Doing Business 2023

POSSE HERRERA RUIZ

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ABOUT US

Posse Herrera Ruiz is a well-established full-service law firm with around 120 attorneys and 25 partners (including two special counsels admitted to the **New York State Bar), all fully bilingual and with broad experience across our key practice areas:**

- Mergers and Acquisitions
- Competition Law
- Consumer Protection and Data Protection
- Compliance and International Investigations
- Local and International Litigation
- Corporate Law
- Tax, Customs & International Trade
- Finance & Capital Markets
- Dispute Resolution
- Insolvency
- Natural Resources and Energy
- Infrastructure, PPPs and Public Law
- Real Estate, Land Use, Urbanism & Agribusiness
- Intellectual Property
- Labor & Immigration
- Insurance
- Environmental & Sustainability
- White-collar crime

HOW TO USE THIS GUIDE

This document provides a general outline of the business environment in Colombia, including the key legal, commercial and practical concerns for clients.

However, this document is not a replacement for specific advice in relation to individual circumstances. Posse Herrera Ruiz shall not be responsible for any actions taken based on the information in this document. We encourage you to seek specific advice, which will be tailored to your business.

FINANCIAL VALUES

Each year, the national government, in consultation with the industry trade associations and unions, sets the minimum legal monthly wage ("MLMW") to be paid to employees. For 2023, the MLMW was set at COP $1,160,000 (approx. USD $242 at an exchange rate of COP $4,800 per one (1) USD).

Under Colombian law, the size of many fines and legal thresholds are defined as multiples of the MLMW. As such, many sums in this document will be expressed as multiples of the MLMW. For exchange purposes, we have used an indicative exchange rate of COP$ 4,800 per one (1) USD throughout this document.

INTRODUCTION

FACTS AND FIGURES ABOUT COLOMBIA

Colombia is located in the northernmost part of South America. It has a population of roughly 51 million inhabitants, with 7 million living in the capital Bogota. The main language is Spanish.

Colombia has a democratic and centralized government. It is divided politically into departments, districts and municipalities. The President of the Republic is the chief of State and is elected for a 4-year term. The Congress is divided into 2 chambers, the Senate and House of Representatives. There is an independent judiciary which administers the courts.

Colombia has the fourth largest economy in Latin America and has increased its Gross Domestic Product (GDP) every year for the past 10 years. During the third trimester of 2021, the GDP increased by 13.2% in relation to the previous trimester. For 2022, the Organization for Economic Cooperation and Development (OECD) estimated a growth in the Colombian economy of 8,1%.

The Colombian, Peruvian and Chilean stock exchanges are part of an Integrated Latin-American Market. This is the largest market based on number of companies in Latin America and the second largest based on market capitalization. It is possible to purchase and sell the stocks listed in the three stock exchanges through a local stockbroker in each of the member countries.

In 2016 a peace treaty was signed between the guerrilla group FARC and the Colombian government, which is in the process of being implemented. The end of the armed conflict with the FARC will help open up previously off-limits areas of the country to exploration and development; this process has been underway for several years already as security conditions have been improving, but the peace deal with the largest guerrilla group will accelerate this trend. The sectors that stand to benefit the most are agriculture, tourism, and mining.

In 2020, a law to support entrepreneurship was passed. Through this, the creation and development of small and medium-sized companies is encouraged through several benefits. Among these benefits are differentiated rates, and more access to public procurement processes and the financing of projects. The law has a special interest on social, green and sports companies, as well as those that favor

1 FOREIGN INVESTMENT

The cornerstone of foreign investment regulations in Colombia is the principle that foreign investors will receive the same treatment as national investors (and vice-versa).

Foreign investment is generally permitted in all economic sectors except for (i) national defense, and (ii) the processing or disposal of hazardous waste not produced in Colombia. There are also limitations applicable to the oil and gas, financial, public television, private security and surveillance sectors.

Branches of foreign companies dedicated to oil and mining activities and related services, have a special regime whereby they have no obligation to repatriate into Colombia any revenues obtained from their activity. This means that they are able to keep such funds abroad without bringing them into the country. However, such branches have no access to the foreign exchange market, and so they cannot access foreign indebtedness operations or financing for imports.

Foreign direct investment in the financial and insurance industry may require approval from the Colombian Financial Superintendency ("CFS"). An investment in more than 10% of the outstanding voting stock of any institution which is regulated by the CFS (such as finance and insurance companies) requires prior approval of the CFS. This approval may not be denied provided that the investment "promotes public welfare, and that the investor duly credits its moral and financial solvency" as determined by the CFS.

There are 2 types of foreign investment: foreign direct investment and portfolio foreign investment. Foreign direct investment is defined as: (i) equity contributions made to the capital of local companies or branches with non-Colombian head offices, (ii) the acquisition of real estate by foreign investors, or (iii) the investment in private equity funds. Foreign direct investment may be made via currency and/or assets.

Portfolio foreign investment is investment made through local capital markets, which must be made through specially designated managers who hold portfolio foreign investment funds composed of investments made by individuals or legal persons. Permitted portfolio investment managers are stock brokerage entities, trust companies and any investment management company regulated by the CFS.

1.1 | RIGHTS OF FOREIGN INVESTORS

With very few exceptions, direct foreign investment is automatically registered with the Central Bank (*Banco de la República*) when the corresponding foreign exchange form is filed with a local bank or financial entity. Registration before the Central Bank shall be made, in compliance with Regulatory Circular Letter DCIP-83 of the Central Bank.

Registration of foreign investment grants the investor a legal right to remit proceeds and other returns (i.e., dividends) from the investment outside of Colombia. Additional rights include:

- Reinvestment of all proceeds, if desired by the investor.
- Capitalization of investment proceeds.
- Remittance of investment sale proceeds or remaining funds after the local company is wound up or liquidated.

These rights are protected. They can only be limited or removed by temporary measures adopted by the Central Bank or the government when the country's international reserves are reduced to less than three months of imports. This event has not occurred since the exchange regime was liberalized in 1991.

1.2 | FOREIGN INDEBTEDNESS

Colombian residents may obtain credit from, and grant loans to, foreigners and non-residents. Such foreign indebtedness agreements and all transactions related with the same, must be registered before the Central Bank, by filing the corresponding foreign exchange form with the local bank or financial entity which receives or transfers the foreign currency.

The interest rate and the amortization plan for foreign currency loans may be freely stipulated by the parties. In the event of indebtedness between related/affiliated entities, the interest rate shall be determined on an arm's length basis.

1.3 | REAL ESTATE INVESTMENT

Foreign investors may acquire real estate without restrictions, such acquisition will be automatically registered as foreign investment with the Central Bank by filing of the relevant foreign exchange form when the payment is transferred to the seller.

Real estate investment in Colombia may be done through an ample spectrum of structures, which in general involve the acquisition of either (i) real estate in and of itself; or (ii) rights over special vehicles – shares in a company or rights over a trust, for example – whose underlying asset is the real estate.

The acquisition of real estate requires the performance of certain legal formalities. The conveyance must be done by deed executed before a notary public in Colombia, and then it must be registered before the corresponding registration office.

The granting and registration of the deed arrears to both parties the payment of: (i) notary fees, (ii) registration tax and (iii) registration fees. The exact value varies from case to case, but it represents around 3% of the transaction's value.

Charges imposed on real estate include the following (while such burdens are imposed on the asset not on the owner, the owner is the person likely to have to pay):

- **Property Tax (*Impuesto Predial*)**. This is a municipal tax, established by the municipal councils *(Concejos Municipales*) or by the special district of Bogotá (*Distrito Especial de Bogotá*) depending on the location of the real estate property. This fee may fluctuate within 5 to 16 COP per 1000 COP applied to the cadastral value of the property and depending on the specific characteristics of the property.

- **Appreciation Contribution (*contribución por valorización*)**. The main cause of the appreciation contribution is when public interest works are built which benefit the real estate. The rate will depend on how the works benefit the real estate and the method used to determine the value of the benefit.

- **Surplus value tax (*participación en plusvalía*):** Is the tax charged over the increase in a property's value stemming from certain changes in the zoning and land use rules applicable to the parcel.

On the other hand, it is possible to use real estate as security for obligations – whether its owner's or a third party's, through mortgages or security trusts. Imposition of the mortgage or conveyance to the security trust must also be done by deed registered on the corresponding registration office.

1.3.1 RELEVANT URBAN LAW MATTERS

The development of buildings in Colombia requires compliance **with the urban regulations mainly contained in the City Plans issued by the respective Municipalities.**

Through these instruments, limitations and obligations are established for the owners of properties. Particularly, they delimit the territory and determine the classification of land uses, the soil treatments, the intensity of use, insulation, buildable area, heights, among other urban planning conditions that are mandatory.

Development of commercial activities on properties requires the authorization of urban mandatory conditions. As a consequence, their development they are subject to obtaining: (i) land management instruments, and / or (ii) the corresponding urban planning licenses.

Land management instruments generally develop, complement and specify the provisions contained in the City Plans for specific areas or land with specific uses. Among them are: (i) partial plans; (ii) zonal plans; (iii) reorganization plans; among others.

On the other hand, urban permits authorizing the use and exploitation of land, imply the acquisition of development or construction rights, depending on the type of license obtained, and certify compliance with urban regulations and other technical and complementary standards.

2 BUSINESS ENTITIES

Owning interests or having investments in Colombia does not create the obligation to be legally established in the country. However, if the investor intends to conduct permanent activities in Colombia, it will be required to establish a local branch or Colombian company.

The Colombian Commerce Code provides a number of corporate forms, ranging from partnerships to stock corporations. The government entity in charge of the inspection and surveillance of companies, as a general rule, is the Superintendency of Companies.

2.1 | LIMITED LIABILITY COMPANIES

These companies, known in Spanish as *Sociedades de Responsabilidad Limitada*, are identified with the abbreviation "Ltda.", which must be included in the corporate name. The partners' liability is limited to the amount of their respective capital contributions, except for labor and tax liabilities. Partners will be held responsible in a subsidiary manner, albeit jointly, with the company for such liabilities. For more detailed information regarding this type of vehicle please review Section 2.7 of this document.

2.2 | STOCK CORPORATIONS (SA)

In Stock Corporations, known as *Sociedades Anónimas*, shareholders' liability is limited to the face value of their stockholdings. While Stock Corporations may negotiate their shares on local capital markets, the by-laws may establish preemptive rights for the subscription or negotiation of shares issued by the corporation. Preemptive rights for the negotiation of shares will be deemed suspended if the company's shares are negotiated in any stock exchange. For more detailed information regarding this type of vehicle please review Section 2.7 of this document.

2.3 | SIMPLIFIED STOCK CORPORATION (SAS)

Known as Sociedades por Acciones Simplificadas, or "SAS", this type of corporation is known for being the most flexible type of vehicle, allowing shareholders to freely agree on the terms of the company's by-laws. The liability of shareholders is limited to the amount of their capital contribution and the corporate veil is especially protected.

According to the applicable regulations, SAS may not trade their shares in the public stock market. For more detailed information regarding this type of vehicle please review Section 2.7 of this document.

2.4 | BRANCH OFFICES OF FOREIGN COMPANIES

Foreign entities conducting permanent activities within Colombian territory, who do not wish to incorporate a Colombian company, may incorporate a branch office in Colombia. Branch offices are considered as commercial establishment of the parent company and not as an independent legal person. For more detailed information regarding this type of vehicle please review Section 2.7 of this document.

2.5 | PUBLIC UTILITIES COMPANIES

Although they are not a different type of legal entity, companies providing public utility services must comply with a number of corporate requirements[1], which include:

a. Being incorporated either as a Stock Company (SA), or as a Simplified Stock Company (SAS).
b. Having a corporate purpose which refers to its activity. This can be as wide as "the provision of one or more public utility services and the development of any complementary activity".
c. Having a board of directors, and a statutory auditor. The legal representative must be a Colombian national.
d. Having at least 5 shareholders
e. Submitting the minutes of the shareholders' meetings to the Public Utilities Superintendency.

2.7 | BUSINESS ENTITIES COMPARISON MAIN CHARACTERISTICS

	Limited Liability Companies	Stock Corporations	Simplified stock Company	Branch Offices of Foreign Companies
NUMBER OF PARTNERS/ SHAREHOLDERS	At least 2 partners, with a maximum of 25 partners.	At least 5 shareholders, none of whom may hold 95% or more of the outstanding share capital.	Any number, even a sole shareholder.	Not applicable.
LIABILITY OF PARTNERS/ SHAREHOLDERS	Liability of partners is limited to their equity contributions, except for tax and labor obligations, where partners could be held liable on a joint and subsidiary basis with the company.	Liability of shareholders limited to their equity contributions, except in cases of fraud.	Liability of shareholders limited to their equity contributions, except in cases of fraud.	The parent company is directly liable for all liabilities incurred in connection with activities undertaken by the Branch Office in Colombia.
FORMAL REQUIREMENTS	By-laws or any amendment to the same shall be formalized by a public deed granted before a Colombian notary public and registered before the Chamber of Commerce.	By-laws or any amendment to the same shall be formalized by a public deed granted before a Colombian notary public and registered before the Chamber of Commerce.	By-laws or by-laws amendments do not need to be formalized through a public deed. Incorporation is formalized through a private document signed by the shareholders before a notary public and registered before the chamber of commerce. By-laws amendments are formalized by registration of a copy of the shareholders resolution approving the same before the Chamber of Commerce.	To open a branch, a public deed needs to be executed before a Colombian public notary with the following information: (i) the by-laws of the parent company, (ii) a copy of the decision issued by the parent company to open a branch in Colombia, and (iii) evidence that the directors have the authority to represent the company. The deed must then be registered before the local Chamber of Commerce.

2 BUSINESS ENTITIES

	Limited Liability Companies	Stock Corporations	Simplified stock Company	Branch Offices of Foreign Companies
CAPITAL	There are no minimum capital requirements for this type of company. The full capital must be paid at its incorporation. However, if the company is going to hire an employee that requires a work visa, the company must have a minimum capital or registered and paid assets equivalent to 100 MLMW (about USD $24,162).	Except for financial institutions or insurance companies, there are no minimum capital requirements for this type of company. At its incorporation, shareholders must subscribe at least 50% of the authorized capital, and pay at least 1/3 of the value of each share of the subscribed capital. The remaining 2/3 shall be paid within 1 year. However, if the company is going to hire an employee that requires a work visa, the company must have a minimum capital or registered and paid assets equivalent to 100 MLMW (about USD $24,162).	There are no minimum capital requirements for this type of company. The subscription and payment of the capital can be made according to the terms established by the shareholders, save that the payment of shares cannot exceed 2 years. However, if the company is going to hire an employee that requires a work visa, the company must have a minimum capital or registered and paid assets equivalent to 100 MLMW (about USD $24,162).	Once the branch is established, all of its assigned capital must be paid. Additional contributions may be made through supplementary investment to the assigned capital, which does not require any formality other than registration as foreign investment with the Central Bank. However, if the branch is going to hire an employee that requires a work visa, the company must have a minimum capital or registered and paid assets equivalent to 100 MLMW (about USD $24,162).

