanding the fact that the merging companies meet the requirements outlined above, the post-merger market share of the integrating companies will be less than 20 percent of the relevant market (all affected relevant markets).

In that case, it is only necessary to notify the SIC of the operation, but no clearance is necessary. This notification must take place prior to the closing of the operation but no response is required from the SIC before the operation may close. It is advisable, however, to close after the SIC has responded (it usually takes less than two weeks), because if the SIC deems that the information submitted is unclear or incomplete, that proceeding will be deemed not to have begun yet.

Leniency and immunity

The leniency program, which is administered by the SIC, applies to anyone (company or individual) who violates the anti-trust laws —rules that are administrative in nature— in Colombia, with the exception of bid rigging in procurement processes before governmental entities, which has been a criminal offense since 2011.

The leniency program contemplates:

- I. Full immunity from administrative penalties to the first applicant who must:
 - Be the first applicant to request admission into the leniency program before the SIC;
 - Acknowledge its participation in the anti-competitive agreement;
 - Not be the instigator or promoter of the anti-competitive agreement;
 - Provide useful information or evidence regarding the existence of the agreement; and
 - Provide evidence that shows that his participation in the anti-competitive agreement has already ended.
- II. A reduction between 30 and 50 percent of the fine to the second applicant.
- III. A reduction of up to 25 percent of the fine to the third and subsequent applicants.

Fines

The SIC may impose, for each violation and to each legal entity that commits any anti-competitive conduct, fines of up to 100,000 minimum wages (approximately US\$24.5 million), or up to 150 percent of the profits derived from the restrictive conduct. The SIC may also order the conduct to cease.

Additionally, the SIC may impose, on individuals who collaborate, facilitate, authorize or condone the commission of the types of conduct described in the general competition regime, fines up to 2,000 minimum wages (approximately US\$490,500).

CONSUMER LAWS

Colombia has a recent and strict regulation regarding consumer relations, especially in provision related to the guarantee, right to information and misleading advertising, contractual protection and product safety.

This regulation is mainly contained in the Consumer Statute (Law 1480 of 2011); however, there are other laws and decrees that regulate specific matters. The SIC enforces this regulation.

The SIC is an administrative entity of national order, with jurisdictional functions in specific subjects such as consumer protection claims, regarding product warranty, contractual protection, and misleading advertising. As an administrative entity, it has the authority to order the suspension of illegal conduct as well as to repress offenders by imposing monetary fines.

Other competencies of the SIC in terms of consumer protection are those related to the surveillance of the provision of tourist services, control and surveillance of promotional games regulations, and protection to users of communications services.

Special prohibitions

Consumer protection regulations are of public order; therefore, any agreement to the contrary is considered void. In this sense, it is generally prohibited to import, distribute or commercialize products or services without warranty, or with misleading advertising, tied sales or with contractual unfair terms.

Legal warranty

As a general principle in Colombia, every product or service offered to the consumer must have a guarantee. Usually the regulation establishes the minimum guaranty term for a specific product. In the event that the law does not establish a term, the producer or distributor must indicate the term. In case they do not designate a period, there is a presumption that the guaranty is of a year.

The responsibilities arising from the guarantee are jointly and severally binding on the manufacturers, importers and distributors.

Regulation permits the formation of additional guarantees that extend or improve the coverage of the legal guarantee, guarantees provided by specialized third parties, and the validity of global guarantees for products purchased in other countries.

Safety product liability

National regulations on product safety contain express provisions related to the obligations and processes which manufacturers and distributors have to design when they acknowledge the existence of products that could harm the health, life and safety of consumers.

Producers and distributors will be jointly and severally liable for damages caused by defective products. The foregoing, without prejudice to the administrative sanctions that may be imposed by the SIC for violation of rules, will especially not activate the processes to mitigate the damages and risks caused by such products.

Misleading information and advertising

In Colombia, insufficient information and misleading advertising are prohibited. The Consumer Statute designates the minimum information that each product and service that is placed on the market must contain. In terms of misleading advertising, the regulation instructs the conditions to be met by advertising placed on the market, in particular that the objective conditions included in advertising must be verifiable and based on studies that prove each statement described therein.

Sanctions

Within jurisdictional functions, the SIC has the power to order the repair of a product, exchange it for a product with the same functionalities and characteristics, or reimburse the price paid and impose fines of up to US\$39,000.

Acting as administrative authority, the SIC may impose fines of up to 2,000 minimum wages (approximately US\$490,500); it can also order the temporary closure of the business establishment for up to 180 days, the definitive closure of the business establishment or a temporary or definitive prohibition of producing, distributing or offering to the public certain products, and order the destruction of a certain product that is harmful to the health and safety of consumers.

Laws and regulations governing corporations



CORPORATE GOVERNANCE

Principles of good corporate governance

There have been remarkable developments in corporate governance in Colombia to meet new business circumstances. In particular, the Superintendence of Finance of Colombia (SFC) published in 2014 the new Code of Best Corporate Governance Practices (New Country Code). Along with the New Country Code, the Superintendence of Companies has produced several guidelines regarding this matter and the Commercial Code and Law 222 from 1995 have set out a broad corporate governance regulation for the companies at large.

The SFC has established the following five areas in which the New Country Code focuses, and provides 33 recommendations which under the principle of comply or explain, are mandatory for securities issuers:

- Shareholder rights and equal treatment
- General assembly of shareholders
- Board of directors
- Control architecture
- Financial and non-financial transparency and information

Duties of company directors and officers

Under the Commercial Code, officers and directors are “managers” and as such, they must act in good faith, with loyalty and proper care. Moreover, managers must abide by the following duties:

- Conduct all their efforts to fulfill the company’s purpose
- Comply with the law and the bylaws
- Allow the external auditor to comply with its duties
- Safeguard and protect the company’s know how and industrial reserve
- Refrain from improperly using inside information
- Treat all shareholders equally and respect their right to inspect the company’s books and commercial papers
- Avoid competing with the company and potential or actual conflicts of interests, unless expressly authorized by the partners board or general shareholders meeting.

DISCLOSURE OBLIGATIONS

Financial and other reporting

The Commercial Code requires all companies to disclose, on an annual basis, their general-purpose audited financial statements. However, the disclosure varies depending on the size of the company and if it is listed. Small and medium-size companies have to deposit their general-purpose financial statements before the Chamber of Commerce of their domicile, whereas large non-listed companies are required to report electronically their general-purpose financial statements to the Superintendence of Companies.

On the other hand, securities issuers must report to the SFC their financial information before the general meeting and the approval of the general-purpose statements and provide the general meeting minutes approving the financial statements. Listed companies also have to electronically send their accounting records quarterly to the SFC.

Colombia applies International Financial Reporting Standards. Officers are responsible for the financial reports.

Continuous disclosure

All listed entities have the obligation to disclose to the market any price sensitive information. The listed company has to make the disclosure to the SFC as soon as the entity becomes aware of the information. The report of the information to the SFC has to be timely, accurate, apprehensible and adequate.

The SFC has several rules relating to whether information needs to be disclosed, including cases when the company can request not to disclose the information to the market.

Non-listed companies may be subject to disclose information to the Superintendence of Companies when they are under the “control” level of oversight, upon request of this entity.

Other governance issues

Under Colombian law, it is a criminal offense to use inside information from listed or unlisted companies to make an unfair profit or to manipulate the market. Likewise, it is a criminal offense for the directors of a listed company, or a company under the oversight of the SFC, to lend money or to discount to the shareholders above a certain threshold. Moreover, the stock market has a strict self-regulatory body that can impose fines to companies and individuals, and even ban from the stock market individuals that practice these types of behaviors.

Colombian laws purport to discourage insolvent trading by making managers jointly and severally liable for the damages caused by these trades. Along with this liability, the Superintendence of Companies can impose fines to the parties involved in the trading in order to reverse it.



Equity fundraising

2450

Law 964 of 2005 and Decree 2555 of 2010, regulate all issues related to public offerings of securities in Colombia. Securities that may be offered to the public include common shares, preferred shares, debentures, exchange traded securities and participations in collective investments funds, among others. Public offerings are those directed at undetermined people or more than 99 identified persons.

Any local or foreign entity or person interested in offering securities to the general public in Colombia must register with the Colombian national registry of securities and issuers and issue a disclosure document, such as a prospectus or a technical sheet, that must include complete, accurate and timely information of the issuer in order to allow prospective investors to adequately assess any investment opportunity.

The disclosure document must include a description of the offering and the securities, as well as a clear, complete, accurate, factual and verifiable description of the issuer's organization, financial information, risk factors, expectations and future projects or ventures.

Public offerings must be authorized by the Colombian Financial Superintendency (Superintendencia Financiera de Colombia) and by an authorized Colombian stock exchange or securities trading facility, if the securities are to be listed in such systems. A stock exchange or securities trading facility listing rules may request or demand compliance with additional requirements to those provided by Law 964 of 2005 and Decree 2555 of 2010, such as floating or number of current shareholders requirements prior to the public offering.

The requirements applicable to public offerings are not required for offerings that qualify as private offerings or that are expressly exempted from public offering regulations (such as offerings made to 99 or less identified persons, or pursuant to employees' stock options, mandatory capitalizations or under pre-emptive rights, as long as the number of shareholders is less than 500).

Colombian regulations do not provide any safe harbors to public offerings triggers, excluding any sophisticated investor, professional investment manager or white knight qualification safe harbors.

Additionally, securities issued by simplified stock corporations (sociedades por acciones simplificadas) are not permitted to be offered or traded in the Colombian public securities market.

Banking and financial services



COLOMBIA'S FINANCIAL SYSTEM

Main entities

The main entities that comprise the Colombian financial system are: (i) entities providing financing, such as banks and financial corporations; (ii) entities providing financial services, such as trust companies, pension funds, insurance and reinsurance companies; (iii) entities providing services related to the public securities market, such as investment management companies, and securities broker dealer companies; (iv) entities providing services such as electronic deposits and payments using technology-based systems; and (v) other entities with special purposes, including lending at lower or special interest rates to entities within particular economic sectors such as education and SMEs.

Regulation

The financial sector is highly regulated and supervised. The Ministry of Finance (Ministerio de Hacienda y Crédito Público) is in charge of the regulation of related activities, such as solicitation of funds from the public, securities offerings and trading in the public securities market, insurance and reinsurance activities, and management of investment funds. The Colombian Superintendence of Finance (Superintendencia Financiera de Colombia - SFC) carries out, primarily, the supervision and regulation of the financial sector. The Financial Regulatory Unit (Unidad de Proyección Normativa y Estudios de Regulación Financiera – URF) is an entity ascribed to the Ministry of Finance, and is in charge of the preparation and analysis of the financial regulation.

Lending activities and entities that provide loans, however, are not per se regulated provided no solicitation of funds from the public is involved.

LENDING ACTIVITIES

Who can lend

Residents and foreign entities can lend money to Colombian residents. Foreign individuals can lend money to Colombian residents only in specific events in compliance with Colombian foreign exchange regulations.

Limit on interest rates

Local loans (between Colombian residents, denominated in Colombian Pesos and governed by Colombian law) are subject to a limitation on the maximum interest rate that a lender may charge to a borrower.

The interest rate for local loans cannot exceed the usury rate, which is 1.5 times the current bank interest certified quarterly by the SFC for the corresponding period. Under Colombian criminal law, exceeding this rate is a criminal offense, punishable with fines and penalties of imprisonment varying from two to five years. Also, if the creditor charges interest above such rate, the debtor may request before a judge the reimbursement by the creditor of 2 times the amount charged in excess.

Foreign loans (between a Colombian resident and a non-resident, or denominated in a foreign currency) are not subject to this limitation (except if granted to a Colombian public entity, in which case the Colombian Central Bank may establish limits for interest rates).

FX regulations

Foreign lenders must be registered with the Colombian Central Bank and foreign loans, disbursements and payments must be informed to the Colombian Central Bank. Also, compensation accounts, if used, must be registered with the Colombian Central Bank.

Colombian foreign exchange rules and regulations prohibit the applicability of set-off provisions for foreign indebtedness transactions.

Tax considerations

As a general rule, there is withholding tax applicable to interest payments on foreign indebtedness by Colombian residents at a rate of 15 percent if the term of the indebtedness is or exceeds 1 year, or 20 percent for indebtedness if its term is less than 1 year, except in cases where international treaties provide otherwise. Gross-up provisions are permitted and usually agreed upon.

