

2019 Doing Business in Colombia

Colombian edition



Credits

This document is a collective effort. We want to recognize the following members from PwC Colombia:



Editorial and writing

Adriana Hincapié Hernández
Alba Gómez Marín
Ana María Avellaneda Ochoa
Andrés Pulido Matallana
Camilo García Sarmiento
Daniel Felipe Rosales
Daniel Orrego Velásquez
Daniel Buitrago Galindo
Fabián Osorio Morales
Gustavo Guzmán Rodríguez
Javier Blel Bitar
Juan Manuel Duarte Aldana
Juan Sebastián Giraldo Rodero
Karen Castillo Valderrama
Kevin Avellaneda Carmona
Laura Carolina Rojas Rubiano
Leidy Gaitán Leal
Lina Ocampo Tenorio
María Camila Espinosa Villafradez
Mariana Jaramillo Pineda
Miguel Fandiño Zuluaga
Natalia Ramírez Valencia
Nelson Rodríguez Infante
Rafael Vesga Pérez
Tivisay Mejía Valle
Wilson Herrera Robles

Design Team

Gisel Moreno Durán
Laura María Trujillo Rodríguez
Laura María Ricaurte Sánchez

Grammatical and style review

Mónica Díaz Mahecha

Cover photo

Mario Alejandro Vallejo Yacelga

Acknowledgment

Carlos Mario Lafaurie Scorza
Carlos Miguel Chaparro Plazas
Eliana Bernal Castro
María Helena Díaz Méndez
Nacira Lamprea Okamel

Content

01

Economic analysis of 2018 and outlook for 2019 08

Economic growth	09
Inflation	10
Interest rates	11
Foreign-exchange market	12
Foreign trade	13
Direct foreign investment	15
Employment	17
Political and economic environment	18
Outlook for 2019	18

02

International Investments and Foreign Exchange Regime 20

International investments	21
· Foreign investment in Colombia	
· Colombian capital investment overseas	
Foreign exchange regime	25
· Operations belonging to the regulated foreign exchange market	
· Foreign Exchange market intermediaries	
· Compensation accounts	
· Exchange declaration	
· Foreign Exchange market operations regulation	
· Special foreign exchange regime	
International investment agreements	31

03

Foreign Trade and Customs 32**General aspects 33**

- Foreign trade and customs rules
- Customs qualifications
- Special import and export programs
- Imports
- Exports

Customs valuation 40**Customs obligations 40****Free-trade zones 41**

- Labor requirements
- Partial processing of raw materials, supplies and intermediate goods
- Lands and buildings
- Investment in real productive fixed assets
- Main types of free-trade zones
- Main incentives
- Types of free-trade zone users

Customs preferential treatments 47

- Trade agreements

04

Labor Law 50**General aspects 51****Types of labor contracts 51****Working hours 53****Flexible working hours 53****Payments resulting from the labor relationship 54**

- Salary
- Labor benefits
- Mandatory days off
- Legal indemnifications
- Contributions to the Social Security System
- Payroll fees
- Types of leaves of absence

Work regulations 61

- Workplace regulations
- Hygiene and industrial safety regulations

Labor harassment 61**Foreign employees or workers 62****Collective Labor Law 62**

- Right to Unionize

05

Immigration Law – Visas 63

Countries that do not require tourist visas 64

Classification of visas 66

- Visitors Visa – Type “V” Visas
- Migrant Visa – Type “M” Visas
- Resident Visa – Type “R” Visas

Entry and permanence permit types 69

Foreign Citizen ID card 70

06

Tax Law 71

The income tax and the capital gains tax 74

- General aspects income tax and capital gains tax
- Income tax base and rate
- Special rates
- Determination of the taxable base of the income tax
- Nontaxable revenues or gains (or nontaxable income or gains)
- Deductible costs, deductible expenses and other deductions
- Tax credits
- Exempt income
- The capital gains tax

Withholding taxes 95

Rules for mega investments 96

International taxation 99

- Taxation of dividend distributions
- Payments to tax havens (“non-cooperating jurisdictions”, “jurisdictions of low or zero taxation”) and to entities that belong in preferential tax systems
- Presumptions for controlled foreign companies
- Transfer pricing regulations

Double Taxation Treaties and Decision 578 of the Andean Community of Nations 105

The Sales Tax or VAT 106

- General aspects
- VAT exempt goods
- VAT exempt services
- Goods and services that were VAT exempt

and are now VAT taxable under the recent tax reform	
· Goods and services that were VAT taxable and are now VAT exempt under the recent tax reform	
· Creditable VAT	
· New rules for non-VAT collection agents	
· VAT withholding tax	
· Digital services	
The Carbon Tax	114
The National Excise Tax	115
The Financial Transactions Tax – GMF (for its acronym in Spanish)	116
The SIMPLE taxation system	117
The Industry and Commerce Tax and Billboards Tax	120
· Industry and commerce tax	
· The supplementary Billboards Tax	
The Unified Property Tax	121
The Registration Tax	122
Tax procedure and formal obligations	123
· Electronic invoicing	
· Other matters	

07

Corporate aspects	131
Investment vehicles	132
· Types of investment vehicles	
· Comparative chart between Branch office of foreign company and Simplified stock company – SAS (for its acronym in Spanish)	
· Incorporation procedure	
· Steps to incorporate a SAS, or a branch office of a foreign company in Colombia	
Functioning of company, bylaws amendments and right to withdraw from a company	141
· Functioning	
· Bylawys amendments	
· Right to withdraw from company	
Parent companies and subsidiaries. Corporate groups	142
Financial statements	143
Profits or Earnings	143
Inspection, surveillance and control	144
Capital reductions	145
Liquidation	147
· Dissolution	
· Liquidation	
· Final liquidation statement, remainder, extinguishment of the legal personality	

08

Legal Compliance 149

Compliance with periodical obligations	150
Special obligations before surveillance and control agencies	152

09

Conflict Resolution 153

Introduction	154
Regular courts of law	154
Contentious Administrative Courts of Law	154
Alternative Conflict Resolution Mechanisms	155
· Conciliation	
· Arbitration	

10

Government Procurement 157

State Contracts	158
· Parties to state contracts	
Modalidades de selección del contratista	159
· Public bidding	
· Abbreviated Selection	
· Merits contest	
· Direct contracting	
· Minimum amount	
Unified Registry of Proponents – RUP (for its acronym in Spanish)	160
Public-Private Associations (PPA)	161
Public Utilities and Services	161
· Residential Public Utilities	
· Direct Provision of Services	
· Acquisition of Public Utility Companies	
Privatizations (sale of state-owned shares)	163
Legal Regulations for oil exploration and exploitation	163

01

Economic analysis of 2018 and outlook for 2019



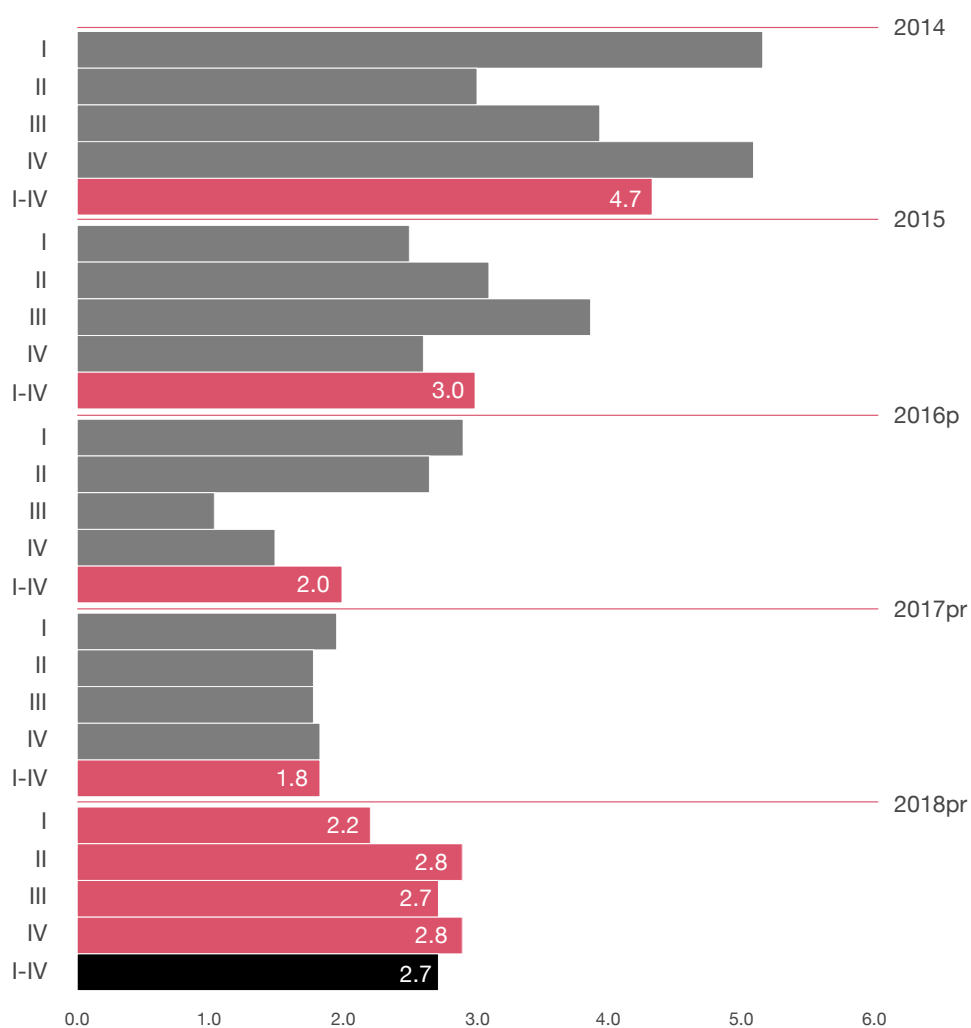
- In 2018, Colombian economy started to recover. The real year-to-date GDP variation was of 2.7% in 2018. This figure exceeded growth rates of the prior two years.
- Macroeconomic indicators were stable. Throughout 2018, inflation almost hit target (3%), and held between the top and bottom limits (from 2% to 4%). The behavior of foreign trade was good; and the unemployment rate stayed as a one-digit-rate.
- The economic situation of Colombia in 2018 went through a crossroads in point of economic growth. The election of a new government generated an atmosphere of uncertainty in the beginning of the year. However, as the months rolled by the economy recovered and the uncertainty dropped. The changes of the tax structure was one of the most important political topics with an economic impact of the year.
- It is expected that the economic recovery that started in 2018 consolidates in 2019, performing at a higher growth rate. This will be a year in which the country will face challenges associated with global trade, a trend of falling oil prices, the first year of the new government, a new national Development Plan and the expectations created by the so-called Public Treasury Financing Law (Ley de Financiamiento in Spanish).

Economic Growth

In 2014, Colombian economy grew by 4.7% with respect to year 2013. However, the falling oil prices of that year affected GDP behavior drastically. In consequence, the country lived an economic slowdown through year 2017 (see Figure 1).

In 2018, according to the National Statistics Administrative Department – DANE (for its acronym in Spanish), Colombian economy grew by 2.7% in respect of 2017. Likewise, the annual growth rates for the four quarters of 2018 were greater than 2017 annual growth rates.

Figure 1.
Real GDP growth rate (%). Annual quarterly variations and year-to-date variations for the 12 months of the year.



Source: DANE – Office of the Dir. of National Synthesis and Accounts
Volume chained series – Reference year is 2015
pr – preliminary figures
p – provisional

In 2018, GDP behavior showed that Colombian economy was recovering. It is expected that recovery will continue in 2019. Fedesarrollo and CEPAL have estimated that the annual 2019 GDP variation will be of 3.3%.¹

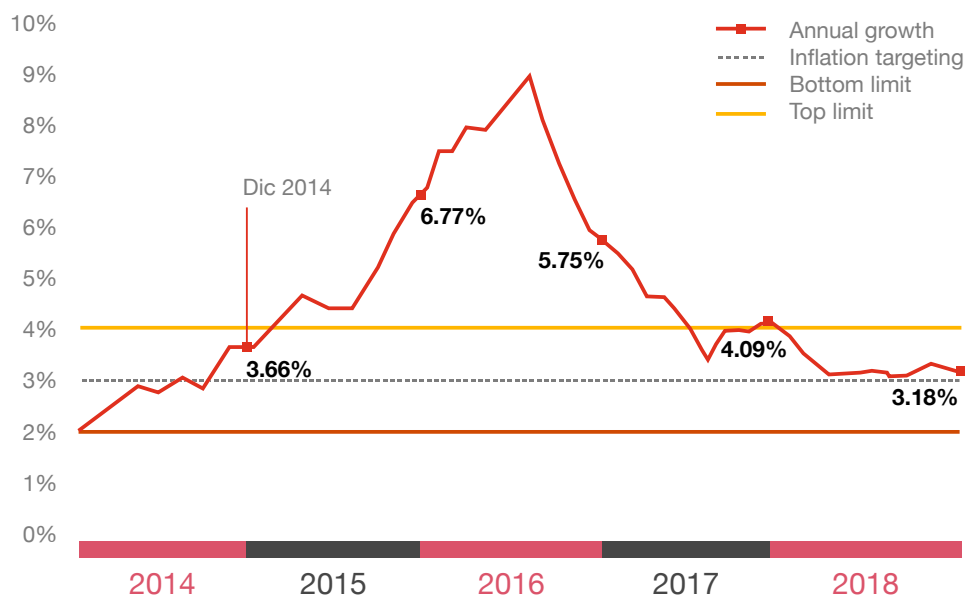
The economic sectors that contributed the most to economic recovery in Colombian 2018 were the following:

- **Public administration and defense:** It contributed 0.7 percentage points to annual GDP variation, growing by 4.1%.
- **Activities associated with trade and transportation:** It contributed 0.6 percentage points to annual GDP variation, growing by 3.1%.
- **Professional, scientific and technical activities:** It contributed 0.6 percentage points to annual GDP variation, growing by 5%.

Inflation

At the close of 2018, the average inflation rate in Colombia was of 3.18%. This reflected good performance and an atmosphere of stability of Colombian economy. This figure almost hit target (3%), and held between the top and bottom limits (from 2% to 4%).

Figure 2.
Inflation in
Colombia



² According to the Bank of the Republic, it is expected that the annual inflation variation as of December 2019 will be of 3.5% with respect to December 2018., <https://www.cepal.org/es/publicaciones/44326-balance-preliminar-economias-america-latina-caribe-2018>

Source: Bank of the Republic (the Colombian Central Bank)

*Inflation refers to the total national weighted variation of the CPI – as produced by DANE.

According to the Bank of the Republic, it is expected that the annual inflation variation as of December 2019 will be of 3.5% with respect to December 2018.²

The increase in inflation would be the result of a possible depreciation of the Colombian peso against the US dollar. This is given the increase of interest rates by the United States Federal Reserve in 2019. This will entail increased costs of imported goods, which will in turn bring about increases in prices for Colombian consumers. Additionally, the El Niño phenomenon would have an impact triggering price increases of food.

Now, despite these two factors, expectations suggest that Colombian inflation will stay under control and will hold its ground within the target range (2% to 4%).

Interest rates

Through intervention interest rates, the Bank of the Republic seeks to affect the amount of money circulating in the economy and inflation behavior. This has an impact as well on the interest rates charged by financial institutions.

From April 30, 2018 through year-end, the intervention rate stayed at 4.25%, after the Bank of the Republic had reduced it since towards the end of 2016.

This rate was at 3.25% in September 2015. But in order to curb inflation increases that had occurred in the beginning of that year, the intervention rate was increased gradually and reached 7.75% in November 2016. Subsequently, inflation would start to fall, and so would the intervention rate.

Given the expected steady inflation behavior, it is expected also that the changes of intervention rates in 2019 will not be as abrupt as the changes that occurred in past years.

² The information was obtained from the results of the monthly expectations survey of economic analysts made by the Bank of the Republic in January 2019.

Exchange market

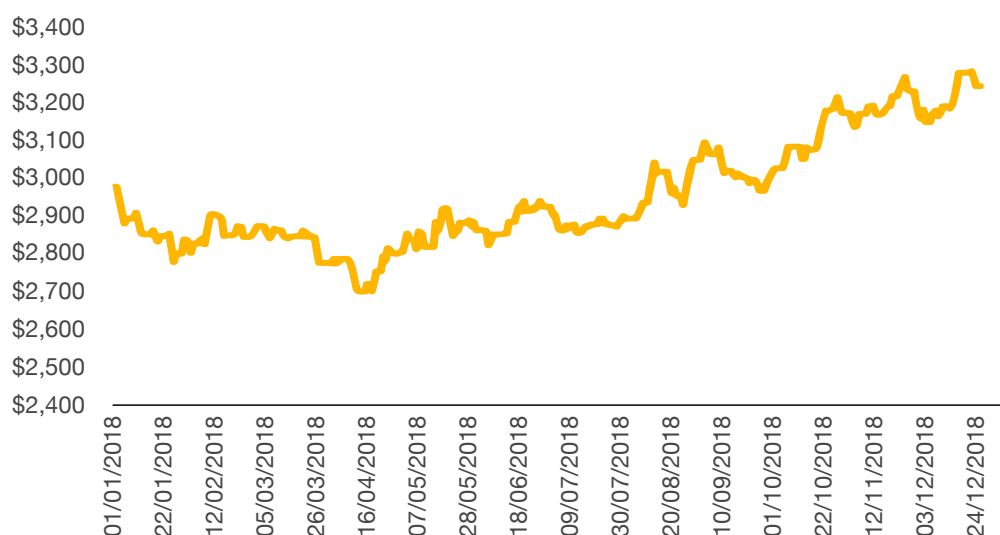
In Colombia, the foreign-exchange market is made up of the total currencies that must be transferred or negotiated through authorized market intermediaries or through the so-called bank compensation accounts.³

Ever since 2014, the Colombian peso has depreciated against the US dollar tagging along falling oil prices.

In 2018 oil prices were quite volatile; and during the last months of the year they fell. In consequence, the depreciation of the Colombian peso was greater towards the end of the year.

On average, the FX exchange rate as of December 2018 was COP\$ 3218.50 to the dollar. This showed a variation of 7.6 in respect of the average December 2018 FX exchange rate, which was of COP\$ 2991.70 to the dollar.

Figure 3.
Behavior of the FX
market rate – TRM
(for its acronym in
Spanish) in 2018.



Source: Bank of the Republic

According to Fedesarrollo, in 2019 oil prices can go on falling because of reduced demand and increased supply by nonconventional oil producers. In a similar way, additional increases in the interest rate of the Federal Reserve could trigger increased depreciation of the Colombian peso.

³ Source: Bank of the Republic <http://www.banrep.gov.co/es/node/34744>



Foreign trade

The total year-to-date value of exports from Colombia in 2018 was of US\$ 41.8 billion FOB. This represented an increase of 10.4% with respect to the same period in 2017, when the total value of exports reached US\$ 37.9 billion FOB. This is according to export data provided by DANE.

Of the total value of exports in 2018, fuel and oil and mining products represented 59.1%; manufactured products represented 19.9%; and farming products, foodstuffs and beverages represented 17.5%.

On the other hand, the main destination of Colombian exports in 2018 was the United States, with a share of 25.4% of total country exports. The other countries to which the biggest shares of total exports were shipped were the following: China (9.7%), Panama (7.3%), Ecuador (4.4%) Turkey (4%), Mexico (3.9%) and Brazil (3.7%).

With respect to imports, they grew by 11.2% as opposed to 2017. They grew from US\$ 46.1 billion CIF in 2017 to US\$ 51.2 billion CIF in 2018.

77.8 % of total 2018 imports corresponded to manufactured products; 13.5 % to farming products, foods and beverages; and 8.6 % to fuel and oil and mining products.

The biggest share of imported products originating in one single country came from the United States in 2018. The US share represented 25.3% of the total value of Colombian imports, with China (20.6%), Mexico (7.7%), Brazil (5.5%), Germany (4.2%), Japan (2.5%) and India (2.3%) trailing.

On the other hand, Colombia has standing bilateral treaties, specifically free-trade agreements with the following countries: the United States, Canada, Mexico, Chile, Venezuela, Cuba, Costa Rica, Korea and the European Union.

We also have trade agreements with country communities such as the Andean Community – CAN (for its acronym in Spanish), the so-called Caribbean Community – CARICOM (for its acronym in Spanish), MERCOSUR, EFTA (Switzerland, Liechtenstein, Norway and Iceland), the Pacific Alliance and the Central American Northern Triangle (El Salvador, Guatemala and Honduras).⁴

As far as efficiency goes, we can highlight that the World Bank ranked Colombia in position 58 (out of 160 countries) under the 2018 Logistics Performance Index (LPI), in point of trade logistics performance. This means improved performance as opposed to years 2016 and 2014, when that agency ranked Colombia in positions 94 and 97, respectively.⁵ In like manner, Colombia ranked third in South America, after Chile and Brazil, in 2018.

In 2019, the volume of Colombian foreign trade may be affected by the ongoing trade wars between the United States and China, which started in 2018. These wars have impacted value chains around the world; especially, it has brought about reduced growth expectations for the main countries of origin and countries of destination of Colombian foreign trade.

⁴ The reader may query our standing treaties at: http://www.tlc.gov.co/publicaciones/5398/acuerdos_vigentes

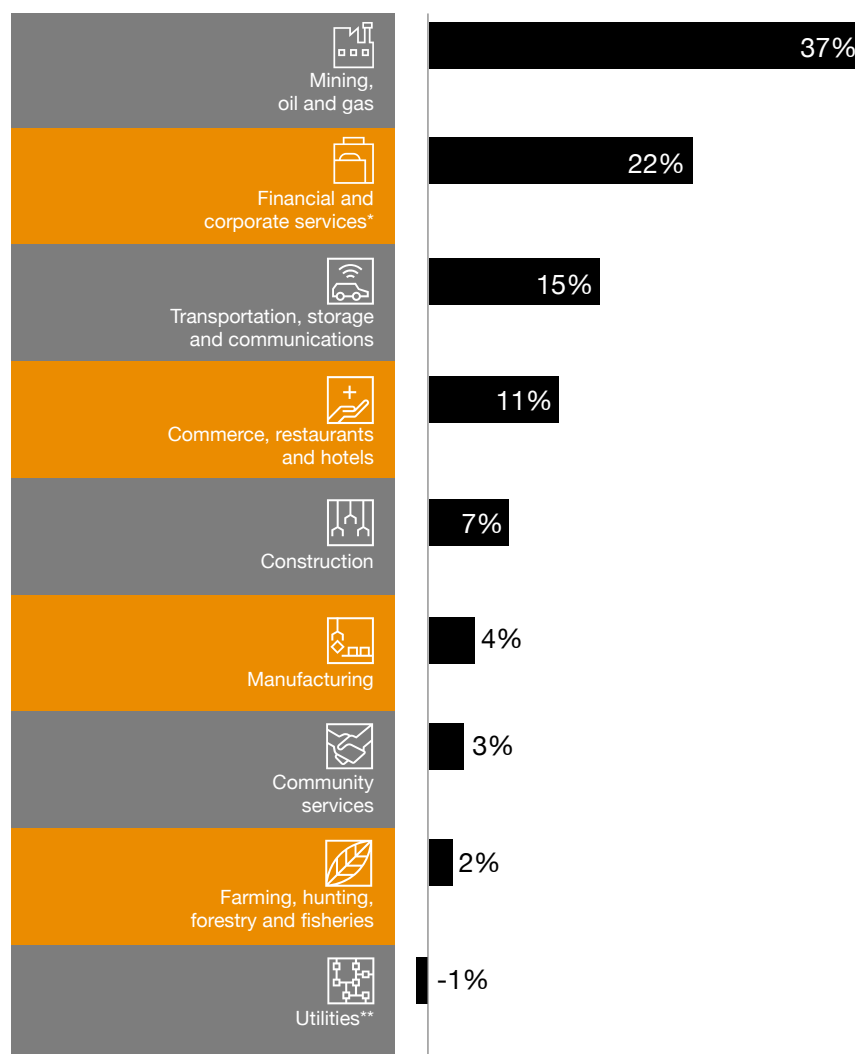
⁵ This index evaluates performance in point of customs duties efficiency, infrastructure quality, transport competitiveness, quality of logistics services, follow up on shipments and cargo transport punctuality. For additional information please see <https://lpi.worldbank.org/international/scorecard/radar/254/C/COL/2018#chartarea>

Foreign direct investment

According to figures of the Office of the Vice Manager of Economic Studies of the Bank of the Republic, foreign direct investment - FDI - flow into Colombia from January through September 2019 varied by 17.6% with respect to the same period of 2017. It dropped from US\$ 10.03 billion to US\$ 8.3 billion. In 2017, FDI grew by 0.8% as compared with 2016.

Figure 4 shows the shares of various economic sectors in the total FDI flow into Colombia through the close of the fourth quarter of 2018.

Figure 4.
Shares of economic sectors in the total FDI flow into Colombia in the period January through September 2018.

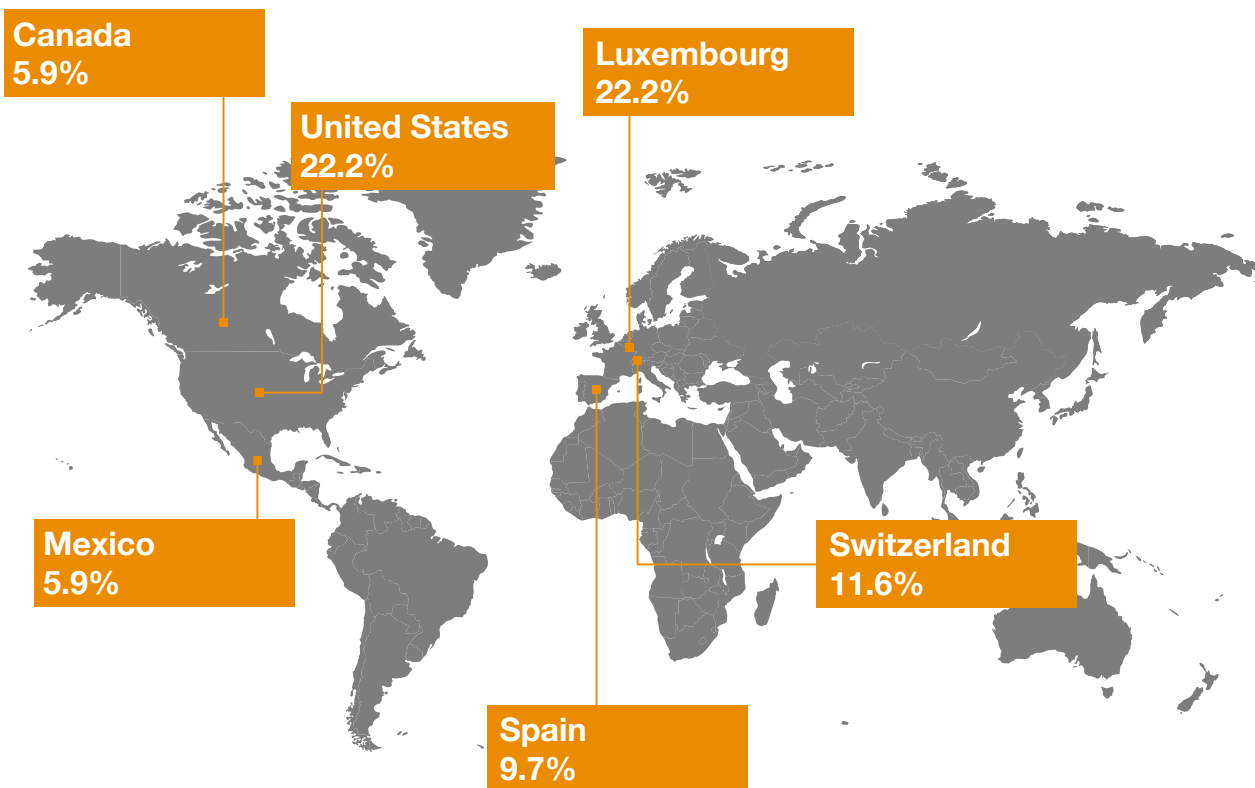


Preliminary figures

*Comprising auxiliary financial intermediation activities, real estate, corporate and rental activities

**Investment flows of US\$79 million.

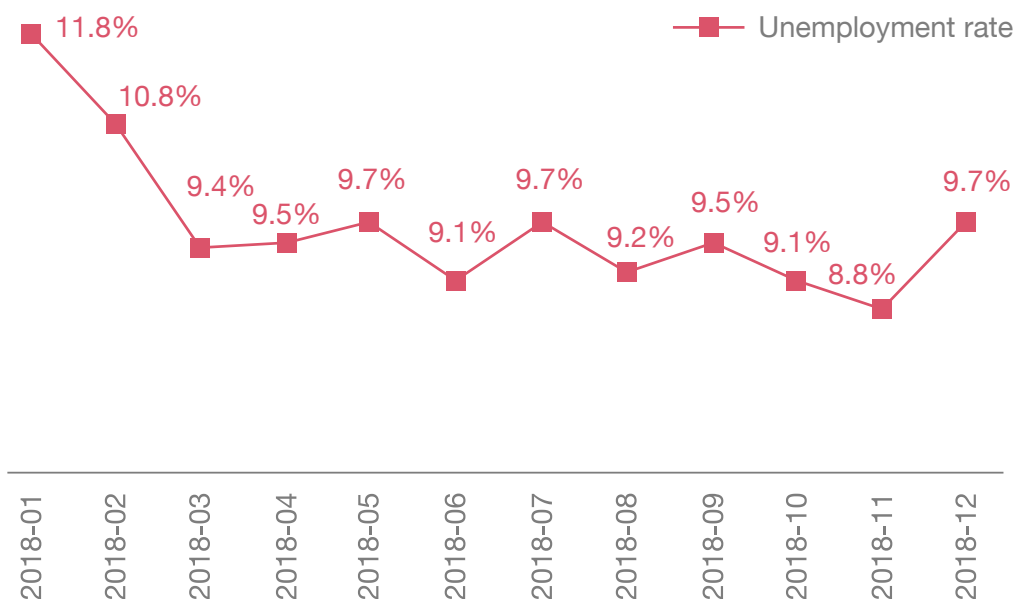
On the other hand, the countries of origin with the greatest shares of FDI flows in the period January through September 2018 were the following:



Employment

The unemployment rate in Colombia stayed as a one-digit-rate for the most part of 2018. According to DANE, the average unemployment rate for 2018 was of 9.7%. This means an increase of 0.3 percentage point with respect to 2017, when the unemployment rate was of 9.4%.