	Limited Liability Companies	Stock Corporations	Simplified stock Company	Branch Offices of Foreign Companies
ASSIGNMENT OF QUOTAS/SHARES	The sale or assignment of quotas requires an amendment to the bylaws. Once the decision is taken, it must be legalized through a public deed duly registered before the Chamber of Commerce.	In general terms, unless the bylaws establish a preemptive right for shareholders to acquire shares, shares are freely transferable, and their purchase does not need any amendment to the bylaws. Transfers are formalized by registration in the Shareholders' Ledger and the issuance of share certificates. A preemptive right is the only valid method which can limit the transfer of shares.	Generally, unless the by-aws establish a preemptive right for shareholders to acquire shares, shares are freely transferable, and their purchase does not require any amendment to the bylaws. Transfers are formalized by registration in the Shareholders' Ledger and the issuance of share certificates. The transfer of shares may be prohibited or limited for up to 10 years and may be made subject to authorization at the shareholders meeting or another corporate body.	Not applicable.
LEGAL RESERVE FUND FROM PROFIT	There is an obligation to reserve an amount equivalent to 10% of the net annual profits into a legal reserve, until the reserve is equivalent to 50% of the capital.	There is an obligation to reserve an amount equivalent to 10% of the net annual profits into a legal reserve, until the reserve is equivalent to 50% of the capital.	No obligation to have a legal reserve, unless it is required in the bylaws.	There is an obligation to reserve an amount equivalent to 10% of the net annual profits into a legal reserve, until the reserve is equivalent to 50% of the capital.
FOREIGN INVESTMENT	Foreign investment in the company's or branch's capital must be registered before Central Bank. Any changes regarding the registered investment (i.e., sale, liquidation, mergers, and spin-offs, among others) must be reported to Central Bank as well.			
STATUTORY AUDITOR	Not required unless: (i) the value of gross assets is equal to or higher than 5,000 MLMW (about USD $1,208,333), or (ii) the gross income of the previous year is equal to or higher than 3,000 MLMW (about USD $725,000).	Mandatory for Stock Corporations.	Not required unless: (i) the value of gross assets is equal to or higher than 5,000 MLMW (about USD $1,208,333), or (ii) the gross income of the previous year is equal to or higher than 3,000 MLMW (about USD $725,000).	Mandatory for branches.

2 BUSINESS ENTITIES

	Limited Liability Companies	Stock Corporations	Simplified stock Company	Branch Offices of Foreign Companies
ADMINISTRATION	At least one of the partners should be appointed to manage the company. However, any individual without capital ownership may be appointed as executive officer (legal representative) of the company. The powers and limitations of authority of the legal representatives shall be set out in the company's bylaws and must be publicized at the Chamber of Commerce. Otherwise, it will be understood that the legal representatives can act on behalf of the company without restrictions, as long as such activities fall within the company's corporate purpose or relate directly to its ordinary course of business.	Management is usually in the hands of at least one executive officer (legal representative) who will be responsible for representing the company before third parties and the board of directors. The powers and limitations of authority of the legal representatives shall be set out in the company's bylaws and must be publicized at the Chamber of Commerce. Otherwise, it will be understood that the legal representatives can act on behalf of the company without restrictions, as long as such activities fall within the company's corporate purpose or relate directly to its ordinary course of business.	Management is usually in the hands of at least one executive officer (legal representative) who will be responsible for representing the company with third parties and the board of directors, if the company has decided to have one. The powers and limitations of authority of the legal representatives shall be set out in the company's bylaws and must be publicized at the Chamber of Commerce. Otherwise, it will be understood that the legal representatives can act on behalf of the company without restrictions, as long as such activities fall within the company's corporate purpose or relate directly to its ordinary course of business.	Management is usually in the hands of at least one executive officer or general manager (legal representative) who will be responsible for representing the branch with third parties. The powers and limitations of authority of the legal representatives shall be set out in the branch's by-laws and must be publicized at the Chamber of Commerce. Otherwise, it will be understood that the legal representatives can act on behalf of the company without restrictions, as long as such activities fall within the company's corporate purpose or relate directly to its ordinary course of business.

2 BUSINESS ENTITIES

	Limited Liability Companies	Stock Corporations	Simplified stock Company	Branch Offices of Foreign Companies
BOARD OF DIRECTORS	Having a board of directors is optional.	Must have a board of directors with at least three principal and three alternate members.	Having a board of directors is optional.	Not applicable.
DIVIDEND PAYMENT	If the foreign investment has been registered with the Central Bank, investors may freely remit any profits, provided they are supported in the approved year-end financial statements. The transfer of such dividends must be registered with the Central Bank.			
REPATRIATION OF CAPITAL	If the foreign investment has been duly registered with the Colombian Central Bank, investors may repatriate the invested capital upon completion of the liquidation, or reduction of capital, in accordance with certain rules.			
GOVERNMENT REGULATOR	Companies and Branches will be under the surveillance regime of the Superintendency of Companies when certain requirements are met[2]. Most common causes leading to surveillance include: a. When the year-end financial statements record total assets or revenues equivalent to or higher than 30,000 MLMW (about USD 7,250,000). b. When the year-end financial statements show an external debt that exceeds the total assets once valuation allowances for fixed assets have been deducted. c. When the year-end financial statements record financial expenses that represent 50% or more of the gross operational income.			
DISSOLUTION FOR NOT COMPLYING WITH THE HYPOTHESIS OF ONGOING BUSINESS	To determine if a company is under this situation, management must determine, based on the financial statements and / or the independent audit, if a company is able to continue as an ongoing business, or if, on the contrary, there is a material uncertainty about this capacity. In the framework of the International Financial Reporting Standards (IFRS), the ongoing business hypothesis refers to the generation of operating profits and cash flows, and the evaluation of the development and viability of the business, all this according to the business activity developed.			

[2] Described in Section 1, Chapter 2 of Title 2 of Unified Decree 1074 of 2015

3 FINANCIAL INSTITUTIONS, OTHER SUPERVISED ENTITIES AND SECURITIES ISSUERS

In Colombia, financial, capital markets and insurance activities, as well as any other activity related to the management, use and investment of funds collected from the public, have a special legal regime under the **Organic Statute for the Financial System, Decree 2555 of 2010, Law 45 of 1990 and Law 964 of 2005 ("Financial Regulations"). Companies subject to the surveillance of the Colombian Financial Superintendency – CFS, have exclusive corporate purpose, i.e., they may only perform acts which are explicitly authorized by law.**

3.1 | INCORPORATION OF REGULATED ENTITIES

The Financial Regulations establishes a special regime for the incorporation of entities under the CFS supervision.

Corporate Form and Minimum Capital Stock

Entities under the surveillance of the CFS must be incorporated as stock corporations and must have a minimum capital stock of between COP$7.411.000.000 (about USD 1.543.000) and COP$121.999.000.000 (about USD 25.416.000) for 2023[3], depending on the type of institution (banks, trust companies, SEDPEs, among others). Future shareholders must demonstrate that they have financial soundness and experience in the respective matters (suitability).

Incorporation process

The incorporation of these type of regulated entities requires prior approval from the CFS. Once the CFS has received all of the required information, it analyzes the documents and decides upon the incorporation request. During the process, the CFS may request additional documentation of the future entity, its directors and shareholders up to the ultimate beneficial owner.

If the CFS authorizes the incorporation and of the relevant entity, applicants must formalize the bylaws of the company in a public deed granted before a Colombian notary public and register it before the local Chamber of Commerce. Upon completion of the latter, the company will be deemed duly incorporated and may start setting up the operating infrastructure to develop its corporate purpose.

[3] These capital requirements are adjusted annually in proportion to the Consumer Price Index and are set by the CFS.

Once the entity has all necessary infrastructure in place to begin operations, it must request the CFS for an operating license. The CFS will request evidence and visit the facilities to assess the infrastructure, after which the operating license may be granted, and the entity will be able to carry out its corporate purpose.

3.2 | ADMINISTRATION

Being stock companies, entities under the surveillance of the CFS must comply with the administrative regime of this type of companies, outlined in Section 2.7 of this document.

In addition, all administrators and its compliance officer must comply with an appointment proceeding before the CFS, through which they must provide evidence of their moral soundness and professional experience.

As a general rule, board of directors of entities under the surveillance by the CFS must have an odd number of members, between five and ten, each with a personal alternate (at least half of the members must be independent from the company). In addition, special rules apply to pension and severance funds management companies, in which the board of directors shall have representatives of the employees and the pensioners.

3.3 | RISK ADMINISTRATION

Entities under the surveillance by the CFS must implement the comprehensive risk management system (SIAR), or the risk management system for entities excluded from SIAR called SARE, as applicable. Supervised entities must have an anti-money laundering and terrorist financing risk management system (SARLAFT).

3.4 | OPERATIONS OVER FINANCIAL INSTITUTIONS

Companies under the surveillance by the CFS require authorization from this entity to carry out, among others, mergers, de-mergers, conversions, assignment of all assets and liabilities, or the acquisition of 10% or more of the shares of the entity.

Accordingly, the entity or those interested in the acquisition, must submit an authorization request to the CFS before starting the process, which shall include the general information of the transaction and provides all documental evidence for the CFS to issue its authorization.

3.5 | SECURITIES ISSUERS

Securities issuers are entities that have securities registered with the National Securities and Issuers Registry (RNVE, per its acronym in Spanish) and are subject to the exclusive or concurrent control of the CFS. Such entities decide to finance their activities through the issuance of securities, i.e., bonds or shares.

In 2022, the CFS issued a regulation by which it seeks to adapt the periodic (quarterly and year-end) and relevant information disclosure regime to international standards and differentiate the information subject to disclosure according to the type of issuer, considering its nature and market preponderance.

3.6 | PROMOTION OF FINTECH COMPANIES AND NEW TECHNOLOGIES

3.6.1. Crowdfunding: Crowdfunding activities are developed by supervised entities (corporations with exclusive purpose) and intended for companies that require capital for certain specific matters.

This regulation allows emerging companies to obtain funds through the capital market from diverse investors, increasing their productive capacity. Crowdfunding activities in Colombia are offered through technological platforms that allow investors to commit up to 20% of their equity or annual income and obtain a return in a short period (usually 24 to 36 months).

3.6.2. Development of fintech products: The CFS launched an exploratory mechanism called "sandbox" through which projects and ventures are promoted in the country in controlled test environments for periods of up to 2 years, in order to assess their viability and the possibility of being implemented in the Colombian market.

To access the sandbox, both entities supervised by the CFS, and non-controlled companies must file a dossier with its minimum viable product, and the CFS analyzes whether it is acceptable to start its development. This benefit allows new products to be known and supported by the regulator from the early stages, which helps more innovative products reach and impact the market.

3.6.3. Low Value Payment Systems ("LVPS"): In Colombia, all transfers not subject to the high-value payment system administered by the Central Bank are included in the LVPS.

The LVPS allows new participants to access the market even if they are not supervised, as acquirers (i.e., those who, among other activities, process payments and transfer orders). It also allows non-controlled entities to act as information processors, payment terminal providers, among others, which broadens the possibilities for Fintech companies to participate in the payment ecosystems.

In 2022, a new participant was included in the LVPS called payment initiator, which refers to third parties (supervised or not) that facilitate transfers between consumers and merchants, with prior authorization from the payer.

3.6.4. Crypto-assets: In Colombia, crypto-assets are not considered a currency, therefore these do not replace common money. However, there have been regulatory advances in this area. In capital contributions to commercial companies not supervised by the CFS, the use of virtual assets has been allowed, warning that in any case the contributions are considered in *"kind"*, i.e., not equivalent to a cash contribution.

As this today, supervised entities are not authorized to invest in virtual assets or offer them directly. However, there are currently two regulatory bills that entail an important advance in this matter for the financial sector insofar as:

(i) It seeks to regulate who offers crypto-assets in Colombia by creating a public platform and establishing guidelines for its surveillance and control.

(i) It establishes rules so that the entities supervised by the CFS may provide services to virtual asset providers (PSAV, per its acronym in Spanish), who carry out, among others, the exchange and transfer of virtual assets.

3.7 | FOREIGN FINANCIAL PRODUCTS OFFERING

In Colombia, Colombian residents may be subject to foreign financial products offered through a representative office duly established in the country, prior to CFS authorization, or through the subscription of agency agreements (*contratos de corresponsalía*) with authorized entities in Colombia, subject to prior CFS authorization.

Recently, the applicable regulation allows agency agreements to be subject to a general authorization regime, which accelerates the processes for such products to be offered in the local market.

The authorized activities that may be carried out regarding to the authorized products and services are limited only to promotion and advertising, since the acquisition and management of the products and services must be carried out directly with the foreign entity.

3.8 | INSURANCE INDUSTRY

In 2022, an issued regulation allows the mass marketing of certain insurance through the channels of credit establishments and correspondents. Insurance policies that meet the following conditions are suitable for mass marketing:

3.8.1. Universality: The policy must protect insurable interests and risks common to all persons.

3.8.2. Simplicity: The policies of the authorized lines of business must be easy for people to understand and handle.

3.8.3. Uniformity: Policy wording must be the same for all clients; no specific conditions or differential treatment may be demanded from policyholders.

Under this model, Colombia promotes financial inclusion and increases the population's access to risk insurance.

3.9 | OPEN BANKING

Following international developments, Colombia implemented the open banking or open financial architecture standard in order to promote financial inclusion and efficiency in the provision of products and services.

Its main purpose is to **"open customer's information"** by financial entities so that other entities in the industry or third parties may access it, subject to prior and informed authorization from consumers, in order to provide them with other products or services.

Similarly, the possibility of commercializing products and services offered by third parties through the channels (in person or not) of the supervised entities is proposed, provided there is a connection with the operations authorized to such entities.

Third parties offering products and services of supervised entities through electronic platforms are considered digital correspondents and must comply with a series of rules on information and the offer's scope.

Under this new model, Colombia provides an opportunity for collaboration between real sector participants and the financial sector, along with an increase in the number of products offered to financial consumers.

4 COMPLIANCE

In recent years, Colombia has developed an increasingly strict compliance regime applicable to companies in different sectors, in order to comply with the country's international commitments and prevent the risks of money laundering, financing of terrorism, financing of the proliferation of mass destruction weapons, corruption and transnational bribery.

4.1 | CORRUPTION AND TRANSNATIONAL BRIBERY

With the promulgation of External Circular 100-000003 of 2016, the Superintendency of Companies imposed on some companies in the real sector the obligation to implement a Business Ethics Program. On August 9, 2021, the Superintendency of Companies issued External Circular 100-000011 which entered into force on January 1, 2022, and derogated External Circular 100-000003 of 2016. The purpose of the new standard is to adapt the regulations of the Superintendency of Companies to the recommendations made by international organizations and the need to combat corruption using corporate governance measures.