SECURITY

Assets

Security may be provided over real estate, movable assets and rights (including shares or participation rights, securities publicly traded, intangible assets, IP rights, tangible assets, etc.) currently existing and/or movable assets that will exist in the future such as receivables, inventory, contracts, economic rights, attributable or derived assets (i.e., assets that derive from the guaranteed asset, such as results from the sale, transformation or substitution of the guaranteed asset, payment of insurance over the collateral), etc.

Security may take the form of guarantee trust agreements, pledges, mortgages, controlled bank accounts, conditional assignments, etc.

Registration

Registration with the Movable Guarantees Registry is generally required if the guarantee includes movable assets. For immovable property, aside from granting the guarantee by means of a public deed, registration with the Land Registry (Oficina de Registro de Instrumentos Públicos) is required.

Other types of registration would be required for certain assets, e.g., registration of guarantees over securities publicly traded, over vehicles, or over IP rights must be made in the corresponding special registry.

Insolvency

In a liquidation proceeding of the debtor, certain assets granted in guarantee, provided such guarantee has been properly registered, may be excluded from such liquidation proceeding and used to pay the guaranteed obligations. Furthermore, in general terms, secured lenders will have priority over unsecured lenders.

Personal guarantees and other types of undertakings

Also, lenders may request other undertakings such as corporate guarantees, sponsor support agreements, letters of credit, joint and several liability, naming as loss payee or beneficiary, etc.

Promissory notes

It is advisable to obtain a promissory note (pagaré) from the debtor. This instrument allows the creditor to initiate a collection proceeding instead of an ordinary proceeding (which takes longer).



Employment



GENERAL CONSIDERATIONS

Under Colombian legislation, an employment agreement exists, regardless of the name given to the relationship, when the following three elements are present: (i) a personal activity performed by the employee; (ii) the subordination of the employee to the employer, which allows the employer to demand from the employee compliance with orders at any time, with respect to the manner, time or quantity of the work to be performed, and to impose regulations in connection therewith; and (iii) the payment of a remuneration.

TYPES OF EMPLOYMENT AGREEMENTS

An employment agreement could be agreed by parties verbally or in writing. Nevertheless, there are certain kinds of stipulations that are valid only if agreed in writing.

On the other hand, depending on how the parties stipulate the term of the employment agreement, the agreement could remain:

- For the term of a specific job: The employment agreement would run for the period required to carry out certain work or labor.
- For a fixed period: This form of employment agreement has to be agreed in writing. The initial term of duration cannot exceed three years, but it is renewable (as many times as required) for additional fixed periods.
- For an indefinite term: Unless expressly agreed otherwise, the employment agreement would be understood as indefinite.

PAYMENTS ARISING FROM AN EMPLOYMENT AGREEMENT

Salary

The concept of “salary” in Colombia is quite broad, as law sets forth a general principle with certain illustrative examples, but the provision is a “catch-all.” In a general vision, the salary is the direct compensation that the employee receives for the services rendered to the employer.

Types of salary

- Ordinary salary: remunerates the ordinary services of an employee.
- Integral salary: compensates for ordinary services and also pays in advance all social benefits, allowances, work on Sundays and holidays, and, in general, any other payment or benefit expressly identified in the agreement as part of the salary, except for vacations that have to be paid separately.

The integral salary is only applicable, if agreed in writing, with employees who have a monthly salary greater than ten times the minimum legal monthly wage plus 30% (as the social benefit component).

Mandatory benefits

Colombian labor law provides the obligation for the employer to pay the employee certain mandatory benefits called social benefits. These are the minimum benefits payable to employees (and which are included in the monthly salary for those employees with an integral salary):

- Severance pay (cesantía) and interest on severance pay
- Semester bonus

Additionally, employees having a monthly salary not exceeding two times the legal monthly minimum wage are entitled to receive transportation aid as well as shoes and dress for labor.

Vacation

Employees are entitled to 15 business days of paid vacation per each year of services. Upon termination, the employee is entitled to receive compensation for the accrued days of vacation not enjoyed during the course of the employment.

Mandatory contributions to Social Security and payroll taxes

All employees in Colombia shall participate with the Integral Social Security Regime (ISSR). The ISSR includes the mandatory health, labor risks (worker compensation) and pension programs.

a. Pensions

The contribution to pension funds each month is equal to 16% of the employee's salary (with a 25 minimum legal wage limit as base salary to calculate the contribution). Of said 16%, the employer shall contribute 12% and 4% shall be contributed by the employee. Employees with a salary greater than four times the minimum legal wage have to contribute an additional 1% (and up to 2% for higher salaries).

b. Health

Contributions to the health care entities are paid on a monthly basis and are equal to 12.5% of the employee's salary, of which 8.5% is assumed by the employer and 4% is assumed by the employee.

For those employees earning less than 10 times the minimum legal monthly wage only the 4% corresponding to the employee is caused.

c. Labor risks (labor sickness - labor accidents)

Contributions to the relevant entity will depend on the risks that are present in the Company/position (usually between 0.348% and 8.7% of the monthly salary). The percentage should be fixed by the employer in conjunction with the labor risk entity.

d. Payroll taxes (family subsidy)

Employers shall contribute 9% of their total value of payroll every month to family subsidy institutions. These institutions provide several services to employees and their families. The employers shall contribute only 4% over their payroll of employees who earn less than 10 times the minimum legal wage.

Contributions to pension, health care, labor risk and payroll taxes for integral salary employees are calculated over 70% of the monthly integral salary.

TERMINATION OF EMPLOYMENT AGREEMENTS

In Colombia, in general, an employment agreement may be terminated unilaterally with or without just cause (just causes are listed in the law by way of limitation) or by mutual consent.

In the case of termination by the employer of the employment agreement unilaterally without just cause, the employee is entitled to an indemnification for unilateral termination (severance) payable by the employer, which formula is provided in the law and varies depending on the salary level of the employee and the duration of the employment agreement.

A special prior authorization from the labor authority is required for unilateral terminations (which may be applied only in the event that a just cause exists), in cases of special categories of protected employees (i.e., pregnant employees, handicapped employees, etc.).

FOREIGN EMPLOYEES

Foreign employees have the same labor rights and obligations as Colombian employees. However, when a Colombian company wants to hire a foreigner to render services in Colombia, it is necessary to apply for the corresponding visa and comply with the immigration procedures.

COLLECTIVE AGREEMENTS

Under the constitutional freedom of association principle, all employees have the right to form or join professional organizations working towards the defense of their labor rights and interests.

Employees belonging to a company, an industry, or a guild of different occupations may form unions, which will need at least 25 affiliated employees. The most common kind of union that is formed in Colombia is the Company Union type that may be formed by individuals of different jobs, professions or specialties working for the same company or entity.

Although Colombian regulations prohibited multiple affiliations with unions of the same classification or activity, currently, due to the Constitutional Court

Decisions, employees can establish and be members of more than one company union; furthermore, they can be affiliated with different unions of the same classification or activity. Such situation, in practice, may represent an increase in union privileges. However such situation may cause that in the long term, union organizations may weaken as they proliferate.

Regarding application of benefits to non-unionized employees, for companies in which the union members exceed one-third of the total number of its employees, the collective agreement is extended to be applied to all the employees of the company, whether they are unionized or not.

Special protections and privileges apply to some union members, such as for example the obligation of the employer to grant leaves to employees involved in the performance of the activities related to the management of the de union or the guarantee of some employees (under special circumstances and periods) to have labor stability and to impede dismissal, diminishment of labor conditions, or movement to other place of work, without a just cause qualified in advance by a labor judge.

Environmental regulations



Colombia is the second most biodiverse country in the world. Consequently, a complete set of regulations have been enacted to protect the environment and to ensure that human activities are conducted in a sustainable manner. When planning any activities, a preliminary evaluation of the environmental regulations is required to establish if there are permits and licenses needed or zoning restrictions related to specially protected areas such as natural reserves.

AUTHORITIES

The Ministry of Environment and Sustainable Development is the legal authority for environmental management, planning, regulation and policy-making. In 2011, the ANLA (National Authority of Environmental Licenses) was incorporated as a specialized entity in charge of granting environmental licenses and permits in accordance with the laws and regulations. Furthermore, regional autonomous corporations (CARs) and urban environmental authorities are competent to administer the environment and natural renewable resources within their jurisdictions in some cases according to the law and regulations.

ENVIRONMENTAL LICENSES, PERMITS AND FEES

Environmental licenses

The environmental license is the authorization granted by the competent environmental authority for a project, work or activity, which according to law and regulations may cause damage to renewable natural resources or the environment, or introduce significant modifications to the landscape. Environmental authorities cannot require environmental licenses for works or projects other than those established by law. The environmental license must be obtained prior to the initiation of the project, work or activity. The environmental license includes all permits, authorizations and/ or concessions for the use or affectation of renewable natural resources that are necessary for the project, work or activity. The environmental license will be granted for the duration of the project, work or activity. The ANLA, the CARs and urban environmental authorities are competent to grant environmental licenses according to the allocation of competence defined by the law. No project, work or activity should require more than one environmental license.

Environmental permits

When a project or work is not subject to an environmental license, but it implies the use of natural resources, it is necessary to obtain an environmental authorization for such activity; i.e., the exploration stage of a mining project is not subject to license but it is necessary to obtain water concession or atmospheric emissions permits for such stage, if applicable.

Colombia's government recently suppressed the lifting of woodcutting ban permit that was required for the competent environmental authority to grant an environmental license, permit, concession or authorization license of a project, work or activity. Instead, the environmental authority in charge of granting the license must determine the appropriate conservation measure for the banned specie.

Colombia's government also suppressed the domestic wastewater discharge permit whenever the discharge is made into the public sewage.

Environmental fees

There are environmental fees associated with the use of natural resources established within the parameters of the law. Those fees are payable to the entity granting the license or permit. In addition, to support the monitoring of the projects, the license holder is obliged to pay a follow-up fee.

When a project involves a water concession, there is a mandatory investment of one percent calculated over the total scope of the project for the conservation of the watershed. Such investment has to be agreed with the environmental authority and is usually related to reforestation activities.

Restrictions

With the purpose of protecting the biodiversity, the law has established some restrictions in the allowed activities in some specially protected areas; such areas are part of the SINAP (National System of Protected Areas). Depending on the classification of the area, some uses are prohibited or subject to special regulations. Such limitations are established by law and must be consulted as part of project planning.

Prior Consultation Process

Colombia is part of the Convention 169 of the ILO; therefore, it is mandatory to conduct prior consultation with Ethnic Communities (indigenous communities, afro-Colombian communities, ROM – gypsies, palenqueros and raizales) regarding administrative and legal measures that may directly affect them. According to the Colombian Constitutional Court, “direct affectation” refers to the positive or negative impact that a project or measure has on the social, economic, environmental or cultural conditions of a determined Ethnic Community.

As a consequence of the aforesaid, ethnic communities must be consulted before applying for an environmental license.

To determine whether there is presence of ethnic communities registered with the State, the developer of the project subject to the obtainment of environmental license, must request a certificate of such presence from the Ministry of Internal Affairs.

According to applicable law, it is not mandatory that a prior consultation process ends with an agreement between the developer of the project and the ethnic communities, except for (i) certain circumstances that would result in the displacement of such communities, (ii) activities involving the dumping of toxic waste in the ethnic communities’ land, (iii) projects that involve high social, cultural and environmental impacts on the ethnic communities that can jeopardize their existence, and (iv) large-scale development plans that impact such communities’ territory.

Failure to carry out a required prior consultation process might lead to the suspension of the project and, in some cases, compensation and reparation of damages caused to the ethnic communities.

The entire prior consultation process must be carried out through the National Prior Consultation Authority Office. This recently created office is in charge of determining whether the prior consultation is required, according to the direct impact criteria, as well as leading, conducting and coordinating the prior consultation process.

Sanctions in environmental law

The environmental liability in Colombia is ruled by the general regime of general civil liability contemplated by the Civil Code, according to which, three requirements have to concur in order to determine that someone is obliged to indemnify. Those are: (i) act or omission, negligence or willful misconduct of the offender; (ii) actual damage caused; and (iii) causal link between the act or omission and the damage. There is no strict liability; however, for environmental purposes, there is a presumption of liability against the offender. According to Law 1333 of 2009, environmental authorities are empowered to initiate investigations and administrative processes and within, issue decisions such as preventive measures and sanctions which are determined by the authority according to the significance of the offense. The general criteria for the imposition of penalties such as pecuniary sanctions and fines are defined in the law. In the case of fines, there is a formula to determine the amount of the same, which includes the following factors: illicit profit obtained by the infringer, its economic capacity, and the significance of the damage to the environment, amongst others.