Figure 5.
Unemployment
rate behavior in
2018.



Source: Comprehensive Household Grand Survey – DANE

With respect to unemployment rates in the cities, the unemployment rate was of 10.8% in the 13 [largest] cities and metropolitan areas of the country. This rate was of 10.6% for the same period of time in 2017.

Santa Marta showed the lowest unemployment rate per city in 2018 (8.4%), with Barranquilla (8.5%) and Cartagena (8.7%) trailing.

One aspect that stands out in the Colombian labor market was the increase of the minimum monthly wage for 2019, which was set at COP\$ 828,116. This means an increase of 6% with respect to 2017.

Political and economic environment

2018 started in an atmosphere of uncertainty in Colombia because it was a change-of-government year. As the months rolled by, Colombian economy started to recover, macroeconomic indicators stayed at adequate levels and uncertainty went on clearing.

One of the most transcendental events in the year – of the greatest economic consequences – was the modification of our tax system through the so-called Public Treasury Financing Law bill (or *Ley de Financiamiento* in Spanish). A lot of discussion went on since September in respect of the measures of this law, which was finally enacted in December.

Aside from the collection of increased public revenue that would be obtained through the *Ley de Financiamiento*, this law also includes measures to improve competitiveness in the productive sector and in [new business] investments, the so-called orange economy and formalization. It is expected that all this would improve, at least partially, the conditions and competitiveness of businesses in Colombia.

On the other hand, a new path will be pursued in 2019 for the development of the country. Through the 2018-2022 Development Plan – “A Covenant for Colombia. A Covenant for Equity”, the government has set three axis or structural covenants for development: (1) justice, (2) entrepreneurship, and (3) legality. This goes hand-in-hand with transversal covenants that include the following. Science, technology and innovation (TC+i); transportation and logistics; digital transformation or identity and creativity for the development of the orange economy. All these covenants of the Plan also seek to contribute to meet the Sustainable Development Goals – ODS (for its acronym in Spanish).

Outlook for 2019

Economic indicators for 2018 were satisfactory. Economic growth recovered after two years. The achieved inflation rate was close to the target rate, after the abrupt hikes of 2016. The behavior of foreign trade was steady, and the unemployment rate stayed below 10% for the most part of the year. Some of the expected economic indicators for 2019 – which show expectations for economic stability – are shown in Table 1 below.

Table 1.
Results of
the monthly
expectations
survey of economic
analysts made by
the Bank of the
Republic in January
2019

Indicator	Average expectation
GDP Variation (annual % increase in 2019)*	3.13 %
Inflation (annual % in December 2019)	3.50 %
Intervention rate (as of December 31, 2019)	4.83 %
FX market rate at year-end (December 31, 2019)	COP \$ 3,134.4

* Fedesarrollo and CEPAL expect 3.3%

Source: Monthly expectations survey of economic analysts – Bank of the Republic, January 2019

Generally, the economic outlook for 2019 in Colombia is made in an atmosphere of improvement. Now, 2019 will bring about big challenges. The consolidation in 2019 of the economic recovery that started in 2018 will depend upon the way in which these challenges are tackled.

According to PwC projections included in its Global Economy Watch ⁶ issue, global economic growth will slow down in 2019. Accordingly, one of the first challenges for Colombia is to tackle the negative impact that the trade wars between the United States and China is having in vast areas of the world, and the uncertainty that these trade wars are generating in international markets.

The possible fall of oil prices in 2019 is another aspect of the global environment that Colombian economy must tackle. This would affect collection of public revenue, inflation levels, the value of our currency, and, generally, and once again (as in 2014), growth levels in the country. Likewise, any increases in interest rates by the Federal Reserve of the United States in 2019 would trigger a depreciation of the Colombian peso against the US dollar, impacting inflation – although it is expected that this would stay within the target range.

Finally, the expectations of the results brought about in the economy by the Ley de Financiamiento will be maintained. It is expected that this law will generate conditions that drive growth and competitiveness of Colombian businesses. Likewise, the expectations about the path that the country will follow under the new Development Plan.

⁶PwC, 2019. Global Economy Watch, <https://www.pwc.com/gx/en/issues/economy/global-economy-watch.html>

02

International Investments and Foreign Exchange Regime

- All foreign investments in Colombia must be registered before the Colombian Central Bank, as well as Colombian investments abroad.
- Only the compensation account holder has the faculty to make foreign exchange operations using the account.
- Imports and exports are operations that must be channeled through the Colombian foreign exchange market, as well as the foreign investments, external debt operations, guarantees in foreign currency, and derivatives operations.



International Investments

International investments include (1) investments of foreign capital in Colombia (both direct and portfolio investments) and (2) investments of Colombian capital abroad.

1. Foreign investment in Colombia

1.1 Types of foreign investment in Colombia

1.1.1 Foreign direct investment

An investment type performed on any of the following assets, on the condition that such assets have been acquired by a non-resident in any capacity, by virtue of a lawful act, contract or legal operation:

- Equity participation in a company resident in Colombia, in shares, social quotas, capital contributions, or BOCEAS (convertible bonds), as long as these are not registered in the National Registry of Securities and Issuers (RNVE) or in any Foreign Securities Quotation System.
- The participations mentioned in the previous point, made in a company resident in Colombia, registered in the National Registry of Securities and Issuers (RNVE), provided that the investors declare that they have been acquired with the intention of permanence.
- The rights or interests in fiduciary businesses entered into with fiduciary companies, which are subject to the inspection and supervision of the Colombian Superintendence of Finance, the purpose of which does not constitute investment portfolio.
- Real estate located in Colombia, acquired under any capacity, either directly or through the execution of fiduciary businesses, or as result of real estate or construction projects, so long as such projects are not registered in the National Registry of Securities and Issuers (RNVE).

- Participations or economic rights derived from acts or contracts, such as those of collaboration, concession, administration services, licensing, joint ventures or those involving technology transfers, when these do not represent a participation in a company, and if the income generated by the investment depends on the company's profit.
- Participations in the assigned capital and supplementary investments to the assigned capital of a foreign company's branch established in Colombia.
- Participations in private capital funds.
- Intangible assets acquired with the purpose of being used to obtain an economic benefit in Colombia.

1.1.2 Portfolio investment

Investment made on securities registered in the National Registry of Securities and Issuers (RNVE) or listed in Foreign Securities Quotation Systems; participations in collective investment funds and in negotiable securities certificate programs.

1.2 Registration of foreign investment in Colombia

All foreign investments in Colombia must be registered directly in the Colombian Central Bank, through a foreign exchange market intermediary IMC – *intermediario del mercado cambiario* (for its acronym in Spanish) or through a compensation account, as a necessary condition for the foreign investor to have the foreign exchange rights conferred by the law.

This registration can be done directly by the foreign investor, their attorneys or any person who represents their interests:

- **Other direct investment registries:** these investments will be automatically registered by submitting the minimum requirements for international investments (exchange declaration), presented at the time of channeling currencies through the Colombian exchange market (through an intermediary bank or compensation account).
- **Other direct investment registries:** investments made by virtue of a lawful act, contract or legal operation (different from currencies) must be registered, at any time, by submitting Form No. 11, "Declaration of International Investment Registration".

In the case of sales of the investment to a Colombian resident, total or partial liquidation of the investment, equity decrease, repurchase of shares, social rights or real estate sale, the holder of the investment must cancel the corresponding international investment registration within the next six months following the date of the operation, as long as there is a previous registry of the investment in the Central Bank.

In cases of capital reorganization resulting in an increase or decrease in the number of shares, without modifying the equity value, this reorganization must be informed to the Central Bank.

Likewise, changes in the investment holders for other non-resident investors, or the change in the recipient company or in the destination must be reported to the Central Bank through a substitution process, which must be carried out within the six months following the date of the operation.

1.3 Foreign exchange rights

Once the investment is registered, its holder has the following foreign exchange rights:

- Periodically sending abroad net profits generated by their investments.
- Reinvesting profits or to retain the surplus of non-distributed profits with the right to be remitted.

- Capitalizing sums with rights to be remitted, resulting from obligations derived from the investment.
- Sending abroad, in convertible legal currency, the funds resulting from the investment sales within the country, from the liquidation of the company or portfolio, or from its equity decrease.

2. Colombian capital investment overseas

These correspond to investments made by Colombian residents, destined to a company's equity, a branch or any other type of foreign company, acquired by a resident in virtue of a lawful act, contract or legal operation.

How to register this investment will depend on whether it was made through currencies or as a result of a lawful act, contract or legal operation.

2.1 Investments, either financial, or in assets abroad

This type of investment includes:



Purchase of securities issued, or assets located abroad.



Purchase of external private obligations, external public debts, and bonds or securities of external public debt.



The transfers originated in the placement of securities to residents in the country, issued by foreign companies and governments, or guaranteed by these, authorized by the Colombian Superintendence of Finance.

These investments can be made through the Colombian foreign exchange market, or through the unregulated market with currencies that do not belong to operations of mandatory channeling through the foreign exchange market.

Currently, there is no registry obligation for financial investments made with resources coming from the unregulated market.

Foreign Exchange Regime

The Colombian foreign exchange market is constituted by all the currencies that must be channeled through the foreign exchange intermediaries - IMC - or through a compensation account.

Additionally, foreign currencies exempt from the aforementioned obligation, but voluntarily channeled through the exchange market, are also subject to the foreign exchange regulation.

1. Operations belonging to the regulated foreign exchange market

The following operations must be channeled through the foreign exchange market:

- Imports and exports of goods.
- External indebtedness operations entered into by Colombian residents, as well as the associated financial costs.
- Foreign capital investments in Colombia and their associated financial returns.
- Colombian capital investments abroad and their associated financial returns.
- Financial investments in securities issued abroad or investments in assets located abroad, as well as their associated yields, except when these investments are made with foreign currencies related to operations that must not be channeled through the Colombian exchange market.
- Guarantees in foreign currencies.
- Derivatives operations.

All other exchange operations that have not been listed above belong to the unregulated market and, consequently, they can be performed without the need of the IMC nor does compensation account (i.e. payments in foreign currency for services).

2. Foreign exchange market intermediaries

Foreign exchange market intermediaries - IMC - are banks, financial corporations, financing companies, the National Development Financer – FDN (for its acronym in Spanish), the Colombian Foreign Trade Bank – BANCOLDEX (for its acronym in Spanish), financial cooperatives, stock exchange brokerage companies, exchange intermediation and special financial services companies – SICSFE (for its acronym in Spanish), and the Specialized Companies in Electronic Deposits and Payments – SEDPE (for its acronym in Spanish).

3. Compensation accounts

Bank accounts in foreign currencies opened in foreign financial institutions, which must be registered before the Central Bank as compensation accounts.



The debits and credits of the compensation accounts can derive from: the payment of obligations resulting from exchange operations that either must or must not be channeled through the foreign exchange market, as well as from internal operations. In any case, through such accounts only operations related to the account holder can be carried out.

The opening, management and closing of compensation accounts are subject to monthly compliance reports to the Central Bank and quarterly reports to the National Tax and Customs Authority – DIAN, *Dirección de Impuestos y Aduanas Nacionales* (for its acronym in Spanish).

4. Exchange declaration

The exchange declaration is a formality required to report the fulfillment of an exchange operation. It involves the purchase or sell of foreign currencies through authorized foreign exchange intermediaries - IMC. The declaration of minimum data, is a IMC's predesigned form that contains the basic information about the operation. When operations are channeled through the compensation account, the use of the exchange declaration is not mandatory.

Although not considered exchange declarations, it is important to consider that there are other forms provided by the Colombian Central Bank used to inform exchange operations, listed as follows:

Form No. 13

To register and update international investment for companies in the Oil & Gas, and mining sector.

Form No. 10

To register movements and cancellation of compensation accounts.

**Form
No. 6**

To inform external indebtedness granted to residents.

**Form
No. 7**

To inform external indebtedness granted to non-residents.

5. Foreign Exchange market operations regulation

Outflows to pay the value of imports or refunds for exports made by residents must be channeled through the exchange market, through IMC or compensation accounts.

1. Imports of goods

The filing of an exchange declaration for imports of goods will depend on the customs supporting documents and the payment to be made by the importer. In this regard, it is important to warn that in the matter of imports, compensation or the crossing of reciprocal obligations is not admissible and, as a general rule, it is required that the Colombian importer wire abroad the foreign currency corresponding to the importation of merchandise, otherwise of incurring penalties of 100% of the value of the transaction.

2. Exports of good

The filing of an exchange declaration for exports of goods will depend on the customs supporting documents and the canalization to be made by the exporter. The payment of exports can also be received in Colombian legal currency, through the intermediaries of the foreign exchange market - IMC - or through an international credit card.

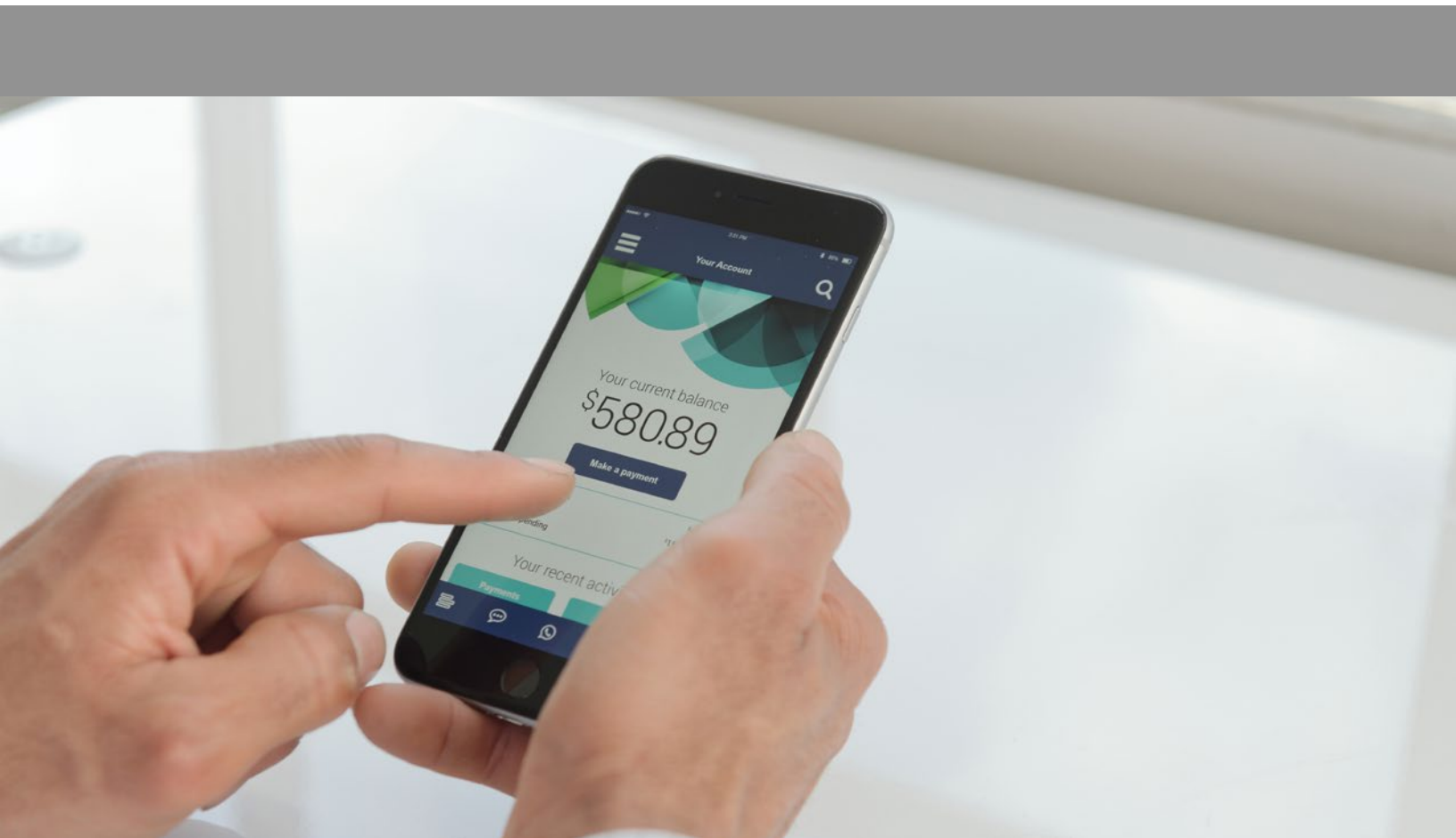
In this regard, it is important to warn that in the matter of exports, compensation or the crossing of reciprocal obligations is not admissible and, as a general rule, It is required that the foreign currency corresponding to the foreign payment must be remitted to the Colombian exporter by its foreign client, under penalty of incurring sanctions of 100% of the value of the money order.

3. Loans in foreign currency

Inflows and outflows of currencies for the concept of indebtedness operations granted to residents in foreign currencies must be channeled through the Colombian foreign exchange market.

Residents and exchange market intermediaries - IMC - can obtain loans in foreign currency from other intermediaries or from non-residents duly register before the Central Bank. These loans must be stipulated in the Colombian legal currency, but their disbursement and repayment can be made either in the legal currency or in another foreign currency. The latter can be processed through bank accounts in legal currency of exclusive use for these operations.

Every single external loan (assets or liabilities), granted or obtained by residents, must be reported to the Central Bank before or simultaneously to the disbursement by filing the corresponding form, through an IMC.



6. Special foreign exchange regime

The special Colombian foreign exchange regime only applies for branch offices of foreign companies belonging to the Oil & Gas and mining sector, which performs activities of exploration, exploitation, and rendering of services to this specific sector. This activity is exclusively related with the exploration and exploitation of oil, natural gas, coal, ferronickel and uranium.

The special foreign exchange regime allows:

Wire transferring currencies for the equivalent to the foreign capital in case of liquidation of the branch office or for the equivalent in currencies of the resources in legal currency on occasion to the internal sales of oil, natural gas or inherent services to the Oil & Gas sector. In addition, these branch offices can receive currencies that they require to meet expenses in legal currency.

Receiving from abroad, directly from headquarters, their revenue.

Signing and paying of contracts in foreign currency, as long as these currencies come from their operations.

Accounting as supplementary investment to the assigned capital, in addition to the availability in foreign currencies, equity available as goods and services.

These branch offices must register the supplementary investment to assigned capital by submitting Form No. 13 “Record of supplementary investment to the assigned capital and updating of equity accounts - branches of the special regime”.

Branch offices that do not wish to belong to the special regime must inform the Central Bank in order to be exempt for 10 years counting from the date of the resignation. Consequently, all exchange operations will be regulated by the ordinary exchange regime.

International investment agreements

As a result of the Colombian strategy to improve commercial relations, the country is currently negotiating and subscribing Agreements for the Promotion and Reciprocal Protection of Investments - APPRI - and Free Trade Agreements - FTA - that include chapters related to foreign investment.

APPRI are international agreements that regulate international investments. Both the APPRI and foreign investments chapter within FTAs have the main purpose of establishing ground rules for national investments that work for both parties, based on justice and transparency principles and on international standards. Additionally, they contain treatment and protection obligations that must be granted to the investments and their integral problem-solving mechanisms, including the possibility of arbitrating differences between foreign investors and governments, in relation to violations of the treaties.

Currently, Colombia has subscribed FTAs with the Andean Community – CAN, EFTA (Switzerland, Liechtenstein, Norway and Iceland), Canada, Chile, United States of America, Mexico, the Northern Triangle (Guatemala, El Salvador, and Honduras), the European Union, Pacific Alliance, South Korea, Costa Rica, the Caribbean Community - CARICOM -, Cuba, MERCOSUR: ACE-59 y ACE-72, Nicaragua and Venezuela.

The country has signed FTAs that include chapters on foreign investment with Israel and Panama, and are still negotiating others with Japan, Australia, New Zealand and Singapore.

In addition, Colombia has signed APPRI with Canada, Brazil, Chile, United States of America, India, Mexico, the Northern Triangle, the Pacific Alliance, Costa Rica, China, Spain, Switzerland, Japan, Peru, and the United Kingdom.

The country subscribed APPRI with France, South Korea, Singapore and Turkey which are still in the corresponding legislative due diligence.

Finally, the country has Investment Cooperation Agreements with Qatar, Kuwait and the United Arab Emirates.

03

Foreign Trade and Customs

- The process to export from Colombia starts by filing and securing acceptance of a shipping permit.
- Colombia has been structuring an open integration policy. Therefore, it enjoys access to free markets in Latin America.
- To promote trade, investment and the creation of jobs in the country, there are special free-trade zone regulations.



General Aspects

1. Foreign trade and customs rules

Colombian legislation has focused on facilitating customs transactions involving imports, exports, and the transit of merchandise by controlling the various types of foreign trade transactions and operations.

Our legislation is aligned with the guidelines of the WTO Treaty, which seeks to promote and support several benefits to companies that belong in the exporting sector in Colombia (a treaty approved as part of Act 170 of 1994).

Colombia implemented the so- called Single Foreign Trade Dealing Office – VUCE, *Ventanilla Única de Comercio Exterior* (for its acronym in Spanish) since 2005. This is an electronic online system developed by the Ministry of Commerce, Industry and Tourism of Colombia. Through it, the government consolidates the whole procedures and proceedings that relate to foreign trade transactions.

To this end, the VUCE has three separate sections (Imports, Exports and Single Foreign Trade Form – FUCE (for its acronym in Spanish), which allow online transaction such as online payments that are designed to speed procedures and proceedings. Please go to www.vuce.gov.co to obtain more information about the VUCE.

2. Customs qualifications

a. Authorized Exporter

Any person who is qualified as an authorized exporter may certify the origin of their merchandise or goods by way of a statement in the sales invoice or by a declaration of origin under any foreign trade agreements that requires this condition to be met. This is allowed provided that the declaration of the exporter continues to be valid and in force at the time the certificate of origin is issued.

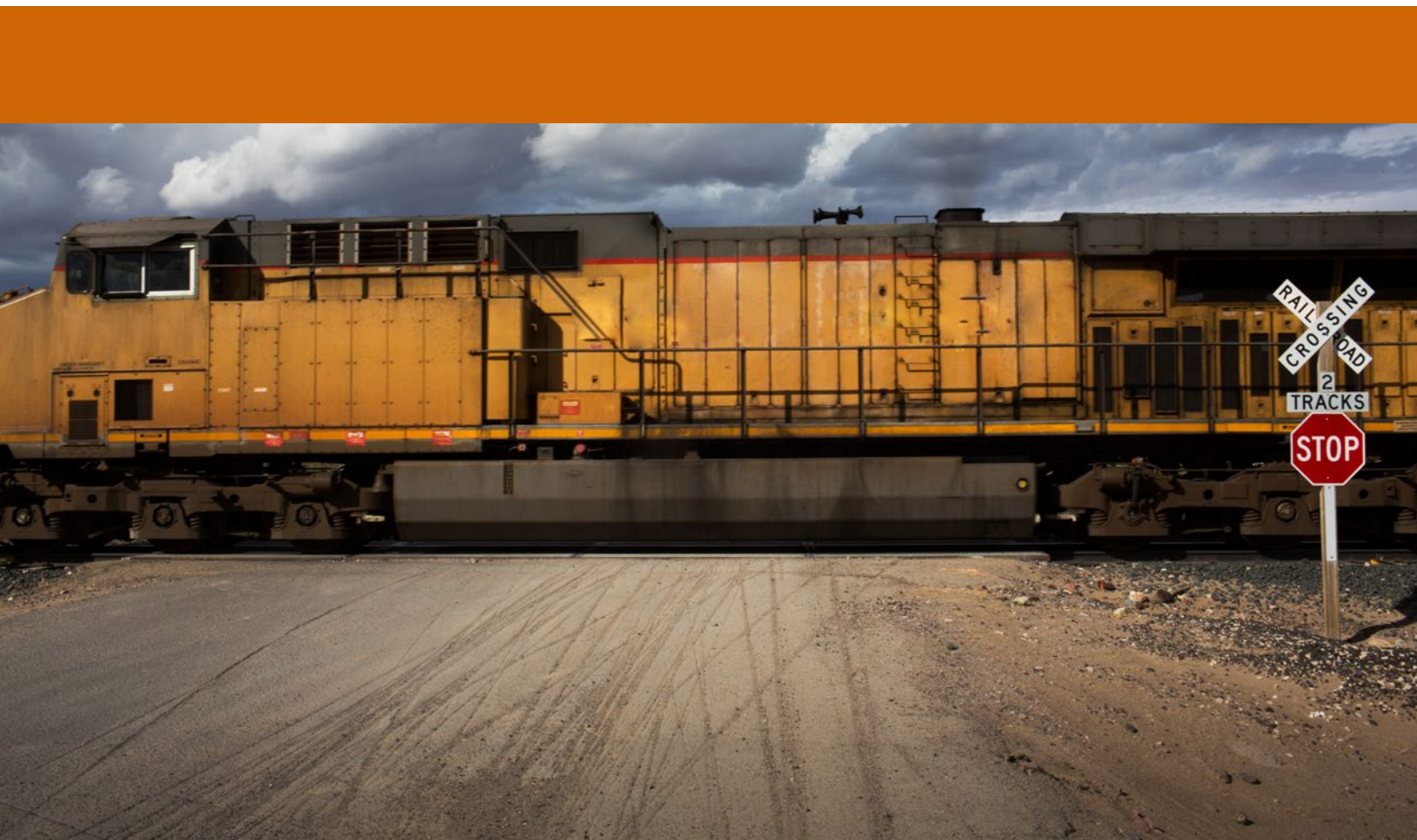
A certificate of origin is acquired at the request of an interested party and after the customs authority (DIAN) evaluates compliance with the requirements it has set, after it has made the corresponding risk assessment.

b. Trusted User

These are persons authorized by DIAN through an official letter. These persons will benefit from special treatment under article 35 of Decree 390 of 2016. To receive this qualification, an interested party needs to have a low risk assessment issued by the risk management system of the entity; and it has to meet other requirements.

c. Authorized Economic Operator – OEA (for its acronym in Spanish)

Natural or legal person based in Colombia which, as a part of an international supply chain, carries out activities that are regulated by customs regulations, or is a person subject to surveillance and control by the Office of the Superintendency of Ports and Transportation, the General Maritime Directorate or Civil Aeronautics. By meeting the minimum requisite conditions set by Decree 3568 of 2011, this operator guarantees safe and reliable foreign trade transactions; hence, is authorized as such by DIAN.



3. Special import and export programs

To promote foreign trade transactions, Colombia has established special import and export programs in its customs law. Through such programs, a person may import property or equipment with tax and duties benefits. Only if the services or finished good export agreements are met, the person may have access to the benefits.

a. *“Plan Vallejo” for raw materials and commodities*

Under this plan, a person may pass specific products marked for total or partial export through national customs territory within a certain period after the products have been transformed, finished or repaired. This includes the materials required for these operations.