In this sense, companies supervised by the Superintendency of Companies that comply with the requirements set out below will have the duty to create and implement a Business Transparency and Ethics Program that adapts to the needs and risks to which the company is exposed:

1. Surveilled companies that (i) as of December 31, 2022 have conducted business or international transactions or transactions of any nature, directly or through an intermediary with foreign natural or legal persons under public or private law, equal to or greater than (100) MLMW (approx. USD$ 24,000); and (ii) as of December 31, 2022 have obtained total revenues or have total assets equal to or greater than 30,000 MLMW (approx. USD$ 7,250,000).

2. Companies that (i) as of December 31, 2022, directly or indirectly have entered into agreements with state entities with an amount equal to or greater than 500 MLMW (approx. USD$ 120,800); and (ii) as of December 31, 2022 have obtained total income or have total assets equal to or greater than 30,000 MLMW (approx. USD$ 7,250,000).

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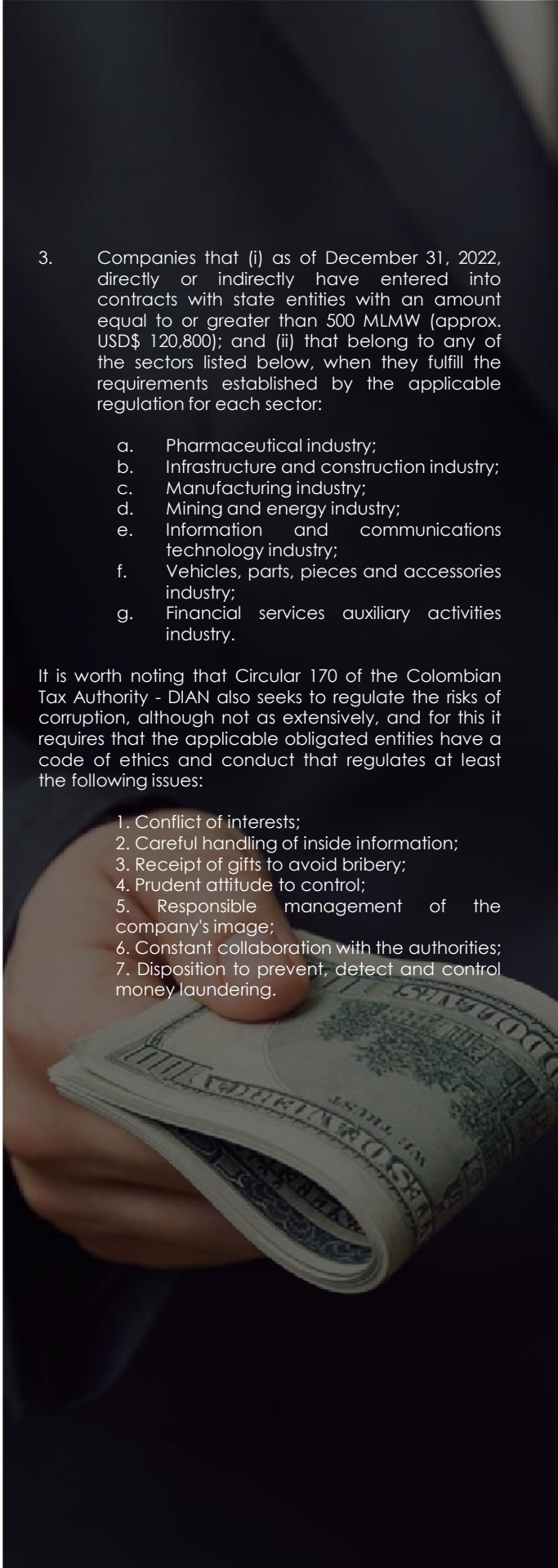
3. Companies that (i) as of December 31, 2022, directly or indirectly have entered into contracts with state entities with an amount equal to or greater than 500 MLMW (approx. USD$ 120,800); and (ii) that belong to any of the sectors listed below, when they fulfill the requirements established by the applicable regulation for each sector:

    a. Pharmaceutical industry;
    b. Infrastructure and construction industry;
    c. Manufacturing industry;
    d. Mining and energy industry;
    e. Information and communications technology industry;
    f. Vehicles, parts, pieces and accessories industry;
    g. Financial services auxiliary activities industry.

It is worth noting that Circular 170 of the Colombian Tax Authority - DIAN also seeks to regulate the risks of corruption, although not as extensively, and for this it requires that the applicable obligated entities have a code of ethics and conduct that regulates at least the following issues:

1. Conflict of interests;
2. Careful handling of inside information;
3. Receipt of gifts to avoid bribery;
4. Prudent attitude to control;
5. Responsible management of the company's image;
6. Constant collaboration with the authorities;
7. Disposition to prevent, detect and control money laundering.



4.2| MONEY LAUNDERING, TERRORISM FINANCING AND FINANCING OF THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION

Contrary to what happens with the control of the risks of corruption and transnational bribery, there are multiple norms and entities that regulate matters related to the risks of money laundering and terrorism financing. Thus, depending on the sector to which the company belongs and the entity that monitors it, a different regulatory framework may be applicable. In this sense, the entities that have issued a system of control, prevention, and mitigation of the risks of money laundering and financing of terrorism are the following:

1. Superintendency of Companies:
    a. Legal Framework: External Circular 2020-01-680161 of 2020 modified by External Circulars 100-000004 of April 9, 2021 and 100-000015 of September 24, 2021.
    b. It is applicable to the entities regulated by this entity that in the immediately preceding year have a total income or total assets of 40,000 LMMW (approx. USD 9,666,000) or more; or that belong to the real estate sector, the commercialization of precious stones, of accounting services, construction and civil engineering works, or services of virtual assets, and comply with the requirements of the Circular for each sector.
    c. This system, unlike the others, does not only include the risks of money laundering and terrorism financing but also the financing of the proliferation of weapons of mass destruction.

2. Financial Superintendency:
    a. Basic Legal Circular.
    b. Applicable to entities supervised by this Superintendency.

3. Superintendency of Ports and Transportation:
    a. Resolution 74854 of 2016.
    b. Applicable to entities supervised by this Superintendency.

4. Coljuegos:
    a. Resolution 20195100044514 of 2019 and Resolution 20215000012784 of 2021 2021.
    b. Applicable to gambling operators.

5. Colombian Tax Authority – DIAN:
    a. Circular 170 of 2002.
    b. Applicable to public and private warehouses, customs brokerage companies, port companies, operator, industrial and commercial users of free zones, transport companies, international cargo agents, postal traffic intermediaries and express shipments, courier companies, permanent customs users, highly exporting users, other auxiliaries of the customs function and professionals of currency exchange.

6. National Superintendency of Health:
    a. External Circular 09 of 2016 modified by External Circular 20211700000005-5, September 17 of 2021.
    b. Applicable to legal representatives, partners, shareholders, statutory auditors, senior management, the highest corporate body, Compliance Officers, administrators and natural or legal persons that are part of the Health Promoting Entities (EPS) of the contributory and subsidized regime, Prepaid Medicine Companies (EMP), Prepaid Ambulance Services (SAP) and Health Service Providing Institutions (IPS) both public and private that are part of groups C1, C2 and D1, in accordance with External Circular 018 of 2015 of the National Superintendency of Health "Institution Classification Groups" and the rules that modify or replace it, regardless of their legal nature.

4 COMPLIANCE

Although each of the regulations has its peculiarities and there are some more complex or complete than others, all of them structure systems focused on risk prevention. In this sense, the essence of all these regulations is to ensure that companies carry out an analysis of the risks of money laundering and financing of terrorism according to their ordinary activity and the sector in which they operate and determine which are the controls that must be implemented to prevent contagion, reputational and legal risks for the company.

Another of the fundamental requirements that is uniform in the regulations, or at least in most of them, is the need to designate a person in charge of the management, proper operation, permanent monitoring and updating of the system. That person, called the compliance officer, will be the person who must ensure that the company is actually complying with the standard and that in practice it is shield, as far as possible, from the risks of money laundering and financing of the terrorism. Depending on the standard in question, this person must have special qualities, be appointed by a particular body and meet a series of requirements. It should also be noted at this point that the compliance officer must have permanent support from other company bodies such as the legal representative and the board of directors who also play a decisive role in the operation of the system.

5 TAXATION

On December 13, 2022, Act 2277 of 2022 (hereinafter the "2022 Tax Reform") was enacted, which included certain modifications to the Colombian tax regime. Considering these modifications, below you will find a brief summary of the most relevant taxes for the 2023 taxable period in Colombia.

5.1 | INCOME TAX

This tax is levied on profits which increase the taxpayers' equity and are derived from its ordinary economic activities. The taxable period for income tax purposes begins on January 1st and ends on December 31st.

5.1.1 | CORPORATE INCOME TAX

General tax rate. For 2023, the income tax rate for corporations and other legal entities is 35%. Exceptions to this include a 20% rate for corporations recognized as operators and industrial users of free trade zones (although this rate would only apply to income from exports as from 2024).

★ Surtax. The following industries will be subject to a surcharge on corporate income tax:

INDUSTRY		SURTAX	INCOME TAX RATE
Financial sector (until 2027)		5%	40%
Mining sector (Based on average product price)	Percentile < 45	0%	35%
	Percentile 45 to 60	5%	40%
	Percentile > 60	10%	45%
Oil sector (Based on average product price)	Percentile < 30	0%	35%
	Percentile 30 to 45	5%	40%
	Percentile 45 to 60	10%	45%
	Percentile > 60	15%	50%
Hydroelectric power generators (until 2026)		3%	38%

Deductions. Expenses that may be deducted for income tax purposes in Colombia include, among others:

- Salaries paid to employees, as long as: (i) the employer/taxpayer has paid the payroll contributions; (ii) the payment was subject to withholding tax; and (iii) the payment has been reported in the electronic payroll support.
- Taxes of whatever nature paid during the fiscal year, to the extent that they are directly related to the taxpayer's economic activity.
- 50% of the financial transactions tax paid during the fiscal year, regardless of their relationship to the taxpayer's ordinary course of business.
- Cross-border expenses, as long as these are directly related to the productive activity of the taxpayer, and the corresponding withholding tax (if applicable) has been made.

★ **Royalties' deduction**. Royalties for the extraction of non-renewable natural resources will not be deductible from income tax and may not be considered as a cost or expense, regardless of the denomination of payment, their accounting or financial treatment, and irrespective of whether they are paid in cash or kind.

★ **Minimum tax**. Income taxpaying legal entities and Free Trade Zone users will be subject to a minimum tax of 15%, known as the Effective Taxation Rate ("TTD"). This will be the result of dividing the Applicable Tax by the Adjusted Financial Profit. If the TTD is less than 15%, the income tax must be adjusted so that the tax rate to be paid complies with the minimum established.

Corporate groups, which are required to consolidate financial statements, shall apply this Minimum Tax on an aggregate basis for the activities carried out among the different entities of the group.

★ **Tax benefits limitation**. Some benefits on the determination of the corporate income tax will be limited to 3% of the corporate taxpayer's net income. Among others, the expenses associated to employee's education and benefits on environmentally friendly investments are limited.

5.1.2 | DIVIDEND TAX

Non-resident investors. Dividends paid to non-resident individuals and legal entities shall be subjected to a general withholding tax of 20%. In each case, the application of preferential rates must be analyzed regarding the Double Taxation Agreements ("DTA") signed by Colombia.

Colombian companies. The withholding tax rate applicable to the distribution of dividends between Colombian companies will be 10%.

The withholding tax will only be accrued upon the first distribution and will not apply if the distribution is made within entities of a registered business group or to the controlling entity registered before the Chamber of Commerce.

★ **Note:** This provision was introduced or modified by the 2022 Tax Reform.

The exchange rate used in this chapter is of COP 4,800 per USD 1.

Resident individuals. For Colombian resident individuals, the withholding tax rate is 15% if the value to be distributed exceeds 1090 UVT (COP$46.229.080 for 2023 - approx. USD$9.631).

Generally, dividends distributed out of profits that have not been taxed at the corporate level, will be subject to the corporate income tax rate plus the dividend tax explained above.

★ 5.1.3 | INCOME TAX FOR INDIVIDUALS

Individuals who are Colombian tax residents shall calculate and pay their income tax considering a marginal and progressive rate that ranges between 0% and 39%, depending on their level of income :

UVT RANGE		MARGINAL RATE
From	Up to	
>0	1.090	0%
>1.090	1.700	19%
>1.700	4.100	28%
>4.100	8.670	33%
>8.670	18.970	35%
>18.970	31.000	37%
>31.000	Onwards	39%

Nevertheless, individuals shall itemize their income into the following categories: i) labor income, capital income and non-labor income; ii) pension income; iii) income from dividends and participations.

In light of the changes brought by the 2022 Tax Reform, as from 2023 individuals who are Colombian tax residents shall consider:

- The unification of the current tax classification baskets of labor income, capital income, non-labor income, pensions, and dividends;
- Both exempt income and deductions cannon exceed to 40% of the income or 1,340 UVT per year (COP 56,832,080 for 2023 – approx. USD $11,840), whatever is higher.
- Reduction of the general annual exempted portion applicable to labor payments to 790 UVT per year (COP 33,505,480 for 2023 – approx. USD $6,980).

★ 5.2 | CAPITAL GAINS TAX

Capital gains tax applies to profits which are not related to the taxpayer's ordinary economic activity, such as:

- Profit from the sale of a fixed asset owned for longer than two years.
- Inheritances, legacies, donations and those received as marital portion.
- Lotteries, raffles and similar activities.
- Life insurance compensation.
- Profits from the liquidation of a company, determined by the difference between the contributed capital and the sum received on liquidation (excluding profits distributable as exempt dividends), as long as the company existed for two years or more.

The capital gain tax rate will be 15% as of 2023.

5.3 | VALUE ADDED TAX – VAT

Sales, services and imports are subject to VAT at a general rate of 19%. The general rate is subject to exceptions in relation to certain goods and services.

Exports are exempt from VAT, and therefore, input VAT associated with the production of the respective exported good or service can be refunded.

VAT can be filed bi-monthly or quarterly depending on the gross income and equity of the taxpayer and on whether or not the taxpayer is an exporter. There is no obligation to file a VAT return when there have been no operations affected by such tax.

5.4 | FINANCIAL TRANSACTIONS TAX

The financial transactions tax is payable at a rate of 0.4% of the transaction in relation to the disposition or transfer of funds deposited in: (i) savings or checking accounts, or others deposits of any nature, (ii) funds deposited in the Central Bank, (iii) the drawing of cashier's checks, and (iv) the transfer of investment fund units.

★ **Note:** This provision was introduced or modified by the 2022 Tax Reform.

★ 5.5 | STAMP TAX

As of 2023, an additional stamp tax is levied on the sale of real estate whose value is equal to or greater than COP 848,240,000 as of 2023 - approx. USD $177,000. The applicable rates are as follows:

COP (APPROX. USD) 2023		MARGINAL RATE
From	To	
0	COP 848.240.000 (USD177.000)	0,0%
COP 848.240.000 (USD177.000)	COP 2.120.600.000 USD 441.791)	1,5%
COP 2.120.600.000 (USD 441.791)	Onwards	3,0%

5.6 | INDUSTRY AND TRADE TAX – ITT

ITT is a municipal tax levied on gross income derived from commercial, industrial or services activities, performed by companies or individuals.