Energy and natural resources



MINING

Ownership of natural resources

Mining regulations in Colombia follow the principle that (except for very limited exceptions) all mineral deposits are property of the state; therefore, they may only be exploited with the permission of the relevant mining authority (the Ministry of Mines and Energy, the National Mining Authority or related entities designated by law).

Mining rights

Pursuant to Law 685 of 2001, the rights to explore and exploit mining reserves are only granted by means of a mining concession agreement, which is divided into three phases: exploration, construction and exploitation.

Law 685 of 2001 provides that concession agreements have a total duration of 30 years. This term may be extended upon request by the titleholder for an additional 30-year term.

Upon registry of the concession agreement with the National Mining Registry, the exploration phase starts to run and lasts three years, and can be extended for additional two-year periods up to a total of 11 years.

Once the exploration phase lapses, the agreement will enter into the construction phase, which lasts for a term of three years, renewable for an additional year, for a total of up to four years.

Once the construction phase lapses, the agreement will enter into the exploitation phase, which will last for the remainder of the life of the concession. During this phase, the titleholder must initiate production.

Economic obligations

The titleholder of the concession agreement is liable for certain economic obligations, such as:

Surface fees (canon superficiario): Amount payable only during the exploration and construction phases. It is determined according to the total area of the mining title, and the ongoing annum of the respective phase.

Environmental-mining insurance policies: The titleholder shall furnish a performance insurance policy to cover the performance of the mining and environmental obligations.

Royalties: Depending on the exploited mineral, the titleholder is liable for the payment of a percentage of the production valued at the mine pithead to the Colombian government. This economic obligation will only be caused during the exploitation phase.

Mining Cadaster: On January 15, 2020, a new state-of-the-art mining cadaster system entered into operation in Colombia. It functions by means of a digital platform called ANNA, and it implements the recently introduced geographic grid-arrangement, that aims to simplify mining procedures for titleholders and applicants. Several deficiencies of the former cadaster system were also corrected, thus providing stronger legal security, and elevating the Colombian mining framework to higher and more competitive standards.

Environmental matters

During the exploration phase, the titleholder may perform all exploration activities, and no environmental license is required to do so. Some environmental permitting may be required if the use of natural resources (e.g., water) is required or roads are to be built.

Before the exploration phase lapses, the titleholder will have to file a Program for Works and Construction (PTO), which must include the activities to be undertaken for the construction and exploitation phases. The titleholder must also file an environmental impact study, which will serve as the basis for the approval of the environmental license.

Any and all construction will require the approval of an environmental license, which will also cover exploitation activities to be initiated subsequently.

If ethnic groups are present within the area of the concession, a previous consultation process before the Ministry of Interior must be conducted to obtain the environmental license.

OIL & GAS

Before 2003, Ecopetrol was the government entity in charge of the management of the oil sector. Ecopetrol used sharing contracts (association contracts) to enter into production with private companies. The company conducted all the exploration activities at its sole risk and if the field was declared commercial, Ecopetrol started to participate in the production phase as an associate of the company.

As of January 1, 2004, the National Hydrocarbons Agency (ANH) has been the entity responsible for managing state-owned hydrocarbons and for defining the contracting policy for exploration and exploitation of hydrocarbons, substituting Ecopetrol. Any association or services contracts existing at that date continue to be enforceable until their natural expiration date and are still being managed by Ecopetrol.

Awarding of Areas

The ANH grants exploration and production of hydrocarbons contracts (E&P) according to the rules defined by the steering council (consejo directivo) of the ANH. These rules are included in the so-called “agreements” (acuerdos) enacted by the ANH’s steering council (consejo directivo).

Among others, the main rules for the awarding of areas and E&P contracts are contained in Agreements 08 of 2004, 04 of 2012 and 02 of 2017 (and its amendments). Currently, the rules applicable are defined in Agreement 02 of 2017 (and its amendments).

As a general rule, the allocation of areas to explore, evaluate, operate, and produce hydrocarbons, must take place through competitive procedures and, exceptionally, by direct awarding.

In fact, the ANH has carried out several competitive processes in recent years, such as the Mini Rondas 2007 and 2008, Rondas Colombia 2008, 2010, 2012 and 2014 and Sinú San Jacinto 2017.

Under Agreement 02 of 2017, a permanent competitive process is in place (launched on February 5, 2019) whereby companies can participate for areas offered by the ANH and/or nominate new areas for the ANH to incorporate them into the competitive process, during the auctions provided in the schedule of the process

The terms of reference of the permanent competitive process are the latest contract awarding terms issued by the ANH. Likewise, under this process the ANH published the new contractual terms for onshore and offshore exploration and production contracts.

In general, for companies to participate in the competitive processes, they must comply with the required legal, financial, technical-operational, environmental, and business social responsibility capacities.

However, if they are unable to meet some of those requirements directly, companies may opt to fulfill them through a parent or holding company, or subordinate of the latter, whether affiliate or subsidiary and even by a company of the same business or corporate group.

In such a case, a joint-and-several debtor guarantee must be issued by the parent company (or the relevant affiliate, subsidiary or same business group company) whereby it assumes jointly-and-several liability for the timely, effective, and efficient compliance with the obligations, commitments, and benefits contracted with the ANH.

Under the 2019 permanent competitive process, two auctions were carried out by the ANH. The first auction took place on July 4, 2019, with 20 blocks offered by the ANH (18 onshore, 2 offshore) and 22 companies qualified to participate. As a result, 11 blocks located in the Departments of Casanare, Guajira, Magdalena, Meta, Santander, and Tolima were granted.

The second auction occurred on November 26, 2019, with a total of 59 blocks offered (54 onshore, 5 offshore), 28 qualified companies and 15 additional blocks granted and located in the Departments of Cesar, Cordoba, Norte de Santander, Magdalena, Meta, Putumayo, Santander, and Tolima.

The contracts related to the blocks granted under the first and second auctions were already executed between the ANH and the new contractors.

Although new auctions have not yet been scheduled, the ANH has announced its enthusiasm to carry out new offerings of areas during 2020, with the offering of unassigned areas previously offered by the ANH and the addition of new areas. As per the calendar updated on January 22, 2020, qualified companies will have

until March 27, 2020, to request the incorporation of additional areas, and the ANH will publish the new areas to be incorporated into the process in June 2020.

Type of Contracts

There are two kinds of contracts to explore and exploit oil in Colombia.

Exploration and production (E&P):

Concession contract with 6 years of exploration (9 years under offshore E&P contracts) and 24 years for production (30 years under offshore E&P contracts). Its main features are:

- The company presents an exploration program with commitments for each phase that are mandatory.
- The company can relinquish at the end of each phase after full compliance of this phase.
- The ANH supervises the operations through the reports that have to be submitted by the company.
- The company is autonomous to declare the commerciality of each field and once it has done so, has 24 years for its exploitation.

Technical evaluation:

The company has 36 months to evaluate an area granted by the ANH. No exploitation is allowed. If some production is obtained, the company is not authorized to sell it.

The company has a preemptive right to exploit the area within an E&P contract in the event a third-party proposal is received by the ANH.

Government take

In the ANH regime the government take is:

- All of the production rights are for the contractor and may be freely disposed of after paying royalties. According to the law, the royalty is a proportion between 8 and 25 percent of the daily gross production based on the monthly average per field. In the case of heavy oil, royalties are 75 percent of the royalties applied to light crude.
- For light crude oil, there is an eventual monthly payment to the ANH when the cumulative production per field is above five MMBBLs and when an

international reference price is above a trigger level. The reference price is the WTI and the trigger level depends on the actual quality of the hydrocarbon produced measured with the API gravity. Similar high prices fees apply for gas production.

- The contractor pays a fee for the right to use the subsurface during each phase of the exploration period after the first phase.
- In competitive bidding processes, the companies offer to the ANH an additional (X%) percentage of the production.
- Royalties plus the applicable taxes constitutes a government take of approximately 75 percent.

Gas

In Colombia, the marketing of gas by producers in the wholesale market is a regulated activity. In 2017, the Gas and Energy Regulatory Commission (CREG) issued Resolution 114, which is the current regulation that producers must follow to market their gas.

Said resolution provides for the rules applicable to the gas marketing procedure as follows: (i) the price of gas is not regulated and is subject to be determined by sellers and buyers; and (ii) the marketing procedure is governed by

- specific timetables: every year (June) CREG issues a resolution providing the gas sales calendar and milestones for producers and buyers to negotiate gas sales contracts;
- specific sales contracts: such as CF 95 (minimum 3-year contract); C1 (1 year contract); and C2 (short-term contract);
- essential clauses for the sales contracts.

Offshore

A regulatory framework applicable to the development of offshore hydrocarbons projects exists in the country due to the Colombian Government's will to promote the development of the said projects to boost oil & gas reserves.

Among others, offshore exploration and production projects and contracts must follow:

- Resolutions 181495 of 2009 and 40048 of 2015 on hydrocarbons final recovery, avoiding unnecessary

waste, and onshore and offshore exploration and production of hydrocarbons measures;

- Decree 1616 of 2014 on the criteria and procedures for the onshore and offshore exploration and production of hydrocarbons (e.g., the need for technical and international standards such as API-NCT ICONTEC);
- Decree 2147 of 2016 on free trade zones intended for technical evaluation, exploration, and production of offshore hydrocarbons activities and their related activities; and
- Agreement 2 of 2017 (and its amendments) as the main rules for the awarding of areas and E&P contracts by the ANH.

These rules set different conditions between offshore and onshore projects, such as more extended contractual periods (9 years of exploration and 30 years of production) and tax and customs benefits for offshore projects.

Up to 2019, several offshore technical evaluation and E&P contracts have been granted to relevant oil and gas companies such as Ecopetrol, Repsol, Petrobras, ExxonMobil, Shell, and Noble Energy.

Likewise, the ANH continues to offer additional areas in the Caribbean and the Pacific Ocean. As a result, under the 2019 permanent competitive process, the ANH offered 7 offshore areas and granted Ecopetrol the GUA OFF 10 contract.

Unconventional Resources

The Colombian regulatory framework on unconventional hydrocarbons is made up of regulation covering issues such as (i) Contractual (Rounds 2010, 2012, 2014, Agreement 04 of 2014 and Agreement 03 of 2014); (ii) Economic (Law 1530 of 2012 and Decree 2100 of 2011); (iii) Technical (Resolution 180742 of 2012, Decree 3004 of 2013, Resolution 90341 of 2014); and (iv) Environmental (Resolution 0421 of 2014 and Decree 2041 of 2014).

Under Ronda 2014, the ANH granted E&P contracts for unconventional hydrocarbons; however, among other challenges, these projects have been affected by the ruling 095 of November 2018 issued by the State Council (Consejo de Estado), which suspended the technical regulations previously mentioned.

Because of the suspension, currently it is not possible for the ANH to sign E&P contracts for unconventional hydrocarbons nor the Environmental Licensing Authority (ANLA) to grant environmental licenses for its development.

On February 14, 2019, a commission of experts appointed by the Government to evaluate the viability of the extraction of hydrocarbons through fracking delivered its conclusions by suggesting the Colombian Government to move forward with pilot research projects (PPI) within the conditions that they have also indicated in its study.

To promote the development of these projects, the Government through the Ministry of Mines and Energy (MEM) and based on the report of the experts' commission, is working on setting up the route to make the research pilots and issue the required regulation to overcome the problems that motivated the State Council decision.

As a result, on December 26, 2019, the Government published the draft decree that sets the guidelines to perform pilot tests on unconventional hydrocarbon deposits. The Ministry of Mines and Energy is expected to issue the final regulation within the first quarter of 2020.

Midstream

Any person interested in the construction of a pipeline for public or private use, or a connection to an existing transport system, must meet the requirements and procedures defined both in the Petroleum Code (Decree Law 1056 of 1953) and in the regulations for the transportation of crude oil by pipeline (Resolution 72 145 of 2014).

Pipeline transportation tariffs are regulated by the Ministry of Mines and Energy (Resolution 72 146 of 2014 as amended), which reviews and adjusts them every four (4) years.

In 2015, the country had more than 9,000 kilometers of oil pipelines, and since then the Government has continued to motivate the increase thereof.

ENERGY

General framework

Colombia's electricity sector has been open to private and foreign investment since 1994. Energy market participants are subject to laws governing the provision of public utilities and electricity services, as well as detailed regulation issued by the Energy and Gas Regulatory Commission, or CREG.