The benefits of Plan Vallejo are granted through a direct operation to the importer of goods, commodities or supplies they produce and export, or finished products. The benefits are also granted through an indirect operation to the importer or producer of intermediary goods sold to the exporter or whoever provides the services associated to the production of goods for the exporter.

4. Imports

According to the current customs laws, an import is the entry of merchandise from foreign territory into “national customs territory”. ⁷

The introduction of merchandise from a free-trade zone into national customs territory also qualifies as an import, if processed with the purpose of remaining for a definite or indefinite period of time in said territory to achieve an specific purpose.

According to the Merchandise Designation and Codification Harmonized System approved by the WTO, imported merchandise is classified using six 6-digit sub codes (the international code). Two (2) additional digits are added for the exclusive use of the Andean Community (CAN) countries, and two (2) final digits that are set for use in Colombia.

The resulting 10-digit sub code is presented in the Colombian customs tariff classification, as established by Decree 2153 of 2016, and it reflects the general tariff of the applicable customs duty. The value-added tax, which is also a part of import taxes, is regulated in the Colombian Tax Code at a general rate of 19% for most cases.

a. Ordinary import

Import for consumption

This is the most used import method. With this method, the importer in Colombia receives the goods as freely disposable property after customs authority has issued its approval electronically or manually.

The obligations include filing a goods declaration (on the forms established by the customs authority through the electronic system), meeting labeling requirements (indicating reference numbers and filling out prior licenses depending on the quality of the imported goods), paying the total applicable import taxes (including duties and value-added taxes) and securing clearance (an OK) on each import declaration.

The evaluation of imported goods is processed in accordance with the method set in the Valuation Agreement established by the WTO, which is based on the General Accord on Customs and Trade of 1994, which is regulated by the CAN and internal legislations. This is a part of the documents that prove the legal introduction of merchandise into national customs territory.

⁷ Decree 2685 of 1999 – Article 1. “National customs territory: limit within which customs laws are applied; it covers the entire national territory, including the subsoil, the territorial sea, the adjacent area, the continental platform, the exclusive economic zone, the airspace, the geostationary orbit segment, the electromagnetic spectrum, and the space where the Colombian State acts in conformity with international law or with Colombian law if international law is not applicable.

b. Temporary imports – Temporary imports for export under the same conditions

Temporary imports are those with exempted or deferred customs duties (mainly duties and VAT) for certain products. At the end of the specified period, the relevant product must be exported in the same conditions in which they entered national customs territory. Sale or disposal of the goods is restricted. These imports are classified into three types:

1.

Short-term imports

The maximum import term is 6 months, which can be extended for 3 extra months, and, in exceptional cases, up to another 6 extra months with prior authorization by the customs authority, adding up to a total of 15 months.

Customs rights and taxes on import for this type of temporary import are suspended permanently, unless the importer decides to retain the goods in the country for a longer period (under a long-term import) or permanently.

2.

Long-term import

Long-term imports apply to imports of capital assets and their accessories – spare parts and other parts – if they are performed in one single shipment.

The term for this type of import is 1 to 5 years. It is possible that the goods will remain for more time in the national customs territory, if they have been imported under a lease contract.

Customs duties shall be deferred in biyearly payments that, in all cases, must be paid during the first five (5) years throughout which the products remain within the national customs territory.

International leasing: the concept of international leasing can be applied to the long-term financing of temporary imports of capital goods, which can remain in the national customs territory for more than 5 years. Under this concept, a foreign company (foreign supplier, foreign financial institution or

leasing) grants the right to use the capital goods imported into Colombia to a Colombian resident in exchange for periodic payments by the latter.

Payments must be made through mechanisms authorized in the exchange regulations and taking into account the procedure established for passive external debt operations, since the operation is considered a financed import.

In this case, customs duties are accrued semi-annually. The maximum period for deferral of import duties and taxes is 5 years, without taking into account the fact that their actual stay in the country may be longer than this period.

3.

Temporary import repairs or overhauls

These types of imports are permitted under customs legislation as follows:

Temporary imports for repairs or overhauls of capital assets:

Under this type of import, the importer may import capital assets for further re-exportation after being repaired and overhauled over a term not exceeding 6 months (which may be extended for an additional 6 months). Disposal of goods is restricted.

Temporary imports for industrial processing:

Under this type of import, the importer may temporarily import raw materials and supplies that will undergo transformation or industrial processing or manufacturing by industries recognized as Highly Exporting Users – ALTEX (for its acronym in Spanish) which are authorized by DIAN. The sale of goods is restricted.



5. Exports

Exports of goods are foreign trade transactions that relate to the outflow of goods or property from the national customs territory to other places around the world or to a free trade zone within Colombia.

The procedure for making an export from Colombia starts with the filing and acceptance of a Request for a Shipment Permit – SAE (for its acronym in Spanish) following procedures established by customs regulations (mainly online procedures).

Once the shipment has been authorized, the products loaded onto the ship and when the carrier has issued the bill of lading, the SAE is considered, for all purposes, as the corresponding export declaration.

In Colombia, exports are not subject to any customs duties or export charges. There is no general drawback program implemented in Colombia for the exportation of property or goods that have been previously imported.

If an importer needs to export products or parts that need to be repaired or replaced outside Colombia, he may use the temporary export rules in order to reimport the products or parts without paying any customs duties or VAT. DIAN may

request the importer to file an importer declaration for the products or parts that are being exported [and reimported later on] to prove that they have legally entered the national customs territory.

Customs valuation

Colombian legislation has focused on making import, export and merchandise transit transactions easier by controlling the use of several foreign trade transaction types.

Our legislation is in conformity with the guidelines set by the WTO Treaty (approved as part of Act 170 of 1994), the purpose of which is to promote and support different benefits for Colombian importers and exporters.

The customs value of imported merchandise is equal to the transaction value, i.e., the price actually paid or payable for the merchandise when they are sold as specific items of property for export to the importing country.

Customs duties are computed and paid based on the customs value of imported goods, and the VAT is offset based on the customs tariff classification of the goods.

Customs obligations

Registration is mandatory for those who import products or is subject to compliance with technical regulations. This is the case of reconditioned products, which the Superintendency of Industry and Commerce oversees and controls.

El registro se realiza con datos de la empresa, tales como: número de registro comercial, nombre, dirección, número de teléfono, etc. La información que proporcione debe coincidir con el registro comercial de la empresa para continuar con el proceso de registro.

Registration must be made online, in the webpage www.sic.gov.co; and it may take around one hour.

- The registration is made using Company information such as commercial registration number, company name, address, telephone number, etc. The information provided must match the information of the commercial registration of the company to continue with the registration procedure.
- A password is required to make changes and updates, which must be made yearly. The password is known because it is associated with the commercial registration number that appears on the certificate of good standing and legal representation. This ensures that only the person authorized by the company may alter the information in this registry.

This requires compliance with technical regulations for imperfect, used, repaired or refurbished products, in regard to which the government has previously authorized the import, assembly, distribution use or sale.

Free-trade zones

To promote commerce and trade, investment and the generation of jobs in the country, there is a free trade zone regulation system in Colombia that applies to specific geographical areas within the national customs territory, the limits of which are set by the Ministry of Industry and Commerce. No customs duties apply within these areas; and, in most cases, the income tax applies at reduced rates. No entity is allow to move or relocate within a free-trade zone.



1. Labor requirements

- Employees of the users must have a formal and direct open-ended labor contract.
- Relation to the production or service provision process.
- Making payroll and Social Security contribution payments.

2. Partial processing of raw materials, supplies and intermediate goods

- The law has not defined a partial processing percentage for a manufacturing process to be completed outside a free-trade zone; this is agreed-upon with the operating user.
- The maximum term of duration for property to be held outside a free-trade zone is 3 months plus a 3-month extension.

3. Lands and buildings

They may be owned or leased depending on the operations and the negotiations with the operating user.

4. Investment in real productive fixed assets

Only new assets are taken into account as part of the investment commitment, and they turn into part of the income-producing activity. Additionally, they are depreciated for accounting purposes.

5. Main types of free-trade zones

- Special permanent free-trade zone – ZFPE (for its acronym in Spanish) or one-single-company free-trade zone, which must meet various investment commitments and job creation commitments within a 3-year term.
- Permanent free-trade zone – ZFP (for its acronym in Spanish), which are zones for several users, including industrial and commercial users.

There is an operating user who manages every free-trade zone, whatever the type.

6. Main incentives

Free-trade zones offer the following incentives to their users for periods up to 30 years, with possible 30-year extensions:

a. Single 20% flat tax rate for the following:

Income tax for all users of free zones, and 33% for commercial users.

b. Import taxes exemption (VAT and customs duties)

This applies to the introduction of goods coming from abroad, so long as they remain in the free-trade zone.

c. Possibility of clearing goods manufactured in free-trade zones through customs

Using the tariffs sub code of the finished product and paying taxes over the added value of supplies coming from abroad; or clearing the raw materials through customs before they are incorporated in the production process, with their specific tax applying (only for free trade zones designated as such until December 2012).

d. Possibility of storing foreign goods for an indeterminate period

Industrial users have the possibility of storing in their facilities goods coming from abroad that are necessary to produce the final goods that they manufacture.

The permanence of the goods may be indefinite if the user maintains his qualification.

e. Possibility of importing secondhand goods without a prior license

Goods in special market conditions (used, imperfect, repaired, rebuilt, refurbished, restored, of low quality -substandard- remanufactured, re-powered, discontinued, recovered, second-hand, second-use, second, third , out of season or other similar condition) entering a free trade zone do not require a license.

If the goods are intended for import into the rest of the national customs territory, they must obtain the corresponding license.





7. Tipos de usuarios



Operating User

The operating user is a company that is dedicated to managing and controlling customs duties matters.



Industrial users of goods

Users that manufacture, produce, transform or assemble goods or products within the free-trade zone.

For products to be exported from a free-trade zone to the rest of Colombia, the importer will have to file an import declaration and apply for any required license during the import process. The client must contract the transportation and logistics services elsewhere in the world or in Colombia.



Industrial users of services

Users that provide services within the free-trade zone area or from the free-trade zone area to perform activities concerning logistics, transportation, distribution, telecommunications, scientific and technological research, medical assistance, dental health services and general health services, tourism, technical support, naval and air equipment, consulting or similar services, among others.



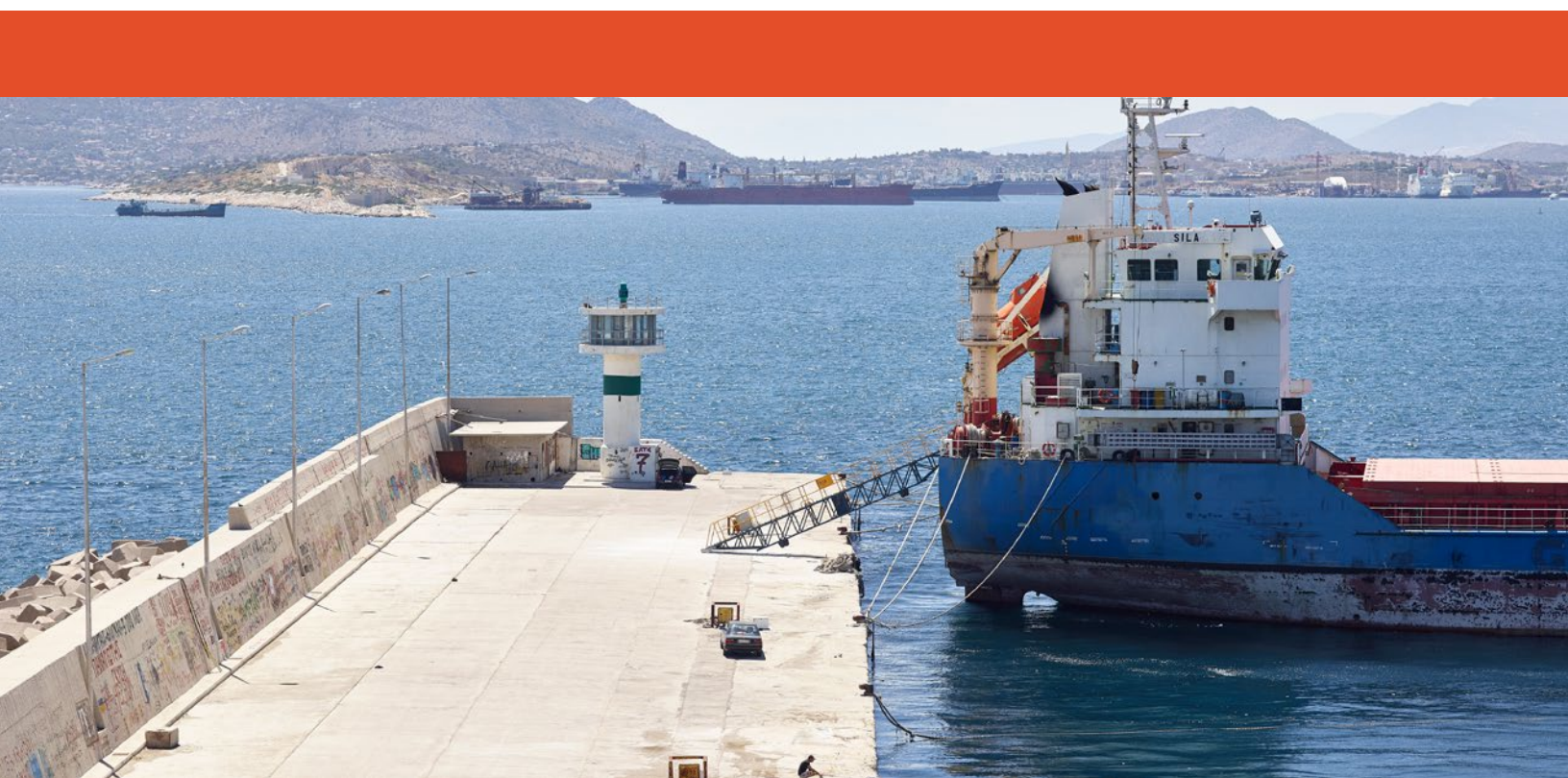
Commercial users

Users that store, sell and preserve products within the corresponding free-trade zone. They can occupy up to 5% of the total free-trade zone area. They cannot be located within any one-single-company free-trade zone and they do not qualify for the special free-trade zone tax benefits.



Support companies

Companies authorized by the operating user to carry out the following activities: surveillance, maintenance, babysitting, cafeterias, financial institutions, restaurants, basic medical attention, employee transportation and other services that are required to support the operations of the free-trade zone. These companies do not enjoy the special free-trade zone tax benefits and they are subject to strict controls for the entry and exit of goods in the free-trade zone areas.



Customs preferential treatments

Trade agreements

Colombia has been structuring a policy of open integration, and so today it enjoys free-trade markets in Latin America within the framework of the Latin American Integration Association – ALADI (for its acronym in Spanish).

Below we present a list of the various agreements or treaties that Colombia has signed:

FTA with Canadá

The FTA between Colombia and Canada came into force on August 15, 2011. The treaty includes a calendar for the asymmetrical elimination of customs duties in the entire set of customs duties; and it seeks to level out the customs duties of the different sectors over a period of 10 years.

The treaty establishes mechanisms to avoid the application within the countries of measures for the protection of health, intellectual property, employment, the environment and consumers where such measures involve human, animal and vegetal life.

FTA with the United States

The FTA between Colombia and the United States came into force on May 15, 2012. The treaty includes a calendar for the asymmetrical elimination of customs duties in the entire set of customs duties; and it seeks to level out the customs duties of the different sectors over a period of 10 years.

The treaty establishes mechanisms to avoid the application within the countries of measures for the protection of health, intellectual property, employment, the environment and consumers where such measures involve human, animal and vegetal life.

Free-trade agreement between Mexico and Colombia (the G2 FTA)

This treaty entered into force in 1995 with Colombia, Mexico and Venezuela being the initial signatories. Currently it includes only Colombia and Mexico, given that Venezuela withdrew from the treaty in November 2006.

The treaty includes an asymmetric elimination calendar for customs duties that applies to the entire set of duties; and it seeks to level the customs duties of the three countries over a period of 10 years, providing special treatment for the agricultural and automobile industries.

FTA with Costa Rica

This treaty grants preferential access especially for Colombian manufactured products, which compete today at a disadvantage against third countries in one of the most attractive markets of the region. Costa Rica is one of the most dynamic and stable economies of Latin America. Colombia has held strong cultural, commercial and diplomatic ties with Costa Rica over many years.

The FTA with Costa Rica is a fundamental and natural step in our consolidation of commercial ties with Central America. This is so because it will supplement the agreements included in the treaty that we subscribed with the countries of the Northern Triangle (El Salvador, Guatemala, Honduras and Panama).

Economic complementation agreement – ACE (for its acronym in Spanish) between Chile and Colombia – Free-Trade Agreement (FTA) with Chile

An economic zone is created between Colombia and Chile in the form of an ACE, with which, the progressive elimination of customs duties and non-tariff barriers is achieved. 95% of duties in bilateral trade are eliminated, which corresponds to 96% of the Colombian tariffs. The remaining percentage was fully released with zero tariffs in 2012.

The ACE with Chile was strengthened and both countries decided to start negotiating a free trade agreement. As a result, on November 27, 2006, the final text of the FTA was signed and entered into force on May 8, 2009.

Economic complementation agreement between Colombia and Cuba

This agreement came into force on July 10, 2001 and it has two amendment protocols. It includes topics concerning market access; non-customs restrictions; rules of origin; agreement on safeguards; unfair practices; services trade; transportation; technical standards; investment; commercial cooperation; and industrial property among others.

Cuba grants preferential treatment for more than 4,600 Colombian lines. This includes customs preferential treatment for agricultural and farming sectors such as beef, seeds, cacao, oleaginous, coffee preparations, fruits, and fish, among others. And preferential treatment in the industrial sector for textiles and confection products, the automobile industry, soaps and cosmetics, letter, electrical appliances, shoes, toys, metallurgical products, construction materials, among others.

Customs preferential treatments

Trade agreements

Colombia has been structuring a policy of open integration, and so today it enjoys free-trade markets in Latin America within the framework of the Latin American Integration Association – ALADI (for its acronym in Spanish).

Below we present a list of the various agreements or treaties that Colombia has signed:

FTA between Colombia and the Northern Triangle

With the purpose of strengthening regional economy as an essential instrument for the social and economic development of Latin American countries, Colombia, Guatemala, El Salvador and Honduras initiated in June 2006 a process for negotiating an FTA. The trade treaty was signed on August 9, 2007 and it came into force on the following dates: November 12, 2009 in Guatemala, February 1, 2010 in El Salvador and March 27, 2010 in Honduras.

This FTA includes matters such as: National treaty and access of merchandise to markets; investment services; international services trade; electronic commerce; cooperation; conflict resolution; public bidding; commercial facilitation; sanitary measures; technical standards; the rules of origin; and trade defense measures.

Andean Community of Nations – CAN

The Andean Community of Nations is one of the strategic integration plans for Colombia. It operates under the sponsorship of ALADI. Under this agreement, Colombia is exempt from any customs duties and restrictions, and becomes a free-trade zone with Bolivia, Ecuador, Peru and Venezuela up until 2011.

Also, in September 2006, the Council of Foreign Affairs Ministries of the CAN gave Chile the condition of associated country. By doing this, it reasserted the economic commitments established with that country and expanded the integration framework in the region.

The main purpose of CAN is to improve integration through a common market regulated by supra-national monetary, tax, foreign-exchange, environmental and public utility agreements (where supra-national agreements means agreements that are to prevail over national, domestic legislation).

Partial agreement between Colombia and CARICOM

This agreement came into force on January 1, 1995. The agreement and the amendment protocol provide general clauses that relate to the following: Customs duties scheduling and elimination; treatment of imports; rules of origin; technical standards; general exceptions; commercial promotion; commerce financing; service trade; transportation; safeguards stipulation; unfair trade practices; economic cooperation; technical cooperation; and other matters which are very important for our country.

European Union FTA

The Free Trade Agreement between Colombia and Peru, on the one hand, and with the European Union and its member states, on the other hand, were signed in 2012, and began provisional application in 2013. On November 5, 2014, the national government issued decree 2247, by way of which the agreement signed by the parties came into force.

This agreement covers several aspects that relate to foreign trade and it includes commitments that go beyond the multilateral trade relations framework. An essential element of this agreement is a commitment between the parties to respect human rights and the development of sustainable economies based on the protection and promotion of employment and environmental rights.

Colombia and the Pacific Basin

Getting closer to and strengthening ties with countries in the Pacific Basin are priorities in the Colombian foreign-policy. With this target in sight, the Council for Economic Operation of the Pacific was created – CCEP (for its acronym in Spanish).

Currently, Colombia belongs to the Economic Council of the Pacific Basin (CECP) also known as the Pacific Club.

This is a nongovernmental organization of the most important business organizations of countries with coasts on the Pacific Ocean. Its purpose is to increase mutual knowledge, business and investment flows, economic cooperation, technology transfers and tourism, among other matters.

Economic supplementation agreement between CAN and MERCOSUR

On October 18, 2014, an economic supplementation agreement was signed between Argentina, Brazil, Paraguay and Uruguay (the countries that make up MERCOSUR) and Colombia, Ecuador and Venezuela (members of the Andean Community of Nations – CAN).

The term of this agreement is limited. It considers the lack of symmetry that derives from the different levels of economic development of the parties. As consequence, it determines the immediate elimination of customs duties for certain customs classification sub elements and the gradual elimination of duties to take place over 6 and 15 years for sensitive products such as vehicles, automobile spare parts and electrical appliances and apparatuses.

The agreement includes matters related to conflict resolution, sanitary standards and industrial safety, technical regulations and safeguards.

Investment and employment commitments

Real productive fixed assets	New investment	Employment
From 0 to 500 minimum salaries	No new investment required	Start of operations: 3 direct and formal jobs The following year: 2 additional jobs The third year: 2 additional jobs Total: 7 jobs
501 to 5,000 minimum salaries	1,000 minimum salaries within 3 years following qualification	Start of operations: 20 direct and formal jobs
5,001 to 30,000 minimum salaries	5,000 minimum salaries within 3 years following qualification	Start of operations: 30 direct and formal jobs
30,000 minimum salaries or more	11,500 minimum salaries within 3 years following qualification	Start of operations: 50 direct and formal jobs

Minimum legal monthly salary in 2019 COP
828,116 (USD 280.11)



04

Labor Law

- Labor Law in Colombia is regulated by the Constitution of 1991, the international treaties and conventions signed by Colombia, and by the Colombian Labor Code.
- Labor law is divided in two areas: Individual Labor Law, which regulates the relationship between employers and their employees, and Collective Labor Law.
- Every employer must pay the following social legal benefits to its employees who earn a regular salary: severance pay, interest on severance pay, service bonus, transportation allowance, and work shoes and clothing.



General aspects

A labor contract in Colombia is the agreement between the employer and the employee, under which the employee personally provides specific services to the employer, permanently subordinated and dependent upon the latter, in exchange for a consideration called salary.

Types of labor contracts

Labor contracts may be classified in different ways. Based on their term or duration they are classified as follows:

Fixed term contracts:

Their term cannot exceed 3 years. However, the parties may extend the contract indefinitely.

Contracts for specific project or works.

Transitory contract:

The term cannot exceed 1 month. Made for the carrying out of activities different from those that are normally carried out by the employer.

Open-ended contract:

No term is established; and its duration does not depend on any specific project or work or the type of nature of the work. It does not relate either to a transitory, specific work, or task.

Likewise, the following agreements reached between the employer and the employee must be put down in writing:

■ **Trial period:** initial stage of the labor contract, the objective of which is to allow the employer to understand the employee's capabilities, and the latter can also experience the working conditions. The period cannot be longer than two (2) months. For fixed term contracts set for a period under one (1) year, the trial period cannot exceed 1/5 of the initial term agreed in the contract.

■ **Integrated salary:** This is a type of salary made of one lump sum payment which compensates for regular work and also compensates for social legal benefits, subsidies, overtime, and generally any compensation items included in the stipulation of this special salary in advanced; except for vacation days and compensation. An integrated salary must always be agreed to in writing.

Integrated salaries may only be agreed to be paid to those employees who earn a salary amount that exceeds ten (10) minimum monthly wages, which includes a social legal benefits factor that cannot be less than 30% of the salary amount. For 2019, 10 minimum monthly wages amount to COP 10,765,508 (USD 3,641.39).

In this type of salary, payroll fees and Social Security contributions are paid on a base of 70% of the total integrated salary amount.

■ **Exclusions:** The employer and the employee may agree in writing which benefits or payments will not be included as salary for purposes of removing them from the salary base that is used to compute social legal benefits and Social Security contributions. Nevertheless, this is limited to the extent that all those payments that are made as direct compensation for the personal service of the employee will always be considered as salary, and no contractual stipulation that seeks to remove them from the salary base will be valid.

Working hours

Regular working hours go up to a maximum of 8 hours a day and 48 hours per week, which may be distributed from Monday through Friday or from Monday through Saturday. The law also allows the parties to agree on flexible working schedules for the employees.

Day working hours cover the period of time that goes from 6 AM through 9 PM, and night working hours cover the period of time that goes from 9 PM to 6 AM.

Flexible working hours

Employers may agree with employees on successive work shifts during all days of the week, provided that every shift does not exceed 6 daily hours and 36 weekly hours, without paying any nightshift fees or holiday compensations.

They may also agree that on flexible daily working hours, in a way that completes the 48 hours for a week, distributed in no more than 6 days, where the number of daily hours worked may go from 4 to 10, without paying any overtime provided that the working hours do not exceed 48 hours per week and that the employee works during the day working hours.

Likewise, when the economic activity is carried out in shifts without a continuing activity being required, the law allows that the total working hours may be extended to cover more than 8 hours per day and more than 48 hours per week, provided that the total number of hours for a period of 3 weeks does not exceed (on average) 8 hours a day and 48 hours a week. In this case, no overtime payments are accrued either.



Payments resulting from the labor relationship

1. Salary

The salary is the direct compensation that employees receive in consideration for the personal provision of their services to the employer.

a. Types of salary

Regular salary: This is a compensation that is paid for regular work. As every year draws to a close, the government establishes the minimum monthly salary. For 2019, the minimum monthly salary was defined as COP 828,116 (USD 280.11).

Integrated salary: This is a type of salary made of one lump sum payment, which compensates for social legal benefits, surcharges and other benefits such as overtime, legal and extralegal bonuses, severance pay and their corresponding interests, subsidies and supplies; and generally any compensation items included in the stipulation of the salary agreement, except for vacation days and compensation. Integrated salaries must always be agreed to in writing, and under no circumstances shall they be under thirteen (13) minimum monthly salaries, which for 2019 are equal to COP 10,765,508 (USD 3,641.39)

2. Labor benefits

Every employer must pay the following labor benefits to employees who earn a regular salary:

Social Legal Benefits		
Item	Period payment	Description
Severance pay	Annual	One monthly salary for each year of service or prorated to a fraction of a year. It must be deposited into a severance pay fund no later than February 14 of the following year, or it must be paid directly to the employee upon termination of the contract.
Interest on severance pay	Annual	12% on the annual amount of severance pay or prorated to a fraction of the year.
Service bonus	Every half-year	15 days as salary for every half-year worked or prorated to fractions. Payable in June and in December
Transportation allowance	Monthly	COP 97,032 in 2019 (USD 32.82). Payable to every employee who earns 2 minimum wages or less.
Work clothing and shoes	Every 4 months	Payable to every employee who earns 2 minimum wages or less COP 1,656,232 (USD 560.22)

3. Mandatory days off

a. Day off on Sundays and holidays

Employers must give their employees the benefit of a day off on Sundays and on any civil or religious holidays. The remuneration is included within the monthly salary payable to the employee.

If the employee works occasionally on Sundays (up to two Sundays during a month), he/she must be paid overtime equal to 75% of his/her regular salary pay prorated to the number

of hours worked on Sunday; or, alternatively, 1 day off for the employee to enjoy on any working day of the following week.

If the employee works regularly on Sundays (3 or more Sundays during a month), he/she must be paid overtime equal to 75% of his/her regular salary pay prorated to the number of hours worked on every Sunday and 1 day off for the employee to enjoy on any working day of the following week.

b. Annual paid vacation leave

Employees are entitled to enjoy 15 working days of paid vacation leave for every year of labor. At a minimum, every employee must enjoy six (6) actual working days of paid vacation leave for each year of service. Additional days may be accumulated for up to two (2) years for regular employees, and for up to four (4) years for technical, specialized trusted employees or management employees, or for foreign employees that provide their services in a location other than that where their family resides.