ITT rates vary in different municipalities, from 0.2% to 1% for commercial activities and services, and 0.2% to 0.7% for industrial activities.

5.7 | PROPERTY TAX

This municipal tax is levied annually on the ownership, usufruct or possession of real estate in Colombia.

The taxable base of this tax is constituted by the current cadastral appraisal, adjusted by the Consumer Price Index ("IPC"). In Bogotá, the taxable base may be increased by means of self-assessment.

The rate varies depending on factors such as the quality of the property, the destination and location in the municipality.

5.8 | OTHER TAXES

Carbon tax. The rate was modified to COP$20,500 – approx. USD$ 4.27 per ton of carbon equivalent (CO2eq).

Plastics tax. The tax is caused by the acquisition, importation or withdrawal of single-use plastics used for packaging, wrapping or packing goods by producers.

Healthy taxes. The tax on ultra-processed beverages and food products was created by the 2022 Tax Reform.

★ **Note:** This provision was introduced or modified by the 2022 Tax Reform.

5.9 | TAX PROCEDURE

5.9.1 | STATUTE OF LIMITATIONS OF TAX RETURNS

By general rule, the statute of limitation expires three (3) years after the filing of the tax return.

The term for income tax returns to become certain and unchangeable, when the taxpayer is subject of the Price Transfer Regime is five(5) years.

5.9.2 | TAX RETURN AMENDMENTS

When tax return amendments increase the tax due or decrease a tax refund, the taxpayer has three years to file the amended tax return.

Where the tax due decreases or the tax refund increases, the taxpayer has one year to present the amended tax return.

5.9.3 | REIMBURSEMENT AND/OR COMPENSATION OF BALANCES

Taxpayers who settle tax refunds in their tax returns may request such refund or compensation within two years from the deadline to file the respective tax return.

★ 5.9.4 | TAX OFFENSES

The necessary thresholds to configure tax offenses are reduced as follows:

- Omission of assets or inclusion of nonexistent liabilities. A tax offense would be configured as from COP$ 1,000,000,000 [approx. USD$ 208,333];
- Tax fraud. A tax offense would be configured whenever it caused a lower value to be paid or a higher balance in favor of COP 100,000,000 [approx. USD$ 20,833] to the taxpayer.
- for 2023 – approx. USD $6,980).

★ **Note:** This provision was introduced or modified by the 2022 Tax Reform.

★ 5.9.5 | PENALTIES REDUCTION

Reduction of penalties for not submitting information or submitting incorrect information. The penalty is reduced to a range between 0.5% and 1% of the unreported amounts. In addition, the maximum penalty would be COP 318,090,000 for 2023 – approx. USD $66,268.

VAT returns. VAT reporters could file without any penalty or interest VAT returns that are understood to have no legal effect before November 30, 2022, because they were filed in a different period than the one in which they are required to be filed.

Reduction of penalties and interest rates. Taxpayers who as of December 31, 2022, have not filed the tax returns to which they are obliged, and they file those returns before May 31, 2023, will be subjected to a reduction of the applicable penalties and interest rates of up to 60%.

Reduction of interest. Tax and customs duties that are fully paid by June 30, 2023, will be subjected to a 50% reduction over the applicable interest.

6 INTERNATIONAL TRADE AND CUSTOMS

6.1 | IMPORTS

Colombia has three import regimes:

- **Free:** Most goods are subject to the free import regime, which means that usually it is not required to apply for an import license or authorization.
- **Prior license or authorization:** Certain goods may require special permits prior to the import (i.e., (importing used goods will require a prior license)
- **Prohibited:** Certain goods are banned from import (i.e., biological weapons).

Prior to making an import it is advisable for the importer to identify the applicable requirements or restrictions.

An importer may may act directly before the Tax and Customs Authority (DIAN) or hire a customs broker, in order to perform any customs formalities inherent to the customs regime.

The most common import modalities are the following:

ORDINARY IMPORT

- The importer must file an import return with the supporting documentation.
- Payment of customs duties (tariff, VAT, antidumping duties, amongst others)
- The imported goods will be considered under free disposal.
- The valuation of the goods should be done by applying methods established by the General Agreement on Tariffs and Trade (GATT), Valuation Agreement from the WTO , Decision 571 and Ruling 1684 of 2014 and its amendments, both issued by the Andean Community.

TEMPORARY IMPORT FOR RE-EXPORTATION IN THE SAME STATE

Temporal import with complete or partial suspension of import duties (tariff and VAT), with the purpose of being subsequently re-exported within a prescribed period of time, without being altered, except for its depreciation. It may be log term or short term:

SHORT-TERM:

- Up to a 6-month period, extendable for an additional 3 months.
- Only for the goods specifically established in Resolution 46 of 2019.
- The importer must have an insurance for this operation.

LONG-TERM:

- Up to a 5-year period.
- Only applicable to capital goods.
- Customs duties and taxes are deferred in semiannual fees during the entire period of time that the goods will stay in Colombia.
- The importer must have an insurance for this operation.

6.2 | EXPORTS

In most cases, exports from Colombia are not subject to any customs duties or taxes. Additionally, the exporter may discount the VAT on exported goods.

However, to export some minerals, a royalty must be paid to the Government prior the export operation. Meanwhile, coffee export will be subject to the payment of the coffee contribution.

The exporter may act directly before the Colombian Tax Authority-DIAN or through a customs broker.

6.3 | SPECIAL FOREIGN COMMERCE SCHEMES AND OTHER BENEFFITS

Colombian customs regulations offer several schemes to be used by importers or exporters that may yield tax and customs advantages in the foreign commerce operations:

PLAN VALLEJO- SPECIAL SYSTEMS TO IMPORT OR EXPORT		
INTERNATIONAL TRADING COMPANY	I NTERNATIONAL LOGISTIC DISTRIBUTION CENTERS	FREE TRADE ZONES
INTERNATIONAL TRADING COMPANY	INTERNATIONAL LOGISTIC DISTRIBUTION CENTERS	FREE TRADE ZONES

PLAN VALLEJO

- **Benefits:** It allows the introduction of raw materials, supplies, capital goods and spare parts, with total or partial exemption from customs taxes.
- **Modalities:** Raw materials, services, capital goods and spare parts.
- **Requirements**: Comply with export commitments, among others.

INTERNATIONAL TRADING COMPANY

Companies dedicated to the commercialization of Colombian products abroad.

- **Benefits**: Among others, acquisition of goods from the national market exempt from VAT as long as they are exported in the following six (6) months.

6 INTERNATIONAL TRADE AND CUSTOMS

FREE TRADE ZONES: These are geographic areas in Colombia created to promote industry and trade of goods and services. Free Trade Zones may be permanent and special – or single business. The users located in the Free Trade Zone may be industrial or commercial.

Some Free Trade Zones types are health services, services, offshore free trade zones for the exploration and exploitation of hydrocarbons; special free trade zones for the touristic sector; port services free trade zone; agro industrial, amongst others.

Benefits:

(i) Customs duties will not accrue for goods from abroad introduced and consumed within the zone or remain in the free trade zone.
(ii) VAT exemption in the acquisition of raw materials and final goods by industrial users in the national customs territory.
(iii) Industrial users can apply a preferential rate of 20% of income tax, instead of the general rate of 35%, to the percentage of taxable income corresponding to income derived from exports.
(iv) Operator users and offshore industrial users, port services, logistics services, and fuel refiners can apply a preferential income tax rate of 20%.

Under the latest tax reform, as of 2024, the preferential rate (20%) will only apply to the percentage of taxable income that corresponds to the proportion between income derived from exports over total tax income (not including occasional earnings). The rest of the taxable income will be taxed at 35%. Additionally, industrial user must comply with the following requirements to access the preferential rate:

In order to operate as a free trade zone, an approval of the internationalization and sales plan from the Ministry of Trade, Industry, and Tourism, must be obtained.

Additionally, a free trade zone must comply with the maximum level of sales to the national territory established in the plan.

INTERNATIONAL LOGISTIC DISTRIBUTION CENTERS: These are warehouses located in ports, airports or in special logistics buildings. These warehouses can be used to store a wide range of goods, including those under a temporary admission importation scheme, any national or foreign goods, and those subject to re-shipping, import or export; foreign goods can be stored for one (1) year from the day they entered the national customs territory, which can be extended for another year.

The sale of merchandise stored in warehouses by a foreign owner will not cause an income from a national source for income tax purposes as long as the companies linked to the foreign company do not have any benefit associated with the sale.

AUTHORIZED EXPORTERS: It is a legal form that contributes to trade facilitation by allowing exporters to make declarations of origin in the commercial invoice, without needing to process a movement certificate (producers or exporters under the European Union and EFTA, commercial agreements, may request such qualification).

AUTHORIZED ECONOMIC OPERATORS (AEO): Is an authorization granted to exporters and importers, customs brokers, ports in order to facilitate the development of trade operations, due to their recognition as a safe and reliable trade entity. AEO may access shorter customs clearance process, special and simpler procedures. Among other benefits AEO will not need to establish warranties for trade operations and they will be able to make monthly payments of customs duties, sanctions, and interest in a consolidated way.

Customs user with simplified procedure (*Usuario Aduanero con Trámite Simplificado- UTS*): Is a benefit granted by the tax authority to importers and exporters who meet certain conditions established in Decree 1165 of 2019 and its modifications. Among other benefits, UTS allow to constitute a single global warranty to support all its foreign trade operations.

AEO and UTS may make consolidated payments of custom duties, sanctions, interests and rescue values and obtain automatic clearance.

6.4 | ANTIDUMPING INVESTIGATIONS AND NON-PREFERENTIAL ORIGIN

More than 60 antidumping investigations have been carried out in Colombia in the past few years. Most of them are against imports from China, but there have also been investigations relating products from Mexico, South Korea, European Union and Brazil.

Regarding non preferential origin, products subject to antidumping duties and safeguarding measures, a written certificate signed by the importer must be submitted, including the tariff classification of the goods and an affidavit expressing the country of origin, among others. The certificate must be issued prior to the submission of the import return before the Customs Authority.

7 INTERNATIONAL TREATIES

Colombia has numerous trade and preferential agreements in force that guarantee benefits for Colombian products that have access to specific foreign markets. These include the Andean Community of Nations Agreement ("CAN" for its acronym in Spanish), the Free Trade Agreement with Mexico, and the Agreement between the member parties of CAN and MERCOSUR (Brazil, Argentina, Uruguay, Venezuela, Paraguay, Bolivia, Colombia, Ecuador and Peru).

Additionally, Colombia has signed free trade agreements with U.S.A., the European Union, United Kingdom of Great Britain and Northern Ireland, Canada, the European Free Trade Association (Norway, Switzerland, Iceland and Liechtenstein), Chile, the North Central American Triangle (El Salvador, Honduras and Guatemala), the Pacific Alliance, South Korea, Israel, the Caribbean Community and Costa Rica.

Free trade agreement between Panama and Colombia, as well as the agreement between the Pacific Alliance and Singapore are pending entering into force.

Trade agreements are pending approval with Panama and three more are under negotiation - with Japan, Turkey and the Trade in Services Agreement (TiSA), which covers more than 50 countries.

Finally, Colombia has signed income and capital gains double taxation agreements with Canada, Spain, Czech Republic, Switzerland, Portugal, India, South Korea, Mexico, Chile, United Kingdom of Great Britain and Northern Ireland, Italy, Japan, France Uruguay, United Arab Emirates, Brazil, and Netherlands of which the last four are not yet in full force and effect.

Additionally, the taxation of cross-border operations between Colombia, Peru, Bolivia and Ecuador are regulated by decisions adopted by the Commission of the Andean Community, among which Decision 578 of 2004 may be found, as a mechanism adopted in order to avoid double legal taxation regarding income tax for Companies and People domiciled in the Member Countries.

Colombia has also signed bilateral investment treaties with Spain, China, India, and Switzerland. United Kingdom, Japan, France and Peru, among others, which are in force. Colombia has also signed Agreements for the Promotion and Reciprocal Protection of Investments with, Turkey, Singapore, Brazil, Spain and the United Arab Emirates, which are pending to enter into force.

8 ANTITRUST AND COMPETITION

During the Pandemic, the efforts of the national competition authority, the Superintendency of Industry and Commerce ("SIC"), have been oriented, mainly, in combating exploitative behaviors due to the health and economic emergency caused by COVID-19. In this context, various investigations have been opened for allegedly charging excessive prices for acquiring sensitive goods.

The penalties applicable to legal entities for a conduct that violates the competition protection rules will be calculated according to: (i) the operating income of the offender in the immediately preceding fiscal year, event in which the penalty may not exceed 20% of such income; (ii) the net worth of the offender in the immediately preceding fiscal year, event in which the sanction may not exceed 20% of the value of the equity of the sanctioned party; (iii) a fine that may not exceed 100,000 monthly minimum wages (approx. USD $24.1 million); (iv) in the case of practices restricting competition related to bid ringing, up to 30% of the value of the contract; and (v) in case it can be verified, up to 300% of the profits obtained due to the execution of the infraction.

One of the key policies has been the development of leniency programs. Through these, participants in a cartel may obtain immunity or reduced fines if they collaborate with the SIC by providing relevant information and evidence about the cartel.

8.1 | ANTICOMPETITIVE AGREEMENTS – CARTELS

Agreements that may be anticompetitive include:

- Direct or indirect price fixing.
- Sales or market conditions that discriminate against third parties.
- Market allocation between manufacturers or distributors.
- Assigning manufacturing or supply quotas.
- Assigning, distributing or limiting supply of materials.
- Limiting or restricting technological developments.
- Making the supply of a product conditional on accepting conditions or additional obligations that by their nature do not constitute the objective of the negotiation.
- to the taxpayer's economic activity.
- Colluding in public tenders or contests, distributing awarded contracts or fixing the terms of the proposal.
- Preventing or obstructing competitors from accessing markets or distributions channels.

8.2 | UNILATERAL CONDUCTS

Acts that may constitute an abuse of dominance include:

- Predatory pricing.
- Discriminatory price and commercial conditions for equivalent operations.
- Tying.
- Exclusionary conducts aimed at eliminating competition by obstructing or preventing entry to the market.

Additionally, Decree 2153 of 1992 forbids market agents from bringing forward the following conducts, when they may negatively affect the competitive process:

- Breaching misleading advertising rules;
- Unilaterally fixing resale prices;
- Retaliating against an undertaking for their pricing policies.

8.3 | UNFAIR COMPETITION

- Any conduct through which customers are diverted from competitors;
- Any conduct that has the purpose or effect of internally disorganizing the competition;
- Any conduct that has the object or effect of creating confusion with the activity, commercial services or establishment of others
- Any use or dissemination of incorrect or false indications or assertions having the purpose or effect of discrediting the activity, services, establishment or business relations of a third party.