Electricity services include generation, distribution, transmission, and commercialization; as a general rule, electricity market participants can only conduct one of the above activities, except for commercialization (i.e., the purchase and sale of electricity to end-users or other energy trader), which may also be undertaken by generators and distributors. Vertically integrated utilities in operation prior to 1994 are also exempted from the segregation of activities provisions.

Transmission

The Colombian electricity framework provides for free access to transmission systems to any party interested in constructing a connection to the grid. Expansion and upgrade of existing infrastructure are done in accordance with public bidding processes held by UPME, the electricity planning authority; expansion projects are allocated in auctions, and provide for fixed annual payments. Any person, Colombian or foreign, may participate in such bidding processes.

Distribution

Distribution of energy to end-users is subject to extensive regulation by CREG, which includes rules for calculating energy prices.

Industrial users, however, may acquire energy from any generator or energy trader at freely agreed prices.

Generation

The construction of power generation facilities is deemed to be of national interest and public benefit in Colombia. As a result, and subject to the segregation of activities provisions, any person is authorized by law to invest in electricity generation companies. Construction and operation of generation plants does not require a special license different from the relevant environmental or local construction permits.

In addition, generators with power capacity above 20MW must sell electricity on the Mercado de Energía Mayorista (MEM), which is the wholesale electricity market through which generators, wholesale energy consumers and unregulated users participate by trading energy through the National Interconnected System (SIN). A generator may sell electricity on the MEM by way of: (i) Firm energy obligation auctions, (ii) bilateral contracts and (iii) the spot market.

Renewables

It is well known that Colombia's generation capacity is comprised mostly of hydropower, making it highly vulnerable to low hydrology situations produced by events like El Nino Phenomenon. In that sense the government is committed to expanding wind, solar and other renewable technologies in the country.

Law 1715 was issued in 2014 as the general legal framework for renewables, and as the first instrument, providing tax incentives related to the use of this energy sources.

The government has also taken the following relevant steps to promote the integration of renewables into the energy matrix: (i) tax incentives implementation; (ii) allowing self-generators to connect onto the grid and sell energy surplus; (iii) construction of new grids to promote wind power in the northern coast of the country; (iv) an auction to award long-term Power Purchase Agreements "PPAs" and (v) a new provision included in the National Development Plan 2018-2022 settings forth that at least an 8 -10% of the energy acquired by marketers (comercializadores) operating within the framework of the MEM, has to come from renewables sources..

Moreover, an Auction for the Awarding of 15 year-Long Term PPAs took place in 2019-Q3 , aimed at renewable-based generators. The auction resulted in the awarding of 8 PPAs that amount to 2.250MW, with a closing price of COP \$95Kw/h; 5 of the awarded PPAs are for wind-power facilities, and the remaining 3 correspond to solar-power generators.

Reliability Charge

The Colombian regulatory framework provides for the Reliability Charge scheme, under which a generator will receive an economic compensation for the firm

energy that its facility would be able to provide to the system in a scarcity scenario, regardless of their actual generation.

This Reliability charges is instrumented via Firm Energy Obligations (“OEF”) that determine how much energy is the generator committed to provide, and are awarded through auctions.

On March 2019, one of this auctions took place and closed with the assignment of 70 OEFs at a USD/MWh \$15,1 price, corresponding to a total of 4010 MWs that will be incorporated into the interconnected national system (“SIN”) by 2022.

Of this total capacity, 1160MW were awarded to wind-power, and 238MW to solar-power, meaning that the Colombian energy market is expected to grow in the forthcoming years, not only in relation to generation activities but also regarding transmission and distribution.

Self- Generation

Also, since 2015, large scale self-generation facilities have been entitled to sell surplus energy to the SIN.

More recently, by means of resolutions 030 and 038 of 2018, the CREG extended this possibility to small scale self-generators located either in the interconnected regions of Colombia, or in those regions lacking connection to the SIN.



Corrupt practice regulations



In 2011, the Colombian Congress passed Law 1474, also known as the anti-corruption statute. Before Law 1474 was enacted, bribery was only a crime when it involved public officers. Nevertheless, this new statute criminalized the following conducts, among others, which were previously considered strictly private matters:

First, article 16 of Law 1474 made “private corruption” a crime. According to this provision, private corruption occurs when an individual, directly or indirectly, offers or gives managers, administrators, employees or consultants of a partnership, association or foundation, grants or any unjustifiable benefit seeking favorable treatment for themselves or a third party in detriment of the legal person’s interests. This conduct is penalized with four to eight years in prison and the imposition of fines.

Second, until Law 1474 was passed, influence peddling was only considered a crime when the influencer was a public officer. The anti-corruption statute added article 411-A to the Colombian Criminal Code, making influence peddling a crime even when the influencer is not a public officer.

Third, Law 1474 introduced a crime known as “disloyal administration”. As per article 17 of such law, officers of any company that authorize the fraudulent transfer of the company’s assets, or acquire obligations on behalf of the company that result in direct damages to the owners of such company can face four to eight years in prison.

Finally, on February 2, 2016, Congress passed Law 1778, which contains Colombia’s own foreign corruption practices provisions. In short, this law creates the crime of “transnational bribery,” which is penalized with the imposition of fines and nine to fifteen years in prison.

It should be noted that shareholders and/or officers are also liable for the breach of these provisions when an employee or any third party acting under the instructions of the former commits the corruption-related crime.

On a separate matter, in Colombia only natural persons are liable for criminal conduct related to corruption. This means that if a corporate officer bribes a government authority for the benefit of a private corporation, criminal charges will only be pressed against the individuals involved, and not against any legal entities.

However, if a legal entity has benefited from the criminal conduct of the individuals who represent it (legal representatives), the legal entity can face economic consequences, such as an extinction of domain (extinción de dominio) claim against the assets obtained as a result of such criminal conduct.

Extinction of domain is an action against assets obtained illegally, and seeks to have such assets transferred to the state by a judicial decision without compensation. It is different from expropriation as no payment is made and it is conducted as a separate matter from the criminal proceedings against individuals.

Additionally, legal entities such as corporations can face other consequences when involved in corruption practices. Indeed, government entities have unilaterally terminated public contracts after finding evidence that such contracts were awarded as a result of bribery or other forms of corruption.

Furthermore, as per article 1 of Law 1474, natural persons convicted of corruption-related crimes are forbidden from entering into public contracts, and so are the corporations in which said natural persons are shareholders, their parent companies and/or subsidiaries.

Notwithstanding all of the above, Congress is currently discussing two bills which would establish specific forms of criminal liability for legal entities.

The first of these bills is known as proposal 117 of 2018 and intends to hold legal entities liable for crimes against public administration (such as bribery, influence peddling and other forms of corruption), the environment, the nation's social and economic order, and financing of terrorism, among others. As per this proposed bill, criminal liability could lead to penalties against the corresponding entity including fines, immediate removal of legal representatives and/or corporate officers, bans on performing specific acts of commerce or pursuing certain lines of business, bans on executing public procurement contracts, and cancelation of the entity's legal personality. Proposal 117 of 2018 also intends to compel certain legal entities, as would be later defined by the Government, to create an ethics committee within the respective organization.

The second bill being considered by Congress in this regard is known as proposal 119 of 2018. This bill's main contribution to the matter is the creation of so-called social or symbolic penalties for corporations involved

in crimes against public administration. Such social penalties include "publicly visible social works", and the listing of the corresponding entity in so-called "walls of corruption", which are envisioned as physical and digital spaces in which corrupt individuals and entities are exposed.

Moreover, in 2018 Congress passed Law 1882 of 2018, also known as the new Infrastructure Law. Pursuant to article 20 of this new Infrastructure Law, in the event that a public infrastructure contract is annulled and terminated by a judicial or administrative authority, the contractor is entitled to compensation for the costs incurred until termination plus interests. What is more, as per such article 20 this form of compensation is retroactive, meaning that it is also applicable to infrastructure contracts executed before the enacting of the new Infrastructure Law. Shortly after being passed, this article was challenged before the Constitutional Court because it could allow companies to benefit from the annulment/termination of an infrastructure contract even when such contract has been procured by means of bribery, influence peddling or other forms of corruption. The Constitutional Court is due to rule on this matter shortly.

Finally, the Superintendence of Industry and Commerce has considered that corruption practices occurring during the awarding of a public contract are restrictions of competition. This has led to the investigation of corporations for unfair competition practices, which can result in the imposition of fines of up to COP\$68 billion (US\$22 million).

CONTRACT

to
Freight Forwarding Railway Service

Customer,
The Parties,



Government procurement



LEGAL FRAMEWORK FOR GOVERNMENT PROCUREMENT

Government contracts in Colombia are subject, mainly, to the general statute for public contracting: Law 80 of 1993, amended and complemented by Law 1150 of 2007. The decrees that regulate such laws have been compiled in Decree 1082 of 2015. There are other relevant laws, which have been enacted:

- Law 1474 of 2011 (the Anti-Corruption Statute)
- Law 1508 of 2012 (public-private partnerships - PPPs and concession contracts)
- Law 1682 of 2013 (Transportation infrastructure)

LAW 1778 OF 2016 (ANTI-TRANSNATIONAL CORRUPTION REGULATION) POTENTIAL PARTICIPANTS

- Individuals
- Companies
- Associations: consortiums and temporary unions. In both cases, two or more persons—individuals, legal entities or both—jointly submit a proposal. Members of the consortium and of the temporary unions are jointly and severally liable for the full compliance of the contract. Regarding temporary unions, fines and sanctions are imposed on the member of the association who is responsible for the performance of the obligation. These associations are not allowed to participate in PPP's and concession contracts.
- Special purpose vehicles: allowed in PPPs and concession contracts.

FOREIGN COMPANIES

- Foreign companies can participate in bidding tenders, even if they have no presence in Colombia.
- If the contract is awarded to a foreign company, it must registers a branch or incorporate a subsidiary in Colombia, immediately after the award.
- It is common for the bidding documents to allow the bidder to use its parent company's or subsidiaries' technical experience and financial capacity, in order to fulfill the technical and financial requirements.

- Because of liability issues, if the bidding documents allow it, foreign companies should try to participate in the bidding processes through a previously incorporated local vehicle (subsidiary).

BIDDER'S REGISTRY

Any individual or legal entity, national or foreign, domiciled or with a branch in Colombia, who intends to participate in a public procurement procedure, must be registered with the National Bidders Registry (Registro Único de Proponentes — RUP), managed by the local Chamber of Commerce. In said registry, a set of documents pertaining to the legal, financial, organizational and technical capacity and experience of the company is filed, reviewed and registered.

If the bidder is not domiciled or does not have a branch in Colombia, it is not required to be registered in the RUP. In that case, the bidder must submit evidence of its legal and financial capacity and technical experience. Documents must be duly translated, notarized and apostilled.

PROCUREMENT ONLINE PORTAL AND ELECTRONIC PROCUREMENT PROCESS

Colombia has an electronic system for public procurement called "SECOP" (Sistema Electrónico de Contratación Pública), where all the stages of the procurement process are published and informed to the public.

Since 2015, SECOP is also a transactional portal, where both buyers (government entities) and sellers upload the documents related to each transaction, and exchange comments related thereto; this includes the seller's offer and comments to the documents of a bidding process. For a potential participant (either local or foreign) to enter into contracts with government entities, it is compulsory to be registered in SECOP. In this registry, the participant will upload the information and documents related to its financial, legal and organizational capacity and technical experience.

MAIN TYPES OF GOVERNMENT PROCUREMENT PROCESSES

There are several types of government procurement processes. The main types are public tender, merits-based selection, direct contracting, framework agreements, and public-private partnerships.

Public tender

This process is the general rule for the acquisition of services and goods, whenever they cannot be framed within the other procedures. The selection of the bidder is based on technical and economic factors that either meet the formulas established in the bidding documents, or that represent the best cost-benefit relation for the governmental entity.

Merits-based selection

This is used for the selection of consulting and architectural services. The selection of the bidder is based on (i) the experience of the bidder and its team, and (ii) the academic background, technical and scientific publications of the working team. Economic criteria are not decisive to choose the contractor.

Framework agreements

This method is used to acquire goods and services of uniform technical characteristics. The national procurement agency, Colombia Compra Eficiente, tenders, awards, executes and administers framework agreements, which contain the identification of the goods, services, the maximum acquisition price, the minimum guarantees, the term of delivery and the conditions by which the buyers (governmental agencies) may become part of the agreement. The execution of the agreements is preceded by a tender process in which all interested suppliers may participate, upon the compliance of certain legal, financial and technical requirements. Governmental entities wishing to acquire the goods or services included in a framework agreement must inform Colombia Compra Eficiente of such interest and must place purchase orders. Governmental agencies at the national level are required to acquire all goods and services included in a framework agreement through that mechanism.