4. Legal indemnifications

Legal indemnifications are payments derived from noncompliance by the employer of his legal or contractual obligations. The most common legal indemnifications are the following:

a. Legal indemnification for dismissal without a fair cause

Fixed term contracts: legal indemnification for dismissal is equal to the amount of the salaries that the employee will not receive from the date of dismissal through the date on which the contract had been set to expire initially.

Specific job contracts: the legal indemnification for dismissal is equal to the time that was left to terminate the job or task; and in this case the legal indemnification may not be less than fifteen (15) worth days of pay.

Open-ended contracts: The legal indemnification is calculated for employees who earn a salary that is less than 10 minimum monthly wages:

-1

If the employee has worked continuously for less than one (1) year, he/she will be paid 30 worth days of salary.

+1

If the employee has worked continuously for more than one (1) year, he/she will be paid thirty (30) worth days of salary for the first year and twenty (20) worth days of salary for each subsequent year and in proportion for period fractions.

For employees who earn a salary that is equal to, or over ten (10) minimum monthly wages:

≤1

If the employee has worked continuously for less than 1 year, he/she will be paid twenty (20) worth days of salary.

+1

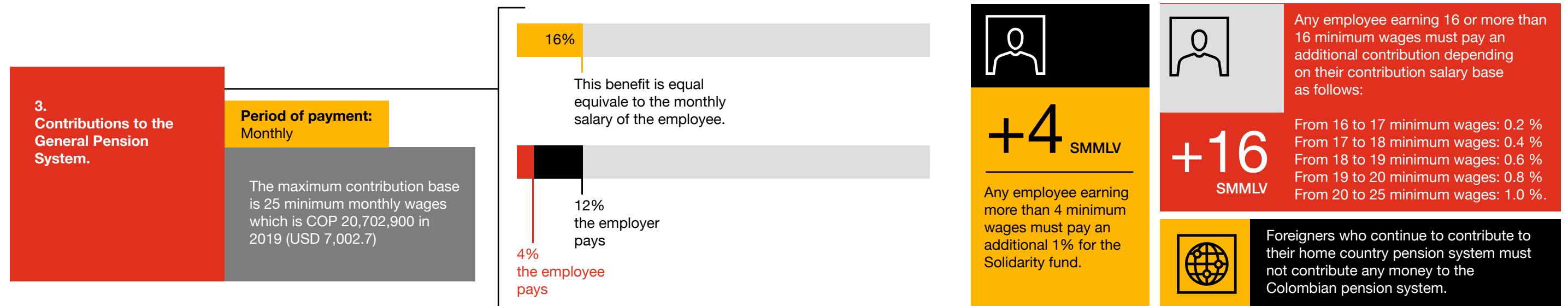
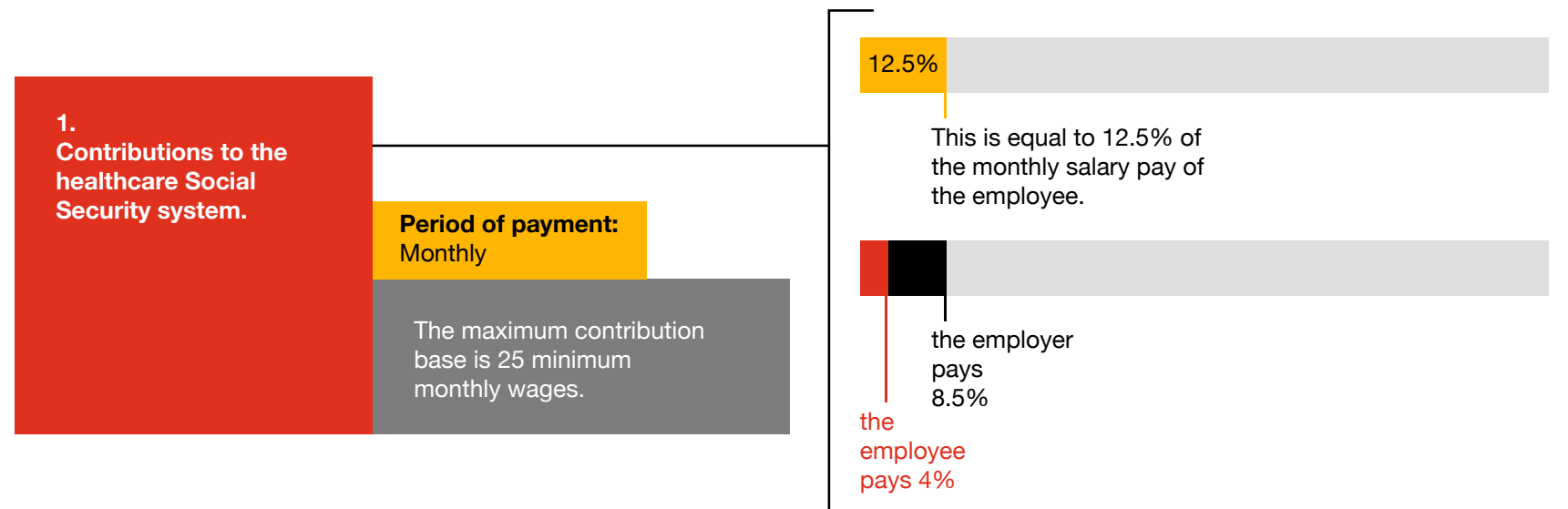
If the employee has worked continuously for more than one (1) year, he/she will be paid 20 worth days of salary for the first year and 15 days' worth of salary for each subsequent year and in proportion for period fractions.

b. Indemnity for failure to pay salaries and labor benefits

If at termination of the labor contract the employer fails to pay his/her employee the unpaid, earned salary and any additional earned labor benefits in due manner and time, the employee will be entitled to receive as indemnity for the delay 1 day of salary for every 1 day of noncompliance during the first 24 months.

5. Contributions to the Social Security System

Colombia has entered into bilateral Social Security treaties with Chile, Argentina, Ecuador and Spain. Under these treaties, the parties seek to guarantee that the nationals of the contracting states validate the time contributed to the pension system in any of the signatory countries (depending on each treaty) to recognize entitlement to retirement, disability or surviving spouse pensions under the terms and conditions, and according to the characteristics set by the legislation of the employees' home country in force at the time pension payments are applied for.





6. Payroll fees

Payroll fees or legal contributions are payments that every employer with contracts with more than one employee must make to the Colombian Family Welfare Institute – ICBF (for its acronym in Spanish), the national apprenticeship system – SENA (for its acronym in Spanish) and Family Compensation Funds. Under In accordance with the regulations, 3% of the monthly salary payroll is paid as ICBF contributions; 2% of the monthly salary payroll is paid as SENA contributions and 4% of the monthly salary payroll is paid as family subsidy contributions.

a. Exemption of contributions to healthcare (12.5%) and contributions to SENA and ICBF

Employers whose employees individually receive up to 10 minimum monthly salaries are exempt from making contributions to SENA, ICBF, and health contributions (at the 8.5% rate corresponding to the employers).

7. Types of leaves of absence

Maternity leave:

Every pregnant employee is entitled to a leave of absence of eighteen (18) weeks, which can start two (2) weeks ahead of the foreseen birthdate. This leave of absence is paid by the Social Security Healthcare System. No employee may be dismissed as a result of pregnancy or lactation, unless there is a fair cause duly certified in advance by a work inspector. Any potential employer is forbidden from requiring a candidate to take a pregnancy test.

Paternity leave:

The spouse or permanent companion will be entitled to eight (8) working days of paid paternity leave, regardless of whether the two (2) parents or just the father are making contributions to the Social Security system.

In both cases, the spouse or permanent companion must have made contributions to the system for the same number of weeks that the mother was required to pay to be entitled to the maternity leave.

Bereavement leave:

In case of death of the spouse, permanent companion, or a relative within the second degree of consanguinity, first degree of affinity or first degree of adoption-based kinship, the employee will be entitled to a paid leave for bereavement of five (5) working days, regardless of the type of labor contract the employee has.



Workplace regulations

Employers are required to issue the following workplace regulations:

1. Workplace regulations

Any commercial company with more than five (5) permanent employees, any industrial company with more than ten (10) permanent employees, or any agricultural, farming or forestry company with more than twenty (20) permanent employees must adopt workplace regulations.

2. Hygiene and industrial safety regulations

Any company with more than ten (10) permanent employees must adopt special hygiene and industrial safety regulations.

Labor harassment

Act 1010 of January 23, 2006 defines, prevents, corrects and penalizes all different forms of aggression, mistreatment and generally any attack on human dignity in the course of work relations.

This law required employers to modify their internal workplace regulations and to create a working relations committee. This committee must establish mechanisms to prevent any labor harassment conducts and to establish and follow and internal, confidential and reconciliation procedure that is effective to overcome any labor harassment conducts occurring in the workplace.

Foreign employees or workers

Foreign employees or workers have the same rights and obligations as Colombian workers. However, when a foreigner signs a labor contract in Colombia, both parties must meet certain additional obligations as compared to those that apply to national employees. These special obligations derive from foreign employee immigration law and the controls that apply during their stay in the country.

Collective Labor Law

Collective labor law regulates relationships between employers and unions, collective hiring and the defense of common interests for both the employers and their workers/employees in point of managing collective labor conflicts. The purpose of collective labor law is to develop union law and the right to collective hiring in negotiation as well as establish the mechanisms that make the right to unionize and the right to strike effective rights.

Right to Unionize

Colombian employees and workers enjoy the right to unionize as a way to exercise collective labor guarantees. This is a constitutional right that seeks to protect the creation and development of unions and seeks to guarantee the exercise by workers of the right to defend their interests, both labor and union related.



05

Immigration Law – Visas

- Colombian immigration law provides over twenty (20) different types of visas, which are divided into categories for visitors, migrants, and residents. Permits may be requested by foreigners to carry out any commercial, business or investment activities in the country.
- When a foreigner enters into a labor contract in Colombia, both the employer and the employee must meet certain obligations so that the foreigners can legally remain in the country.



Colombia controls and regulates the entry and stay of foreigners in the country through its migratory regime. This chapter presents the regulations issued by the Ministry of Foreign Affairs regarding foreign nationals who do not require a visa to enter the country as visitors. In addition, we will explain the three types of visas that exist in Colombia, which can be requested by foreigners depending on the activities that they will carry out in Colombia, such as rendering services to a Company with a labor contract, providing services or carrying out business, commercial, corporate or investment activities in Colombia.

Countries that do not require tourist visas

Nationals of the following countries do not require a type “V” Colombian visa to enter the country as tourist:

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

Those bearing a passport from Hong Kong – SARG China; the Sovereign Military Order of Malta and Taiwan-China, and the nationals of the Republic of Nicaragua who prove to be nationals from the Northern Caribbean Autonomous Coastal Region and the Southern Caribbean Autonomous Coastal Region are also exempt from a visa to enter the country as tourists.

When foreigners enter the country, the immigration authorities stamp a seal in their passports granting a temporary permit - PIP and PTP respectively (for its acronym in Spanish) as tourists indicating the number of days authorized to stay in the country.

The PIP is granted for a period of ninety (90) days, which may be extended for an additional ninety (90) days if required within the same calendar year.








Visa classification

1. Visitors Visa –Type “V” Visas

 <p>a. Leisure or Tourism Visitors Visa:</p>	 <p>b. Business Visitor Visa:</p>	 <p>c. Visitor's visa as vessel or coastal platform crew member:</p>	 <p>d. Visitor's visa to participate in any event as speaker, expositor, contestant, jury, or logistic personnel:</p>	 <p>e. Visitor's visa as an intern in a Colombian company:</p>
<p>Applicants: This visa is issued to a foreigner who plans to carry out leisure or entertainment activities. This visa applies for foreigners with restricted nationalities, meaning those who may not enter the country without holding a Colombian visa.</p> <p>Term: This visa is granted for a maximum term of two (2) years with multiple entries and authorizes the foreigner to stay in the country for up to 180 continuous or discontinuous days during the 365 days of validity of the visa.</p>	<p>Applicants: This visa is issued to a foreigner who plans to enter Colombia to carry out business management activities, marketing studies, direct investment plans or paperwork, or incorporation of a commercial company.</p> <p>Term: This visa is granted for a maximum term of two (2) years with the foreigner being allowed to stay in the country for up to 180 continuous or discontinuous days during the 365 days of validity of the visa.</p>	<p>Applicants: This visa is issued to a foreigner who comes to work in Colombian territorial waters as a crew member of a vessel or coastal offshore platform.</p> <p>Term: This visa is granted for a maximum term of two (2) years with multiple entries and authorizes the foreigner to stay in the country for up to two (2) continuous or discontinuous years during the term of validity of the visa. (This visa includes a work permit).</p>	<p>Applicants: This visa is issued to foreigners that plan to enter the country to participate in academic, scientific, artistic, cultural, or sports events.</p> <p>Term: This visa is granted for a maximum term of two (2) years with multiple entries and authorizes the foreigner to stay in the country for up to 180 continuous or discontinuous days during the 365 days of validity of the visa. (This visa includes a work permit).</p>	<p>Applicants: This visa is issued to foreigners who plan to enter Colombia to participate in a corporate internship in a company established in Colombia.</p> <p>Term: This visa is granted for a maximum term of two (2) years with multiple entries and authorizes the foreigner to stay in the country for up to two (2) continuous or discontinuous years during the term of validity of the visa. (This visa includes a work permit).</p>
 <p>f. Visitor's visa to participate in an audiovisual production or to produce digital content work:</p>	 <p>g. Visitor's visa to carry out journalistic reporting or to stay temporarily as a foreign news press correspondent:</p>	 <p>h. Visitor's visa as a provider of temporary services to a natural or legal person in Colombia:</p>	 <p>i. Visitor's visa to hold a position in a company based in Colombia under an intracompany transfer:</p>	 <p>j. Visitor's visa to visit the national territory under vacation-work programs:</p>
<p>Applicants: This visa is issued to foreigners who plan to enter the country to make an audiovisual production or produce any kind of digital content work.</p> <p>Term: This visa is granted for a maximum term of two (2) years with multiple entries and authorizes the foreigner to stay in the country for up to two (2) continuous or discontinuous years during the term of validity of the visa.</p>	<p>Applicants: This visa is issued to foreigners who plan to enter the country to carry out journalistic reporting or to stay in the country temporarily as an international news press correspondent.</p> <p>Term: This visa is granted for a maximum term of two (2) years with multiple entries and authorizes the foreigner to stay in the country for up to two (2) continuous or discontinuous years during the term of validity of the visa.</p>	<p>Applicants: This visa is issued to foreigners who plan to enter Colombia to provide temporary services to a Colombian company or to a natural person under a labor contract.</p> <p>Term: This visa is granted for a maximum term of two (2) years with multiple entries and authorizes the foreigner to stay in the country for up to two (2) continuous or discontinuous years during the term of validity of the visa. (This visa includes a work permit).</p>	<p>Applicants: This visa is issued to foreigners who plan to enter Colombia to hold a position in a company based in Colombia under an intra-company transfer program established in any international instrument in force with Colombia (example, an FTA).</p> <p>Term: This visa is granted for a maximum term of two (2) years with multiple entries and authorizes the foreigner to stay in the country for up to two (2) continuous or discontinuous years during the term of validity of the visa. (This visa includes a work permit).</p>	<p>Applicants: This visa is issued to foreigners who plan to enter Colombia to visit the national territory under a vacation-work program established in any treaty between a foreign state and Colombia.</p> <p>Term: This visa is granted for a maximum term of one (1) year with multiple entries and authorizes the foreigner to stay in the country for up to one (1) continuous or discontinuous year during the term of validity of the visa. (This visa includes a work permit).</p>

2. Migrant Visa – type “M” Visas

<div>  </div> <div> a. Migrant visa as spouse or permanent companion of a Colombian national: </div>	<div>  </div> <div> b. Migrant visa as a refugee in Colombia: </div>	<div>  </div> <div> c. Migrant visa as businessperson: </div>	<div>  </div> <div> d. Migrant visa as a member of a religious order undergoing formation, as missionary or religious leader: </div>	<div>  </div> <div> e. Migrant visa as real estate investor: </div>
<div> <p>Applicants: This visa is issued to foreigners who plan to enter the national territory as the spouse or permanent companion of a Colombian national.</p> <p>Term: This visa is granted for a maximum term of three (3) years and authorizes the holder to stay during the term of validity of the visa. (This visa includes a work permit).</p> </div>	<div> <p>Applicants: This visa is issued to a foreigner who has been qualified as a refugee by the national government, at the request of the Advisory Council for the Termination of the Condition of Refugee, in accordance with current international instruments on these matters. (This visa includes a work permit).</p> <p>Term: This visa is granted for a maximum term of three (3) years and authorizes the holder to stay during the term of validity of the visa.</p> </div>	<div> <p>Applicants: This visa is issued to foreigners who plan to enter the country as the partner or owner of a company. Their share in it must be worth at least 100 minimum monthly salaries, which is equivalent to COP 82,811,600 (USD 28,010.68).</p> <p>Term: This visa is granted for a maximum term of three (3) years with multiple entries and authorizes the holder to stay during the term of validity of the visa. (This visa includes a work permit issued solely to work in the company that the businessperson acquired.)</p> </div>	<div> <p>Applicants: This visa is issued to foreigners who plan to enter the country in their condition as members of a religious order duly recognized by the Colombian state.</p> <p>Term: This visa is granted for a maximum term of three (3) years with multiple entries and authorizes the holder to stay during the term of validity of the visa.</p> </div>	<div> <p>Applicants: This visa is issued to foreigners who plan to enter the country in their condition as owners of a piece of a real estate property. They must make an investment worth at least 350 minimum salaries, the approximate Colombian peso value of which is COP 289,840,600 (USD 98,037.36).</p> <p>Term: This visa is granted for a maximum term of three (3) years with multiple entries and authorizes the holder to stay during the term of validity of the visa.</p> </div>
<div>  </div> <div> f. Migrant visa as the father or the child of a Colombian national by way of adoption: </div>				
<div> <p>Applicants: This visa is issued to foreigners who plan to enter the national territory as the father or the child of a Colombian national by way of adoption.</p> <p>Term: This visa is granted for a maximum term of three (3) years and authorizes the holder to stay during the term of validity of the visa. (This visa includes a work permit).</p> </div>				
<div>  </div> <div> k. Migrant visa as national of the MERCOSUR member states: </div>	<div> g. Migrant visa for long-term worker: </div>	<div> h. Migrant visa as a freelance professional </div>	<div> i. Migrant visa as student: </div>	<div> j. Migrant visa as retiree or as capital investment income beneficiary: </div>
<div> <p>Applicants: This visa is issued to citizens of any of the MERCOSUR member and associate countries. Currently, this visa may be issued to citizens of Argentina, Brazil, Bolivia, Peru, Chile, Ecuador, Uruguay and Paraguay.</p> <p>Term: This visa is granted for a maximum term of three (3) years and authorizes the holder to stay during the term of validity of the visa.</p> </div>	<div> <p>Applicants: This visa is issued to a foreigner who plans to enter the country under a labor contract or a services contract.</p> <p>Term: This visa is granted for a maximum term of three (3) years with multiple entries and authorizes the holder to stay during the term of validity of the visa. (The duration of this visa depends on the term of duration of the labor contract, and includes a work permit issued exclusively for the activity declared in the application).</p> </div>	<div> <p>Applicants: This visa is issued to foreigners who plan to enter the country as a freelance professional or worker with qualifications or experience to practice a profession.</p> <p>Term: This visa is granted for a maximum term of three (3) years with multiple entries and authorizes the holder to stay during the term of validity of the visa. (This visa includes a work permit issued exclusively for the activity declared in the application.)</p> </div>	<div> <p>Applicants: This visa is issued to foreigners who plan to pursue an academic program, provided that this program is taught by a certified education institution.</p> <p>Term: This visa is granted for a maximum term of three (3) years with multiple entries and authorizes the holder to stay during the term of validity of the visa. (The duration of this visa depends upon the term of duration of the academic program).</p> </div>	<div> <p>Applicants: This visa is issued to foreigners who plan to enter Colombia as a retiree receiving a monthly payment worth no less than three (3) minimum monthly salaries, the approximate Colombian peso value of which is COP 2,484,348 (USD 840.33). Also issued to foreigners who prove that they are receiving income from a private or public institution for an amount worth no less than ten (10) minimum monthly salaries, the approximate Colombian peso value of which is COP 8,281,160 (USD 2,801.07).</p> <p>Term: This visa is granted for a maximum term of three (3) years and authorizes the holder to stay during the term of validity of the visa.</p> </div>

3. Resident visa –Type “R” Visas

Applicants: This visa is issued to foreigners who plan to enter the country and stay in it; it may be applied for in the following cases:

- When the foreigner is the father or the mother of a Colombian national.
- When the foreigner, having been a former Colombian national either by way of adoption or by birth, gave up his/her Colombian nationality.
- When the foreigner has been the former holder of a migrant visa as a refugee, long-term duration worker or employee, businessperson, freelance worker, member of a religious order, student, real estate investor, retiree or capital investor income beneficiary for at least five (5) continuous or discontinuous years.
- When the foreigner has been the holder of a migrant visa as spouse or permanent companion of a Colombian national, or the holder of a migrant visa as the father or the child of a Colombian national by way of adoption, or the holder of a migrant visa from a MERCOSUR member state for at least 2 continuous and uninterrupted years.
- When a foreigner, of legal age, has held an R-type visa for at least five (5) continuous and uninterrupted years.
- A foreign investor who has registered a foreign investment with the Bank of the Republic for an amount exceeding 650 minimum monthly salaries, the approximate Colombian peso value of which is COP 538,275,400 (USD 182,069.39).

- Term: This visa is granted for a term of five (5) years and authorizes the holder to stay during the term of validity of the visa. (This visa includes a work permit for any lawful activity).

In case the foreigner leaves the country and stays outside for a term of two (2) continuous years or longer, they will lose their right to the visa.

Entry and permanence permit types

These permits are granted to foreigners who enter Colombia with no intention of settling here in the country and who, because of their nationality, do not require a tourist visa.

The Special Colombian Migration Administrative Unit - UMC (for its acronym in Spanish) is the agency in charge of issuing entry and permanence permits - PIP - and temporary permanence permits -PTP- for foreigners who do not require a tourist visa to enter the country.

I. PIPs are granted to foreigners that will enter the country to carry out any of the following activities:

PIP - 1	To fulfill international conventions or treaties, and whose presence is of vital importance for the country.
PIP - 2	To pursue academic programs, so long as they do not exceed a duration of half a year.
PIP - 3	Medical treatment.
PIP - 4	Participation in court or administrative proceedings.
PIP - 5	Tourism.
PIP - 6	Academic, scientific, artistic, cultural, or sports events; or coming to have an interview in the personnel recruiting process of public or private entities, or corporate training, or journalistic reporting provided that such duties are not performed under a labor contract.
PIP - 7	Provision of specialized technical assistance.
PIP - 8	Member of an international transportation vehicle (A 72-hour permit will be issued).

The term of duration of any PIP will be of ninety (90) days, except for those that specify a term, and except for PIP-7, which is issued to perform technical assistance activities, considering that the term of the said permit cannot exceed thirty (30) calendar days per year.

ii. PTP are permits granted by the Special Colombian Migration Administrative Unit -UMC- to any foreigner who does not require a visa, and who has already used a PIP, and are aiming to extend their stay in the country or change the authorized activity.

PIPs and PTPs are regulated by Resolution 1220 of 2016 from the Special Colombian Migration Administrative Unit - UMC.

Foreign Citizen ID card

- This ID card is issued to foreigners who have obtained a visa for more than three (3) months.
- They must register the visa before UMC within fifteen (15) days following their entry to Colombia, or from the date in which the visa has been issued in case it has been issued in Colombia.
- Once the visa has been registered, the UMC will issue a foreign citizen ID card to the foreigner. The foreign citizen ID card will be issued for the same term of the visa.
- This will be the ID document of the foreigner while they remain in Colombia; it enables them to enter into contracts, open bank accounts and other different transactions. The foreigners must keep it with them during their permanence in the country.

06

Tax Law

We should start by mentioning the main changes that will take effect starting in 2019 under the most recent tax reform, the so-called *Ley de Financiamento* (Law 1943 of 2018 or Public Revenue Financing Law). These changes are summarized below:

- The corporate income tax rate will still be of 33% in tax year 2019. Thereafter, it will drop gradually as follows: to 32% in tax year 2020; to 31% in tax year 2021; and to 30% in tax year 2022 and thereafter. Financial institutions that earn taxable income in excess of 120,000 tax value units – UVT (for its acronym in Spanish) will pay a surcharge of 4 points in tax year 2019 and of 3 points in tax years 2020 and 2021.
- The alternate, presumptive income method will gradually phase out as follows. The PI rate will be 1.5% for tax years 2019 and 2020; and it will drop to 0% in 2021 and thereafter.



- A new set of tax rules for the so-called mega-investments is established. The purpose is to foster investment and the generation of jobs by giving tax incentives such as the following. An income tax rate of 27%; depreciation of fixed assets over minimal terms of 2 years; and exoneration from presumptive income rules, among others.
- Income derived from the carrying out of value-added technological industries and creative activities known as “orange economy” activities will be income tax exempt for 7 years. Also, income derived from investments that increase productivity in the farming sector will be income tax exempt for 10 years.
- The special income tax rate of 9% is set to apply on income derived from services provided at new or refurbished hotels that meet certain conditions, and on income derived from new projects in theme parks, ecotourism parks, agri-tourism parks and nautical wharves, subject as well to meeting certain conditions for the special tax rate to apply.
- Relevant changes have been established in point of thin capitalization rules. The field of application of these rules is confined to interests that derive from [loans from] national and foreign related parties.
- Taxpayers may deduct 100% of any taxes, fees and dues and contributions paid effectively which are causally connected with the economic activity of the taxpayer, including affiliation dues paid to professional associations. Taxpayers will be entitled to claim 50% of the industry and commerce tax and related billboards tax that they pay as an income tax credit. In 2022 the tax credit will increase to 100% of those taxes paid.
- There are new rules for Colombian Holding Companies – a.k.a. CHC. These rules seek to foster national companies [established] to carry out as main line of business the holding of securities or negotiable instruments, investments in or holdings of shares of stock and other equity interests in Colombian and foreign companies, and the management of said investments. The law creates exemptions by way of incentive [for these investments].
- The indirect transfer of companies or assets located in national territory by way of the sale of shares or equity interests held in foreign companies is taxable in Colombia just as if the transfer had been made directly.
- The sales tax (or VAT) paid on the import, formation, construction or acquisition of real productive fixed assets may be claimed as an income tax credit.
- New income tax brackets apply for natural persons as follows: 35%, 37% and 39%. The [former 5] baskets of

income into which individual taxpayers must group their revenues [and related costs and expenses] are reduced [to 3] that are the following. The general basket of income (for labor income, nonlabor income and capital income); the pension's basket of income; and the dividends and profit shares basket of income.

- Once again, the wealth tax is levied on natural persons or individuals whose wealth exceeds 5 billion COP. This tax will accrue on January 1 of each one of the corresponding tax years, which is to say 2019, 2020 and 2021. By way of exception, foreign companies and legal entities that do not qualify as income tax return filers in Colombia and which hold property in Colombia other than shares [and equity interests] and accounts receivable will also pay the wealth tax.
- Additionally, the so-called normalization tax is created. The tax seeks to induce taxpayers who hold assets that they have not reported to the authority or who have reported nonexistent liabilities to correct this situation by [reporting the undisclosed assets and eliminating the nonexistent liabilities] and paying the tax at 13%.
- A new, comprehensive tax system has been created. It is the so-called unified tax of simple taxation rules – the so-called SIMPLE (for its acronym in Spanish) tax system (or simplified tax system). This system seeks to provide incentives for economic formalization and the creation of jobs, and it replaces the rules that were created [in 2016] for the so-called *monotributo* or single tax.





The Colombian tax system

Colombian tax laws establish national taxes and territorial taxes (departmental and municipal taxes).

The main national taxes are the following. The income tax and the related capital gains tax. The wealth tax and normalization tax (of transitory validity). The sales tax or VAT (value-added tax). The national excise tax. And the financial transactions tax. As a general rule, these taxes are managed by the nation through the national tax authority – DIAN.

A part of the territorial taxes are the following. The industry and commerce tax. The property tax. And the registration tax.

To avoid double taxation and prevent tax avoidance in respect of the income tax and the patrimony tax, Colombia has made substantial progress in the negotiation of international double taxation treaties. As of this date we have the following treaties in force: with Spain, Chile, Portugal, Korea, India, Mexico, Czech Republic, Canada and Switzerland. Double taxation treaties were also signed with United Kingdom, Italy France and Japan, and the related domestic procedure for approval of these treaties by internal legislation will be completed soon.