- Any public comparison of one's own or another's business activity, commercial services or establishment with those of a third party, when such comparison uses incorrect or false indications or assertions or omits true ones;
- The exact and meticulous imitation of the services of a third party when, as a result of such imitation, confusion is generated as to the business origin of the service or the reputation of another is exploited;
- The systematic imitation of the services and business initiatives of others when such strategy is aimed at preventing or hindering their assertion in the market and exceeds what, depending on the circumstances, can be considered as a natural response of the market;
- The exploitation for one's own benefit or that of others of the advantages in the industrial reputation of a third party;
- The disclosure or exploitation, without the authorization of the owner, of industrial secrets to which he/she has had access under a duty of confidentiality. Likewise, access to industrial secrets through espionage will be considered unfair;
- Inducing employees, suppliers, customers and other obligated parties to breach or terminate contracts entered into with competitors.
- The violation of norms, when such violation results in a significant competitive advantage.
- To agree on exclusivity clauses in supply contracts, when such clauses have the purpose or effect of restricting the access of competitors to the market or monopolizing the distribution of products or services.

8.4 | BUSINESS CONCENTRATION – MERGER APPROVAL

Any business merger or corporate transaction affecting the Colombian market, even if it is carried out off-shore, may require prior clearance from SIC.

Approval is only required when the following conditions are met:

I. **Acquisition of Control:** It is necessary for competition to cease through the acquisition of control by one of the parties over the other. In competition matters, an enterprise will control another when it acquires the possibility of influencing, directly or indirectly, the business policy, the initiation or termination of the activity of the enterprise, the variation of the activity to which the enterprise is dedicated or the disposition of assets or rights essential for the development of the activity of the enterprise. Likewise, it is understood that this requirement is met when a company acquires assets that are essential to develop a particular economic activity. On the other hand, the creation of a joint venture may be considered as a business integration.

II. **Subjective assumption:** The parties involved develop the same business or carry out activities within the same value chain in Colombia. The relationship between the companies involved determines whether the concentration entails horizontal or vertical effects.

III. **Objective assumption:** During the fiscal year before the proposed transaction, the companies, together or individually, had operating income or assets above 1,641,044.99 UVT (COP 69,600,000,115.88, approx. USD $14.5 million). In case the intervening parties own locally incorporated vehicles or permanent establishments in Colombia, only the operating income and total assets of those vehicles or establishments should be considered. If the parties participate in the Colombian market only through exports, worldwide operating income and total assets should be considered.

Business mergers in which the joint market share of the parties is less than 20% are deemed to be preapproved. The parties only need to file a notification before SIC prior to closing the transaction in order to report the occurrence of the transaction (fast-track authorization).

If the joint market share of the parties is above or equal to 20%, in any relevant market, then the parties require prior clearance from SIC, prior to closing the relevant transaction.

9 DATA PROTECTION

The Protection of Personal Data is a system designed so that individuals can have access and control over the use given to the information that distinguishes them directly or potentially as individuals. Since the issuance of Laws 1266 of 2008 (financial habeas data), 1581 of 2012; Decree 1074 of 2015 and External Circular 02 of 2015 ("Data Protection Regulation" or "DPR") Colombia has embarked on the development of a comprehensive protection system, which provides adequate levels of personal data protection, in accordance with international standards on the matter.

The DPR is based on 8 principles that define the proper processing of personal data and provide individuals with specific rights so that they can control the use given to their personal data. At the same time, it establishes obligations for the organizations responsible and in charge of the processing of such data.

The principles governing the processing of personal data are: (i) legality; (ii) purpose; (iii) freedom; (iv) truthfulness; (v) transparency; (vi) restricted circulation; (vii) security; and (viii) confidentiality.

9.1 | DEFINITIONS

Authorization: The prior and informed consent that the Data Subject must give to the Controller for the Processing of Personal Data.

Personal Data: Any information that can be directly or indirectly associated to a person or group of persons;

Data considered as public are not subject to the protection of the DPR; only a limited group of these have been classified as such (marital status), while the rest are considered as semi-private (credit history), private (level of education) or sensitive (religion, political affiliation, health).

Sensitive Data are those that can be used to discriminate and, therefore, no activity can be conditioned to the delivery of this type of information.

Controller: Individuals or legal entities, either public or private, who by itself or in association with others, decides over determined database and/or Data processing.

Processor: Individuals or legal entities, either public or private, who by itself or in association with others, carries out the Processing of Personal Data on behalf of the Controller.

Data Subject: Individua whose Personal Data is the submitted to processing.

9.2 | RIGHTS OF DATA SUBJECTS

Data Subjects have the following rights in relation to Data Controllers and Data Processors: (i) to know, update and rectify their Personal Data; (ii) to request proof of the authorization that they rendered to Data Controllers; (iii) to be informed about the use that has been given to their Personal Data; (iv) to file claims before the regulator (SIC); (v) to revoke the authorization or ask for the suppression of their Personal Data; and (vi) to freely access their Personal Data which is subject to processing.

9.3 | DUTIES OF THE DATA CONTROLLER AND DATA PROCESSOR

In accordance with the DPR, Controllers have, among others, the following responsibilities: (i) request and keep the Authorization given by the Data Subject; (ii) maintain Data under security measures that prevent its loss, adulteration or unauthorized use; (iiii) rectify information that is incorrect; (iv) adopt an internal manual for the correct processing of Personal Data; (v) provide the Processor with all the information required for the processing in a complete and accurate manner; (vi) ensure that the Processor maintains the security and integrity of the Personal Data entrusted to it; and, (vii) report to the SIC any Personal Data related security incident.

Processors have, amongst others, the following responsibilities: (i) keep the information under security conditions that prevent its loss, adulteration or unauthorized use; (ii) update the information when so requested by the Controller; (iii) address queries, complaints and claims made by the Data Controllers; (iv) adopt an internal manual for the correct processing of Personal Data; (v) adopt the necessary measures to prevent the circulation of Data disputed in a judicial process or whose blocking has been ordered by the SIC; and (vi) report to the SIC any Personal Data related security incident.

9.4 | IMPLEMENTING DUTIES AND COMPLIANCE MEASURES

9.4.1 | APPROPRIATE AUTHORIZATION

Controllers must request express Authorization from Data Subjects prior to the collection and processing of their Personal Data. Authorization may be rendered verbally or in writing, or by unequivocal conduct indicating Authorization by the Data Subject. Silence can never be understood as an Authorization.

The Authorization must contain all the necessary information so that: (i) the Data Subject knows the contact information of the Controller; (ii) the purposes for which the Personal Data will be processed and; (iiii) the way in which he/she may exercise his/her rights before the Controller.

9.4.2 | PRIVACY POLICY

Controllers must adopt a public privacy policy, which shall be easy to understand and written in Spanish. In addition to the information that is part of the Authorization, the policy must establish in detail: (i) the person or area responsible for the attention of petitions, complaints and claims formulated by Data Subjects; and (ii) the procedure for the Data Subjects to exercise their rights to know, update, rectify and delete their Personal Data and revoke the Authorization.

The Responsible Parties must verify that the Data Processors comply with the Policy.

9.4.3 | INTERNAL MANUAL

Controllers and Processors must have an internal document that includes, according to the administrative structure of each undertaking: (i) security and confidentiality protocols; (ii) internal procedures for the processing of questions, complaints and claims from Data Subjects; (iii) periodic training programs on the above points; (iv) periodic compliance mechanisms and audits; and (v) the functions and contact details of the Compliance Officer for the monitoring of compliance with the DPR.

9.4.4 | DATA TRANSMISSION

National and international transmissions of Personal Data is the information that is sent between a Controller and a third party acting as a Processor. These transmissions must alternatively comply with one of the following conditions: (i) be expressly authorized by the Data Subject; or (ii) be regulated by a transmission contract entered between the Controller and the Processor.

The SIC must authorize international transmissions when there is no authorization, and no transmission contract has been entered to.

9.4.5 | DATA TRANSFERS

A transfer the information that is sent between the Data Controller and a third party who also has such condition, and who will therefore also assume direct responsibility for the processing of the data.

Transfers to countries that do not have adequate levels of data protection are prohibited. For this purpose, the SIC is in charge of issuing conformity certifications for each country. Consequently, for an international transfer to be legal, it must alternatively: (i) be authorized by the Data Subject; (ii) be authorized by the SIC; or (iii) fall within one of the following exceptions:

- Medical data, when so required by the processing of the Data Holder for reasons of health or public hygiene;
- Banking or stock market transfers, in accordance with the applicable legislation;
- Transfers agreed upon in an international treaty to which Colombia is a party;
- Transfers necessary for the execution of a contract between the Data Subject and the Data Controller, or for the execution of pre-contractual measures, as long as the authorization of the Data Subject is obtained;

- Legally prescribed Transfers for the preservation of a higher legal duty.

The SIC has determined that the following countries have an adequate level of protection of personal data: Australia; Austria; Belgium; Bulgaria; Costa Rica; Croatia; Cyprus; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Iceland; Ireland; Italy; Japan; Latvia; Lithuania; Luxembourg; Malta; Mexico; Netherlands; Norway; Peru; Poland; Portugal; Republic of Korea; Romania; Serbia; Slovakia; Slovenia; Spain; Sweden; Slovakia; Sweden; and the countries that have been declared with the adequate level of protection by the European Commission; United Kingdom; United States of America; and the countries that have been declared with the adequate level of protection by the European Commission.

9.4.6 | NATIONAL DATA BASE REGISTRY

According to Law 1581 of 2012, all databases in Colombia must be registered by the Controllers in the National Database Registry, administered by SIC.

All documentation related to the privacy policy, internal manual, transfers, transmissions, security protocols, form of processing and purposes must be registered. Controllers with assets of less than 100,000 UVT (COP 4,241,200,000, approx. USD $883,583) are not required to register their databases with SIC. Companies that exceed this value of assets must register their Databases within 2 months after their creation.

When substantial changes are made to the registered information, this information should be updated within the first 10 working days of each month. Additionally, the registry must be updated between January 2 and March 31 of each year.

9.3.6 | SPECIAL REGIMES

In accordance with the provisions of Law 1581 of 2012, there are certain matters that require special regulation, given the specific characteristics of the balance between the right to information and the right to privacy that they purport.

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Consequently, databases of a purely domestic nature, those containing information related to national security and defense, intelligence and counterintelligence information, journalistic information and editorial content, credit history information (financial *habeas data*) and State censuses, are subject only to the 8 principles governing Law 1581 of 2012. So far, only financial habeas data and State censuses have their respective special regulation.

SPECIAL REGIME FOR CREDIT RISK AGENCIES

This system is designed to provide reliable information to the financial system regarding the payment capacity and credit habits of individuals. Its main figure is the credit bureaus, which are legally authorized to receive and manage consumer credit information. The information is provided by the system's users (i.e., banks, commercial establishments, etc.), which collect and forward the information with the prior and informed authorization of Data Holders.

As in the general regime, the information must be treated under strict security measures, the quality of the information must be assured and it must be accessed only by authorized users (there is a public list of them), who must use the information for the specific purposes prescribed by law. The system classifies the information provided by users into positive reports (compliance with credit obligations) and negative reports (non-compliance). Negative reports must remain published for legally prescribed periods of time in accordance with the level of non-compliance.

10 INTELLECTUAL PROPERTY

Intellectual Property (IP) falls into two categories: industrial property rights and copyrights.

10.1 | INDUSTRIAL PROPERTY

They grant their owner the exclusive right to use industrial property rights, such as distinctive signs and new creations.

Regulations for industrial property rights are unified for all Andean Community Countries-CAN (Bolivia, Colombia, Ecuador and Peru).

10.1.1 | DISTINCTIVE SIGNS

Protection over a distinctive sign is obtained, as a general rule, by means of its registration before the regulator: in Colombia, the Superintendency of Industry and Commerce (SIC).

Unlike some jurisdictions, the use of an unregistered distinctive sign in most cases grants no legal protection. The only exception is for trade names and trade ensigns, where their continued, public and proven use will vest rights in the first user.

The registration of a distinctive sign grants its owner an exclusive right of use and the ability to prevent others from using and/or registering similar or identical signs which cover identical or related goods or services.

The most common types of distinctive signs that can be legally protected in Colombia are:

Trademarks. Trademarks are signs that are capable of distinguishing goods and services of one manufacturer from those of another. In Colombia they are classified according to the Nice International Classification of Goods and Services which has 45 classes, and it is possible to apply for the registration of multi-class applications.

The exclusive right to use a trademark is granted for an initial period of 10 years, renewable indefinitely for subsequent 10-year periods.

All registered trademarks become open to cancellation based on lack of use three years after their registration. If a non-use cancellation action is filed, the owner must prove use in any of the Andean Community countries, during the previous three years to avoid cancellation.

The owner of a registered trademark or a trademark application in any member country can oppose the registration of a similar or identical trademark filed in any other member country.

In this case, the opponent must file a simultaneous trademark application in the country where the opposition is submitted.

Slogans. These consist of a word or phrase used together with a trademark. Slogans are subject to the same provisions as trademarks.

Trade Names and Trade Ensigns. Trade names identify an economic activity, a company or an entrepreneur. In many cases they match with the registered company name.

Trade ensigns identify commercial establishments.

Rights over trade names and trade ensigns are acquired by their first use in commerce and end when such use ceases.

10.1.2 | NEW CREATIONS

The registration of new creations grants owners the exclusive right to exploit their inventions and to prevent others from manufacturing or using them in commerce.

They are one of the main vehicles for the country's technological development and exclusive temporary rights are granted to encourage inventors to invent and continue developing innovation.

The most common are the following:

Invention Patents. These protect inventions of products or processes that are new, useful and involve an inventive step. The exclusive right to use a patent is granted for 20 years from the filing date of the application.

Patents on Utility Models. These protect new shapes, configurations, or compositions of elements of any device, tool, mechanism or other object, or any part thereof, which allows a better or different use, or provides an advantage or technical effect which it previously lacked. The right of exclusive use is granted for 10 years from the filing date of the application.

Industrial Designs. These protect the appearance of a product which does not change its function or purpose. The exclusive right of use is granted for 10 years from the filing date of the application.

10.1.3 | TRANSFER OF INDUSTRIAL PROPERTY RIGHTS

Industrial property rights (registered or pending registration) can be negotiated and transferred to third parties using license agreements, assignments, mortgages or guarantees.

Generally, the contracts transferring rights must be registered with the SIC to be enforceable against third parties. There is an exception for trademark licenses, as their registration is optional.

10.2 | COPYRIGHTS

Copyright protection is granted to creators of scientific, literary and artistic works (including software which is not patentable in Colombia). It protects the way ideas are expressed, not the ideas themselves.

Copyright protection arises automatically when the work is created. Although it is not necessary to acquire the right, we advise registering works with the National Direction of Copyright, as this provides a legal presumption of authorship and evidence of the date of creation.