In the case of goods or services of uniform characteristics, price is the awarding criteria.

In the case of merits-based selection, experience and education of the bidder are the main selection criteria.

Direct contracting

The use of this process is strongly regulated and only permitted in the following cases:

- Evident urgency—used in cases of crisis and to provide goods or services urgently needed when the public entity does not have the time to carry out a competitive selection process; applies in cases of natural or human disasters, amongst others
- Contracting of/acquiring loans
- Contracts between public entities – inter-administrative contracts
- Acquiring confidential goods and services for national defense purposes. When only one-known source exists; only one-single supplier can fulfil the requirements; the supplier has exclusivity rights on the territory; or the supplier owns rights of intellectual property.
- The development of scientific and technological activities, as per the legal definition of such activities.
- Contracting of professional services and artistic works that only one particular individual may perform.
- Acquisition of real estate

REVIEW OF PROCUREMENT DECISIONS

The award of contracts by government entities is not subject to any administrative review proceedings. The only available remedies for unsuccessful bidders are judicial actions filed before the courts. The only procurement decisions that may be challenged by means of an administrative remedy are those that declare the public tender deserted (i.e., when the government agency fails to award the contract, even if bids have been submitted). Bidders may challenge that decision before the government entity that issued it. If unsuccessful, they have the right to a judicial claim.

Unsuccessful bidders have the right to challenge the award of government contracts by means of a judicial claim within four months of the date of the award. They have the burden of proving that the award was unlawful and that their bid was the one that must have been

successful. Local courts have ruled that if the latter circumstances are proven, unsuccessful bidders have the right to claim and obtain, from the government entity, lost profits. The successful bidders who executed the contracts are called to appear in those judicial proceedings, but they are not responsible for the payment of damages to unsuccessful bidders

PREFERENTIAL TREATMENT FOR NATIONAL BIDDERS, TRADE AGREEMENTS AND RECIPROCITY

National bidders enjoy the following preferential treatment:

- Promotion of the national industry: most of the procurement processes (with the exception of direct contracting and the procurement of goods or services with uniform technical characteristics) must include measures to promote national goods, services or national labor. This means that all procedures must grant scores to the promotion of national goods and services, and the promotion of the use of national components over foreign goods.
- Trade agreements and reciprocity: foreign goods and services are subject to national treatment if they (i) are provided by nationals of States with whom Colombia has a commercial agreement applicable to the procurement process; or (ii) have national treatment by reciprocity.
- Tie-break factors: when two or more offers are tied in the first place of the eligibility order, the aforementioned events may be used to determine the winner. The government entity must prefer the bid that includes national goods or services, over the offer for foreign goods and services.

EXCEPTIONAL POWERS

Government entities have exceptional powers to control the performance of contracts and to preserve the general public interest. Those powers are reflected in the following contractual provisions:

- Unilateral cancelation of the contract for serious breach (*caducidad*); the contractor is barred from contracting with governmental entities for a term of five years.
- Unilateral termination of the contract to protect the public interest.

- Unilateral modification of the contract: the contractor has the right to the reestablishment of the financial equilibrium of the contract.
- Unilateral interpretation of the contract.
- Unilateral declaration of breach of contract in order to call the performance bond.
- Unilateral liquidation of the contract.
- Mandatory transfer of the assets to the state—without compensation—in contracts regarding the exploitation and concession of the state's assets.

These clauses are not mandatory, but allowed, in supply and services agreements.

These provisions are prohibited in inter-administrative contracts, government contracts ruled by private law, contracts with international public persons, loans, donations, lease contracts and insurance contracts.

The administrative resolutions exercising exceptional powers may be challenged before the same public official who issued it. If that challenge is unsuccessful, the administrative resolutions may be judicially challenged. They are not arbitrable.

FINES AND LIQUIDATED DAMAGES CLAUSES

Government contracts usually contain fines and liquidated damages provisions. The imposition of fines, penalties and the declaration of breach of contract requires a previous fair hearing.

AMENDMENT TO CONTRACTS

Government contracts may be amended if there are valid reasons to do so, with the following restrictions: (i) the amendment has to be in writing; (ii) the scope of the contract cannot be modified substantially; (iii) the term of the contract cannot be amended if it has expired; and (iv) the contract cannot be amended for more than 50% of its original value. For PPPs, which include concession contracts, the amendments may not exceed 20% of the initial value.

DIFFICULTIES DURING THE PERFORMANCE OF CONTRACTS IN INFRASTRUCTURE PROJECTS

- Acquisition of land.
- Environmental licenses and other permits.
- Community consultations (Consultas Previas). It is the right that indigenous people and other ethnic groups have to be asked before undertaking the construction or developing a project in their land or territory.
- Relocation or transfer of utility networks.
- Fear of public officials to make decisions based on concern for personal liability.

CONTRACTS BARRED TO FOREIGN COMPANIES

Foreign companies cannot enter into public contracts regarding the following matters:

- Television: The foreign ownership in a licensed television company is limited to 40%. It is subject to reciprocity and to the transferring of technology that contributes to the development of the national television industry (Law 680/2001).
- Weapons, ammunitions and explosives: the government is the only one authorized to import, export, produce and trade weapons, ammunitions and explosives within the country and it controls such activities. The Colombian military weapons manufacturer is called "Indumil."

OFFICIAL CONTROL ENTITIES OVERSEEING THE GOVERNMENT PROCUREMENT PROCEDURES

Government entities and officials are subject to control exercised by other entities such as the General Comptroller, the Office of the Attorney General, Public Prosecutor's Office (when facing crimes) and to the guidance of the National Procurement Agency. Additionally, government entities must follow the case law issued by Colombian high courts.

PPP: PUBLIC-PRIVATE PARTNERSHIPS

Since 2012, there has been legislation in place for public-private partnerships—PPP (APP by its acronym in Spanish). By means of PPP agreements, the government contracts with private investors for the design and construction of infrastructure, its repair, improvement or procurement.

- PPPs of private initiative: (i) those that require government funding; (ii) those that don't require such funding, as all the financing comes from private parties.
- PPPs of public initiative: the compensation may be obtained from users' fees (e.g., a toll road), commercial exploitation or from payments directly made by the governmental entity.

Compensation of the contractor is subject to the delivery of the infrastructure and the compliance of certain levels of service and quality. The contractor will only be able to obtain the return of its investment, when the infrastructure is available and operating, under specific service levels and quality standards. The delivery of the infrastructure can be arranged by milestones called "functional units."

The revenues of the private partner derive from its right to exploit the infrastructure or service. The specific terms and conditions for exploiting the infrastructure are agreed with the government agency.

CLAIMS, LITIGATION AND ARBITRATION

Government entities can agree to both national and international arbitration. If the government contract does not contain an arbitration clause, contractual claims are reviewed by the judicial system.

Direct settlement agreements are legally possible, but public officials are reluctant to sign them, due to the fear involving their personal liability. Therefore, mechanisms where a judge approves the settlement agreements are used (conciliation procedures).

LIABILITY

Contractors may be liable, contractually, fiscally and criminally.

Contractual liability

Contractors can be subject to contractual sanctions and penalties, such as:

- **Fines:** Government entities can impose the fines agreed in the contract to encourage the contractor to comply with the obligations set forth in the contract.
- **Liquidated Damages Clause:** If agreed in the contract, the non-breaching party can enforce the liquidated damages clause as a way to recover the damages caused by the breach of the contract.
- **Exercise of exceptional powers:** Government entities have the right to unilaterally cancel the contract for serious breach (*caducidad*). They also have the right to unilaterally modify or construe the contract, or unilaterally call on the performance bond.

Fiscal liability

Fiscal liability aims to reimburse the damages caused to the public finances due to the improper behavior—with gross negligence or willful misconduct—of individuals who manage public resources, whether they are public or private individuals. This type of liability is independent from contractual liability.

Fiscal liability proceedings are carried out by the country's fiscal controlling authorities. Government contractors may be fiscally liable if, as a consequence of gross negligence or willful misconduct, financial damages are caused to the government agency, due to extra costs accrued during the performance of the contract or any other irregular acts.

The decisions rendered by the fiscal controlling authorities can be challenged before the administrative courts.

Criminal liability

Colombia's Criminal Code, the Anti-Corruption Statue and the Anti-transnational corruption

regulation, establish a set of crimes against the public administration, which penalize irregular contractual activities and corruption. Those criminal conducts involve public servants and/or contractors.

BID RIGGING

In Colombia, bid rigging is an antitrust violation and a crime.

Bidders barred from government tender procedures:

- For a five-year term, when a contractor causes the unilateral cancellation of a government contract due to a serious breach
- For a three-year term, when a contractor has been subject to the imposition, by governmental entities, of a certain number of fines and penalties during the course of one year
- For a five-year term, when a contractor refuses to execute an awarded government contract without just cause
- For a 20-year term: individuals who have been convicted for committing crimes against the public administration, for acts committed against the Colombian Anti-Corruption Statute, acts contemplated in international anti-corruption conventions executed and ratified by Colombia, or companies that have been declared administratively liable for transnational bribery. This bar is extended to the companies in which such individuals act as administrators, legal representatives, board members and controlling shareholders, to parent companies, subsidiaries and branches of foreign companies
- For a five-year term, when the owner's representatives breach their obligation to submit to the government entity information regarding the contractor's breach of contract or facts or circumstances that may constitute acts of corruption

Only upon the expiration of such terms (three, five or 20 years), will the bidder regain the right to participate in government procurement proceedings.

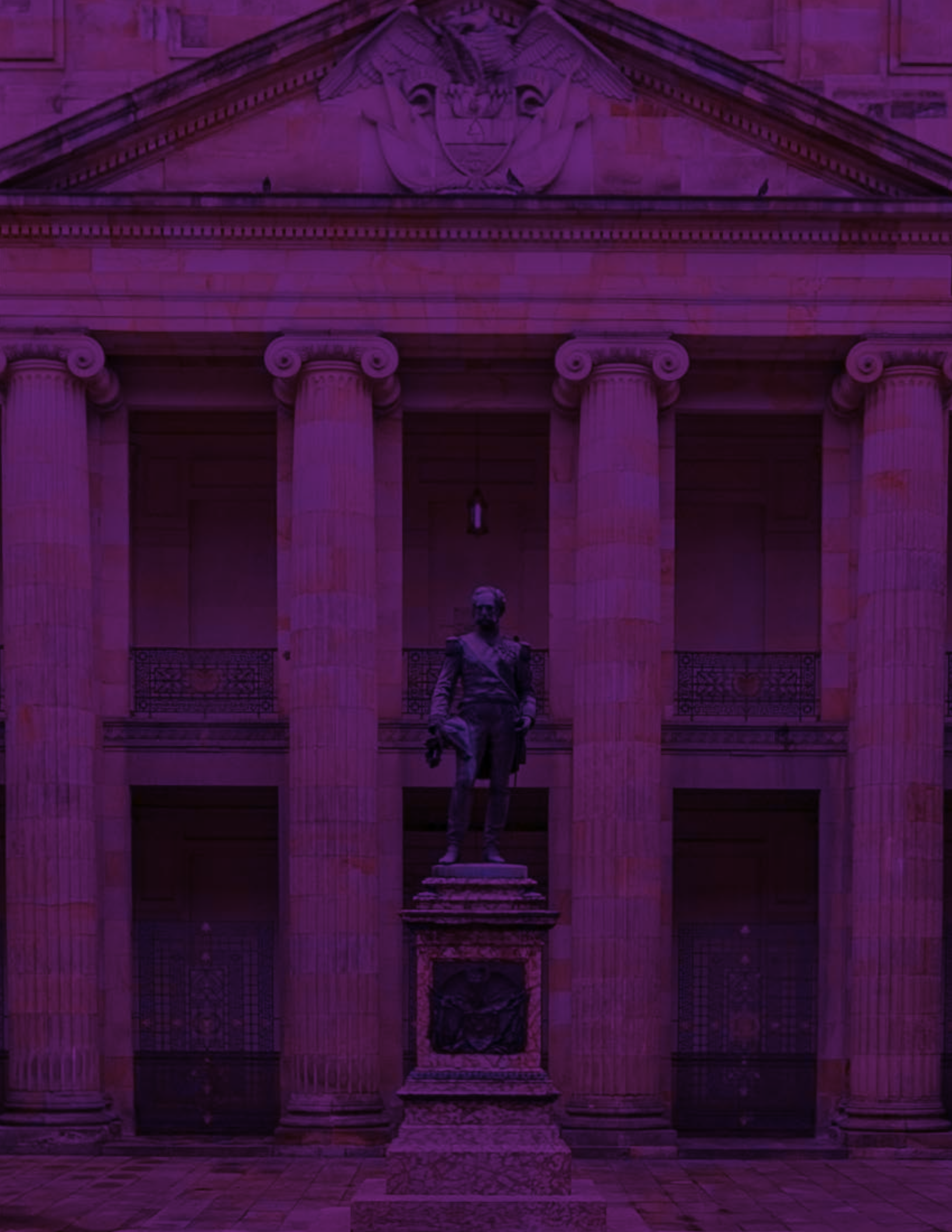
GETTING OUT

It is difficult to get out of a contract entered into with a governmental entity. The assignment of contracts to third parties, or leaving a consortium or temporary union, requires an express authorization from the government entity.