1. The income tax and the capital gains tax

Generally, revenues are inflows of resources that ultimately create increases in the gross patrimony of natural or legal persons.

Colombia's tax system is based upon a real or source based system which is used to determine the source of income. This is so because resident natural persons are taxed upon their worldwide income, whereas nonresidents are taxed on their Colombian source income and capital gains only.

With respect to national companies, a principle of domicile applies. In other words, they must report both their Colombian and foreign source income. On the other hand, foreign companies are subject to tax only on their Colombian source income and capital gains.

Finally, permanent establishments located in the country must pay income tax on any Colombian and foreign source income that are attributable to them.

In Colombia the tax year is the same calendar year, from January 1 through December 31. Notwithstanding, there are certain exceptions, principally where a taxpayer has not existed during the entire calendar year as is the case of companies created or liquidated in the year. In these events, the income tax is reported and paid for the corresponding fraction of the full year.



2. Income tax base and rate

i. (i) For corporate entities

Under the new law – Law 1943 of 2018 –, the general corporate income tax rate that applies to national companies and similar entities, permanent establishments and legal entities with no residence in Colombia that must file an income tax return was modified. It will decrease gradually as follows:



ii. For natural persons:

The personal income tax (to be paid by Colombian resident natural persons, the estates of Colombian resident decedents, and special-purpose legacies or bequests) will be determined in accordance with the following tax table starting in tax year 2019:

UVT ranges	Tax
From 0 to 1,090	0
Marginal Rate 0%	
From >1,090 to 1,700	(Taxable Base in UVT minus 1,090 UVT)*
Marginal Rate 19%	19%
From >1,700 to 4,100	(Taxable Base in UVT minus 1,700 UVT)*
Marginal Rate 28%	28% plus 116 UVT
From >4,100 to 8,670	(Taxable Base in UVT minus 4,100 UVT)*
Marginal Rate 33%	33% plus 788 UVT
From >8,670 to 18,970	(Taxable Base in UVT minus 8,670 UVT)*
Marginal Rate 35%	35% plus 2,296 UVT
From >18,970 to 31,000	(Taxable Base in UVT minus 18,970 UVT)*
Marginal Rate 37%	37% plus 5,901 UVT
From >31,000 and above	(Taxable Base in UVT minus 31,000 UVT)*
Marginal Rate 39%	39% plus 10,352 UVT



3. Special Rates:

Rate	Type of activity/income
27%	Mega-investments: any income taxpayers that create at least 250 new jobs and make new investments in the national territory for an amount equal to or greater than 30,000,000 UVT (1,028,100,000,000 COP [in 2019]). To be eligible for this benefit, the taxpayer must enter into a legal stability contract [with the Colombian tax authority], among other requirements.
20%	Free-trade zone goods and services industrial users.
15%	Free-trade zone users of new free-trade zones created in Cúcuta between January 2017 and December 2019 that (i) have more than 80 ha and (ii) have more than 40 free-trade zone users, whether national or foreign companies – or a mix of the two.

9%

i. Hotel services provided in municipalities of 200,000 inhabitants or less: (a) for new hotels built within 10 years following the entry into force of the law, the right will apply over 20 years; and (b) for refurbished or expanded hotels, the terms will be the same, but the special rate will apply [to the portion of net income] prorated to the value that represents the cost of the refurbishment [or expansion] in the total tax basis of the property.

ii. Hotel services provided in municipalities of 200,000 inhabitants or more: (a) for new hotels this rate will apply if the hotel is built within the following 4 years, over 10 years; and (b) for refurbished or expanded hotels, the terms will be the same, but in this case the cost of the refurbishment or expansion cannot be less than 50% of the property acquisition cost.

iii. New theme parks, ecotourism parks, agri-tourism parks and nautical wharves built in municipalities of 200,000 inhabitants or less within 10 years following the entry into force of the law, over a term of 10 years.

iv. New theme parks, ecotourism parks, agri-tourism parks and nautical wharves built in municipalities of 200,000 inhabitants or more within 4 years following the entry into force of the law, over a term of 10 years.

9 %

i. State-owned industrial and commercial enterprises and departmental, municipal and district mixed economy companies where the state owns 90% or more of the equity interests and which exert monopolies in liquor and alcoholic beverage industries.

ii. Publishing enterprises established in Colombia as legal entities, which exclusive line of business is the publishing of scientific or cultural books, magazines, booklets, or collectible serial issues.

iii. Income generated by the stabilization reserve established by pension and severance pay fund management companies.





4. Determination of the taxable base of the income tax

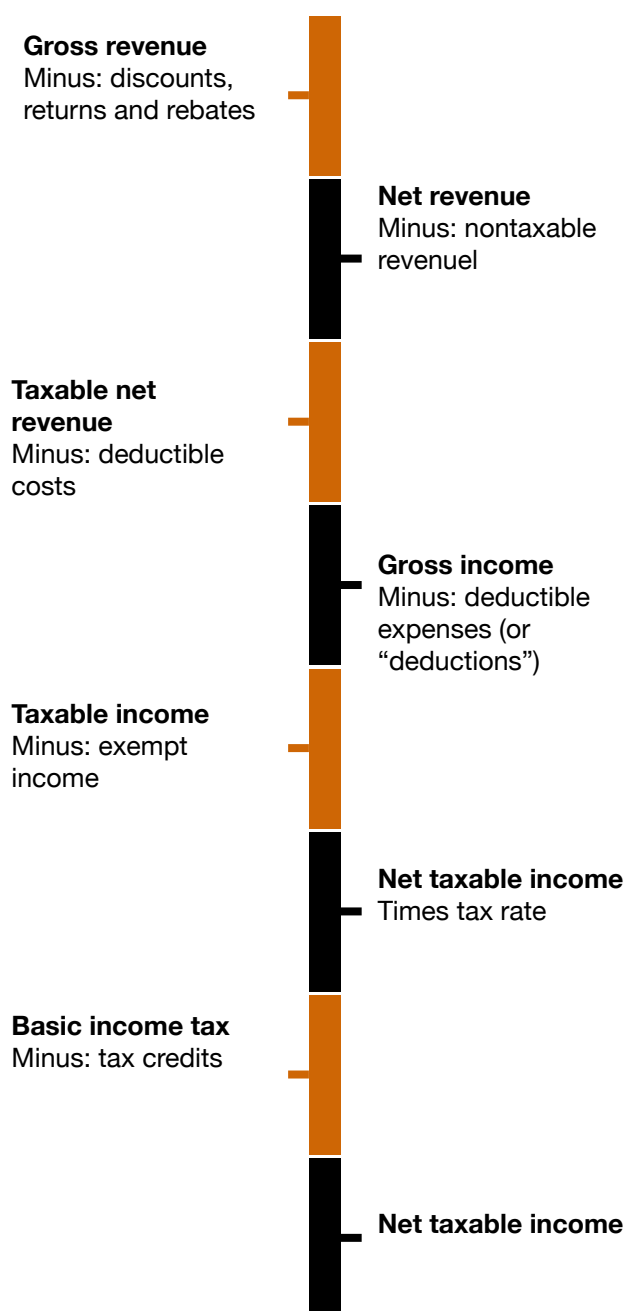
Colombian law establishes two ways of determining the taxable base of the income tax. The regular system and the alternate system – the so-called presumptive income system.

Every year every income taxpayer must compare the amounts of taxable income that derive from applying these two systems. The income tax payable for the tax year will be computed on the highest amount that derives from the comparison.

Method	Regular	Method	Regular
2019	1.5%	2021	0%
Method	Regular	Method	Regular
2020	1.5%	2022	-

i. Regular system of determination of taxable income

Under this system, the taxpayer includes the entire revenues obtained in the year to the extent they are capable of generating a net increase of patrimony at the time of realization. These revenues are then netted as shown in the table below:



ii. Alternate, presumptive income system

The so-called presumptive income is the minimum estimated profitability of an income taxpayer, on which the law expects this taxpayer to pay income taxes.

The presumptive income is not a natural income generated by the activity of the taxpayer. It operates by law (as a rebuttable presumption) and under parameters established by the law.

Taxpayers that are registered under so called SIMPLE tax system will not be subject to the presumptive income computation.

The following amounts (among others) may be deducted from the tax equity that is the base to compute presumptive income:

- The net asset value of any shares and equity interests held in Colombian companies.
- The net asset value of any property affected by force majeure or unforeseen, uncontrollable events (or “Acts of God”).
- The net asset value of any property associated with enterprises undergoing the initial unproductive stage.
- The net book value of any property directly associated with companies whose exclusive line of business is mining other than the production of liquid and gaseous hydrocarbons.
- The first 19,000 UVT’ worth of the taxpayer’s property used in agricultural and farming activities.
- The first 8,000 UVT’ worth of the taxpayer’s personal home.
- The net asset value of any property exclusively used in sports activities of social and sports clubs.

If the resulting presumptive income is greater than the regular taxable income, that excess is a “presumptive income excess” (or PIE). PIE amounts can be carried forward for set off against net taxable income reported by the taxpayer in any of the following 5 tax years.

Certain taxpayers are exempted from applying the presumptive income alternate computation method because of their actual lines of business. This is the case of residential public utility companies. Likewise, companies undergoing liquidation are not subject to this PI alternate computation method during the first 3 years.

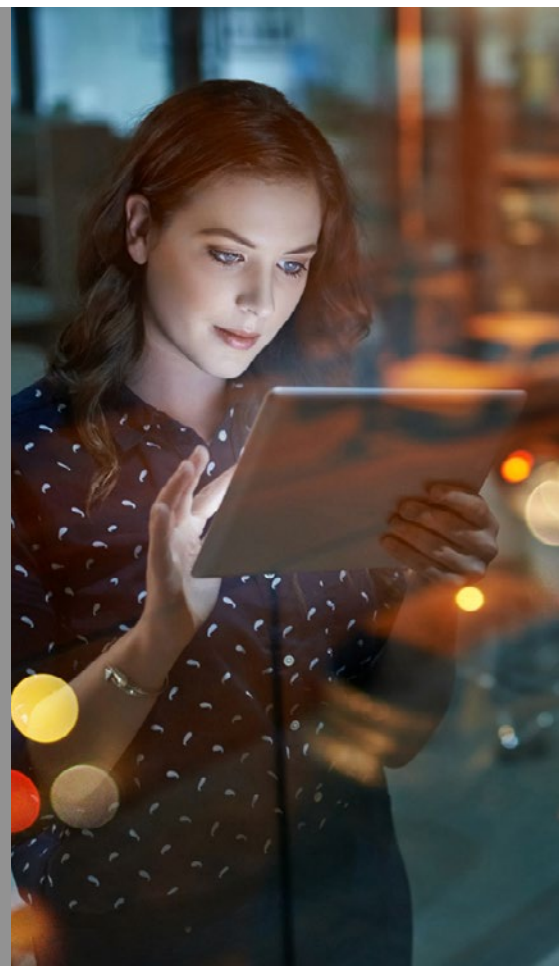
–The pension and dividends baskets of income will not be subject to the alternate presumptive income computation.

It is worth noting that the most recent tax reform established a phase-out of the presumptive income computation, which will be eliminated in 2021 and thereafter. To this end, the rate will drop gradually, to 1.5% in 2019 and 2020, and to 0% in tax year 2021.

5. Nontaxable revenues or gains (or nontaxable income or gains)

Tax law establishes certain special treatments that allow a taxpayer to exclude certain items of income or revenue in the computation of taxable income:

- Voluntary social security contributions to the solidarity, savings based pension system continue to qualify as nontaxable income, up to 25% of annual labor revenues or annual tax revenues or 2,500 UVT, whichever is less.
- Tax law establishes certain special treatments that allow a taxpayer to exclude certain items of income or revenue in the computation of taxable income. Some of these items of income are, for example, dividends and shares in profits distributed by Colombian companies (provided that they are paid out of earnings already taxed at corporate level) and the value of casualty insurance compensation to the extent they correspond to the direct loss suffered by the taxpayer.



6. Deductible costs, deductible expenses and other deductions

Costs are expenditures incurred to acquire or produce a good or piece of property or to provide a service to obtain income or revenues. Costs are deductible for income tax purposes provided they are “causally connected” with the production of income, are necessary and reasonable and have accrued or have been paid in the corresponding tax year. The necessity and reasonableness of any cost item is determined from a commercial point of view, taking into account commercial customs and any restrictions set by the law.

a. Salaries and payroll taxes

Salaries accruing as due or paid to employees are deductible provided that the employer is clear and up to date in the payment of all his payroll taxes (ICBF, SENA and family subsidy funds) and social security contributions and provided they have collected the requisite withholding taxes. Payroll taxes and social security contributions are also deductible for income tax purposes.

The following employers are exonerated from paying any payroll taxes in respect of their employees who earn 10 minimum monthly legal wages or less: (i) corporate income tax payers, (ii) natural persons who have 2 or more employees and (iii) joint ventures (consorcios), temporary unions and trusts where the members are exonerated from paying payroll taxes.

b. Taxes, fees and dues (*tasas*) and contributions paid

100% of taxes, fees and dues (*tasas*) and contributions effectively paid are deductible for income tax purposes provided they are “causally connected” with the taxpayer’s income-producing activity. This includes affiliation dues paid to professional associations.

50% of the financial transactions tax or GMF (for its acronym in Spanish) may be deducted for income tax purposes without this tax needing to be causally connected with the taxpayer’s income production activity.

Taxpayers will be entitled to claim 50% of the industry and commerce tax and related billboards tax that they pay as an income tax credit. In 2022 the tax credit will increase to 100%.

Please note that neither the wealth tax nor the normalization tax may be deducted for income tax purposes.



c. Interest

As a general rule, the taxpayer may deduct any interest paid on debts or liabilities. Notwithstanding, under the thin capitalization rules established in Colombian tax law, starting in 2019 the field of application of these rules is confined to interests that derive from loans from national and foreign related parties. The limitation will apply where the total average debt amount exceeds the result of multiplying the taxpayer's tax equity times 2 (formerly, times 3).

d. Expenses incurred abroad

Income taxpayers may deduct any expenses incurred abroad that are causally connected with their Colombian source income, provided that they have collected the applicable withholding taxes if the items paid qualify as Colombian source income for the payment beneficiary.

For expenses incurred abroad to obtain Colombian source income that are not subject to withholding tax in Colombia, the related deduction cannot exceed 15% of the taxpayer's taxable income computed before deducting such costs or expenses. The above is so save for certain cases expressly established by tax law.

e. Investments in scientific and technological development

Income taxpayers that make investments in projects that qualify as of research, technological development and innovation projects (as defined by law) may deduct those investments in the tax year in which they were made. The deduction is admissible under the criteria and conditions set by the National Council of Economic and Social Policy Document 3892 of 2017, which updated CONPES Document 3834 of 2015. It is worth noting that taxpayers may claim this deduction and claim at the same time the tax credit that is available for making this type of investments.

A deduction is also admissible for donations made [for the same purpose] through higher education institutions or through the Colombian Institute of Educational Loans and Technical Studies Abroad – ICETEX (for its acronym in Spanish) that are earmarked to finance scholarships or condonable loan programs approved by the Ministry of National Education. This deduction is subject to certain requirements. In this case as well, taxpayers may claim the deduction and claim at the same time the tax credit that is available for making this type of investments [i.e. donations].



f. Net loss carry forwards

Taxpayers may carry forward net losses for set off against any regular taxable income obtained in any future tax years, without detriment to the computation of the current year's alternate, presumptive taxable income. These net losses cannot be allocated to the company's shareholders or members.

Notwithstanding, under Law 1819 of 2016, losses incurred in tax year 2017 and thereafter may be set off against income of the following 12 tax years only. For losses that were incurred before 2017, there are transition rules made to determine the offset amount under a formula set by the law.

In regard to merger and spin off processes, the absorbing company or the company derived from the spinoff may set off the net tax losses of the merged or spun-off companies against regular, [future] net income, but only up to a limit equal to the percentage that the patrimonies of the merged or spun-off companies represent in the patrimony of the absorbing company or the company derived from the spinoff process.

g. Amortization of investments

The amortization is the allocation of the cost of intangible property over the useful life of the property or during any other period of time determined under valid criteria.

The following are deductible items:

- Prepaid expenses: These are deducted periodically as the taxpayer receives the related services.
- Incorporation and startup disbursements: These are deducted by the straight line method at an annual rate of 20% of the tax basis, [or] they are deducted in equal shares during the life of the contract from when the taxpayers starts generating income.
- Research and development, and "innovation": As a general rule, this starts at the point where the research and development and "innovation" project comes to an end, regardless of success or failure. The cost will be amortized in equal shares over the time the taxpayer expects to obtain income; but, in any event, the deductible amount cannot exceed 20% of the related tax basis per year.

In the case of intangible property, taxpayers may deduct 20% of the tax basis of investments made in intangible property for the ends of the business or activity. This is done under of certain rules established by the law.

Costs are expenditures incurred to acquire or produce a good or piece of property or incurred to provide a service to obtain income or revenues. Costs are deductible for income tax purposes provided they are causally connected with the production of income, are necessary and reasonable (“proportional”) and have accrued or have been paid in the corresponding tax year. The necessity and reasonableness of any costs item is determined from a commercial point of view, taking into account commercial customs and any restrictions set by the law.

h. Depreciation

Taxpayers may deduct reasonable amounts of depreciation accruing for the normal wear and tear or the obsolescence of fixed assets used in any income-producing business activities, according to the table below:

Assets	Tasa de depreciación fiscal anual
Constructions and buildings	2.22 %
Aqueduct, plant and networks	2.5 %
Thoroughfares	2.5 %
Air fleet and equipment	3.33 %
Railroad fleet and equipment	5 %
Fluvial fleet and equipment	6.67 %
Armory and vigilance equipment	10 %
Electrical equipment	10 %
Land transport fleet and equipment	10 %
Machinery and equipment	10 %
Furniture and office elements	10 %
Scientific medical equipment	12.5 %
Containers, packaging and tools	20 %
Computer equipment	20 %
Data processing networks	20 %
Communication equipment	20 %

The useful life of assets is determined in accordance with IFRS (international financial reporting standards), but it is possible to use other methods.

Annual depreciation rates will range between 2.2% and 33%. Other depreciation rates may be used without detriment to the above.

The application of any excess depreciation rates may generate timing differences.

i. Exchange gains and losses

Any foreign-currency denominated revenues, costs, deductible expenses, assets and liabilities must be measured on the date of their initial recognition in Colombian pesos at the “representative” market FX rate.

Any variations in the COP value of any foreign-currency denominated assets and liabilities will not have any tax effects until the assets are sold or there is a credit to the asset account or until the liabilities are settled or paid partially. Where the asset is sold or where a credit is entered in the asset account, or where the liability is settled or paid partially, as the case may be, [the variation] is recognized at the “representative” market FX rate of the initial recognition.

The taxable exchange gain or the deductible exchange loss on any of the above events corresponds to the difference between the representative market FX rate of the initial recognition and the representative market FX rate of the date of the credit to account or payment (realized exchange gain or loss).

j. Limitations and prohibitions that relate to deductions

As a general rule, income tax deductions have the following limitations:

- The maximum deductible amount for attentions to customers, providers and employees, such as presents, tokens of courtesy, parties, celebrations and social gatherings, is of 1% of the net, effectively realized tax revenues.
- Any payments for salaries and labor benefits that derive from labor litigation are deductible at the time of the payment provided that the taxpayers proves that he has met the entire requirements set for the deduction of salary payments.

k. Other deductions

Under Law 1943 of 2018, the following items may be deducted as employee education allowances:

A.

Payments made to fund full or partial scholarship programs, and condonable educational loans, established by corporate entities for the benefit of their employees or the employees' families.

B.

Investment payments made for schooling programs or attention and stimulation and comprehensive development schooling programs or preschool programs for boys and girls under 7 years of age, established by companies for their employees' children exclusively.

C.

Contributions made by companies to elementary, junior and high school institutions and technical education institutions recognized by the Ministry of Education; and contributions made to technical, technological, and higher education institutions that meet the requirements established by the Ministry of Education. These qualify for the benefit if they benefit local communities and areas of influence where the legal entity carries out its productive or commercial operations.

For any payments in excess of 100 UVT to be deductible for income tax purposes or to be creditable for tax purposes, or acceptable as valid tax debts, the payments must be made through the financial system.

The following are nondeductible:

- Any expenses originating in the commission of crimes.
- Royalties paid to foreign related parties or to any parties operating in free-trade zones as compensation for the use of intangible property created in national territory.
- Any royalties realized during the tax year where the same are associated with the acquisition of finished products.

7. Tax credits

Under tax law, certain amounts may be credited directly against the income tax liability computed by the taxpayer. These include, among others, the following:

- Foreign tax credits for taxes paid abroad by resident taxpayers earning foreign source income.
- Tax credits for the culture of trees in reforestation areas.
- Stock exchange investments in shares of companies devoted to the agriculture industry.
- Investments made in the control, preservation and improvement of the environment (25%, with a prior certificate from the environmental authority).
- 25% of the amount donated to not-for-profit entities that belong in the special tax system.
- Investments in technological research and development and innovation.
- Any funds originating in subsidies or donations from foreign entities or governments under agreements with the Colombian government, earmarked for general interest programs, and covered by intergovernmental agreements. Likewise, any purchases and imports of property and the acquisition of services with the funds so donated, provided that the funds are applied to the purpose of the donation solely.
- VAT collection agents may claim the sales tax (or VAT) paid on the import, formation, construction or acquisition of real productive fixed assets may be claimed as an income tax credit in the tax year in which they pay the tax or in any [subsequent] tax year.
- In no case may the tax credits exceed the total amount of the income tax liability. In no case may the net income tax, as determined after all tax credits, be less than 75% of the tax determined by the alternate presumptive income tax computation method before any tax credit.

8. Exempt income

New items of exempt income. Conditions

a. Orange economy:

Any income derived from the carrying out of technological value-added industries and specifically listed creative activities will be income tax exempt for a term of 7 years. Requirements: (i) The main domicile must be in national territory, and the line of business must be one of exclusive dedication to these industries. (ii) These activities must be carried out by companies that are established and start economic operations before December 31, 2021. (iii) The activities must correspond to the activities included in the list set by the law. (iv) They must create a minimum number of jobs (3), which must relate to the industries referred to above. (v) The project must be submitted to the Ministry of Culture. And (vi) a minimum amount must be invested (4400 UVT) within a term not to exceed 3 years.

Development of Colombian rural areas:

Any income derived from investments made that increase productivity in the farming sector will be income tax exempt for 10 years. Requirements: (i) The taxpayer's main domicile, management and operations base must be located in the municipality where the investment is made. (ii) The line of business must be exclusive. (iii) The company must be established and start economic operations before December 31, 2021. (iv) The project must create a minimum number of jobs (10) and it must meet a minimum investment amount (25,000 UVT). (v) The project must be submitted to the Ministry of Agriculture. Other requirements: this exempt income will benefit entrepreneurial, investment or business schemes.



b. Other exempt income:

The items of income described below qualify as exempt income under the law, provided that the taxpayer meets the requisite conditions to claim the exempt income:

Any gains from sales of property earmarked for public interest projects or social interest projects (such as social interest housing projects).	Income derived from new forestry plantations, including <i>guadua</i> , rubber and <i>marañón</i> .
The provision of fluvial transport services with shallow draft vessels and flatboats over a term of 15 years.	Resources from the General Social Security System.
The tax incentives set for orange economy literary creations, under Article 28 of Law 98 of 1993.	Income generated by the stabilization reserve established by pension and severance pay fund management companies under Article 101 of Law 100 of 1993.

9. The capital gains tax

As a supplementary tax in respect of the income tax, the capital gains tax taxes certain items of income that are obtained in certain transactions defined by the law expressly. Capital gains may not be reduced by the regular deductible costs and expenses of the taxpayer; and capital losses may not be used either to offset the regular taxable income of the taxpayer.

The current capital gains flat tax rate is

10%

Withholding taxes

Under Colombian tax law, withholding taxes are used as a mechanism to collect taxes in advance. By rule of the law or government regulation, this mechanism authorizes a private or public person to collect certain taxes or to self-collect certain taxes depending upon certain special characteristics. Under the Colombian Tax Code, among other persons, the following are withholding tax collection agents: Any persons who or which are parties to transactions in which by express rule of law must collect withholding taxes.

The main obligations of withholding tax collection agents are the following: to collect the applicable withholding tax amounts; to deposit the amounts so collected [with financial institutions or banks] and on or before the deadline set by the government; to file monthly withholding tax returns; and to issue withholding tax collection certificates.

Because there are many different withholding tax rates on local payments and on payments paid abroad, the specific withholding tax rates depend upon the specific nature of the items being paid.



Rules for mega investments

The purpose here is to foster investment and the generation of jobs by giving tax incentives to taxpayers that make investments and meet the requirements established by the law.

Benefits:

1. The income tax rate is of 27%.
2. Depreciation of fixed assets over minimal terms of 2 years.
3. Exoneration from presumptive income rules.
4. If the investment is made through national companies or permanent establishments, the following rules will apply in respect of the tax on dividend distributions:
 - If the dividends are paid from earnings that were taxed at the level of the company making the distributions, the dividend distributions will not be subject to tax.
 - With the dividends are paid from earnings that were not taxed at the level of the company making the distributions, a flat 27% rate will apply.
5. Mega-investments will not be subject to the wealth tax.
6. Taxpayers making mega-investments may qualify for legal stability contracts under the following conditions:

This stability applies for the tax benefits and conditions that relate to the benefit. The qualification procedure is carried out before the Ministry of Commerce, Industry and Tourism according to regulations issued by the national government. The legal stability contract is signed with DIAN. The taxpayer must pay a premium equal to 0.75% of the value of the investment made every year, which cannot be less than 30,000,000 UVT.

Requirements:

i) Create a minimum number of 250 jobs. (ii) The minimum investment amount of the investments made is 30,000,000 UVT. (iii) The investments must be made in property, plant and equipment. And (iv) the investment must be made within a term not to exceed 5 years.

These rules will apply to investments made before January 1, 2024, over a term of 20 years. The Ministry of Commerce, Industry and Tourism is the agency in charge of qualifying any given project as “mega-investment”. These rules will not apply for any investments made in nonrenewable natural resources evaluation and exploration projects. Taxpayers will be allowed to sign legal stability contracts so that these benefits are guaranteed.

Rules on Colombian Holding Companies

Taxpayers that qualify for this tax system:

Any national companies which main line of business is the holding of securities or negotiable instruments, investments in or holding of shares of stock and equity interests in Colombian or foreign companies, and/or the management of said investments.



Requirements to qualify for the benefit:

1. Direct or indirect equity holdings, of at least 10% of the corporate capital of one Colombian or foreign companies for a minimum term of 12 months.
2. Having at least 3 employees, and a fixed address in Colombia. Proving that strategic decisions about the investments and CHC assets are made in Colombia. To this end, the mere formal requirement of holding the annual shareholders meeting in the country will not be enough.
3. Submitting a communication to DIAN, on the forms established by regulation. The special CHC rules will apply starting in the tax year in which the taxpayer submits this communication to DIAN. The benefits will be lost in any tax year in which the taxpayer fails to meet any of the requirements and these are rejected by DIAN. It will be understood that decentralized state companies that hold equity interests in other companies will be covered by the CHC rules.

Benefits of the CHC rules:

- Any dividends or profits share distributions made by nonresident entities to a CHC will be income tax exempt, and will be reported as such (exempt income).
- Any dividend distributions from the CHC to a nonresident shareholder, individual or corporate, will be treated as foreign source income.
- Any income or gains derived from the sale or transfer of any CHC holdings in foreign companies would be income tax exempt.

International Taxation

Withholding taxes for payments made abroad

These withholding tax rates are the following under the changes introduced by Law 1943 of 2018:

Type of payment	WHT rate before the tax reform	WHT rate after the tax reform
Interest, commissions, royalties, rentals, compensation for personal services, industrial property or know-how	15 %	20 %
Technical services, technical assistance, and consulting services	15 %	20 %
Computer software royalties	26.4 %	20 %
Management services	15 %	33 %
Loans for a term of 1 year or more; financial lease payments (transition)	15 %	15 %
Loans for the financing of PPA projects	15 %	15 %
Financial leases of aircraft, helicopters and other airplanes	1 %	1 %
Film royalties	15 %	15 %
Cession of reinsurance premiums	1 %	1 %
International transport	5 %	15 %

1. Taxation of dividend distributions

Dividends and profit share distributions to Colombian corporate residents qualify as nontaxable income provided that they correspond to earnings that were reported and taxed at corporate level. If that is not the case, the following withholding taxes will apply on any dividend or profit distributions that are paid from earnings realized as from tax year 2019 (without detriment to the application of any double taxation treaties subscribed by Colombia):



Natural Persons:

a. Dividends paid from profits already taxed in the hands of the company:

UVT Ranges	Tax
From <0 to 300	0
Marginal Rate 0%	
From 300 and above	(UVT dividends minus 300)* 15%
Marginal Rate 15%	

b. Dividends paid from profits that were not taxed in the hands of the company:

These are taxable at the general income tax rate depending upon the tax year in which they are paid or credited to account. In this case, the 15% rate will apply after the tax has been deducted (33% for 2019, 32% for 2020, 31% for 2021, and 30% for 2022 and thereafter).