Authors acquire individual moral rights and economic rights.

a. **Moral Rights**. These protect the author's right to be mentioned as the author of the work, of deciding whether or not to publish it and of preserving its integrity. They are perpetual, non-negotiable and non-transferrable.

b. **Economic Rights**. These are the author's exclusive right to use, authorize or forbid the use or exploitation of the work, and receive payment for its use.

10.2.1 | PROTECTION PERIOD

Economic rights are granted throughout the author's life and for 80 years after his or her death.

Where the owner of economic rights is a legal entity, protection is granted for 70 years from the final day of the calendar year of the first authorized publication of the work.

If an authorized publication has not been made after 50 years of the work's creation, the protection will be granted for 70 years from the final day of the calendar year of its creation.

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10.2.2 | ASSIGNMENT OF ECONOMIC RIGHTS

Economic rights or associated rights may be transferred to third parties. The contract assigning the rights can stipulate how the rights can be used, the length of the assignment and the territory where it applies. If the agreement is silent on these matters, the term will be five years and the territory will be limited to the country in which the transfer is made.

The assignment of economic rights must be in writing and registered at the National Direction of Copyright to be valid and enforceable against third parties.

10.3 | EMPLOYMENT AND SERVICES CONTRACTS

In Colombia there is a legal presumption that intellectual property rights of an employee or contractor will be transferred to the employer or commissioner under employment or service contracts, provided such contracts are in writing and have been executed after June 16, 2011.

However, employment and service contracts are not accepted for the registration of patent assignments and a separate assignment agreement must be submitted.

11 LABOR LAW

11.1 | EMPLOYMENT AGREEMENT

Employment agreements can be entered into verbally or in writing and are classified according to their duration. According to Colombian law, the are four types of contracts:

- ***Fixed Term Contract:*** It must be in writing and cannot exceed 3 years. It can be renewed indefinitely if the initial term is equal to, or more than, 1 year. If the initial term is less than 1 year, the contract may only be successively extended for up to 3 equal or shorter periods, after which the renewals are indefinite for terms that can not be shorter than 1 year and so on.

- ***Contract for the duration of a specific task:*** The duration of the agreement can be equal to the length of time to complete a task. The employment relationship ends when the task is completed.

- ***Occasional, accidental or temporary contract:*** It cannot last more than a month and are designed to meet extraordinary, temporary or other special needs of the employer.

- ***Indefinite term contract:*** Any contract that is not a fixed-term or does not refer to an occasional or transitory job, will be an indefinite term contract. In this type of contracts there is no obligation to give prior notice for termination, except when the termination is based in certain causes provided for in the labor law.

Trial period
Employment contracts may have a trial period in their initial stage, during which the employment contract can be unilaterally terminated at any time, without any obligation to give prior notice or pay any indemnification for the termination.

For indefinite term contracts, the probationary period can be up to two months. For fixed term agreements it cannot be longer than 1/5 of the initial term agreed, up to a maximum period of two months. The probationary period must be agreed in writing.

Termination Payments
Employers will have to pay indemnification for termination of the employment agreement without just cause. The amount of the payment will depend on the salary and the duration of the employment agreement.

The following chart indicates the amount of the indemnification to be paid to employees that subscribed a non-fixed term employment agreement, when it is unilaterally terminated without a just cause:

SALARY	AMOUNT PAYABLE (EXPRESSED IN DAYS)
EMPLOYEES EARING LESS THAN 10 MLMW	30 days of salary, when the employee´s time of service does not exceed one year.
	If the employee´s time of services is more than one year, 30 days of salary for the first year and 20 additional days of salary for each of the subsequent years of service or proportionally by fraction.
EMPLOYEES EARING MORE OR EQUAL 10 MLMW	20 days of salary, when the employee´s time of service does not exceed one year.
	If the employee´s time of services is more than one year, 20 days of salary for the first year and 15 additional days of salary for each of the subsequent years of service or proportionally by fraction.
If the employee's start date of work is prior to December 27, 1992; the salary earned is not taken into account. 45 days of salary will be paid for the first year, plus 40 days of salary per year or proportionally per additional fraction of the year.	

For fixed term employment agreements and agreements for the duration of a task, the indemnification for termination without cause is equivalent to the pending salaries for the remaining time for the completion of the fix term or task.

In the case of terminations without cause in employment agreements for the duration of a task, in no case the indemnification could be lower than 15 days of salary.

Working Hours
The ordinary week in Colombia consists of a maximum of 48 working hours, with a daily maximum of 8 working hours, which will be decreased gradually from June 2023 (47) to 2026 (42).

As of June 2023, the working week in Colombia will consist of a maximum of 47 hours. The daytime working day goes from 6:00 a.m. to 9:00 p.m. The work done between 9:00 p.m. and six 6:00 a.m. is considered night work.

Hours worked in addition to normal workday are compensated as overtime. Overtime may not exceed 2 hours per day and 12 hours per week.

For the employees to be able to work overtime, the company will have to obtain an authorization from the Ministry of Labor.

Flexible Working Day: The parties of the employment contract may agree to organize successive work shifts every day of the week, not exceeding 6 hours per day or 36 hours per week.

Likewise, they may agree on a **flexible weekly work schedule,,** distributed in no more than 6 days. Under this work schedule the number of hours worked daily will be no less than 4 and no more than 9, and no overtime will apply if the employee works, in a given day, more than the daily working hours as long as it does not exceed the maximum weekly working hours.

It is important to mention that the employee and employer can agree to convert the Saturday on the mandatory rest day instead of Sunday, and then, for all legal purposes, Saturday will be recognized as if it were a Sunday.

11.2 | SURCHARGES

The following chart shows the applicable surcharges for overtime:

OVERTIME SURCHARGES	
Day overtime	Daytime hour x 125%
Night overtime	Daytime hour x 175%
Night work	Daytime hour x 35%
Day overtime on Sunday or holidays	Daytime hour x 200%
Night overtime on Sunday or holidays	Daytime hour x 250%
Work on Sunday or holidays	Daytime hour x 175%

Employers shall have to keep a daily record of the overtime, indicating the amount of overtime hours, the employee's name and the corresponding payment.

11.3 | SALARY

Salary is the direct compensation that the employee receives for the provision of services and can be paid in money or in kind. It can be paid as an ordinary salary or an integral salary.
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The ordinary salary consists in a fixed ordinary compensation monthly paid; and in extraordinary compensations represented by overtime work, percentage on sales and commissions, additional salaries, regular bonuses, and permanent travel expenses intended to provide meals and lodging to the employee. The parties are free to agree any salary amount, as long as it is above the legal minimum wage, which for 2023 is COP 1,160,000 (approx. USD $241.6) for fulltime employees.

In addition, it is possible for the parties to agree an all-inclusive salary (integral salary). This kind of salary is intended to compensate ordinary work, night shifts, work on Sundays and holidays, legal bonuses, severance payment, interest on severance payments, and, in general, any other employment benefits excluding vacation. This salary must be agreed in written and is composed of a fixed amount (not less than 10 MLMW) plus a payroll benefits factor equivalent to 30% of the fixed amount. In order for a salary to be agreed as integral in 2023, it must be at least COP 15,080,000 (approximately USD $3,142).

11.4 | FRINGE BENEFITS

The following fringe benefits are additional to the monthly remuneration of the employee and apply only for employees earning an ordinary salary. Employees earning integral salaries do not receive additional mandatory benefits:

- Transportation Allowance (*Auxilio de transporte*): It is a monthly aid provided by the employer to the employees who earn up to 2 MLMW, in order to cover their transportation expenses, which for the year 2023 is COP 140,606, (approx. USD $29)

- Dress and Footwear (*Calzado y vestido de Labor*): The employer must provide 3 times a year, to the employees who earn up to 2 MLMW, 1 pair of shoes and 1 labor dress.

- Severance Payment (*Cesantía*): It is 1 monthly salary per year or proportional to the time worked. The severance payment must be deposited in the severance fund (*Fondo de Cesantías*) chosen by the employee.

- Interest on Severance (*Intereses sobre cesantía*): Equivalent to 12% of the severance payment made, or a proportion if the employee worked for less than 12 months during the year.

- Legal Services Bonus (*Prima de servicios*): A monthly salary paid in 2 instalments: 15 days of salary in the last day of June, and the remaining 15 days of salary during the first 20 days of December.

11.5 | VACATIONS

All employees are entitled to 15 consecutive business days of paid leave per year of service. Employees must take at least 6 continuous business days of vacations each year; the rest may be accrued.

Vacations can be compensated in cash in two events: a) when the contract is terminated; or b) when the employee requests payment in place of no more than half of the vacations.

11.6 | PAYROLL TAXES AND SOCIAL SECURITY CONTRIBUTIONS

Employers are obliged to make the payment of social security contributions and payroll taxes on a monthly basis, as follows:

1. Pensions. It is a monthly contribution equivalent to 16% of the monthly salary earned by the employee. 12% is paid by the employer, and the rest 4% is assumed by the employee.

2. Fellowship fund. Employees who earn more than 4 MLMW are required to make an additional contribution, which ranges between 1% and 2% of their average income.

3. Health. It is a monthly contribution equivalent to 12.5% of the monthly salary earned by the employee. 8.5% is paid by the employer, and the rest 4% is assumed by the employee.

4. Labor risks: Employers must make a monthly contribution to a Labor Risk Administrator (*Administradora de Riesgos Laborales*), intended to cover the risk of work accidents/illnesses. The payments depend on the company's level of risk and the activities performed by the employees.

Payroll taxes:

1. Contributions to the Family Compensation Funds (*Cajas de Compensación Familiar*): Equivalent to 4% of the employee´s monthly salary.

2. Contributions to the Colombian Institute of Family Welfare (*Instituto Colombiano de Bienestar Familiar-ICBF*): Equivalent to 3% of the employee´s monthly salary.

3. National Apprenticeship Service (*Servicio Nacional de Aprendizaje-SENA*): Equivalent to 2% of the employee´s monthly salary.

Corporations and legal entities, natural persons, consortiums, temporary unions and autonomous estates are exempt from paying the contributions to SENA, ICBF and the employer's portion of the Health Regime, in relation to employees who earn less than 10 MLMW (COP 11,600,000 – approx. USD $2,416).

The quotation base for employees who earn an integral salary is equivalent to 70% of their monthly salary.

11.7 | COLLECTIVE RIGHTS

Colombia's legal system guarantees the right of employees to associate into unions, and to collective negotiation to for the improvement of their working conditions.

In Colombia there are different types of unions, namely:

- **Company union:** Constituted by employees of various professions who render services to the same company.
- **Industry union or union by economic activity:** Constituted by individuals who render services to different companies of the same trade or economic activity.
- **Trade union:** Constituted by individuals who belong to the same trade.
- **Miscellaneous activities union:** made up by employees of different professions.

The employees and the employer may agree upon additional terms and conditions to regulate employment relationships, known as collective bargaining agreement. Legal provisions protect employees' rights to collectively negotiate such contracts.

11.8 | FOREIGN EMPLOYEES

All foreigners who come to work in Colombia must apply for a visa that allows them to carry out activities in Colombia. In the case of Venezuelan citizens, they may be holders of a special permit of permanence - PEP or obtain a temporary protection permit – PPT. For regulated professions, they must also process the corresponding professional permission, although this is not a prerequisite for obtaining a visa.

The requirement for a certain proportion between local and foreign employees is limited for specific professions.

Immigration Matters

Visitor from most countries do not require a visa to visit Colombia[4], unless the purpose of the visit is to invest, do business, or work in Colombia.

The following chart, explains the most common types of visa:

TYPE OF VISA	COST IN COLOMBIA IN USD BEFORE COMPETENT AUTHORITIES	
TYPE "V" - VISITANT	Study	Visa
AIRPORT TRANSIT	54,92	52
TOURISM	54,92	52
BUSINESS	54,92	132,03
STUDENT	16	21
MEDICAL TREATMENT	54,92	132,03
ADMINISTRATIVE/JUDICIAL PROCEDURES	54,92	132,03
CREW	54,92	132,03
SEASONAL AGRICULTURAL EMPLOYEE	54,92	132,03
EVENTS	54,92	132,03
RELIGIOUS	54,92	132,03
STUDENT/RELIGIOUS VOLUNTEER	54,92	132,03
VOLUNTEER / COOPERANT	54,92	132,03
FILM PRODUCTIONS OR LARGE FORMAT DOCUMENTARIES	54,92	132,03
DIGITAL NOMAD	54,92	132,03
JOURNALISTIC COVERAGE	54,92	132,03
PERMANENT CORRESPONDENT	54,92	132,03
TECHNICAL ASSISTANCE	54,92	132,03
ENTREPRENEURS FTA	54,92	132,03
NON-CERTIFIED OFFICIALS	54,92	132,03
VACATION-WORK PROGRAMS	0	0
INTERN	54,92	132,03
SERVICE PROVIDERS-WORK OR LABOR	54,92	132,03
PROMOTING INTERNATIONALIZATION	54,92	132,03
RENTIER	54,92	132,03
COURTESY	0	0
NON-EXPECTED CASES	54,92	132,03

[4] According to Resolution 5488 of 2022 of the Ministry of Foreign Affairs, the countries to which Colombia does not require a visitor visa are:

Albania, Alemania, Andorra, Antigua y Barbuda, Argentina, Australia, Austria, Azerbaiyán, Bahamas, Barbados, Bélgica, Belice, Bolivia, Bosnia y Herzegovina, Brasil, Brunéi-Darussalam, Bulgaria, Bután, Canadá, Checa (República), Chile, Chipre, Corea (República de), Costa Rica, Croacia, Dinamarca, Dominica, Ecuador, El Salvador, Emiratos Árabes Unidos, Eslovaquia, Eslovenia, España, Estados Unidos de América, Estonia, Fiyi, Filipinas, Finlandia, Francia, Georgia, Granada, Grecia, Guatemala, Guyana, Honduras, Hungría, Indonesia, Irlanda, Islandia, Islas Marshall, Islas Salomón, Israel, Italia, Jamaica, Japón, Kazajstán, Letonia, Liechtenstein, Lituania, Luxemburgo, Macedonia del Norte, Malta, Marruecos, México, Micronesia, Moldova, Mónaco, Montenegro, Noruega, Nueva Zelandia, Países Bajos, Omán, Palau, Panamá, Papúa Nueva Guinea, Paraguay, Perú, Polonia, Portugal, Qatar, Reino Unido de la Gran Bretaña e Irlanda del Norte, República Dominicana, Rumania, Rusia (Federación de), San Cristóbal y Nieves, Samoa, San Marino, Santa Lucia, Santa Sede, San Vicente y las Granadinas, Serbia, Singapur, Suecia, Suiza, Surinam, Trinidad y Tobago, Turquía, Ucrania, Uruguay, Venezuela, Hong Kong SARG China, Soberana Orden Militar de Malta, Taiwán.