Concession contracts have specific rules: getting out in the construction phase is harder than getting out during the operation phase. Usually it requires authorization from the governmental entity.

STANDARD BIDDING DOCUMENTS

Since April 2019, Government entities are obliged to adopt the standard bidding documents published for competitive processes of public works of transportation infrastructure, which includes roads, maritime or fluvial works, railways, bridges, airports and urban roads. Under such documents, the following requirements are standardized as a function of the scope and value of the contract: legal capacity, experience, financial and organizational capacity, and technical and economic factors.



Intellectual property



Intangible assets should be protected since they represent the knowledge the company has developed or invested in, which has allowed it to gain a competitive edge over other companies.

Intellectual property protects these intangible assets by providing the administrative and judicial tools allowing the economic and exclusive exploitation of said intangible assets by the business, while preventing unauthorized third parties from using them.

Broadly speaking, intellectual property is divided into two branches: (i) industrial property, which includes trademarks, slogans, patents, utility models, industrial designs and layout-design for integrated circuits, commercial names and business names, and (ii) copyright and related rights.

The regulatory framework for intellectual property in Colombia is mainly covered by the rules issued by the Andean Community, the parties of which are Bolivia, Colombia, Ecuador and Peru. The Andean Community regime on industrial property is found in Decision 486 of 2000. For copyright and related rights, the regulatory framework are Decision 351 of 1993, Law 23/1982 and Law 1915/2018.

INDUSTRIAL PROPERTY

Trademarks

A trademark is a sign that distinguishes one product or service in a marketplace. It is possible to register words or a combination of words, images, figures, symbols, sounds, smells, or colors delimited by a form or the combination of colors, its containers or wrappings as trademarks, as long as they are distinctive.

Requirements

- Indication of the trademark, if it is a word mark or has a logo.
- Description of the products and/ or services to be covered with the trademark.
- Indication of the Classes according to the International Classification of Nice where the products and/or services belong.

Name of the applicant and domicile

- Payment of the official fees.

Registration procedure

The application must be submitted to the competent authority, which in this case is the Superintendence of Industry and Commerce (SIC). This entity will be in charge of the administrative process.

Once the SIC has verified that the documents submitted are complete, it will publish the distinctive sign of the application in the Industrial Property Gazette, so that third parties may raise their objections should they believe their rights have been infringed.

If no objections have been raised by third parties, its registrability will be reviewed by the SIC. If the SIC has no objections, the entity will proceed with the registration.

The validity of a trademark of ten years, renewable for successive equivalent periods.

Cancelling a trademark due to non-use

Once a trademark has been granted, and in order to avoid the cancellation due to non-use, the owner of trademark has a three-year period to use it in any of the country members of the Andean Community. The action may be filed by any interested person before the SIC.

A trademark is understood as used whenever the products or services that said trademark distinguishes have been sold or are available in the market in regular quantity and form, considering their nature and the way in which they are sold. Or, if the trademark has been used to distinguish products or services that are exported, the trademark must be used by the owner or an authorized third party.

In the event of a cancellation application, the owner of the registration must provide evidence of its use in the market. Failure to do so will entail the full cancellation of the registration. Should it be proven that it was used for only a few of the products and/or services for which it was registered, the cancellation will be partial, leaving in force and restricted the part of the registration effectively used.

The interested third party to whom is granted a favorable decision will have a preferential right on the registration of a trademark identical to the one that has been cancelled. Said rights may be invoked up to three months after the final resolution.

Rights given with the granting of a trademark

- Trademark registration is for ten years and may be renewed for successive ten-year periods.
- The right to the exclusive use of the trademark in Colombian territory to identify the products and/or services for which it was registered.
- The right to prevent any unauthorized third party from selling products or services that are identical or similar under a trademark that is equal or similar to the protected trademark, which may confuse the consumers regarding the origin of the products or services.

Slogans

A slogan is a distinctive sign made up of a word, phrase or caption used to complement a trademark.

In order to apply for the registration, it must be indicated the applied or registered trademark with which it will be used the slogan. From there on, the slogan will be deemed an accessory to the trademark, and its enforcement will be tied to the enforcement of the trademark to which it is linked.

Trade name and business name

The trade name is the sign that identifies the business that produces, offers or sells products and/or services. A business name is the sign that identifies a commercial establishment.

Unlike trademarks and slogans, the exclusive right over a trade name or business name is acquired through its first use in the market and ends when the use or the activities of the company using it have ended. This means that its registration before the SIC is not mandatory to give rise to the right. In this case, the deposit at the SIC is used only for evidential purposes, since it is merely declarative and does not constitute a right.

Patents on inventions

An invention patent is a privilege granted by the State to the inventor to reward his/ her investment and effort to achieve an invention that will contribute to a technical solution. This privilege entails the exclusive exploitation of the invention for a certain period.

Inventions consisting in products, procedures, manufacturing methods, machines or devices obtained therefrom can be patented.

On the contrary, discoveries; scientific theories; mathematical methods; living beings or what exists in nature; artistic, literary, scientific works; games and methods for the exertion of intellectual activities; financial or business methods; computer programs per se; therapeutic, and/or surgical methods are all examples of what cannot be patented.

For a product or procedure to be protected under a patent, it must fulfill the following requirements:

- Be innovative, meaning that it does not exist anywhere in the world nor has been accessed by the public by any means.
- Be inventive, meaning that it is not obvious to an expert in the subject matter of the invention.
- Have industrial application, meaning that the invention may be carried out by any industry.

The rights given with the granting of a patent to its owner are:

- The patent will last 20 years, non-renewable, as of the date of filing of the application at the Colombian Patent Office.
- Grant exploitation licenses to authorized third parties.
- Prevent unauthorized third parties from any of the following: manufacture, offer to sell, sell or use the product or import it to any of these ends. When dealing with a patent on a process, the owner may prevent the following: using the process, carry out any of the mentioned acts regarding a product obtained directly by using the process.

The documents required to file a patent application are the following:

- A form called a petition.
- The description of the invention.
- The claims, that is, the specification of the subject that will be protected by the patent.
- Figures or examples.
- The payment voucher of a set fee (which changes every year).
- If filed via an attorney, the power of attorney must be annexed.
- If filed via a company, a certificate of incorporation and legal representation must be submitted.
- If applicable, the document in which the inventor assigns the rights over the patent to the company that is filing the application.

Patents on industrial designs

An industrial design is the legal protection to the aesthetic or external appearance of a product resulting from any combination of lines, colors or any external two-dimensional or three-dimensional shape, line, contour, configuration, texture or material, without changing the use or purpose of the product.

If the appearance is dictated by its technical function, it cannot be registered as an industrial design.

In order to be registrable as an industrial design, the design must be innovative, meaning that it does not exist anywhere in the world nor has been accessed by the public by any means.

The rights given with the registration of an industrial design are:

- The protection for ten years, non-renewable, as of the date of filing of the application at the Colombian Patent Office.
- Grant exploitation licenses to authorized third parties.
- Take action against unauthorized third party who manufactures, offers or introduces into the market or commercially uses products that use or reproduce the industrial design.

- Take action against anyone who manufactures or sells a product whose design only has secondary differences regarding the protected design or has the same appearance.

The documents required to file an industrial design application are:

- A form called a petition.
- The payment voucher of a set fee (which changes every year).
- Drawings of the design (in total seven, divided thus: six views, one for each side, and one perspective)
- If the design was requested by someone other than the designer or by a company, it must be attached the designer's assignment of rights to the person or company filing the application.
- If a company is filing the application, a certificate of incorporation and legal existence must be annexed.

Other new creations may be protected in Colombia through utility models and layout-design for integrated circuits.

COPYRIGHT AND RELATED RIGHTS

Copyright protects artistic or literary works, such as musical, audiovisual or dramatic works, computer programs, among others.

The protection is granted on the way in which the author expresses the idea and not on the idea per se.

The right on a certain work arises from the moment the idea manifests itself, meaning that its registration at Colombian Copyright Office (Dirección Nacional de Derecho de Autor - DNDA), is not mandatory.

Registration of the work at the DNDA serves as evidence of the existence, ownership, originality and date on which the work was created.

Copyrights protect economic and non-economic rights of authors. Economic rights entitle the author to financially exploit his/her work, as well as its reproduction, communication, distribution and transformation. Non-economic rights, also called moral rights, protect the author's intellectual interests in his/

her creation, such as claiming ownership over the work, maintaining the integrity of the work, keeping it unpublished, modifying it at any time and retracting the circulation of the work.

In Colombia, moral copyrights are perpetual, inalienable and non-waivable. On the contrary, economic copyrights are protected over the life of the author plus 80 years, and they may be totally or partially licensed or transferred to third parties.

The laws of Colombia presume that unless otherwise agreed on, economic copyrights have been transferred to the commissioner or employer whenever the work has been created to fulfill an employment or service contract. In order for this presumption to apply, the contract must be in writing.

Any act or contract whereby copyrights are transferred must be registered at the DNDA for disclosure purposes and to make it enforceable against third parties.

Other rights protected by the laws of Colombia are related rights, which protect the rights of artists, interpreters or performers, phonogram producers and broadcasting organizations.

E-commerce and digital

E-commerce is mainly governed by Law 527 / 1999, which is based on the Model Law on Electronic Commerce created by the United Nations Commission on International Trade Law (CNUDMI)¹.

Other regulations coexist with the foregoing and may be even more relevant when addressing e-commerce, such as Decree 2364 / 2012 on electronic signatures, Law 1480 / 2011, regarding consumer protection, and Law 1581 / 2012 pertaining to the protection of personal information.

Information required in e-commerce

Information is one of the most important parts of the procurement process. The provider of products and services online must guarantee:

- The true, accurate, sufficient, clear, accessible and current information concerning its identity at all times, specifying name or corporate name, tax identification number (NIT), address for service of notice, telephone, email and other contact information.
- The true, accurate, sufficient, clear and current information concerning the products and services offered, as well as relating to payment means, delivery time for the product or service, the consumer's right of withdrawal and the corresponding procedure.
- Term of validity of the offer and availability of the product.
- Whenever the product's advertisement includes images or pictures, it must state the scale in which it is presented.
- Information on the total price of the product, including all taxes, costs and expenses to be assumed by the consumer in order to purchase the product.
- Information on contracts.

¹ CNUDMI is also known as UNCITRAL for its initials in English (United Nations Commission on International Trade Law) which was created by the UN General Assembly through Resolution dated December 17, 1966.

Relevant issues regarding electronic procurement

Concerning formation and validity, electronic procurement maintains the same structure of civil or mercantile contracts. However, electronic procurement involves two special characteristics: the parties are not physically present upon execution of the contract, and the offer and acceptance are conveyed using electronic means.