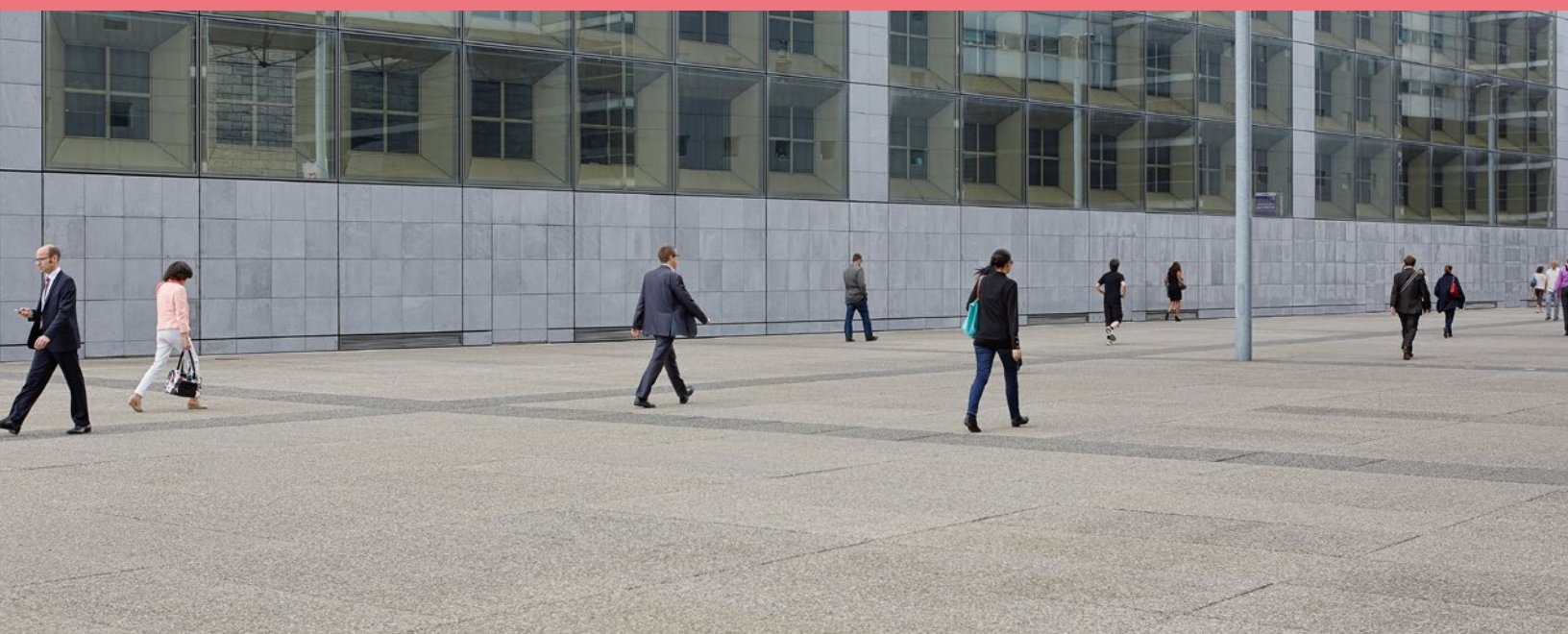


Corporate entities /Legal entities:

Tax year	Dividends paid from profits already taxed in the hands of the company that distributes them	Dividends paid from profits not taxed in the hands of the company that distributes them
2019	7.5%	33% (on the net)
2020		32% (on the net)
2021		31% (on the net)
2022		30% (on the net)

The following rules will apply in the case of Colombian companies:

- The withholding tax will only be collected from the first dividend distribution paid to the Colombian company.
- The credit will be allocated down through the natural person who is the final beneficiary.
- Any dividend distributions that were declared and were due and payable as of December 31, 2018 will be treated under the rules that were in force before Law 1943.



2. Payments to tax havens (“non-cooperating jurisdictions”, “jurisdictions of low or zero taxation”) and to entities that belong in preferential tax systems

(i) Criteria used to identify the above:

Non-cooperating jurisdictions and low or zero imposition jurisdictions. They are determined by the government based on the following criteria:	Entities that belong in preferential tax systems
A. Nonexistence of tax rates, or existence of low-income tax rates in respect of those that would apply in Colombia on similar transactions.	A. Nonexistence of tax rates, or existence of low-income tax rates in respect of those that would apply in Colombia on similar transactions.
B. Lack of an effective exchange of information; or existence of legal rules or administrative practices that limit this exchange.	B. Lack of an effective exchange of information; or existence of legal rules or administrative practices that limit this exchange.
C. Lack of transparency at the level of the law or the regulations or in the way the Administration works.	C. Lack of transparency at the level of the law or the regulations or in the way the Administration works.
D. The requirement of an actual substantial presence does not apply, nor that of the exercise of a real activity with economic substance.	D. The requirement of an actual substantial presence does not apply, nor that of the exercise of a real activity with economic substance.
E. Besides the above criteria, the national government will use as reference internationally accepted criteria for the determination of non-cooperating jurisdictions or low taxation or zero taxation jurisdictions.	E. These are tax regimes open only to persons or entities that qualify as nonresidents in respect of the jurisdiction in which the preferential tax regime functions (ring-fencing practice).

Effects of this classification:

[Any payments or credits to account made to any of the above taxpayers/entities] will be subject to withholding tax collection at the general corporate income tax rate.

Any payments or credits to account to non-cooperating jurisdictions or low tax or zero tax jurisdictions or payments or credits to account made to entities belonging in any preferential tax regimes qualified as such by the national government will not be deductible, unless withholding income taxes have been actually collected from them (when applicable).

On the other hand, in addition to general deductibility requirements, the payments or credits to account made to these jurisdictions must meet the following conditions:

- The transactions must be subject to transfer pricing rules and the taxpayer must meet the obligation of filing a transfer pricing study and a transfer pricing information return regardless of whether its gross assets as at yearend or its gross revenue of the respective year are below the requisite threshold amounts.
- The taxpayer must document and show in detail the functions carried out, the assets used, the risks assumed and the total costs and expenses incurred by the mentioned person or company to carry out the activities that generated the mentioned payments; otherwise these payments will be treated as non-deductible for income tax purposes. The “mentioned person or company” is the person or company located in or that is a resident of the noncooperating jurisdiction or the low tax or zero tax jurisdiction or the entity belonging in a preferential tax system.

c. Effective beneficiary

Subsidiaries of foreign companies, as well as any permanent establishment of foreign companies, trusts and collective investment portfolios are required to provide detailed information about the effective beneficiaries of their payments or credits to account. The tax reform includes the definition effective beneficiary.

Effective beneficiary means the natural person that meets any of the following conditions:

To exert effective, direct or indirect control over a national company, an agent, a trust, a collective portfolio investment, or a permanent establishment of a foreign company.

To be the direct or indirect beneficial owner of the transactions and activities carried out by the national company, the agent, the trust, the collective portfolio investment or the foreign company with a permanent establishment in Colombia.

3. Presumptions for controlled foreign companies

In case the active income or the substantial economic operations of controlled foreign companies represent more than 80% of their revenue or income, their entire revenues, deductible costs and expenses will originate active income. Contrariwise, where the passive income of the CFC represents 80% or more of its total income, then the entire revenue, deductible costs and expenses of the CFC will originate passive income.

4. Transfer pricing regulations

Colombian transfer pricing regulations were drafted based upon the guidelines set by the Organization of Economic Cooperation and Development - OECD -, and they came into force as part of the Colombian tax system in 2004.

Under these regulations, all income tax payers who enter into transactions with foreign related parties must determine their revenues and deductible costs and expenses based upon the prices and profit margins that would have been used in comparable transactions with or between unrelated parties.

Double Taxation Treaties and Decision 578 of the Andean Community of Nations

Colombia has been negotiating double taxation treaties to avoid double taxation and prevent tax evasion in point of income taxes in patrimony taxes, particularly with respect to cross-border transactions.

At the level of the Andean Community of Nations, Colombia adopted Decision 578 which contains the new Andean Community regulations designed to avoid double taxation and prevent tax evasion between the member countries of the CAN (Colombia, Peru and Ecuador). In regulating the taxing power of the member states, this decision favors the criterion of source-based taxation above residence-based taxation.

The double taxation treaties signed by Colombia to date seek to avoid international double taxation and prevent tax evasion; and in addition to that, they seek to eliminate barriers to the flow of capitals, goods, technologies and persons between the signatory countries.

Additionally, these treaties help countries to better implement transfer pricing regulations; they recognize the principles of nondiscrimination of nationals and nonresidents which carry out activities in any other counterparty countries; they implement procedures of reciprocal cooperation between taxing authorities for the resolution of conflicts, the making of consultations, the exchange of information, and assistance in tax collection efforts.

The following double taxation treaties are in force as of this date. With Spain, Chile, Portugal, Korea, India, Mexico, Czech Republic, Canada, Switzerland and the United Kingdom. Double taxation treaties were also signed with Italy, France, and Japan, and the related, internal approving legislation is expected to be promulgated soon.

The Sales Tax or VAT

1. General aspects

This is a national tax which taxes the following mainly:

The sale of tangible personal property or real property that have not been exempted expressly.	The provision of services in the national territory or from abroad, except for services that have been exempted expressly.
The sale or assignment of industrial property rights.	Gambling and other similar games, except for lotteries and gambling and similar games that are operated on the Internet exclusively.
Imports of personal property that have not been exempted expressly.	

Salvo Save for a few, quite particular exceptions (such as beers and crude oil), the sales tax has been structured as a value-added tax. This means that VAT collection agents may credit the amount of the VAT paid on the goods and services that they buy to generate the revenue of VAT taxable transactions against the VAT payable on their sales to determine the net VAT payable to the government.

The VAT collection agent required to collect and pay the tax to the government is any person that realizes any of the taxable events. This is so despite that it is the end-user who assumes the economic burden of the tax.

Generally, the taxable base is the total value of any sales and service transaction. The taxable base of the VAT comprises the property or services acquired for the account of or in the name of the purchaser of the goods or services provided. Additionally, there are special taxable bases for certain types of goods and services.

There is a general VAT rate that applies to the majority of transactions, which is currently of 19%; and there is a special rate of 5%.

The VAT liability is determined as the excess of VAT charged on taxable transactions over and above total admissible VAT setoffs.

2. VAT exempt goods

Several articles that are basic household consumable goods (or a part of the so-called *canasta familiar* in Spanish – or “family basket”) are VAT exempt, as well as many agricultural and farming products. We highlight the following goods which are also VAT exempt:

- National and imported equipment and elements earmarked for the construction, set up, mounting, and operation of environmental monitoring and control systems.
- Personal desktop computers or personal laptops where their value does not exceed 50 UVT.
- Smartphones and tablets where their value does not exceed 22 UVT.
- Regular permanent imports made by ultra-frequent exporters – ALTEX (for its acronym in Spanish) of industrial machinery that is not manufactured in the country, earmarked for the transformation of raw materials.
- All sales of real property.
- Sales of certain articles, such as human and animal consumption foodstuffs, clothing, cleaning and

medication for human or veterinary use, etc. that are introduced and sold in the departments of Guaviare, Guainía, Vaupés and Vichada.

Commissions earned by stock exchange brokers for the management of mutual funds.

3. VAT exempt services:

We highlight the following:

- Public or private cargo transport, national and international.
- Public land, maritime or river transport of passengers in national territory.
- National air transport of passengers to national destinations with no organized land transport systems.
- Transport of gas and hydrocarbons.
- Interest and financial income and loan transactions and financial leases.
- Medical, dental, hospital, clinic and laboratory human health services.
- Public utility services including electric power, water, sewage, street cleaning, garbage collection and residential gas supply.
- Inbound or outbound tourism air transport to and from the Department of Guajira and the municipalities of Nuquí – in the Department of Chocó –, Mompox – in the Department of Bolivar – and Tolú – in the Department of Sucre.
- The initial monthly 325 minutes of local telephone services provided to social strata 1, 2 and 3 users.

- Food services contracted with public resources for the Military, the National Police, child development centers, nursing homes, public hospitals and community service diners.
- Hotel and tourism services that are provided in any of the municipalities comprised in the following special customs duties regime areas:

Urabá,
Tumaco y
Guapi

Inírida, Puerto
Carreño, La
Primavera y
Cumaribo

Maicao,
Uribía y
Manaure.

4. Goods and services that were VAT exempt and are now VAT taxable under the recent tax reform:

Under the changes enacted by the so-called *Ley de Financiamiento*, the following, former VAT exempt goods and services are now VAT taxable:

- Reinsurance brokerage services
- Franchise contracts
- Cosmetic treatments and aesthetic surgery (other than corrective, functional plastic surgery) under the definitions adopted by the Ministry of Health and Social Protection)
- Remote maintenance services for software and hardware
- Commissions earned by investment management companies, insurance life [brokers] and capitalization securities management companies
- Remote maintenance services for hardware and software

5. Goods and services that were VAT taxable and are now VAT exempt under the recent tax reform:

Under the new Law 1943 of 2018, the following, formerly VAT taxable goods and services qualify as VAT exempt goods and services:

Whole public passenger transport motor vehicles; the chassis and the motor, and the car body, acquired separately to assemble new whole public transport passenger motor vehicles.

Whole public or private cargo transport service motor vehicles; the chassis and the motor, and the car body, acquired separately to assemble new whole cargo transport motor vehicles weighing more than 10.5 gross vehicle weight.



6. Creditable VAT

The VAT invoiced to the VAT collection agent on the acquisition or import of tangible personal property and services is a creditable VAT. For these purposes, VAT collection agents must keep in mind that the only actually creditable VAT is the VAT that they pay on acquisitions of personal property and services (imports of personal property included) where the underlying value is computable as a deductible cost or expense for income tax purposes and provided that they are earmarked for VAT taxable transactions.

The VAT collection agent may book the creditable VAT in any of the following VAT periods:

- i. For those who file bimonthly VAT returns, in the term in which the VAT accrues or in any of the 3 following VAT periods.
- ii. For those who file quarterly VAT returns, in the term in which the VAT accrues or in the following VAT period.

No credit may be claimed for any VAT paid on any of the following transactions:.

Uncollectible credits and debts.	Acquisitions from unregistered suppliers.	Acquisitions from insolvent or fictitious suppliers.
----------------------------------	---	--

7. New rules for non-VAT collection agents

The so-called simplified VAT regime was eliminated. Instead of it, a new regimen is established which is merely one in which the following belong as non-VAT collection agents or persons that are not responsible for the tax: natural persons who are businessmen and merchants, craftsmen and artisans, small farmers and natural persons who provide services, provided that they meet the following conditions:

1. That their total gross revenues for the prior or current year earned in their trade are less than 3500 UVT (UVT).
2. That they do not have more than one commercial establishment, office, base, store or business point where they carry out their activity.
3. That no activities under franchises, concession contracts, royalty, authorization or any other system entailing the exploitation of intangible property are carried out in their commercial establishment, office, base, store or business point.
4. That they are not customs duties users.
5. That they have not entered into any contract for the sale of taxable goods or the provision of taxable services where the individual contract value is equal to or greater than 3500 UVT, either in the current year or in the prior year.
6. That the total amount of their bank deposits or financial investments in the prior or current year does not exceed 3500 UVT.
7. That the person is not registered as a taxpayer of the so-called SIMPLE tax system.

8. VAT withholding tax

The national government may establish VAT withholding taxes, for as much as 50% of the tax value. There are no regulations establishing a special VAT withholding tax rate, then the rate will be 15% of the tax value.

The VAT withholding tax rate will be 100% in the case of digital services and of [services] contracts that local VAT collection agents enter into with nonresidents.

9. Digital services

Those who provide digital and electronic services from abroad may file bimonthly VAT returns or may choose to pay through withholding tax collection under the following rules:

Which services are included

- a. Audiovisual services (music, videos, movies and any type of games, and the broadcasting of any type of events, inter alia).
- b. Services provided through digital platforms.
- c. Online advertising services.
- d. Remote education or training services.
- e. Assignment of intangible property use or exploitation rights.
- f. f. Any other electronic or digital services for users located in Colombia.

Which would be the taxable base

The amount invoiced or charged to or demanded from users located in Colombia.

Who will collect the withholding tax

Credit and debit card issuing entities; prepaid card sellers; those who collect cash [for] third parties; and any others as designated by DIAN.

Who can elect the withholding tax system

- Those who carry out one or more of the above activities exclusively.
- Those who fail to meet the VAT bimonthly return system, or those who choose this alternate tax payment system voluntarily.

Who must file VAT returns

- Those who do not choose the withholding tax payment system voluntarily.
- Those who do not appear in the list of service providers from whom VAT must be collected.

The Carbon Tax

This tax is levied upon the carbon content of all fossil fuels including any oil derivatives that are used for power generation [or as motor fuel]. The taxable event is the sale, withdrawal, importation for own use or for resale of any fossil fuels; and it is a tax that accrues on a single phase on the taxable event that occurs the first.

A specific rate applies depending upon the carbon dioxide issue factor (CO₂) for each specific fuel fossil; it is expressed in a volume unit (CO₂ kilograms) or power generating unit (terajoules) in accordance with fuel volume or weight.

Additionally, starting in 2017 a motor fuel tax was created. The taxable event of it is the sale in Colombia of any regular motor gasoline or diesel fuel by the refiner or importer to the wholesale fuel distributor, according to the price fixed for the purpose by the Ministry of Mines and Energy. In case the importer of record is at the same time the wholesale distributor, the taxable event will be the withdrawal of each product unit for wholesale distribution.

The National Excise Tax

The taxable event of the national excise tax is the provision or sale to the end-user or the import by the end-user of the following services and goods, which are taxed at the following rates:

Taxable events	Tax rates
Mobile telephone services, Internet, mobile web surfing and data services.	4%
The sale of certain items of luxurious personal property such as automobiles, motorcycles, yachts and hot air balloons.	8-16%
The sale of prepared foods and beverages at restaurants, cafeterias, self-service stores, ice cream and fruit parlors, cake stores, bakeries, bars and catering services.	8%

Any taxpayers that carry out beverages and foods sales operations under franchise contracts are not subject to the national excise tax but to VAT instead. These taxpayers may elect this treatment through June 30, 2019.

The following are new rules that apply to those who are non-excise restaurant-and-bar tax collection agents, which replace former simplified tax system rules:

- Once a restaurant or a bar has been registered as an excise tax collection agent, it may request to be removed from the register only after proving that the conditions of non-tax collection agents were met for the prior 3 tax years – and specifically in each one of those 3 years.
- In case non-excise tax collection agents do business with excise tax collection agents, they must register their condition as such in their unified tax registration form (or RUT), and deliver a copy of the form to the party acquiring their services.

The national excise tax has been incorporated into the new overall simplified tax system – the optional, all-inclusive SIMPLE tax system with annual returns and bimonthly estimated tax payments –, for those excise taxpayers who elect to belong in the SIMPLE system.



The Financial Transactions Tax – *GMF* (for its acronym in Spanish)

The Financial Transactions Tax (GMF)

The financial transactions tax is a single event tax. Among others, the taxable event is the making of financial transactions by which the taxpayer disposes of resources held in savings or checking accounts as well as in special deposit accounts with the Bank of the Republic, and the drawing of cashier's checks. Because it is a single event tax, the tax accrues at the time the resources are disposed of through the financial transaction.

The tax rate is four per thousand (4×1000) of the total value of the financial transaction by which the taxpayer disposes of its resources. 50% of the GMF paid is deductible for income tax purposes regardless of whether or not the tax is causally connected with the income-producing activity of the taxpayer.

This tax is collected and paid by withholding tax collection carried out by the Bank of the Republic and the rest of financial institutions at which the respective checking, savings, deposit or collective-portfolio accounts are held; or where accounting movements are made entailing the transfer or disposal of resources. Under the law, there is a number of transactions that are exempt from this tax.

The SIMPLE taxation system

This is an optional tax system, where the tax accrues annually and is paid in bi-monthly [estimated tax payments]. It replaces the income tax and consolidates the following taxes: the industry and commerce tax and the related billboards tax; the excise tax in the case of restaurants and food service providers; and the VAT in the case of small stores and hair salons.

The taxable event is the making of revenues that are capable of generating increases in net assets or equity.

The taxable base is made up of the total gross revenues, whether regular or special, earned by the taxpayer in the respective taxable period. We should note the following in respect of these tax elements: that the municipalities retain their authority to define the taxable events, taxable bases and rates of the consolidated industry and commerce tax.

In respect of the consolidated industry and commerce tax, municipalities retain their authority to define the essential tax elements under current law.

Under the so-called Ley de Financiamiento (Law 1943 of 2018), for a person to qualify as a unified, SIMPLE tax taxpayer, the person needs to meet, among others, the following requirements:

Being a natural person that carries out a business enterprise; if the person is a legal entity, their shareholders must be natural persons that are Colombian residents.

Having earned gross revenues of less than 80,000 UV T in the prior tax year. If it is a new company, its qualification for the tax system will be conditioned upon meeting this requirement.

On the other hand, the following are classified as persons that cannot be SIMPLE tax taxpayers: any foreign legal entities or their permanent establishments; any companies whose shareholders, members or managers have a labor relationship with the contractor – as it is the case of personal services –; financial institutions; any natural or legal entities dedicated to asset management activities, asset sales intermediation, asset rentals and leases, etc.

Now, the law established progressive tax rates depending upon the amount of gross revenues earned by the taxpayer. These rates depend on the activity carried out by the taxpayer as well:

- Small stores, micro and mini markets and hair salons: **between 2 % and 11.6 %.**
- Commercial activities, technical and mechanical services where the physical, material factor prevails over the intellectual factor; and electricians, construction services and mechanical shops, among others: **between 1.8 % and 5.4 %.**
- Professional services, consulting and scientific services, where the intellectual factor prevails over the physical, material factor, including intellectual professions services: **between 4.9 % and 8.5 %.**
- Foods and beverages sales activities and transport activities: **between 4.9 % and 7 %** (in the first case, taxpayers must add 8% for excise taxes).

On the other hand, SIMPLE tax taxpayers must make unified tax estimate payments every two months, by filing the special SIMPLE tax payment receipts. (Taxpayers must include their revenue information broken down by municipality or district in these documents.) The estimated tax payments rate will range between 1.8% and 11.6%.



8.1 Anti-Avoidance Rules

The law defined certain requirements for a person to be qualified for this special system. However, the legislature considered it was important to establish certain rules to prevent any abuses in these particular tax matters.

In this way, certain measures have been established to mitigate the risk of avoidance by taxpayers. Among others, these include checking the levels of consolidated revenues where the natural person is a shareholder in several companies or is a manager in several companies.

8.2 Withholding tax

SIMPLE tax taxpayers will not be subject to withholding tax collection, and will not be required either to collect or self-collect withholding taxes, except for withholding taxes on labor payments.

Additionally, the law established that in the case of payments made by SIMPLE tax taxpayers for the acquisition of goods and services, the party receiving the payment (a regular income taxpayer and withholding tax collection agent) must collect self-withholding taxes. This is without detriment to the collection of VAT withholding taxes where a withholding tax collection agent acquires any items of VAT taxable personal property or services from SIMPLE tax taxpayers.

8.3 Other matters

- SIMPLE tax taxpayers are VAT collection agents or excise tax collection agents.
- The rules on procedure, tax penalties, and statute of limitations relating to tax returns provided for in the Tax Code will apply in this special SIMPLE tax system.
- SIMPLE tax taxpayers that are also VAT collection agents – because they carry out activities in small stores, micro and mini markets and hair salons, **are not entitled to claim VAT setoffs.**
- SIMPLE tax taxpayers who have foods and beverages sales businesses may pay their excise tax liability as part of the SIMPLE tax liability.
- If any SIMPLE tax taxpayer fails to make the estimated tax payments required to cover the total annual tax liability, incurring in tardiness for more than 1 month, it will be excluded from the system, and will be precluded from electing the system for the taxable year following the year in which it failed to meet its payment obligations.

The Industry and Commerce Tax and Billboards Tax

1. Industry and commerce tax

This is a municipal tax levied upon the revenues obtained by natural or legal persons or unincorporated associations through the carrying out of industrial, commercial and service activities, directly or indirectly, in the respective territories of the municipalities.

The taxable base of this tax is made up of the total regular and special revenues realized by the taxpayer in the respective tax year, including any financial income, commissions, and generally any type of revenue that has not been expressly exempted by the law.

Neither revenues derived from exempt or nontaxable activities, nor sales returns, discounts and rebates, nor export revenues nor revenues from sales of fixed assets are included in the taxable base.

As noted above, the unified SIMPLE tax system was created by the recent tax reform (Law 1943 of 2018). Several taxes, including the industry and commerce tax, are consolidated into this SIMPLE tax. In this regard, it is worth mentioning that the new law reserved the authority of defining the essential tax elements (i.e. taxable events, taxable bases, rates and taxpayers) to the municipalities.

City Councils set the industry and commerce tax rates within the following limits:

Activity	Industrial activities	Commercial and service activities
Rate	From 2 x 1000 to 7 x 1000	From 2 x 1000 to 10 x 1000

2. The supplementary Billboards Tax

This is also a municipal tax, and works as a supplement to the industry and commerce tax. The taxable event is the placement of billboards and other advertising boards in public space. This means that the tax is collected from any natural or legal persons or unincorporated associations that carry out industrial, commercial and service activities in a municipality and that use public space to advertise their businesses through billboards or other advertising boards. The taxable base of the tax is the amount payable as industry and commerce tax. The tax rate is 15%.

The Unified Property Tax

The unified property tax is a charge on the [value] of real properties located in urban, suburban or rural areas, with or without constructions on them. In consequence, property tax taxpayers are the persons who own or possess real property. The tax is justified by the fact that real property is a sign of concentration of income and wealth, and to that extent real properties are taxed.

The taxable base of the tax is made up of the cadastral valuation of the property, as adjusted for inflation (by the consumer price index – CPI). In certain areas such as in Bogotá, the taxable base is made up of the self-appraisal made by the taxpayer.

The applicable tax rate depends upon the qualification of the property. In other words, if the property is rural or urban or suburban property; and the rate ranges between 4 and 12 x 1000 (i.e. 0.4% and 1.2%), taking into account the economic uses of each property.

Taxpayers may deduct 100% of this tax in their income tax return provided that it is causally connected with the taxpayer's income-producing activity.

The Registration Tax

The registration tax is levied upon all documentary legal acts, contracts or transactions that must be registered with chambers of commerce and land registration offices. In case the act, contract or transaction must be registered with the above two agencies, then the tax will be paid exclusively to the land registration office.

The taxpayers are the private contract parties and beneficiaries of the act subject to registration.

The taxable base of this tax is the transaction value set down in writing in the document that contains the legal act, contract or transaction. In respect of documents with no value, the taxable base is determined in accordance with the nature of the act:

The rate is as follows:

- Legal acts, contracts or transactions with a transaction or contract value and subject to registration with land registration offices, between 0.5% and 1%.
- Legal acts, contracts or transactions with a transaction or contract value and subject to registration with chambers of commerce, where the underlying act does not entail the incorporation of a company or the increase of share placement premiums, between 0.3% and 0.7%.
- Legal acts, contracts or transactions with no transaction or contract value and subject to registration with chambers of commerce, where the underlying act entails the incorporation of a company or the increase of share placement premiums, between 0.1% and 0.3%.
- Legal acts, contracts or transactions with no transaction or contract value and subject to registration with land registration offices or chambers of commerce, between 2 and 4 minimum daily wages.

Tax procedure and formal obligations

1. Electronic invoicing

As from January 1, 2020, taxpayers must obtain an electronic invoice from their vendors for their deductible costs and expenses and tax credits to be admissible, according to the table below:

Year	Max percentage that may be claimed as deductible with no electronic invoices
2020	30%
2021	20%
2022	10%

The law gave authority to DIAN to regulate sales invoice and equivalent documents (currently, this authority belongs only to the National Government – Ministry of Finance). To this end, the law established that DIAN will announce the timing requirements and the taxpayers that must implement electronic invoicing during 2019.