TYPE OF VISA	COST IN COLOMBIA IN USD BEFORE COMPETENT AUTHORITIES	
TYPE "M" - MIGRANT		
SPOUSE OF COLOMBIAN CITIZEN	54,92	195,40
PERMANENT COMPANION OF COLOMBIAN CITIZEN	54,92	195,40
FATHER OR CHILDREN OF COLOMBIAN CITIZEN	54,92	195,40
MERCOSUR AGREEMENT	54,92	195,40
ANDINO AGREEMENT	54,92	195,40
REFUGEE	0	0
EMPLOYEE	54,92	195,40
PARTNER/OWNER	54,92	195,40
PENSIONER	54,92	195,40
PROMOTING INTERNATIONALIZATION	54,92	195,40
INVESTOR	54,92	195,40
STATELESS	54,92	195,40
TYPE "R" - RESIDENT	54,92	175,33
FOR WAIVER OF NATIONALITY	54,92	175,33
FOR ACCUMULATED TIME OF PERMANENCE IN COLOMBIA	54,92	175,33
FOR THE APPLICATION OF THE TEMPORARY PROTECTION STATUTE FOR VENEZUELAN MIGRANTS (ETPV)	54,92	175,33
SPECIAL RESIDENT OF PEACE	54,92	175,33
VISA TRANSFER	54,92	54,92

Entry and visit permits for foreigners.

The Colombian Immigration Authority issued the Resolution 3167 of 2019, regulating entry and visit permits for foreigners of non-restricted nationalities into three groups:

Tourism permit (PT).	**It is granted for up to 90 calendar days.**	**For rest, culture and/or entertainment activities, events, health assistance, conventions or business activities.**
Integration and Development permit (PID.	It is granted for up to 90 calendar days, except for some cases such as special emergency situations in which the permit is granted only for 15 calendar days.	For short stay activities such as: i) execution of cooperation agreements; ii) carrying out personal issues including participation in interviews; iii) for being an individual of special importance for the Colombian Government; iv) to attend as a student non-formal academic programs; v) for lecturers, professors or investigators vi) for journalistic activities; vii) to attend urgency cases such as natural disasters; and viii) to exercise the representation of a State in an official commission or service.
Permit to carry out other activities (POA).	It is granted between 10 up to 30 calendar days.	For short stay activities that are not included in the two previous permits, such as: i) technical assistance activities; ii) concerts, events and/or artistic activities; iii) for temporary transit; and, iv) to travel crews,

Depending on the type of permit, this may be extended through the granting of a temporary permanence permit (PTP), without exceeding 180 calendar days under any type of permit in a given calendar year.

11.9 | OTHERS

- **Gradual reduction of the work schedule**

Law 2101 of 2021 reduced the maximum working week from 48 to 42 hours. The reduction will be implemented in a gradual manner, decreasing as of June 2023.

The aforementioned, without prejudice that, upon the entry into force of this law, the employer implements in advance the reduction.

11 LABOR LAW

- **Decree 1227 of 2022, by means of which telecommuting was regulated.**

Telecommuting is a modality of work that allows the performance of remunerated activities or provision of services to third parties using as support the information and communication technologies -ICT-, without requiring the physical presence of the employee in a specific place of work. The Decree regulates the obligations for telecommuters and employers, as well as provides guidelines for the implementation of this modality of work.

- **Decree 555 of 2022, which regulates Remote Work.**

This decree regulates the conditions under which Remote Work (Law 2121 of August 3, 2021) shall be provided, Remote Work, understood as the form of execution of the employment agreement where the entire employment relationship, from its beginning to its termination, is carried out through the use of technological tools.

- **Law 649 of 2022, which regulates the habilitation of Work at Home.**

It is a work modality that allows employees to perform their duties from their homes, as long as there are occasional, exceptional or special circumstances that prevent them from attending the employer's facilities for a specific period of time.

- **Law 2191 of 2022, which regulates Labor Disconnection.**

This law regulated the right to labor disconnection. This is the right of all employees to have no contact by any means or tool, whether technological or not, related to their work activity at times outside the ordinary working day or maximum legal working day, or during their vacations or breaks.

- **Decree 1427 of 2022, which regulates the economic benefits of the Social Security System in Health.**

The Ministry of Health issued Decree 1427 of 2022, which establishes the rules for the issuance, recognition and payment of maternity and paternity leaves, as well as common origin sick leaves, including those exceeding 540 days. It also defined the situations of right abuse and the procedure to be followed in such cases.

Maternity and paternity leaves are paid by the employer, who may subsequently request their reimbursement to the health system.

- Maternity leave: 18 weeks.
- Maternity leave in multiple pregnancies: 20 weeks.
- Paternity leave: 2 weeks.
- The last six weeks of maternity leave may be transferred to the father to extend paternity leave. Likewise, they can be worked part-time in order to extend the mother´s leave time.

- **Termination of employment contracts**

The employer may terminate employment contracts unilaterally, as long as it pays the corresponding indemnification as established by law in the event such termination takes place without just cause. Employment contracts may not be terminated for those workers who have special protection such as workers with union privilege, pre-pensioner privilege, health or maternity privilege.

12 SETTLEMENT OF DISPUTES

In Colombia, disputes may be settled via different types of arbitral, court, and extrajudicial proceedings.

In Colombia, jurisdictional rules are of public order: if the requirements given by law are met and Colombian courts have jurisdiction, they must exercise it. The parties to a dispute may only depart from Colombian jurisdiction rules by means of arbitration agreements.

Arbitration in Colombia —national and international—is governed by Law 1563 of 2012 (the 'Arbitration Act'), which is based on the UNCITRAL Model Law on International Commercial Arbitration of 1985.

Pursuant to the Arbitration Act, arbitration is International if:

1.the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their domiciles in different States; or
2.
2.the place where a substantial part of the obligations is to be performed or the place with which the subject-matter of the dispute is most closely connected, is situated outside the State in which the parties have their domiciles; or
3.
3.the dispute submitted to arbitration affects the interests of international trade.

In all other cases, the arbitration will be domestic.

If the arbitration is domestic, the parties may agree on a local arbitral institution to administer the arbitration, an odd number of arbitrators and the method of appointment of arbitrators. However, various issues or stages of the proceeding such as the requirements of the complaint, impeachment of arbitrators, admission of the complaint, the evidentiary stage, the issuance of precautionary measures, and the intervention of other parties or third parties will be conducted according to the rules included in the General Code o Procedure or according to the Administrative Code (*Código de Procedimiento Administrativo y de lo Contencioso Administrativo*) whenever a public entity is involved.

If the arbitration is international with seat in Colombia, the parties may agree on the rules of procedure, a local or international institution to administer the arbitration, the applicable law, the language of the proceedings, an odd number of arbitrators and the method of appointing them.

Colombia is a State Party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention), the Convention on the Settlement of Investment Disputes between States and Nationals of Other States 1965 (ICSID Convention), the Inter-American Convention on International Commercial Arbitration of 1975 (Panama Convention), and the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards of 1979.

Arbitral Institutions

Although arbitrations seated in Colombia may be *ad-hoc*, they usually are administered by arbitral institutions. In fact, the Arbitration Act states that, for domestic arbitration, in the absence of agreement regarding its nature and when the parties are silent, the arbitration will be institutional.

The arbitral institutions at the Bogotá Chamber of Commerce (CCB), the Medellín Chamber of Commerce for Antioquia (CCMedellin), the Cali Chamber of Commerce, and the Chamber of Commerce of Barranquilla are the leading local institutions that administer more than 500 arbitrations per year —both national and international—.

Furthermore, international arbitrations seated in Colombia or involving Colombian parties are usually held under the arbitration rules of the CCB, the CCMedellin, the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), the International Centre for Dispute Resolution (ICDR), the Swiss Chambers' Arbitration Institution (SCAI), among others.

Recognition and enforcement of foreign arbitral awards in Colombia

Foreign arbitral award are enforceable in Colombia, regardless of the country of issuance, following recognition proceedings before the competent Colombian court (the Supreme Court of Justice, or the Council of State when a Colombian State entity is involved).

Awards issued in international arbitrations seated in Colombia are deemed national arbitral awards and, therefore, maybe enforced without following recognition proceedings, unless parties have waived their right to set aside the award.

The party seeking recognition must file a request before the competent court, by submitting the original arbitral award, or a copy thereof. If the award is issued in a language other than Spanish, the party must submit a translation.

The competent court may only refuse the recognition of a foreign arbitral award under the exhaustive grounds established in the Arbitration Act, that mirror the grounds established in Article V of the New York Convention

13 ENVIRONMENTAL LAW

- ***Constitutional basis for the protection of the environment***

The Colombian Constitution aims for the protection and conservation of the environment and the preservation of ethnic and cultural diversity in the country.

- ***Institutional framework for the protection of the environment***

The Colombian Ministry of Environment and Sustainable Development is entrusted with the formulation of environmental policies and with the issuance of specific mandatory regulation. To that extent, the Ministry exercises as environmental authority only on exceptional basis regarding nation-level projects, works or activities ("POAs", for its acronym in Spanish).

The Colombian National Authority on Environmental Licenses ("ANLA" for its acronym in Spanish language) and the local and regional environmental authorities (i.e., *Corporaciones Autónomas Regionales, C orporaciones para el Desarrollo Sostenible and Autoridades Ambientales de los Grandes Centros Urbanos y Distritos*) exercise their powers onto POAs of a regional or local character. Besides granting environmental licenses and permits, said authorities are entrusted with the monitoring and control of local and regional POAs located within their correspondent jurisdictions and/or of their competence.

- ***Environmental licenses***

Environmental licenses are the administrative authorizations granted by environmental authorities for the development of POAs. License holders shall abide by the mandatory provisions regarding the prevention, mitigation, correction, compensation and management of the environmental impacts to be generated by the relevant POA.

As per the environmental normative framework in force, environmental licenses:

a) shall include all permits/authorizations and/or concessions required by POAs for the use, exploitation or impact on renewable natural resources;

b) shall be obtained prior to the commencement of the POA;

c) constitute a precedent mandatory condition for the exercise of the rights and obligations granted by other Colombian authorities;

c) shall be granted for a term covering the entire operative life of the relevant POA. The latter includes its construction, assembly, operation, maintenance, dismantling, final restoration, abandonment and/or termination; and

d) shall comprise the development in full of the relevant POA, meaning that POAs shall not require more than one environmental license.

Depending on the magnitude and scope (national or regional) of the POA to be developed, license holders shall request and obtain the required environmental license from ANLA or from the competent regional or local environmental authorities.

POAs requiring environmental licensing for their development are limited to those provided by the law. Relevant POAs subject to environmental licensing include:

a) The exploratory drilling of hydrocarbons;

b) The exploitation and transportation of hydrocarbons through pipelines;

c) The exploitation of minerals;

d) The construction and operation of power generating plants, hydroelectric plants, and renewable energy generation projects;

e) The laying of lines for the transmission of energy;

f) The construction of sea and river ports, and of road and rail infrastructure projects; and

g) The manufacture of certain chemical substances.

Environmental licensing process is governed by Law 99 of 1993 and its Regulatory Decree 1076 of 2015. In force legislation sets out a term of maximum 6 months to conclude the assessment of environmental license requests. Please note that, as a matter of general practice, this process may take longer. Currently, the Government is preparing a substantial amendment to the licensing regime, aimed at increasing the participation of civil society and communities on licensing processes.

- ***Environmental permits***

If the development of a POA does not require environmental licensing, it may nonetheless require independent environmental permits related to the use or exploitation of natural resources. POAs not subject to environmental licensing may, for instance, require individual permits such as:

a) Effluents discharge permits;
b) Water concessions;
c) Atmospheric emissions permits; and
d) Forestry utilization permits.

In addition to the foregoing, POAs shall comply with the applicable environmental obligations regarding ordinary, special and hazardous wastes.

- ***Hazardous Wastes***

The generation, management, treatment and final disposal of hazardous wastes is regulated in Colombian regulation. The hazardous wastes regime in force sets forth several obligations for each one of the agents engaged in the management of wastes (i.e., generator, transporter, final disposer).

Hazardous wastes generators are to be held jointly and severally liable for damages arising from the management of hazardous wastes until they are finally disposed.

- ***Post-consumer Plans***

Based on the concept of extended producer responsibility, the regulations require manufacturers and importers of certain mass consumer products to organize, develop and finance a comprehensive management of waste derived from their products, once the final consumer discards them. These products include: (i) Pesticides; (ii) Medications or expired medicines; (iii) Used lead-acid batteries; (iv) Batteries and/or accumulators; (v) Used tires; (vi) Light bulbs; (vii) Computers and peripherals; and (viii) Containers and packaging.

In 2022, the Ministry of Environment established new requirements in relation to the waste management of electric and electronic equipment. The regulation sets forth a classification of the product –of which some have special management obligations- and requires waste disposal certificates for users and consumers.

- ***Protected Areas***

Colombia has several key strategic areas and ecosystems protected at both the national and regional levels. These include: a) Natural National Parks; b) Regional Natural Parks; c) Forest reserves; d) Moorlands; and e) Wetlands.

Depending on the type and level of protection, the development of certain POAs shall be permitted or not following the protection measures set forth in the specific environmental management plan adopted for each area.

The intervention of these strategic areas or ecosystems requires, in most of the cases, the obtainment of a special authorization from the competent environmental authority.

- ***Prior Consultation***

The development of POAs which may directly impact on ethnic communities in Colombia require undertaking prior consultation, under the direction of the Colombian Ministry of Interior. The latter, with the aim of agreeing upon the conditions for the development of the POA and of adopting the correspondent protection and compensation measures on behalf of the affected communities.

The developer of a POA must request the Ministry of Interior to determine whether prior consultation must be conducted in relation to a specific POA. In 2022, the Constitutional Court issued a ruling which requires that this decision is notified to all ethnic communities within the municipalities belonging to the influence area where the POA is located. Except for certain cases established by the Colombian Constitutional Court, ethnic communities do not have a veto power over the development of the POA under consultation.

Finally, it is worth mentioning that the execution of the prior consultation is a condition precedent for the granting of an environmental license.

- ***Sanctioning regime***

As per the environmental sanctioning regime, an environmental infringement will exist when (i) there is an action or omission that constitutes a violation of (a) the applicable environmental regulations or (b) administrative acts issued by the environmental authorities (such as permits or environmental licenses); or (ii) when damages to the environment are caused,

The regime in force provides for a presumption of negligence or willful intent against the alleged infringer, who bears the burden of evidencing that it acted diligently or with no willful intent to escape liability using all legal means of evidence.

If the infraction is proven, the competent environmental authority may impose sanctions that can vary between written warnings, daily fines up to 5000 MLMW and revocation of the environmental permit or license, among others.

Environmental sanctions shall be imposed without prejudice to the environmental reparation or compensation measures that may be applicable, and without prejudice to civil or criminal liability arising out of the same facts.

In certain cases, especially in matters of criminal liability, these infractions may compromise the personal liability of the infringer's administrators (if constituted as a company) or of those who decisively interfered with the company's operations.

14 PUBLIC LAW AND STATE CONTRACTS

14.1 | ACTORS OF PUBLIC PROCUREMENT

Persons considered legally capable, consortiums and temporary unions, national and foreign legal entities, which duration is no less than the term of the contract, may enter into contracts with public entities in Colombia.