The following aspects of the regulations in force on the subject must be taken into account whenever entering into electronic contracts:

- Maintain, for the same period required for commercial documents to be kept, durable backup mechanisms to prove the commercial relation, especially the full identity of the consumer, his/her express will to engage in the transaction, how payment was made, and the actual, effective delivery of the purchased goods or services, in order to ensure the integrity and authenticity of the information, allowing the competent authorities to verify it.
- Implement the proper and reliable security mechanisms to guarantee the protection of the consumer's personal information and of the transaction per se. The supplier is liable for security breaches in the transactions carried out in the means it has made available, whether these are owned by the supplier or by a third party.
- Whenever the supplier or vendor provides information regarding its membership or affiliation to any relevant self-regulating model, business association, dispute-settlement organization or any other certification entity, it must provide a simple way in which to verify said information, as well as the relevant details to contact said organizations, and the relevant codes and practices applied by the certification entity, should they apply.
- Make mechanisms available so that the consumer may file petitions, complaints or claims in the same means used in the electronic transaction, so that the consumer will have a record of the date and time of filing, including a follow-up mechanism.
- Unless otherwise agreed, the supplier must deliver the order within 30 calendar days as of the day after the order was placed by the consumer.
- Should the ordered product not be available, the consumer must be informed immediately.
- Should the delivery of the order exceed 30 calendar days or if the ordered product is not available, the consumer may unilaterally rescind or terminate the contract and be fully reimbursed for all sums paid, without any withholding or deduction. The reimbursement must be made within 30 calendar days.
- The party responsible for the website must place a visible and easily identifiable link on the transaction site, allowing the consumer to access the consumer protection authority in Colombia.
- State the term of validity of the offer and the availability of the product. Whenever the product's advertisement includes images or pictures, it must state the scale in which it is presented.
- Provide information, via the transaction site, as to the mechanisms in place to make payments, deliver the good or provide the service, the consumer's right of withdrawal and the corresponding procedure, as well as any other relevant information that will enable the consumer to freely make a purchase without being misled.
- Make mechanisms available so that the consumer may file petitions, complaints or claims on the same means used in the electronic transaction, so that the consumer will have a record of the date and time of filing, including a follow-up mechanism.

Electronic procurement for children and adolescents

- The owners of online establishments must define mechanisms to verify the age of their consumers.
- If the client is a child or adolescent, the parents must give their express consent to the transaction.

Data protection against electronic procurement

Electronic procurement entails the gathering of personal information. Therefore, it is essential to comply with the regulations on this issue, which is why every website must include:

- Privacy statement
- Data processing policy
- Data processing authorization form
- Procedures guaranteeing the access, update, suppression and correction of personal data and revocation of the authorization

Information concerning domain name websites

- By law, Colombian Internet websites whose economic activity is commercial, financial or for the provision of services, must be registered at the Trade Registry.
- The domain name is a distinctive sign of the company; it represents the common identifier of a group of computers or equipment connected to a network and constitutes an internet address designed to allow users to easily locate a site on the Internet.
- The use of a distinctive sign as part of a domain name may constitute trademark infringement.

CYBERSECURITY IN COLOMBIA

Cybersecurity in Colombia has become increasingly relevant due to the impressive growth of information and communication technologies (ICTs) in the country: Internet users have doubled in the last four years, reaching 15 million subscribers with a 31 percent penetration, nine million of which are mobile Internet users (figures from the third quarter of 2016). Experts say that cybercrimes in Colombia grow at a rate of 50 to 60 percent each year, and that they were responsible for US\$600 million in losses in 2015.

Entities in charge of cybersecurity in Colombia

In Colombia, the entities in charge of handling cybercrimes are the Police Cybernetic Center, which deals with internal crime, and the Joint Cyber Command, which deals with national security and sovereignty issues.

The Police Cybernetic Center website, <http://caivirtual.policia.gov.co/>, reports cybercrime and provides information and security recommendations for companies and the people.

Colombia has forged cooperation alliances with INTERPOL and EUROPOL against cybercrimes.

Another important entity in the area of cybersecurity is colCert, the Colombian CSIRT. It is responsible for protecting the critical Colombian infrastructure, including industries such as telecommunications, energy and mining. Cyber incidents and information on system vulnerabilities may be reported at the colCert website: <http://www.colcert.gov.co/>.

Cybercrime in Colombia

The Colombian Penal Code has defined the following as the main cybercrimes:

- Abusive access to IT systems (regulated in Article 269A of the Penal Code): Access to or staying within an IT system without authorization regardless of the criminal ends, or the protection of the system.
- Information theft (regulated in Articles 269C, 269F and 269G of the Penal Code): Intercepting IT data or the unauthorized use of personal data for personal benefit or that of a third party. Impersonating websites to collect personal data is also a cybercrime.
- Damage to IT systems (regulated in Articles 269B, 269D and 269E of the Penal Code): Damage to an IT system, including deleting, altering or deteriorating the data or logical components thereof. The use of malware or simply preventing or hindering the operation of or access to said IT systems is also a cybercrime.

- Asset theft using computer systems (regulated in Articles 269I and 269J of the Penal Code): The transfer, without consent, of assets by manipulating computer systems or theft involving overcoming IT security measures.

Cybersecurity recommendations in Colombia

The following are a few recommendations:

- Include clauses covering responsibility for the proper management of information and IT systems in employment and third-party service contracts.
- Implement an information security management system that takes into account the organization's responsibility and business risks.
- Follow Colombia's strict regulations to properly identify and manage personal information. Whenever personal information is gathered with the sole purpose of obtaining statistical data, it must be anonymized.
- Be familiar with the organization's information assets, clarify their importance to the continuity of the business and protect them accordingly.
- Classify the information in confidentiality levels, be familiar with the responsibilities that come with each level of confidentiality and appoint the personnel that should or should not have access to said information. Label and protect the information according to its level of confidentiality.
- Guarantee the availability of the information and the IT systems by creating backup systems and copies. Backup copies must be as well protected as the originals.
- Guarantee the integrity and originality of the digital documents by using digital signatures, hash codes and time stamps.
- Guarantee the confidentiality of the information by encrypting files or communications.

Health regulations

In order to import, manufacture and/or sell a product (foodstuff, dietary supplements, medications, phytotherapeutic products, diagnostic reagents, liquors and/ or cosmetics) within the national territory, the manufacturer or importer must take the following into account.

Product	General information
Foodstuff	<ul style="list-style-type: none"> • Obtain the corresponding health registration for each product prior to selling. • Renew the health registration at least 6 months prior to its expiration. • Comply with health regulations pertaining to labeling. • Comply with regulations relating to nutrition information labeling (if stated on the label). • Comply with advertising-related obligations. • Comply with the technical rules of each product. • Sell the product in accordance with the health registration obtained. • The importer must be duly registered at the Invima (only for imports).
Dietary supplements	<ul style="list-style-type: none"> • Obtain the corresponding health registration for each product prior to selling. • Renew the health registration at least six months prior to its expiration. • Comply with health regulations pertaining to labeling. • Comply with regulations relating to nutrition information labeling • Comply with advertising-related obligations. • Comply with the technical rules of each product. • Sell the product in accordance with the health registration obtained. • The importer must be duly registered at the Invima (only for imports).

Product	General information
Medication	<ul style="list-style-type: none"> • Obtain the corresponding health registration for each product prior to selling. • Renew the health registration at least six months prior to its expiration. • Comply with health regulations pertaining to labeling. • Comply with advertising-related obligations. • Comply with the technical rules of each product. • Submit pharmacovigilance reports. • Report the prices of medications. • Sell the product in accordance with the health registration obtained. • The importer must be duly registered at the Invima (only for imports).
Phytotherapeutic products	<ul style="list-style-type: none"> • Obtain the corresponding health registration for each product prior to selling. • Renew the health registration at least six months prior to its expiration. • Comply with health regulations pertaining to labeling. • Comply with advertising-related obligations. • Comply with the technical rules of each product. • Sell the product in accordance with the health registration obtained. • The importer must be duly registered at the Invima (only for imports).
Medical devices	<ul style="list-style-type: none"> • Obtain the corresponding health registration for each product prior to selling. • Renew the health registration at least six months prior to its expiration. • Comply with health regulations pertaining to labeling. • Comply with advertising-related obligations. • Comply with the technical rules of each product. • Sell the product in accordance with the health registration obtained. • The importer and storage facility must be duly registered at the Invima (only for imports).

Product	General information
Diagnostic reagents	<ul style="list-style-type: none"> • Obtain the corresponding health registration for each product prior to selling. • Renew the health registration at least six months prior to its expiration. • Comply with health regulations pertaining to labeling. • Comply with advertising-related obligations. • Comply with the technical rules of each product. • Sell the product in accordance with the health registration obtained. • The importer and storage facility must be duly registered at the Invima (only for imports).
Liquors	<ul style="list-style-type: none"> • Obtain the corresponding health registration for each product prior to selling. • Renew the health registration at least 6 months prior to its expiration. • Comply with health regulations pertaining to labeling. • Comply with advertising-related obligations. • Comply with the technical rules of each product. • Sell the product in accordance with the health registration obtained. • The importer must be duly registered at the Invima (only for imports)
Cosmetics	<ul style="list-style-type: none"> • Obtain the corresponding health registration for each product prior to selling. • Renew the health registration at least six months prior to its expiration. • Comply with health regulations pertaining to labeling. • Comply with advertising-related obligations. • Comply with the technical rules of each product. • Sell the product in accordance with the health registration obtained. • The importer must be duly registered at the Invima (only for imports).

CONSUMER LAWS

The Colombian Consumer Statute seeks to regulate the rights and obligations arising between producers, suppliers and consumers and the responsibility of producers regarding their products in the market.

The rules contained in this law are generally applicable to consumer relations and the responsibility of producers and suppliers towards consumers in all sectors of the economy.

Rights of consumers

- Right to receive quality products: Receive products in accordance with the conditions established by the legal guarantee, those offered and the usual market.
- Right to security and indemnity: Consumers have the right to enjoy products that do not cause harm to consumers under normal conditions of use, and the right to be protected against harmful consequences to health, life or integrity.
- Right to information: Obtain complete, truthful, transparent, timely, verifiable, comprehensible, accurate and suitable information regarding the products offered or put into circulation, as well as the risks that may arise from their use or use, protection mechanisms of their rights and ways of exercising them.
- Right to receive protection against misleading advertising.
- Right to claim: Implies to claim directly to the producer, supplier or supplier and obtain a comprehensive, timely and adequate repair of all damages suffered, as well as having access to judicial or administrative authorities for the same purpose, under the terms of this law.
- Right to choose: To choose freely the goods and services that they require.
- Right to participate: To organize and associate to protect their rights and interests, to elect their representatives, to participate and be heard by those who perform public functions in the study of the legal and administrative decisions that concern them, as well as to obtain a response to their requests.
- Right of representation: Consumers have the right to be represented, for the resolution of claims on consumption of goods and services, and violations of this law, by their organizations, or spokespersons authorized by them.
- Right to inform: Consumers, their organizations and public authorities will have access to the mass media, to inform, disseminate and educate about the exercise of consumer rights.

Duties of consumers

- Inform themselves about the quality of the products, as well as the instructions supplied by the supplier or producer in relation to their proper use or consumption, installation and maintenance.
- Behave in good faith towards suppliers and producers and against public authorities.

Quality, suitability and safety of products

- **Quality:** The condition in which a product meets the inherent characteristics and those attributed by the information supplied on it.
- **Suitability:** Product's ability to meet the need or needs for which it has been produced or marketed.
- **Safety:** The condition of the product that, in normal use, taking into account the duration, commissioning, installation and maintenance, does not present unreasonable risks to the consumer's integrity or integrity. Right to choose.

Obligations of producers and suppliers regarding the quality, suitability and safety of products

Every producer must ensure the suitability and safety of the goods and services offered or put on the market, as well as the quality offered.

Failure to comply with this obligation will result in:

- Joint responsibility of the producer and supplier for guarantee to consumers.
- Individual administrative responsibility before the Superintendency of Industry and Commerce (fines).
- Liability for defective product damages.

Guarantee

- The guarantee is a temporary obligation, jointly and severally borne by the producer and the supplier, to be responsible for the good condition of the product and its compliance with the conditions of suitability, quality and safety that are legally enforceable or offered.

- The term of the legal guarantee shall be as provided by law or by the competent authority.
- In the absence of mandatory compliance, apply the one announced by the producer and/ or supplier.
- The term of legal guarantee will start to run from the delivery of the product to the consumer.

Warranty terms

If the guarantee term is not indicated by the producer, the term will be:

- One year > for new products
- The expiration date > for perishable goods
- Three months > used products (it can be unsecured if the consumer is explicitly warned and accepted by the consumer in writing).
- Three months > for repairs (it can be unsecured if the consumer is explicitly warned and accepted by the consumer in writing).

The guarantee term will be suspended while the consumer is deprived of the use of the product at the time of the effectiveness of the guarantee.

If there is a complete change of the product by another, the guarantee term will start to run again in full from the time of the replacement.

If one or more parts of the product are changed, they will have their own warranty.

Technical assistance must be available for installation, maintenance and use in accordance with the nature of these.