In line with Article 1.6.1.4.1.16 of Unified Tax Regulation 1625 of 2016, the law establishes that equivalent documents issued by POS cash registers will not entitle the buying taxpayer to claim VAT setoffs and deductible costs and expenses; but, if the buying taxpayer needs so, it may require the commercial establishment to issue the corresponding invoice.

From January 1 through June 30, 2019, taxpayers required to issue electronic invoices that fail to meet that obligation will not be subject to any penalties, including the disallowance of costs and expenses, provided that they meet the following conditions:

- They must issue an invoice by traditional methods – other than electronic methods.
- They must prove that they did not issue electronic invoices because of (i) technological impediments or (ii) justified commercial reasons.

2. Other matters

2.1 New third parties joint and severally liable for payment of the tax

The following are defined as persons who are joint and severally liable with the taxpayer for payment of the tax:

- Any persons or entities which have been parties to transactions that were purely tax driven and sought to evade or avoid taxes, for the taxes, late interest and penalties that the tax administration did not collect.
- Any persons in charge of the custody, management or any persons who in any manner manage fund assets or business vehicles used by their owners to evade or avoid taxes, and were aware of transactions that entailed abuse in tax matters or tax avoidance.

2.2 Contentious administrative conciliation

DIAN now has the authority under the new law to enter into settlement and conciliation arrangements in respect of tax, customs duties and foreign-exchange proceedings where these are pending before contentious administrative courts:

- For single-instance proceedings or proceedings undergoing the first instance: the parties may settle for payment of 80% of the total value of penalties, late interest and indexations, provided that the taxpayer pays 100% of the disputed tax amount and 20% of the penalties, late interest and indexations.
- For proceedings undergoing the second instance (at appeal level): the parties may settle for payment of 70% of the total value of penalties, late interest and indexations, provided that the taxpayer pays 100% of the disputed tax amount and 30% of the penalties, late interest and indexations.

For UGPP (Social Security and payroll tax related) proceedings, the parties may settle on penalties and late interest derived from administrative proceedings.

The deadline for filing the request referred to in this rule of law was set at September 30, 2019.

2.3 Termination by mutual consent of tax, customs duties and foreign-exchange administrative proceedings:

DIAN now has the authority to terminate this type of proceedings under the following conditions:

- If a proposed addition to tax or actual tax deficiency assessment was notified: the parties may settle for payment of 80% of the total value of penalties, late interest and indexations, provided that the taxpayer pays 100% of the disputed tax amount and 20% of the penalties, late interest and indexations.
- If a bill of charges or resolution imposing a penalty was notified: the parties may settle for payment of 50% of the total value of penalties, late interest and indexations, provided that the taxpayer pays 50% of the penalties, late interest and indexations.
- If a resolution imposing a penalty for not filing return was notified: the parties may settle for payment of 70% of the total value of penalties, late interest and indexations, provided that the taxpayer pays 30% of the penalties, late interest and indexations.
- If a resolution imposing a penalty for inadmissible tax refund or offset was notified: the parties may settle for payment of 50% of the total value of penalties, late interest and indexations, provided that the taxpayer pays 50% of the penalties, late interest and indexations and pays also 100% of the reduced tax liability, penalties and late interest.

Compliance with the rest of the requirements set for taxpayers and other persons to qualify for these mechanisms must be proven no later than October 31, 2019.



2.4 Mutual agreement procedure – MAP

This is a procedure regulated by double taxation treaties entered into by Colombia. Taxpayers may request that the authority resorts to this procedure, by filing a formal request with DIAN, under the following conditions:

- To be admitted to this procedure, the taxpayer must abandon or dismiss any motions and appeals filed with the Administration, and the abandonment or dismissal must be accepted by DIAN.
- DIAN will establish the details of the procedure by resolution.
- The competent authority will subscribe any agreements that are in order in furtherance of the MAP established in the [relevant] double taxation treaties.
- These agreements will be equivalent to a final, nonappealable court decision. Therefore, they will be valid as supporting document to institute and carry out forceful collection proceedings.
- The agreement is final, nonappealable.
- They can be implemented in any time, regardless of the statute of limitations that relates to the relevant tax return.

2.5 Electronic notifications

- Provided that the taxpayer, withholding tax collection agent or tax return filer has reported its electronic address in the unified tax registration form – RUT (for its acronym in Spanish), the tax administration may notify any administrative acts at that address. Based in this, it is understood that the taxpayer has stated expressly that it is willing to accept electronic notifications.
- This means of notification is also extended to any actions carried out by the tax authority. These includes information requests, tax inspection orders, and special requests, among others. The regulations will provide for a special box on the RUT form for the taxpayer to report the email address of its attorneys. In this way, the authority may send copies of its acts to the latter.
- For legal purposes, electronic notifications stand as made on the date on which the administrative act is sent to the email address. However, the taxpayer retains the right to report to the tax authority that it has been impossible for it to access the contents of the message, within 3 days following receipt of the same.
- In respect of any resolutions that decide upon motions or appeals, the 10 days that the taxpayer has to appear will run from the day following the date on which the call notice is put in the mail.
- These electronic notification rules apply to administrative acts issued by the UGPP.
- These rules will apply as from July 1, 2019.

2.6 Special tax audit benefits:








- The law established special tax audit benefits for taxable years 2019 and 2020. These benefits apply for taxpayers that increase their net income tax liability by 30% at least in respect of the prior year. In these cases, the taxpayer's income tax return will become nonassessable and closed to review by the authority 6 months after the filing of the return.
- If the increase of the net income tax liability is of 20% at least [but less than 30%], then the taxpayer's income tax return will become nonassessable and closed to review by the authority if none of the following is notified to the taxpayer within 12 months following the date of filing of the return: a call to file an amended return, a proposed addition to tax, a special call (*emplazamiento especial*) or a provisional deficiency assessment. This rule applies provided that the taxpayer files its return on or before the statutory deadline and pays the tax liability on or before the statutory payment deadlines set by the national government.
- Where the tax return for which tax audit benefits are claimed shows a net loss, DIAN will retain its ability to audit the return to determine whether or not the reported net loss may be carried forward for offset in future years.
- The following will apply to those taxpayers that did not file an income tax return for taxable years prior to the year in respect of which they purport to claim these tax audit benefits. If they meet their obligation and file the returns for taxable years 2019 and 2020 on or before the filing deadline set by the government, the regular statute of limitations set herein will apply to them. To this end, they must increase their income tax liability for the mentioned years in the percentages set in this Article.
- Wherever it is proven that the withholding tax collections reported in the tax return are nonexistent, the tax audit benefit will not apply.

PwC Tax & Legal Times





The newspaper arrives to your mail

To start receiving the PwC Tax & Legal Times newspaper in your email, follow these short steps:

New user:

-  Enter our registration form [here](#)
-  Click on the option “no tengo una cuenta en Impuestos en Línea” (I do not have an Online Tax account).
-  Complete the requested data and click continue.
-  Log in with the information sent to your email.
-  Select if you are a natural or legal person.
-  Click on the services tab and select the “Activar” (Activate) option (in the PwC Tax & Legal Times section). *Please accept terms and conditions.
-  The next business day you will receive the newspaper in your mail.

Registered user:

-  Log in with your access data [here](#)
-  Click on your username, located in the upper right corner, and choose the “mi perfil” (my profile) option.
-  Select the tab “servicios” (services) and choose the option “activar” (enable). * You must accept them and conditions police.
-  The next business day you will receive the newspaper in your mail.

Estatuto Tributario PwC 2019

- Updated with the recent Tax Law (1943 of 2018).
- Contains laws, legislative decrees and extraordinary decrees with provisions of a tax nature.
- Single Tax Decree (1625 of 2016) with the modifications and additions made during 2018.
- Relevant tax provisions contained in the Single Decrees of other sectors (available for consultation in the digital version).
- IFRS notes in the relevant provisions, updated with Decree 2483 of 2018 (available for consultation in the digital version).
- Approximately 1,700 notes that facilitate the interpretation of the rules.
- Contains more than 900 sentences of the Constitutional Court and the Council of State.
- More than 1,700 DIAN concepts, including the unified doctrine regarding: special tax regime, tax procedure, individuals, regime of controlled entities from abroad - ECE, participation accounts, tax on financial movements, among others.



For the purchase of this Statute, you will receive a free version of the web version and the mobile application, which will be updated monthly until December 10, 2019, and the subscription to our virtual newspaper Tax & Legal Times.

Available in version:



07

Corporate aspects

- The preferred investment vehicle for foreign and local investors is the simplified stock company, widely known for its Spanish acronym, S.A.S. This is mostly because they are very easy to incorporate, and they are very functional.
- Branch offices of foreign companies are also very common in Colombia as investment vehicles, especially for foreign investors in the mining and hydrocarbons industries, because of the related foreign exchanges benefits that companies of that sector enjoy.



Investment vehicles

In Colombia, investment vehicles are supported by constitutional principles. Among these, we can mention the right to equal treatment, the protection of free enterprise and the protection of private initiatives. Below we include a summary of the most relevant legal aspects that relate to the investment vehicles that are most common in Colombia, including notes about their procedure of incorporation.

1. Types of investment vehicles

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

one single shareholder or more shareholders (natural or legal persons, Colombian or foreign) may incorporate this type of company. The shareholders will be liable only up to the amount of their capital contributions. It is worth noting that an S.A.S. may be incorporated by way of a private document, and the bylaws of the company may also be amended through a private document. The company name must always be followed by the acronym S.A.S. or by the words “simplified stock company” in Spanish, *Sociedad por Acciones Simplificada*.

Stock Company or Corporation (S.A.):

this type of company must have 5 shareholders at a minimum (natural or legal persons, Colombian or foreign), who will be liable only up to the amount of their capital contributions. Those companies are incorporated by means of a public deed executed before a public notary; and bylaws amendments must be made in the same way*. The company name must always be followed by the acronym S. A. or by the words “stock company” in Spanish *Sociedad Anónima*. Corporations must appoint a statutory auditor.

Limited Liability Company (LLC):

this type of company must be incorporated by a

*A Corporation (S.A.) or a limited liability company may also be incorporated by way of a private document if the constituents meet the requirements established in Act 1014 of 2006

public deed executed before a public notary*. This companies must have at a minimum 2 members and 25 members at a maximum (either natural or legal persons, Colombian or foreign persons). Members of LLCs are liable up to the amount of their capital contributions, except for labor and tax obligations, in which case they are called to answer jointly with the company. Any bylaw amendment or any transfer of company shares, or equity interests must also be made through a public deed. The company name is always followed by the abbreviation “LLC.” in Spanish Ltda.

■ **Branch office of a foreign company:**

under Colombian commercial legislation, the branch office of a foreign company is considered a commercial establishment, which is necessary for the foreign company to carry out permanent business operations in Colombia. In this way, from a purely legal point of view, the branch office of a foreign company and its parent company are considered to be the same legal person. In this way, the parent company is entirely liable for the entire obligations of the branch office. A branch office must be registered in Colombia by way of a public deed; and its bylaws and corporate organs are the same bylaws and corporate organs of the parent company. The branch office of a foreign company must appoint a statutory auditor.

On the other hand, Colombian legislation has also provided for other types of companies, however, these are used in fewer proportion, such as is the case of limited partnerships (Sociedades en Comandita) and pure partnerships (Sociedades Colectivas).

Finally, among the above mentioned investment vehicles, it is worth noting that since the enforcement of Act 1258 of 2008, the law that created the S.A.S., this type of entity has become the investment vehicle of choice for foreign investors and also for local investors, mostly because of the flexibility in their process of incorporation and their functionality.

On the other hand, branch offices of foreign companies are also very common in Colombia as investment vehicles, especially for foreign investors in the mining and hydrocarbons industries because of the related foreign exchange benefits that companies of that sector enjoy.



2. Comparative chart between Branch office of foreign company and Simplified stock company- SAS (for its acronym in Spanish)

Members, Legal nature and Liability	
Branch office of foreign company	Simplified stock company – SAS (for its acronym in Spanish)
The branch office of a foreign company is a commercial establishment owned by the parent company. For this reason, it lacks any legal personality other than that of the parent company. In consequence, the liabilities of the branch office in Colombia flow through directly to the parent company.	It is a separate legal person, different from its shareholders. One or several natural or legal persons may establish a corporation. The shareholders will not be liable for any labor, or tax obligations or any other obligation of the company, except when the company is set up to break the law or when it damages third parties.
Name, Term of validity and Business purpose	
Branch office of foreign company	Simplified stock company – SAS
As a rule, it must use the same name of the parent company, adding the expression Colombian Branch (“Sucursal Colombia”). The term of duration of the branch office must be defined, confined to specific commercial activities.	The company name must be followed by the expression Simplified Stock Company (S.A.S.) As opposed to other commercial companies, the term of duration of an S.A.S. may be indefinite, and their purpose or line of business may be just to carry out any lawful civil or commercial transactions, without having to specify them.

Capital	
Branch office of foreign company	Simplified stock company – SAS
<p>In principle, the branch office of a foreign company has an assigned capital, which they receive from their parent company. As is the case for commercial companies, this capital assigned to the branch office works as a general collateral for the protection of the creditors. The assigned capital must be paid in full upon registration of the branch office in Colombia.</p> <p>Additionally, the branch office of a foreign company has a “floating capital”, called the “assigned capital supplementary investment”. This supplementary capital can increase or decrease without any need for amending the bylaws or securing any prior approvals.</p>	<p>The capital is divided into registered shares and is divided into three types: authorized capital, subscribed capital and paid in capital. The term for payment of all subscribed shares cannot exceed 2 years. The parties can establish percentages or minimum or maximum amounts of the corporate capital that one or more shareholders may control, directly or indirectly. The constituents may stipulate in the bylaws that the shares issued by the company may not be negotiated, or that a certain class of shares may not be negotiated, provided that this restriction does not exceed 10 years counting from the date of issuance. This term may be extended for additional terms of 10 years maximum, by the unanimous vote of the shareholders. Share negotiations may be subject to prior authorization by the shareholders meeting of the company.</p>





Corporate organs	
Branch office of foreign company	Simplified stock company – SAS
<p>Given that this is a commercial establishment, its main corporate organs are those of the parent company. However, the branch office of a foreign company has the figure of the General Manager, who carries out management duties in the establishment and represents the company before third parties.</p> <p>Additionally, under the law, branch offices of foreign companies are required to appoint a statutory auditor, in charge of fulfilling the same duties they perform in commercial companies.</p>	<p>In the bylaws of an S.A.S., the constituents will freely determine the structure of the organs of the company and any other functioning rules.</p> <p>An S.A.S. may have one or more statutory representatives. An S.A.S. is not required to have a Board of Directors. In case the constituents agree that the Company should have one, the board may operate with just one member or with several or many members, and there may or may not be stand-ins for the main members of the board.</p> <p>On the other hand, an S.A.S. is not required to have a statutory auditor, unless this is established by the constituents or the shareholders in the bylaws, or unless the amount of the gross assets of the company exceeds 5,000 minimum monthly salaries at December 31 of the prior year, or unless the amount of gross revenue of the company exceeds 3,000 minimum monthly salaries at the same date.</p>

Special grounds for dissolution for accumulation of losses

Branch office of foreign company	Simplified stock company – SAS
<p>The Branch offices of a foreign company are dissolved according to the same grounds for dissolution established for the parent company, because the existence of the branch office of a foreign company depends on that of the parent company. Branch offices of a foreign company are dissolved because their term of duration expires. Branch offices of a foreign company are also required to dissolve on the grounds of accumulation of losses. Under this rule, a branch office of a foreign company must dissolve and liquidate when it reaches a point in which the net equity of the branch office is less than 50 % of the assigned capital, and the branch fails to reverse this situation within 18 months following the outset of the losses.</p>	<p>Among the grounds for dissolution of an S.A.S. we can highlight dissolution for accumulation of losses. This is triggered when there are losses that accumulate and reduce the net equity of the company below 50% of the subscribed capital.</p>

Profits

Branch office of foreign company	Simplified stock company – SAS
<p>Branches follow the same handling procedure that commercial companies. In other words, profits must be approved by the parent company.</p>	<p>Unless a different majority is established in the bylaws of the company, this decision is adopted by the favorable vote of a group of shareholders representing at least one half plus one share of total shares present at the meeting of the shareholders. An S.A.S. is not required to distribute a minimum of shares.</p>

Inspection, surveillance and control

All commercial companies are subject to inspection and, eventually, to surveillance and control exerted by the Office of the Superintendency of Companies, except when such capabilities have been transferred to another Superintendency.

Companies that have assets at December 31 of the previous year (adjustment for inflation included) worth 30,000 minimum monthly salaries or more (which is approximately \$24,843,480,000 COP or 8,403,202 USD at a foreign exchange) are subject to surveillance.

Also subject to surveillance are companies that realize revenues at the same date that are worth over 30,000 minimum monthly salaries (adjustment for inflation included), as are companies that meet any of the conditions established in points 2.2.1.1.2.3, 2.2.2.1.1.2.4 and 2.2.2.1.1.2.5 of Decree 1074 of 2015.

Branch offices of foreign companies are always subject to inspection by the Superintendency of Companies and may be subject to surveillance if they are involved in any of the assumptions of fact established in Decree 2300 of 2008.

3. Incorporation procedure

Bearing in mind that the investment vehicles that foreigners use the most are the S.A.S. and branch offices of foreign companies, we will only review the incorporation procedure of these two vehicles.

a. Documents required to incorporate an S.A.S.

- Certificate of good standing and representation of each one of the shareholders (in case they are legal persons).
- Copy of the ID of each one of the shareholders (in case they are natural persons).
- Articles of incorporation and articles of Association of the new company.

- As applicable, powers of attorney granted by each one of the shareholders.
- Decree 667, 2018 has set out that when the S.A.S. to be incorporated has an individual as its sole shareholder, the company shall file, along with the incorporation documents, a form declaring the control situation being set up. The sole shareholder of the S.A.S. shall sign the abovementioned document.

b. Documents for the incorporation of branches of foreign companies

- Certificate of good standing and representation of the parent company.
- Complete bylaws of the parent company and its articles of incorporation.
- Resolution deciding the registration of the branch office of a foreign company, issued by the competent corporate organ of the parent company. This resolution must indicate the items set out in article 472 of the Colombian Code of Commerce.
- Powers of attorney, as applicable, granted by the parent company.

Requirements for legalization of documents issued or executed abroad:

- Every document issued or executed abroad must be certified by apostille or must be legalized through diplomatic channels in the country of origin.
- Every document drafted in any language other than Spanish must be translated by a translator certified in Colombia.



c. Steps to incorporate an S.A.S. or a branch office of a foreign company in Colombia

Step 1

1 Business Days

Signing the document of incorporation including the bylaws of the new company, and appointing the legal representatives and statutory auditor (as applicable).

Notarization of signatures on documents of incorporation or acknowledgment of content before a notary.

In the case of a branch office of a foreign company, a public deed must be generated. This may take about 4 days.

Step 2

1 Business Days

Preliminary procedure for issuance of tax ID number and unified tax registration certificate - RUT - before the national tax authority. Among other requirements, the following is necessary:

- Indicating the address of the new company or of the branch office.
- Indicating the economic activities or lines of business. No more than 4.

Step 3

4 Business Days

Registering the new company or branch office before the Chamber of Commerce.

Expenses:

The registration tax will be calculated at a rate ranging between 0.7 % and 1 % of the subscribed capital of the S.A.S. or of the assigned capital of the branch office, depending on the city of the domicile. For example, in Bogotá the authority charges 0.7 %; in Barranquilla, they charge 1%.

Registration rights and commercial registration rights (calculated based on a table of values set by the Chambers of Commerce).

Both the registration rights and commercial registration rights, as well as the registration tax, will be paid to the Chamber of Commerce upon submission of the documents, either in cash, with a cashier's check, or with a debit or credit card.

Step 4

1 Business Days

Final registration in the unified tax register - RUT - and issuance of final tax ID number - NIT - by the national tax authority. Among other requirements, the following is necessary, indicating the address of domicile of the new company or branch office.

Step 5

1 Business Days

Updating the commercial registration to include the NIT.

Step 6

1 Business Days

Transferring corporate capital.
Preparation of foreign exchange form No. 4.

Functioning of company, bylaws amendments and right to withdraw from a company

1. Functioning

In general, Commercial Companies do not require an authorization from any public authority to be able to function or operate. As an exception, commercial companies working on financing, stock exchange or insurance activities require a prior authorization to operate from the administrative authorities. This requirement also applies to any company which's work relates to the management, use and investment of resources or funds collected from the public.

2. Bylaws amendments

As rule of thumb, amendments to the bylaws do not require an authorization from any public authority, save for those cases where the amendment implies a corporate reorganization, as is the case of mergers and spinoffs. In these cases, special procedures of advertisement and convening or call to the shareholders or members and creditors of the companies involved in the transaction are subject to verification. Capital reductions with cash reimbursement of contributions requires prior authorization from the Superintendency of Companies.

3. Right to withdraw from company

The right to withdraw is the possibility that a shareholder or partner has to withdraw from the company, with the ensuing reimbursement of the contributed capital. This right arises when the shareholders' meeting adopts a determination entailing changes that generate a greater responsibility for the shareholder or a detriment of its patrimonial rights, which would reduce the shareholder's interest to continue being associated with the company. Among the events established in the law that would allow a shareholder to exert their right to withdraw from a Company are Company transformations, mergers or spinoffs.

Parent companies and subsidiaries. Corporate groups

A company is a subsidiary or a controlled entity when its decision-making power is subject to the will or the decision of another legal person or natural person referred to as the parent company or controller. This control may be economic, political or commercial.

Mainly, control may be exerted by a majority shareholding position in respect to the capital of the subsidiary, or by way of making a contract or a special transaction creating the ability to exert dominant influence in the management organs of the controlled company.

If the subsidiary suffers the control directly, it is called a first-tier subsidiary. If it suffers the control through other subsidiaries of the parent company, it is called a lower tier subsidiary. In this regard, it is worth noting the following:

- i. The law recognizes that a company may be subordinated to another company without any existing share in the capital.
- ii. Likewise, it is recognized that natural persons or unincorporated associations may exert control.
- iii. A majority shareholding of the capital may take place with speculation or strategic purposes, not necessarily to establish a control structure.
- iv. To determine if there is a natural corporate group made up of several legal persons, in addition to the above subordination ties, there must be a unified purpose and a unified direction in the commercial pursuits of the various entities.
- v. For the above purposes, the law considers that there is a unified purpose and unified direction when all entities are pursuing a common objective or goal determined by the parent company or by a controlling entity exercising its power of control over the entire set or body. This is without detriment to the ability of each one of the companies to pursue their own specific lines of business.

In accordance to Section 30, Act 222 of 1995, if the control or corporate group situation is not declared before the Chamber of Commerce within the 30 days following the date on which it has taken place, the Superintendency of Companies would declare the situation and to order its registration in the Mercantile Register by itself or at the request of any interested person. Additionally, section 86 of the same law set forth that the Superintendency of Companies may impose successive penalties or not, up to an amount of 200 minimum legal salaries, which for 2019 is an amount of 165,623,200 COP or 56,021 USD.

Financial Statements

The purpose of the financial statements is to provide means of information to those who do not have any access to the records of a company, so that they may learn about the controlled resources, the obligations that require a company to transfer resources, the changes that these resources have undergone and the results obtained in a fiscal year or reporting period.

In this regard, the law requires commercial companies to settle their accounts and prepare general-purpose financial statements at least once a year, stated at December 31. This is without detriment to the ability of the constituent shareholders or members to agree upon an additional account settling and reporting date for the company.

General purpose financial statements are those prepared at the closing of a determined reporting period to be disclosed to indeterminate users. This is done to satisfy the common interests of the public at large of evaluating the capacity of an economic entity to generate positive cash flows in the future; and these are the financial statements that are used as a basis to distribute earnings. The financial statements include the statement of financial position or balance sheet, the statement of income, the statement of changes in equity, the statement of changes in the financial position and the statement of cash flows.

Profits or Earnings

Profits or earnings are distributed based on financial statements prepared in accordance with the generally accepted accounting principles. They are distributed proportionally based on the paid-up portion of the par value of shares or equity interests held by

every shareholder, unless otherwise stated in the contract.

If there are any stipulations that deprive any shareholder or member of their right to receive a share of the profits or earnings made by the company, these stipulations will be held as never written.

Inspection, surveillance and control

All commercial companies are subject to a degree of surveillance by a Superintendency in Colombia. This circumstance will be determined based on the specific activity that is the line of business of the corresponding company.

The various degrees of surveillance are as follows:

- i. **Inspection:** the Superintendency may occasionally request, verify and analyze any information it requires on the legal, economic, accounting, and administrative situation of the corresponding company.
- ii. **Vigilance (or surveillance):** the the Superintendency may permanently verify that the incorporation and operations of the company are in conformity with the law and the company's bylaws.

The degree of inspection and vigilance are generally determined by the value of the assets of the company.

- iii. **Control:** the Superintendency may remedy a critical situation, whether legal, economic, administrative or related to accounting.

As a rule of thumb, commercial companies are subject to inspection, surveillance and control by the Superintendency of Companies. As an exception, these competences of surveillance may be assigned to other agencies such as the Colombian Superintendency of Finance, the Superintendency of Healthcare, the Superintendency of Utilities, the Superintendency of Ports and Transportation, and the Superintendency of Surveillance and Private Security, among others.



Capital Reductions

Under article 145 of the Code of Commerce, a company or a branch office may carry out an amendment of the bylaws that consists of reducing the corporate capital with a reimbursement in cash of contributions. This must be done with the prior approval by the Superintendency of Companies, which will issue the authorization at the request of the company and whenever any of the following circumstances occurs:

- i. The company has no external liabilities.
- ii. After the reduction is made, the corporate assets represent at least twice as much as the external liabilities.
- iii. The corporate creditors expressly accept in writing the reduction of capital, regardless of the amount of corporate assets.

The Basic Circular Letter of the Superintendency of Companies established general rules for the authorization of capital reductions with the reimbursement of cash contributions. This applies to companies, branch offices of foreign companies and sold proprietorships that are not subject to surveillance or control by that body, nor to surveillance or control by any

other Superintendency, unless they are in any of the following situations:

<p>A. Where, notwithstanding compliance with any of the conditions set in article 145 of the Code of Commerce, the financial situation of the respective entity shows one or more overdue obligations, where noncompliance extends for over 90 days, and where they represent in total 10 % or more of the external liabilities.</p>	<p>D. Where the total value of the contributions to be reimbursed represents 50 % or more of the total asset value.</p>
<p>B. Where it is a case of companies with liabilities that derive from the issuance of bonds.</p>	<p>E. Where it is a case of legal persons involved in a control situation, either as controlling entities or as subsidiaries and in respect to one or more different legal persons that are subject to the control or surveillance of the Superintendency of Companies or of any other Superintendency.</p>
<p>C. Where it is a case of companies, branches of foreign companies or sole proprietorships that have pension liabilities.</p>	<p>F. Where it is a case of companies, branches of foreign companies or sole proprietorships that are carrying out an agreement with creditors or a restructuring or reorganization agreement.</p>

In this way, in case the company falls in any of the situations that triggers the obligation to request authorization, then it must follow the corresponding procedure before the Superintendency of Companies.

It is worth noting that the same procedure applies in cases where the plan of the company is to reimburse share placement premium amounts.

Liquidation

When a company or branch office of a foreign company liquidates on the decision of the shareholders or members of the parent company (as the case may be), then the company or the branch office must follow the rules of articles 218 et seq. of the Colombian Code of Commerce and any other related, applicable laws and regulations. In a general way, voluntary liquidation includes the following stages:

A. Dissolution:

The first stage of voluntary liquidation starts at the time in which the shareholders meeting or the competent body of the parent company (as the case may be) adopt the decision of dissolving the company or the branch office and appointing liquidators. Once dissolution is approved by the top corporate body, the legal capacity of the company narrows down to acts which seek to attain immediate liquidation.

After the shareholders meeting has declared the dissolution of the company, the company needs to add the expression “in liquidation” to the company name or to the name of the branch office.

B. Liquidation

i. Notices and inventory.

In this stage, the liquidator carries out acts that seek to liquidate the assets of the company, pay off the liabilities and thereafter distribute any remainder between the shareholders or members or remit it back to the parent company. To this end, the liquidator must do the following: (i) give notice to the DIAN; (ii) do the liquidation public process, by publishing a notice in a widely circulated daily newspaper in the domicile of the company or branch office; (iii) request permission from the Ministry of Labor where required by law; (iv) prepare an asset-liability inventory statement within the month following the dissolution.