- **Consortiums and temporary unions**

Colombian law allows the association of bidders in the objective selection processes raised before state agencies, with the dual purpose of accrediting the common attributes of a set of bidders and the execution of the awarded contract.

Consortiums or temporary unions are not legal entities, but mere contractual agreements between the parties, temporarily joining efforts and resources in order to present bids, celebrate and execute specific contracts. It is considered a collaboration contract, similar to a joint venture.

- **Promises of future companies**

The public contracting law also allows the conformation of promises of future companies to be made under any corporate modality for the sole purpose of submitting a proposal, entering into and executing a public contract. The general rule of liability under promises of future companies will be that of consortiums. However, for projects carried out under the PPP modality, the liability will correspond to that of the corporate type that they intend to incorporate.

- **Unique Registry of Proponents – RUP**

One of the relevant requirements to participate in selection processes with Colombian government and to be able to demonstrate legal, administrative, financial, technical capacity and experience is the RUP. This is a registry in which individuals or legal entities who seek to enter into government contracts must be registered.

The purpose of the RUP is to provide the necessary information of a registered contractor in relation to its experience, legal, technical, organizational and financial capacity. With it, the qualifying requirements of the contractor are verified in the frame of selection processes. The information provided for registration is subject to verification by the Chamber of Commerce, and must be renewed year by year, no later than the fifth (5th) business day of April.

The RUP is not required in the following events: (i) contracts for the provision of health services; (ii) minimum value contracts; (iii) alienation of State property; (iv) contracts whose purpose is to acquire products of agricultural origin or destination that are offered in legally constituted product exchanges; (v) the acts and contracts that have as their direct object the commercial and industrial activities of the industrial and commercial companies of the State and the mixed economy companies and; (vi) the concession agreements of any kind.

14.2 | INABILITIES AND INCOMPATIBILITIES

The inabilities and incompatibilities to contract with public entities, are expressly established in the Law, in order to limit the capacity of some bidders and prevent personal interests from being opposed in the conclusion of contracts with the government.

Inabilities are impediments applied to a person to contract with a public entity. Incompatibilities are prohibitions applicable to persons who hold or have held a position of public servant, to carry out a certain contracts.

If the inability occurs during the performance of a contract, the contractor must assign the contract to a third party or, if this is not possible, it must renounce the performance of the contract.

14.3 | CONTRACTOR SELECTION MODALITIES

As a general rule, when a governmental entity needs to celebrate a contract with a private individual, the selection process must take the form of a public bidding process, and exceptionally and only when certain assumptions are met, through abbreviated selection or minimum amounts process, direct contracting, or merit based contracting.

a. Public Bidding.

The contractor's selection process will be made under this modality, unless there is one of the exceptions indicated in the rest of the selection modalities. The public tender is characterized by having a procedure that seeks the participation of a plurality of bidders within which the respective state entity will select, through objective criteria, the most favorable offer.

b. Abbreviated selection.

The abbreviated selection process has the same stages as the public tender but with shorter terms and has some specificity. Said selection process is for entities that have an annual budget: (i) greater than or equal to 1,200,000 MLMW, the smallest amount will be up to 1,000 MLMW; (ii) greater than or equal to 850,000 MLMW and less than 1,200,000 MLMW, the smallest amount will be up to 850 MLMW; (iii) greater than or equal to 400,000 MLMW and less than 850,000 MLMW, the smallest amount will be up to 650 MLMW; (iv) greater than or equal to 400,000 MLMW and less than 850,000 MLMW, the smallest amount will be up to 650 MLMW; (v) greater than or equal to 120,000 MLMW and less than 400,000 MLMW, the smallest amount will be up to 450 MLMW; (vi) less than 120,000 MLMW, the smallest amount will be up to 280 MLMW.

c. Minimum amount

It is the contracting whose value does not exceed 10% of the budget of the governmental entity, regardless of its purpose.

d. Direct contracting

It is applicable in cases of (i) manifest urgency; (ii) loan agreements; (iii) contracts between state companies, (iv) defense contracts; (v) artistic, scientific and technological contracts; (vi) trust for the management of labor liabilities; (vii) when there are no multiple offerors; (viii) for the provision of specialized services to support state entities; (ix) leasing and purchase of immovable assets; o (x) the contracting of the intelligence agency as long as reserve must be kept.

e. Merit based contracting

Under this modality, the contractor is chosen based on the greatest technical, scientific, cultural or artistic capacity, in order to choose the most suitable person to carry out the contractual purpose.

14.4 | EXCEPTIONAL POWERS

Article 14 of Law 80 of 1993 establishes that public entities have the general direction and responsibility to exercise control and surveillance over their contracts and can exercise exceptional powers to fulfill the contractual purpose.

The contracting public entities may only exercise the exceptional clauses, in cases where they are necessary to prevent the paralysis of the service or serious damage to the public service.

The private contractor affected by administrative acts that impose such exceptional measures may sue to obtain legal remedies, for example to annul or invalidate the decision. Therefore, the contracting entities must comply with the procedures and requirements established in the applicable norms for the case, attending to due process and guaranteeing the right of defense and contradiction.

Law 2195 of 2022, brings with it the mandatory inclusion of these clauses in the contracts called PAE.

The principal exceptional clauses are the following:

a. **Termination of the contract through forfeiture (caducidad) (Article 18 of Law 80, 1993):** Forfeiture allows the public contracting entity to terminate the contract and impose, as a sanction, the inability to contract with public entities for 5 years, if there is a serious default which affects the performance of said contract and could lead to its paralysis.

b. **Reversion (Article 19 of Law 80, 1993):** In concession or exploitation contracts, it can be agreed that at the end of the term of the contract, the elements and assets directly affected become the property of the governmental entity, without having to make any compensation to the concessionaire.

c. **Unilateral termination of the contract (Article 17 of Law 80, 1993):** Public contracting entities may unilaterally terminate the contract in the following events: (i) for preserving the public service or public order; (ii) due to dissolution of the contractor; (iii) if the contractor is declared in legal injunction or declaration of bankruptcy; or (iv) any suspension of payments or court order to freeze assets against the contractor which seriously affects the performance of the contract.

d. *Unilateral modification of the contract (Article 16 of Law 80, 1993):* Public contracting entities may modify the contract, if necessary, to avoid the suspension or serious endangerment to the public service, if the parties have not reached a prior agreement. If the modification increase the value of the works required by the public entity on a 20% of the estimated contract value, the contractor may terminate the contract as it will be considered an excessive modification by the contracting public entity. If the value of the modification does not exceed 20% of the contract value, the contracting entity will compensate the contractor.

e. *Unilateral interpretation of the contract (Article 15 of Law 80, 1993):* If during the execution of the contract no agreement is reached on the discrepancies that may arise between the parties, on the interpretation of its provisions that may lead to the paralysis or serious impairment of the public service that is intended to be satisfied, the public entity shall unilaterally interpret the stipulations or clauses subject to the difference, through duly motivated administrative act.

14.5 | PUBLIC PROCUREMENT SYSTEM

The National Procurement Agency "Colombia Compra Eficiente" carries out, the design, organization and conclusion of price framework agreements for the acquisition of goods and services with uniform technical characteristics, through the abbreviated selection mechanisms or purchases by catalogs.

The Public Procurement System is the structure organized to make public contracting and use of public resources, in order to make the goods and services in charge of public entities, available to people.

Law 1150 of 2007 created the Electronic Public Procurement System (SECOP, for its acronym in Spanish), with the purpose of publishing the information related to the different contracting processes carried out by state entities in the public domain and public knowledge. Likewise, it applies to the documentation of PPP projects, such as the contract minutes, technical appendices, risk matrix, as well as their respective modifications.

- **Electronic System for the Public Procurement - SECOP**

SECOP is the official information medium and the only entry point for information for entities that contract with public resources.

- **Virtual store of the Colombian State**

Transactional platform through which purchasing entities acquire: (i) goods and services through the Framework Price Agreements; (ii) goods and services under the Demand Aggregation Contracts; and (iii) goods in the form of Minimum Amount in Large Stores.

- **Standard documents for contracting processes**

The standard documents are the documents adopted by the Colombian Government that include the qualifying conditions, technical and economic factors and other mandatory selection factors for the State Entities subject to the general public contracting regime with respect to a specific type of contract.

Throughout 2022, Resolutions 146, 275, 326 and 333 were issued, modifying and updating the standard documents adopted by the National Procurement Agency for transportation infrastructure projects.

- **Law 2195 of 2022 - Law on transparency, prevention and fight against corruption**

The purpose of the law is to adopt provisions aimed at preventing acts of corruption, to strengthen the articulation and coordination of State entities and to recover damages caused by such acts in order to ensure and promote a culture of legality and integrity.

In the area of public procurement, the law expands the subjects susceptible to be declared fiscally responsible; it introduces the reduction of scores in public selection processes to entities that have been imposed fines or penal clauses and the expansion of fiscal responsibility, and regulates the way in which the accounting of projects must be carried out when public resources are executed.

15 PUBLIC PRIVATE PARTNERSHIPS (PPPS) AND INFRASTRUCTURE

14.6 | PUBLIC PRIVATE PARTNERSHIPS

PPPs are instruments of private investment, that are materialized in a contract between public and private actors, for the provision of public goods and their related services, which involves the retention and transfer of risks and the methods for payments that are subject to availability of and compliance with the levels of service of the infrastructure and/or service.

There are two types of PPP: (i) public initiative and (ii) private initiative. The latter are divided into private initiatives with public resources and private initiatives without public resources.

In general terms, public initiatives are structured by the contracting entity and are awarded through public tender. Under private initiatives, individuals submit to the competent entity, at their own risk and expense, an infrastructure or services project, assuming the total costs of structuring the project. Depending on whether public resources are required or not, there are procedures that shall be followed.

These private initiative projects must be aligned with the National and Territorial Development Plans or with any planning tool of the respective entity, according to Decree 438 of 2021.

- **Key features of PPP regulation:**

- Although PPPs are materialized through a concession contract, not all concessions are granted to develop PPP projects; but only those that are regulated by Law 1508 of 2012.

- Payment can be made in stages, subject to approval of the Ministry or relevant public body. In order for it to proceed, the project must have been structured by functional units and comply with a certain amount according on the sector.

Road sector: the amount of the estimated investment budget of each infrastructure functional unit must be equal to or greater than 100,000 MLMW (approx. USD $24,166,666.67 USD).

Education sector: the amount of the estimated investment budget of each functional unit must be greater than 6,000 MLMW (approx. USD $1,450,000).

River sector: the amount of the estimated investment budget for each functional infrastructure unit must be equal to or greater than 5,300 MLMW (approx. USD $1,280,833.33).

Railway sector: the amount of the estimated investment budget for each functional unit will be determined in the studies and analysis developed for the PPP.

• Several conditions must be met to pay for PPP projects using functional units.

•Deductions can be made for non-compliance with service levels and quality standards agreed in the contract.

• Disbursements of public resources include expenditure from the General Budget of the Nation, the budget of the Territorial Entities, decentralized entities or other public funds, such as the General System of Royalties.

• Resources generated from the use of the infrastructure (i.e., toll fees) are not considered disbursements of public resources. Also, public entities are allowed to make in-kind contributions (i.e., deliver the real property where the project will be developed) which are not considered disbursements of public resources.

• The value of public initiative PPP contracts comprises the estimated investment budget corresponding to the value of construction, repair, improvement, equipment, operation and maintenance.

• The value of the additions and extensions may not exceed 20% of the value of the contract.

• Entities may open prequalification processes when the project value is greater than 70,000 MLMW (approx. USD $18,584,693). Depending on the number of the interested parties, it is or not mandatory for the public entity to issue the list of prequalified bidders. n the event there are not at least two bidders, the public entity may carry out the prequalification process again or it may choose to carry out a public bidding process.

• The submission of PPPs for private initiatives is prohibited for projects: (i) that modify existing contracts or concessions; (ii) for which the entity is already structuring, which will occur when (a) the entity has already entered into a contract for structuring the project or has issued the resolution for opening the selection process for selecting the contractor that will structure the project, or (b) when the entity has carried out the studies for the feasibility stage; and for projects (iii) that require guarantees or disbursements of public resources higher than those established in PPP Law.

PUBLIC PRIVATE PARTNERSHIPS (PPPS) AND INFRASTRUCTURE

- Private initiatives without public funds may use different mechanisms to compensate the contractor for risks which materialize. For example, the scope of the project may be modified, or toll rates may be increased or the term of the contract may be extended; in "Brownfield" projects, the creation of special subaccounts that are funded with resources from the toll collection before remuneration, among others.

- Private initiatives must be registered in the Single Registry of Public Private Partnerships ("RUAPP").

The RUAPP is a database managed by the National Planning Department (DNP for its acronym in Sp anish) that compiles information on the status of projects being developed under the Public-Private Partnership scheme at the national and territorial level.

At the beginning of 2023, the DNP launched a new public consultation platform of the RUAPP. Here, all interested parties will be able to find information on projects such as urban roads, ports, airports, transportation systems, logistics centers and social projects such as schools, hospitals, sports and cultural venues, and detention centers, among others.

- In public initiative PPP projects at any territorial level (previously only applicable to entities of the national level), part of the payment may take the form of real property rights, provided they are not required to provide the service associated with the project.

- If the public body provides operating infrastructure, payment for ongoing operation and maintenance (O&M) activities can be made conditional on ongoing availability, compliance with service levels and quality standards.

- Sections of airports, wastewater treatment plants, tunnels or railways can be split into units, with payment dependent on partial availability and quality standards in relation to each section.

- In private initiatives PPP that require public funding, investment from the General Budget of the Nation, territorial entities or other public funds may not exceed 30% of the estimated investment value of the project. If it is road infrastructure, the percentage may not exceed 20%.

- The presentation of private initiative PPPs must follow a procedure that is divided into two stages: pre-feasibility and feasibility.

- The contracts for the execution of the PPP project will have a maximum term of thirty years, includin
- and before the selection process it turns out that the project will have an execution period greater than that foreseen in the previous paragraph, PPP contracts may be signed provided that it has the prior favorable opinion of the Economic and Social National Policy Council – CONPES.

- Decree 438 of 2021

  • Attempt to create mechanisms that cushion the impacts that natural disasters bring, including tools from project planning to minimize losses and unfavorable situations for the parties.
  • Brings with it a rule for the originator of the project so that in the pre-feasibility stage it makes an estimate of the costs of capital and debt, as well as the identification of possible sources of financing.
  • Invites the strengthening of the evaluation and review of private initiative projects with the understanding that the Ministry of Finance may request the financial model of projects in the feasibility stage for the due analysis of the project, while preserving the character of legal reserve referred to in Law 1508 of 2012.

14.8 | 5G CONCESSIONS

The 5G Concessions refers to the program of transportation infrastructure projects aimed at contributing to the country's economic growth and improving the quality of life of the population by connecting Colombia's regions. This program is composed of two waves: the first with 14 multimodal projects and the second with 16 projects.

To date, 7 projects of the first wave have already been awarded and one was declared deserted.