The availability of spare parts, parts, supplies, and skilled labor must be available, even after the warranty has expired for the term established by the competent authority or the producer. What does the warranty include?

- The free repair of defects of the goods, as well as their transportation, if necessary, and the timely supply of spare parts.

- If the property does not allow repairs, it will proceed with the replacement or full refund of the money.
- If the fault is repeated (it must be the same fault), at the consumer's choice: i) a new repair will be carried out; ii) the total or partial repayment of the price paid; or iii) the total or partial change of the good by another of the same species, similar characteristics or technical specifications.

Grounds for exoneration

The producer or supplier will be relieved of the liability deriving from the guarantee when it proves that the defect comes from:

- Force majeure or fortuitous event
- A fact of a third party
- Misuse of the product by the consumer
- Consumer's lack of compliance with the installation, use or maintenance instructions stated in the product manual and in the warranty

Provision of services involving the delivery of a good: technical service

- The person who provides the service must issue a receipt of the goods in which it mentions the date of receipt and the name of the owner or person making the delivery, address, telephone number, identification of the good, type of service, guarantee term and, if possible, the value of the service and the date of return.
- The provider of the service assumes the custody and proper conservation of the property, and therefore the integrity of the elements that compose it.
- At the consumer's choice, either the service will be provided under contracted conditions or the cost of the service will be returned.
- Provide instructions for installation, maintenance and use of the products.
- Have technical assistance for the installation, maintenance and use of the products, which may have additional value.

- Repair the good or replace it with another of the same characteristics or pay its equivalent.

Liability for defective product

When a member of the manufacturing, distribution and commercialization chain has knowledge that at least one product manufactured, imported or marketed by it, has a defect that has produced or may produce an adverse event that is detrimental to the health, life or safety of persons, the corresponding member of the chain shall take corrective measures on the products that have not been delivered or placed in the market and [said member] must inform of the fact within three calendar days.

The producer and vendor shall be jointly and severally liable for damages caused by defects in their products.

Duty of information

- Suppliers and producers must provide consumers with clear, truthful, sufficient, timely, verifiable, comprehensible, accurate and suitable information on the products they offer.
- Suppliers and producers shall be liable for any damage resulting from inadequate or insufficient information.

Minimum information regarding a product or service

- Instructions for the correct use or consumption, conservation and installation of product
- The specifications of the good or service
- The information regarding the guarantees that assist the consumer
- The price—the supplier is obliged to inform the consumer of the price in Colombian pesos, including all taxes and additional costs of the products

Advertising

- Advertising is any form and content of communication, whose purpose is to influence consumption decisions.
- The objective and specific conditions announced in the advertising force the advertiser in the terms of such advertising.
- Misleading advertising is prohibited (meaning advertising that does not correspond to the reality, that is insufficient or that induces or can induce in error, deception or confusion to the consumer).
- The advertiser will be responsible for the damages caused by misleading advertising.
- The terms of promotions and offers obligate those who make them and will be subject to the rules incorporated in the statute.
- Indications of time, mode, location and any other requirements to access the promotion must always be informed.

Sales using non-traditional or remote methods

- Sales methods that are held without the consumer having sought them, such as those made in the place of residence of the consumer or outside the establishment of commerce.
- Distance sales are made without the consumer having had direct contact with the product, such as those given by means such as mail, telephone, catalog or digital media.

The producer or supplier making distant sales must:

- Ensure that the delivery of the good or service is effectively carried out following the directions indicated by the consumer
- Allow the consumer to make claims and returns on the same terms and by the same means as the original transaction
- Maintain the necessary records

- Inform in advance the availability of the product, the right of withdrawal and the way of exercising it, the time of delivery and the terms and conditions of the purchase.

Right of withdrawal

- It applies to all contracts for the sale of goods and services through financing systems granted by the producer, sales using non-conventional or remote means, which by their nature should not be consumed or have not begun to be executed before five days.
- The consumer must return the product by the same means and in the same conditions in which he received it.
- The transportation costs and others that lead to the return will be covered by the consumer.
- The maximum term to exercise the right of withdrawal will be five business days from the date the consumer received it.

The following cases are excluded from the right of withdrawal:

- Contracts for the provision of services whose service has begun
- Contracts for the supply of goods and services whose price is subject to fluctuations in market coefficients that the producer cannot control
- Contracts for supplying manufactured goods conform to consumer specifications or clearly customized
- Contracts to supply goods that by their nature cannot be returned
- Purchase contracts for perishable goods

Colombian privacy law

With the issuance of Law 1581 of 2012, Colombia established a general regime for the protection of personal data that must be observed by all natural and/or legal persons, of a public or private nature, that process personal data. Colombian privacy law takes a comprehensive approach, considering that it applies

to all data processing that is not excluded by few exceptions provided by the law.

It is important to note that, under Colombian privacy law, data processing includes any operation carried out on information that may be linked to a natural person (data subject), including the collection, storage, use, deletion, updating, transmission and transfer of personal data. Therefore, the performance of any of the activities listed above, if not exempted by the law, is ruled by Colombian privacy law.

Definitions and obligations

The obligations that you must observe will depend on your position at the moment of processing the personal data. This position is defined by law in the following terms:

- **Data controller:** Any legal or natural person who decide on the databases and/or the purposes of the data processing; i.e., generally, companies are data controllers when they process personal data of their employees, suppliers, customers, etc.
- **Data processor:** Any legal or natural person who processes personal data on behalf of a data controller; for example, an external accounting adviser is a data processor when it processes personal data sent by its clients for the purposes of the advice.

A natural or legal person may simultaneously be a data controller and a data processor. In that case, the obligations defined for each one must be observed.

International data transfers and transmissions

Colombian privacy law establishes specific obligations in order to protect personal data that is accessed or processed by third parties abroad. To this end, it distinguishes two categories:

- **International data transmission:** The sending of personal information to a natural or legal person located abroad, who will process the data on behalf of a data controller. Examples of international data transmissions are (i) the contracting of outsourcing services with entities located abroad, concerning

the sending of databases or personal information (i.e., payroll management processes, health services overseas, etc.); or (ii) contracting cloud services, when the supplier stores information on a server located outside Colombia.

- **International data transfer:** The sending of personal information to a natural or legal person located abroad, who will decide autonomously on the purposes and treatment of personal information. An example of this is the sending of information of a subsidiary company to its parent company, when the latter uses the information according to its own parameters.

International data transfers and transmissions constitute different regimes with diverse obligations. Therefore, if you or your company transmit or transfer personal data abroad, the following requirements must be taken into account.

Supervision and sanctions

The entity designated to supervise the compliance of Colombian privacy law is the Superintendence of Industry and Commerce, through its Data Protection Office. Please note that non-compliance with any of the provisions established by law may cause the following penalties:

- Fines, up to the equivalent of 2,000 times the minimum monthly legal wage (approximately COP\$1.475 million or US\$500 thousand)
- Temporary suspension or closure of activities related to the data processing
- Immediate and definitive closing of the operation involving the processing of sensitive data.

International Data Transmissions

In principle, you must inform all data subjects about the data transmissions.

Nevertheless, you may dismiss the abovementioned requirement, if you subscribe a data transmission contract with the data processors, in the terms set forth in the Law.

International Data Transfers

In principle, international data transfers are prohibited by the law, if the recipient country does not offer adequate data protection standards.

Nevertheless, you can transfer personal data if:

1. It is included in one of the exemptions provided by the law
2. You obtain a declaration of conformity from the DPA

Taking into account the above mentioned categories, the law establishes the following obligations:

Data controllers	Data processors
<p>If you are a data controller, you must:</p> <ul style="list-style-type: none">• Guarantee data subjects, at all times, the full and effective exercise of the right of habeas data (access, update, rectify and to suppress their personal data)• Request and keep proofs, under the conditions established by law, of all authorizations given by the data subjects for the processing of their personal data.• Keep the information under the necessary security conditions to prevent its adulteration, loss, consultation, unauthorized use or fraudulent access• Implement a privacy policy and make it available to data subjects• Implement manuals and procedures to ensure proper compliance with the law, including the implementation of a privacy officer or committee.• Inform the DPA - Data Protection Authority- (Superintendence of Industry and Commerce-SIC) of the occurrence of data breaches or potential risks in the administration of the personal data.• Register their databases in the National Registry of Databases (RNBD), which is a public directory administered by the Superintendence of Industry and Commerce.	<p>If you are a data processor, you must:</p> <ul style="list-style-type: none">• Process personal data in accordance to: (i) the instructions given by the data controller and its privacy policy; (ii) the scope of the authorizations given by the data subjects.• Guarantee data subjects, at all times, the full and effective exercise of the right of habeas data (access, update, rectify and to suppress their personal data).• Keep the information under the necessary security conditions to prevent its adulteration, loss, consultation, unauthorized use or fraudulent access.• Implement a privacy policy and make it available to data subjects• Implement manuals and procedures to ensure proper compliance with the law, including the implementation of a privacy officer or committee.• Inform the DPA – Data Protection Authority – (Superintendence of Industry and Commerce– SIC) of the occurrence of data breaches or potential risks in the administration of the personal data.

International trade and investment agreements



Colombia has some free trade and investment tools in force, which were negotiated to boost foreign investment and open new markets to local companies. Colombia is also part of some regional treaties.

Free trade agreements (FTAs)

FTAs are agreements between two or more parties under which they give each other preferential market access through preferential custom duties and other measures. FTAs usually apply to trade of certain goods. They also include a proscription of restriction and prohibitions on importation of goods, with the exception of sanitary and phyto-sanitary measures. In most cases, these agreements also cover trade in specific services.

Colombia currently has FTAs in force with Chile, Canada, the United States of America, Cuba, Korea, Costa Rica, Nicaragua, South Korea, Venezuela and Mexico. Each of the FTAs signed and implemented by Colombia differ in their specific content and obligations. The FTA's target is to increase market access in goods and services and, in some cases, investments, intellectual property and government procurement.

Andean Community Agreement

Colombia is part of the Andean Community Agreement, which is a regional agreement that includes free trade provisions. Bolivia, Colombia, Ecuador and Peru are currently part of the Andean Community Agreement. Furthermore, Chile, Argentina, Brazil, Paraguay and Uruguay are associated members of this agreement.

The Andean Community Agreement's target was the integration of the parties into a common market. It includes custom, intellectual property, tax, investment and other provisions.

International investment agreements

International investment agreements (IIA) are agreements entered into with other countries, by means of which each state assumes certain obligations regarding investments made by an investor from the other contracting party. Colombian IIAs are composed of bilateral investment treaties and free trade agreements that contain investment chapters.

Colombia is a party to IIAs already in force with Mexico, Peru, Chile, Spain, Guatemala, El Salvador, Honduras, Switzerland, Norway, Iceland and Liechtenstein, Canada, United States, China, India, United Kingdom, Japan, Costa Rica and the member states of the European Union, with the exception of Croatia.

Other treaties

Central America North Triangle FTA. Colombia is a party to an FTA in force with Guatemala, El Salvador and Honduras. This agreement established a free trade zone which the parties may access.

Caricom Agreement. Colombia has executed an agreement that grants preferential market access with 12 of the 15 members of the Caribbean Community (CARICOM). Trinidad and Tobago, Jamaica, Barbados, Guyana, Antigua and Barbuda, Belize, Dominica, Granada, Montserrat, Saint Kitts and Nevis, Saint Lucia, San Vicente and Grenadines Islands are currently part of this agreement. This agreement includes preferential access to the Colombian market for the trade of specific goods.

Mercosur – Can Agreement. Colombia is party to an agreement executed by the members of the Andean Community Agreement and the members of Mercosur (Argentina, Brazil, Paraguay and Uruguay). This agreement establishes a free trade zone.

EFTA Agreement. Colombia is a party to an agreement executed with the members of the European Free Trade Association (Switzerland, Norway, Iceland and Liechtenstein). The purpose of this agreement is to open new markets, expand the current investment and allow Colombia to get closer to the European Union market.

Colombia, Peru and European Union Agreement. Colombia is a party to an agreement executed by Colombia and Peru, from one side, and the European Union and its member states from the other side (with the exception of Croatia). This agreement allows Colombia and Peru to have permanent and preferential access to the European market.

Pacific Alliance Agreement. Colombia is part of the Pacific Alliance, created by Chile, Colombia, Mexico and Peru, in order to ensure regional integration among these countries. As a first step, the parties executed a frame agreement. Later the parties executed an additional instrument, which granted commercial preferences.



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