At this point, it is worth noting that Stock Companies and branch offices of foreign companies that are subject to surveillance and control by the Superintendency of Companies, must submit the asset/liability inventory

statement for approval by that agency. If after having prepared this statement they determine that the value of the assets is not enough to pay off the external liabilities; or if at the time of dissolution or termination of business affairs in the country they have retirement pensions payable, or pension bonds or certificates payable.

ii. Realization of assets and payment of liabilities.

By realizing the assets, the need is served of changing the total corporate assets or the total asset for the branch office into cash so it still have enough funds to pay for any obligations owing to third parties.

**C.
Final liquidation
statement,
remainder,
extinguishment
of the legal
personality.**

The final stage of the liquidation procedure requires the liquidator to prepare the final liquidation statement. This statement will indicate the way in which any remaining assets will be distributed between the shareholders or remitted back to the parent company, should there be any remainder, and how the legal personality or legal existence of the company or branch office will be extinguished.



08

Legal Compliance



- Under the law, commercial companies and other legal entities are required to meet 6 periodical obligations:
 1. Renewing the commercial registration.
 2. Holding annual meetings.
 3. Submitting financial statements to the Chamber of Commerce of the main domicile.
 4. Reporting of financial statements.
 5. Registering the control situation or business group.
 6. Appointing a statutory auditor.
- In Colombia, there are certain special obligations that must be met before certain surveillance and control agencies.
 1. Reviewing ML/TF risks
 2. Transparency and business ethics programs and international corruption prevention mechanisms.
 3. Protection of personal data

1. Compliance with periodical obligations

According to the law, companies must meet the following periodical obligations:

	Renewing Mercantile Registration	Annual meetings	Filing of the financial statements before the Chamber of Commerce of the principal domicile
Obligation:	Before March 31 of every year, every registered business must renew its mercantile registration and that of its commercial establishments.	The Shareholders' Meeting, the Board of Partners (depending on the company type) and, if applicable, the Board of Directors, must hold at least one ordinary meeting per year.	Companies must file a copy of their general purpose financial statements (with their accompanying notes and the opinion of the statutory auditor) before the Chamber of Commerce of the corporate domicile.
Who must do this:	Every commercial company and branch offices of foreign companies.	Every commercial company.	Every commercial company, except where the company is required to file the financial statements before the office of the superintendency of companies.
Amount:	The amount payable for the renewal of the mercantile registration is calculated based on the assets reported in the financial statements as of December 31 of the preceding year.	Not applicable.	Cost: 20,800 COP or 7.04 USD per financial statement filled.
Time limit for compliance:	Within the 3 first months of the year, on March 31 at the latest.	On the dates set in the bylaws or if these are silent, within the 3 months following the closing of every reporting period. In any case, the meeting must be held on the first working day of april at the latest.	Within 1 month following the date of approval.
Penalty:	Fines of up to 17 minimum monthly legal salaries imposed by the Superintendency of Industry and Trade and 200 minimum monthly legal salaries imposed by the Superintendency of companies.	Penalties or fines of up to 200 minimum monthly salaries imposed by the Superintendency of companies.	Penalties or fines of up to 200 minimum monthly salaries imposed by the Superintendency of companies.

1. Compliance with periodical obligations

According to the law, companies must meet the following periodical obligations:

	Reporting of financial statements	Registration of the control situation and business group	Appointment of a statutory auditor
Obligation:	Any company subject to surveillance and control by the Superintendency of Companies must report its financial statements for the closing of the fiscal year, cut-off at December 31 2018, certified and with the opinion of the statutory auditor. This obligation applies every year, without a specific requests issued by the entity being needed.	The Companies whose decision-making power is subject to the will of a controlling third party must register this situation of subordination before the Chamber of Commerce. Additionally, if there is unity of purpose and direction between different subordinate entities, the status of business group must be declared.	For certain companies, appointing a statutory auditor is mandatory, either at the time of company inception or when they reach the legal threshold for compliance.
Who must do this:	Every commercial company and branch offices of foreign companies that are subject to surveillance and control by the Superintendency of Companies.	All commercial companies that meet the following requirements: 1. When more than fifty percent (50 %) of the capital belongs to the controller, directly or indirectly. 2. When the controller and the subordinates jointly or separately have the right to cast the votes constituting the minimum decision-making majority at the shareholders meeting or board of directors meeting, or have the number of votes necessary to elect the majority of the board of directors, if applicable. 3. When the controller, directly or through the subordinates, by reason of an act or business with the controlled company or its partners, exercises dominant influence in the decisions of the management bodies of the company.	Branch offices of foreign companies must always do it. Corporations must always do it. Companies in which whether in compliance with the regulations or with the company bylaws, the management is not in the hands of all shareholders. In such cases, any number of shareholders that are not a part of the management and represent no less than 20% of the total capital may request the appointing of a statutory auditor. Commercial companies with assets worth 5,000 minimum monthly salaries or more at December 31 of the previous year. Commercial companies with revenues worth 3,000 minimum monthly salaries or more at December 31 of the previous years.
Amount:	The agency does not charge for the reporting of financial information.	For the registration of the control situation and business group before the Chamber of Commerce, the corresponding registration fees and registration tax for acts without the amount for each company will be charged 153,000 COP or 51.75 USD.	To register the appointing before the Chamber of Commerce, the entity charges a predefined registration fee and the registration tax set by law. In case the statutory auditor is a company, it shall assign individuals to perform as auditors, which leads to an additional payment for COP 153,000 (USD 51.75).
Time limit for compliance:	On or before the deadline set and published by the agency, which depends on the last two digits of the NIT of each company.	Within the 30 days following the occurrence of the situation that originated the control situation.	Once the company becomes obligated as indicated above.
Penalty:	Penalties or fines of up to 200 minimum monthly salaries imposed by the Superintendency of companies.	Penalties or fines of up to 200 minimum monthly salaries imposed by the Superintendency of companies.	1. Penalties or fines of up to 200 minimum monthly salaries. 2. 1 UVT (tax value unit) for each day of delay in updating the unified tax registry (RUT), counting from the month following the date on which the obligation arose for the company.

2. Special obligations before surveillance and control agencies

	ML/TF Risk Prevention	Transparency, business ethics programs and international corruption prevention mechanisms	Personal data protection
Obligation	<p>The company must adopt a system for control and management of the risk of money laundering (ML) and terrorism financing (TF).</p> <p>To this end, and for a better performance of the anti-money laundering and terrorism financing control system, the company must appoint a local compliance officer that can carry out the duties stipulated in the current laws and regulations.</p>	<p>As a new obligation, companies must implement international corruption prevention programs that meet the criteria established by the Superintendency of Companies. This relates to corruption acts which any of these companies could eventually commit.</p> <p>Appointing of a compliance officer.</p> <p>Applicable to any company subject to surveillance by the Superintendency of Companies that have regularly carried out international business transactions of any nature with foreign persons – whether natural or legal –, provided that any of the following situations occurs:</p>	<p>Only companies and non-profits responsible for information handling with total assets exceeding 100,000 tax value units – UVT, as well as legal persons with a public nature, must register their databases no later than September 30, 2018 (if their total assets exceed 610,000 tax value units), or no later than November 30, 2018 (if their total assets exceed 100,000 tax value units but do not exceed 610,000 tax value units), or no later than January 31, 2019 (for all public legal entities). Any data bases created after the above deadlines must be registered within two months following the date of their creation.</p>
Description	<p>If the surveilled entity recorded gross revenue or total assets for an amount exceeding 160,000 minimum monthly salaries, they have a maximum term of 12 calendar months to implement this control system. The term runs from December 31 of the year in which they exceed the noted revenue threshold.</p> <p>Some economic sectors might have a different and lower limit in order to determine this obligation.</p>	<p>1. Carrying out international business transactions through third parties: through an intermediary or middleman, a contractor, a subsidiary or a branch office located in a country other than Colombia.</p> <p>2. International transactions in specified economic sectors where any of the three conditions defined by the Superintendency of Companies is met (gross revenue, total assets, or number of employees), depending on the economy sector:</p> <ul style="list-style-type: none"> • Pharmaceutical • Infrastructure and construction • Manufacturing • Power and mining • Information technologies and telecommunications 	<p>If the company carries out any activities that make it responsible for the treatment of personal data, it must implement the following mechanisms:</p> <ul style="list-style-type: none"> • Privacy notice. • Procedure to obtain authorization from the data owner before beginning to handle any data • Tools that guarantee adequate safety conditions to avoid modification, loss, querying, fraudulent use or access to the information • Technological measures to protect personal and sensitive data. • Internal policy and procedure manual to comply with data protection laws. • Preparing policies for the treatment of data and providing them to the national database registry managed by the Superintendency of Industry and Commerce.
Observations	<p>Depending on the economic activity of the entity, a company may be subject to special surveillance and control by other agencies, and these agencies may require the company to implement an ML/TF risk prevention system based on different criteria.</p>		
Penalty:	<p>Penalties or fines of up to 200 minimum monthly salaries imposed by the Superintendency of companies.</p>	<p>Sanciones o multas hasta por 200 SMMLV por parte de la Superintendencia de Sociedades.</p>	<p>1. Fines for natural or legal persons of up to 2,000 minimum monthly salaries imposed by the Superintendency of companies. 2. Suspension of the activities concerning data treatment for up to 6 months. 3. Suspension of the operations concerning the treatment of personal data. 4. Immediate and final closure of operations involving the treatment of</p>

09

Conflict Resolution

- The Colombian legal system establishes different conflict resolution mechanisms for disagreements between private citizens and the state, operating in accordance with the Constitution and the law.
- Conciliation and arbitration have been broadly developed in our legislation. Because of this, everyday more and more people resort to these mechanisms to settle and resolve their conflicts in a quick and reliable manner.
- International arbitration rules in Colombia have been created in accordance with the CNUDMI Model Law on International Commercial Arbitration. In this way, arbitration originates more under contracts than under procedural law.
- On the other hand, it is worth mentioning that Colombia ratified and adopted as internal legislation the 1958 New York Convention on the Recognition and Execution of Foreign Arbitral Awards, and the 1975 Inter-American Convention on International Commercial Arbitration.



Introduction

Under Colombian law we have several instances of judicial competence, through which conflicts between private parties and conflicts between private parties and the state may be settled. As a general rule, conflicts between private parties are settled before regular courts of law and regular judges; whereas conflicts between private parties and state agencies must be settled before contentious administrative courts of law.

The state also allows private citizens to exert the function of administering justice transitorily as peace/justices judges, reconciliation agents or arbiters, so that they can hand down decisions based on equality or on the law, in accordance with the guidelines and restrictions that the law establishes for each specific case.

Regular Courts of Law

Regular courts of law are in charge of settling conflicts between private parties in civil, commercial, labor, agricultural, criminal and family matters. Regular courts of law include of all-inclusive competency courts, municipal courts, circuit courts, Higher Tribunals and, finally, the Supreme Court of Justice, the highest tribunal in Colombian Law.

For these courts of law, the rules of procedure are framed under Act 1564 of 2012, the so-called General Rules of Procedure. These rules are provided for civil, commercial, agricultural and family matters. Also, under Legislative-Decree 2158 of 1948, the so-called Labor and Social Security Procedural Code, as well as Act 906 of 2004, the so-called *Code of Criminal Procedure*.

Contentious Administrative Courts of Law

Contentious administrative courts of law are in charge of settling conflicts between private parties and the state, or conflicts between state entities. This system of courts includes administrative circuit courts, administrative tribunals and the so-called Council of State, the highest administrative court of law in the country.

The rules of procedure for these courts of law are framed under Act 1437 of 2011, the so-called Code of Administrative Procedure

Alternative Conflict Resolution Mechanisms

Because of the high levels of judicial congestion in Colombia, settling a case before the regular and the contentious administrative courts of law may take several years. As a result, Article 116 of the Constitution provides the possibility to private parties being temporarily invested with the power to administer justice acting as conciliation agents and arbiters.

Conciliation and arbitration in Colombia are already amply developed. As such, more and more people resort to these mechanisms in an attempt to settle their controversies in a quick and reliable manner.

1. Conciliation

Conciliation is a mechanism for the resolution of conflicts, through which two or more persons directly work on solving their differences with the help of a qualified, neutral third party known as the conciliation agent (conciliador in Spanish). Any matters settled as a result of compromise and settlement agreements, which may be abandoned in the course of legal proceedings, may be settled through conciliation, in addition to other specific matters determined by the law.

The effectiveness of conciliation lies in the fact that when the parties reach the point of a total or partial compromise agreement, said agreement turns into *res judicata*, and the record written to set it down on paper is valid as a supporting document to initiate collection proceedings.

This alternate conflict resolution method is being used more and more in Colombia. Today, there are 364 active conciliation centers, and 95,000 conciliation applications or requests were filed before those centers.⁸

8. Information taken from <https://conciliacion.gov.co/portal/Estadistica/Estadisticas> 2015

2. Arbitration

Arbitration is an alternate conflict resolution mechanism, by which the parties leave it to arbiters to settle a controversy. Such controversy must relate to matters or rights which the parties may dispose of freely or to any other matters authorized by the law. Arbitration can be national or international.



National arbitration

National arbitration will be ad hoc if the arbiters carry out arbitration directly, or it will be institutional, if managed by a center of arbitration. In lack of an agreement between the parties concerning the nature of the arbitration, it will be institutional.

Where the controversy is about contracts entered into with a public or state entity or with a private entity that carries administrative duties, then the proceedings will be regulated by the rules set forth in Act 1563 of 2012 for institutional arbitration.



International arbitration

The arbitration is understood to be international when: (i) the parties are located in different States, (ii) the place where the obligations related to the controversy are fulfilled, or where the controversy itself takes place, are places out of the State where the parties are located, and (iii) when the controversy submitted to arbitration affect international trade interests .

It is worth noting that Colombia ratified and adopted as internal legislation the 1958 New York Convention on the Recognition and Execution of Foreign Arbitral Awards, and the 1975 Inter- American Convention on International Commercial Arbitration.



Investment arbitration

Since August 14, 1997, Colombia is a member of the International Center for the Settlement of Investment Related Conflicts – CIADI (for its acronym in Spanish) –, which was created to provide solutions to problems arising between governments and foreign investors.

10

Government Procurement



- A state or public contract is any contract signed with the state to provide a service or sell goods, whether between natural or legal persons.
- The types of state contracts include contracts for: Works, Consulting, Provision of Services, Concessions, Trust Funds and Public Trust Funds.
- Any natural and legal person, whether national or foreign, who are legally capable under current legislation, may enter into contracts with state entities and agencies.
- Consortiums, joint ventures and temporary unions may also enter into contracts with the state. The Colombian State Procurement Statute recognizes these figures, which are normally and internationally known as public-private partnerships and joint ventures.

Colombia has a General Government Procurement Statute for the Public Administration and complementary laws and regulations, which set the guidelines for public contracts. In case any specific necessary rule is not stated in the Statute, the general rules of the law contained in the Colombian Civil Code and the Colombian Code of Commerce will apply.

Government procurement has higher-level characteristics, which derive from the purposes of the state and what it pursues. Such purposes comprise an obligation for both the corresponding state agencies and the private parties that enter into contracts with the state, to the extent that the latter are always acting in their condition as collaborators of the public administration.

State Contracts

The Government Procurement Statute establishes which contracts must follow the rules set in the statute. Under the law, and for the sake of contract security, all state contracts must be prepared in writing, save for situations of urgency where it is not possible to write down a contract.

All the clauses and conditions stipulated in these contracts must be in conformity with the Constitution, the law, public order and the principles and purposes enshrined in the Government Procurement Statute.

1. Parties to State Contracts

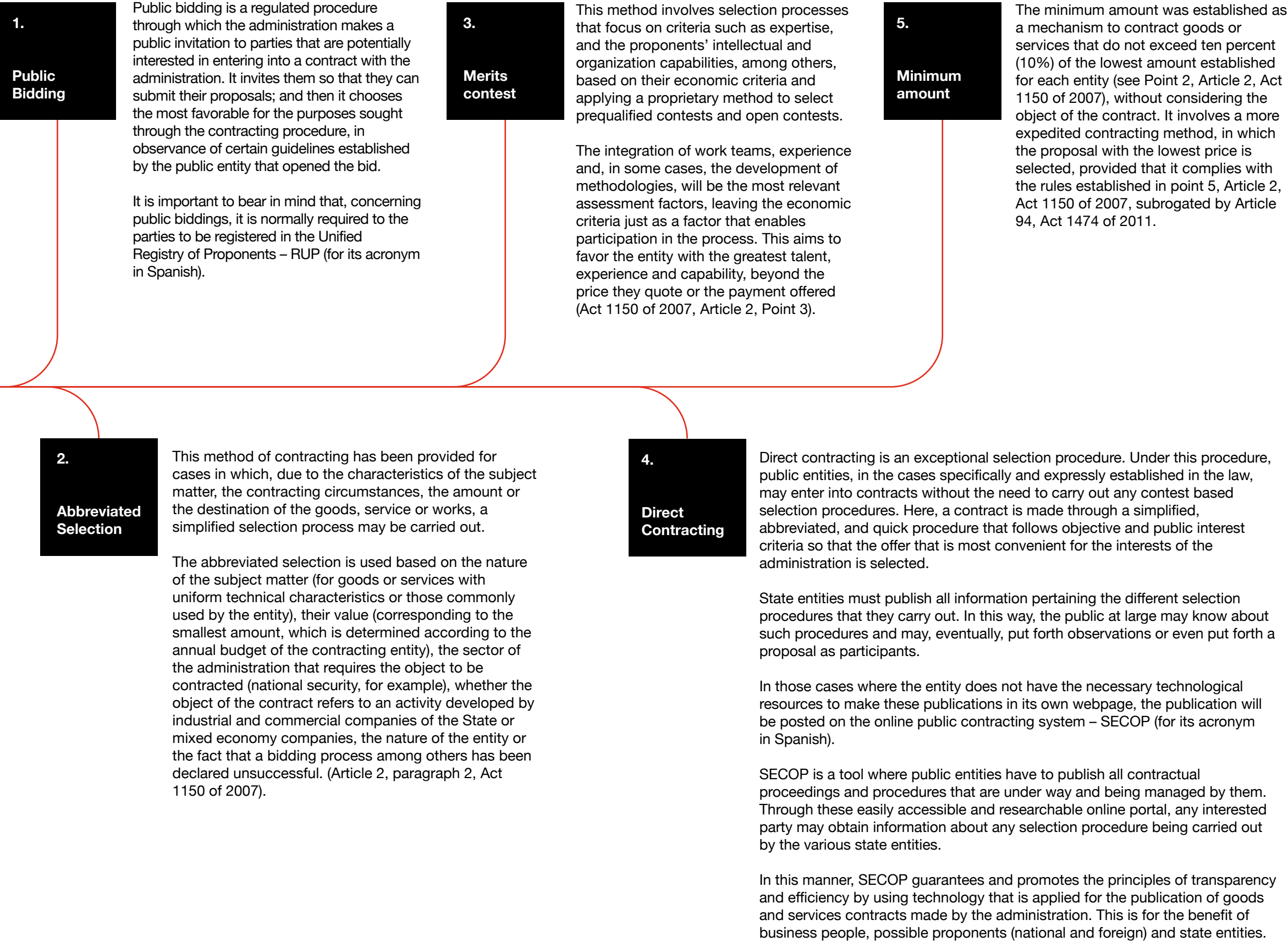
All natural and legal persons, whether national or foreign, considered to be legally capable under current legislation, may enter into contracts with state entities and agencies; in other words, any person who is not in grounds for inability or incompatibility.

Consortiums, joint ventures and temporary unions may also enter into contracts with the state. The Colombian Government Procurement Statute recognizes these figures, which are normally and internationally known as public-private partnerships and joint ventures.

Methods to select a contractor

As a general rule, a contractor must be selected through a public bidding process. However, the law has provided for cases where the administration makes contract through more abbreviated procedures but equally transparent, equitable and objective, such as the merits contest, abbreviated selection and direct contracting and minimal amounts.

These powers are fully regulated by the law, which has established the reasons why carrying out the selection of a contractor through a procedure other than public bidding is justified, either because of the characteristics of the subject matter, the conditions for the type of contract to be entered into, the contract value or the legal nature of the contracting entity.



Unified Registry of Proponents – RUP (for its acronym in Spanish)

This is a registry created by law and delegated to the chambers of commerce throughout the country, designed for the registration of natural or legal persons, national or foreign, who seek to enter into contracts with state agencies for the execution of civil works, the provision of goods or services, save for any specific exceptions expressly set by the law.

The purpose of this registry is to provide the necessary information about any contractor that is registered in it concerning their experience, legal capacity, organization capacity and financial capacity; and, with this information, anyone can verify if the contractor meets the required qualifications. This is done using the score and classification that each interested party obtains at the time of making the registration, renewal or updates, by providing the required documentation. Each respective Chamber of Commerce must verify the supporting documents provided for registration.

The benefits of being registered in the Unified Registry of Proponents include:

- 1.** Providing publicity for all qualification requirements that make a proponent a qualified participant in an eventual bidding process.
- 2.** The possibility of participating in bidding processes with state entities.
- 3.** Obtaining the RUP certificate, which serves as full evidence of the information it contains, provided that the registration is valid and current.

Public - Private Associations (PPA)

These are instruments to raise private capital. Ultimately, they materialize by way of a contract between a state entity and a private natural or legal person, made to provide public goods and services (or utilities) in the sectors of productive (roads, ports, airports, railroads) and social infrastructure (schools, universities and colleges, hospitals, public buildings, etc.). To develop the project, the minimum amount under a scheme of a PPA is of 6,000 minimum wages.

Public Utilities and Services

Colombia is a social state based on the rule of law, hence the provision of public services and utilities is an inherent purpose of the state. The state may provide public utilities directly or indirectly; for organized communities or for private citizens; but, in every case, the state will retain surveillance, control and regulation of said services, and will ensure that service provision to all inhabitants is efficient.

On the other hand, the state may reserve certain strategic activities or public utilities, under certain conditions that include the obligation to indemnify beforehand and fully any person who are deprived from the exercise of a lawful activity.

For the above, the Colombian state has chosen to develop the figure of the “public utility concession” as the most useful means to ensure the efficient provision of public utilities, in the form of a contract or license through which the state provides a person (known as the concessionaire) the right to provide, operate, exploit, organize and manage, totally or partially, a certain public utility or service, defining the term for the provision of their services, the geographical territory in which they will be provided, the regulations on service rates and fees and the operating conditions, and regulations on the utilization of state or private property for the provision of the public utilities.

Likewise, Act 1508 of 2012 established the rules for Public Private Associations as an instrument for the raising of private capital, which enables the state to provide, operate and maintain public services infrastructures. The use of this contract model by the State has become more common, given the benefits that it can obtain in terms of technology and innovation, distribution of risks, infrastructure development, among others.

1. Residential Public Utilities

Act 142 of 1994 established the rules that apply to residential public utilities, which include water, sewage, cleaning and garbage collection, electric power, distribution of combustible gas, basic telephone services and local mobile services in rural areas.

Any person who purports to provide residential public utilities must incorporate a joint-stock company, the purpose of which is the provision of residential public services, and said company must subject to a special regime contained in the law.

National and foreign investors can make contributions into these companies. The Superintendency of Public Utilities will regulate those investors, and the name of their company must include the words “*empresa de servicios públicos*” (Public Utilities Company) or the acronym “E.S.P.”, right after the S.A. or S.A.S. acronym.

In order to operate, public utility companies must obtain, as applicable, the required permits, authorizations and licenses for operation based on the type of activities that they carry out.

2. Direct Provision of Services

This happens when the State signs a contract with a private company to directly operate the entirety or a part of the project. This model is used for projects involving the water supply, TV services, mobile communication, local communication, and power generation and distribution.

3. Acquisition of Public Utility Companies

Private investors may acquire a portion or the entire outstanding shares of public utility companies, acquiring a shares package or important assets owned by the company.

Privatizations (sale of state-owned shares)

Under Act 226 of 1995, there is a procedure by which private persons have the possibility of acquiring the entirety or a portion of state-owned shares in a public company. There are various defined stages in this procedure: the making of the decision to sell the shares; offers by interested parties; the award, signing and polishing of the contract. These stages all involve a visible public interest by the Colombian authorities to protect public property or interests.

This leads us to a constitutional and legal framework where the participation of private persons in state entities is developed consistently by the legislative power and consistently applied by the national government, under an economic model that makes the access of private capital, both national and foreign, under surveillance and control of state agencies, viable.

Legal Regulations for oil exploration and exploitation

The National Hydrocarbons Agency – ANH (for its acronym in Spanish) is the entity in charge of managing the oil resources of the country. The creation of this entity marked the beginning of the new contracting regime for the exploration and production of hydrocarbons in Colombia.

Under the new system, private entities dedicated to the exploration and production of hydrocarbons and Ecopetrol S.A. (formerly known as Empresa Colombiana de Petroleos) began competing under the same conditions, and association contracts are no longer required.

The new exploration and production contract has the following characteristics:

<p>A. It is a state contract governed by special rules, and it is not subject to the contracting rules in Act 80 of 1993.</p>	<p>D. The contractor has full autonomy and operating responsibility.</p>
<p>B. The contract must be negotiated with and approved by the ANH.</p>	<p>E. The contractor is entitled to the whole production after deduction for applicable royalties, which must be paid to the ANH based on the volume and quality of the produced hydrocarbons.</p>
<p>C. The contractor undertakes 100% of the work programs, assets, costs and risks.</p>	<p>F. In addition to the above, the Contractor must process and obtain the corresponding environmental licenses before the National Authority of Environmental Licenses – ANLA (for its acronym in Spanish).</p>

The ANH manages the resources of the nation, following up on the contracts and managing the royalties received during the execution of those contracts.

For the assignment of exploration and production areas, the new system allows the agency to assign areas directly, without a public bidding process being necessary for an area to be assigned.

Contacts



Senior Partners

Gustavo F. Dreispiel

Leading Partner / Country Senior Partner
Telephone - (571) 634 0555 Ext. 10218
gustavo.f.dreispiel@co.pwc.com

Carlos Mario Lafaurie

Tax & Legal Services
Lead Partner
Telephone - (571) 634 0555 Ext. 10404
carlos_mario.lafaurie@co.pwc.com

Mónica Jiménez

Advisory
Lead Partner
Telephone - (571) 634 0555 Ext. 10307
monica.jimenez@co.pwc.com

Juan Colina

Assurance
Lead Partner
Telephone - (571) 634 0555 Ext. 10319
juan.colina@co.pwc.com

Legal Services

Eliana Bernal Castro

Legal Services
Partner
Telephone - (571) 634 0555 Ext. 10280
eliana.bernal@co.pwc.com

Legal Advisory & Family Business

Wilson Herrera Robles

Legal Services
Director
Telephone - (571) 634 0555 Ext. 10324
wilson.herrera@co.pwc.com

Labor & Migratory Advisory

Adriana Hincapié

Labor Advisory

Director

Telephone - (571) 634 0555 Ext. 10291

adriana.hincapie@co.pwc.com

Internacional Trade, Customs & Foreign Exchange

Eliana Bernal Castro

Internacional Trade, Customs & Foreign Exchange

Partner

Telephone - (571) 634 0555 Ext. 10280

eliana.bernal@co.pwc.com

Lina Ocampo Tenorio

Customs Director

Telephone - (571) 634 0555 Ext. 10229

lina.ocampo@co.pwc.com

Wilson Herrera Robles

Foreign Exchange Director

Telephone - (571) 634 0555 Ext. 10324

wilson.herrera@co.pwc.com

Tax Litigation

Carlos Mario Lafaurie

Tax & Legal Services

Lead Partner

Telephone - (571) 6340555 Ext. 10404

carlos_mario.lafaurie@co.pwc.com

Javier Blel Bitar

Tax litigations and conflict resolution

Director

Telephone - (571) 634 0555 Ext. 10317

javier.blel@co.pwc.com



Tax Services

Tax Consulting

Carlos Miguel Chaparro

International Tax consulting

Director

Telephone - (571) 634 0555 Ext. 10295

carlos.chaparro@co.pwc.com

Ángela Liliana Sánchez

Directora Consultoría Tributaria

Internacional

Telephone - (571) 634 0555 Ext. 10293

angela.liliana.sanchez@co.pwc.com

Compliance & Tax Outsourcing

María Helena Díaz

Tax Outsourcing

Director

Telephone - (571) 634 0555 Ext. 10295

maria_helena.diaz@co.pwc.com

Nacira Lamprea

Tax Outsourcing

Partner

Telephone - (571) 634 0555 Ext. 10242

nacira.lamprea@co.pwc.com

Marta Toro

Tax Associate

Director

Telephone - (571) 634 0555 Ext. 10362

marta.toro@co.pwc.com

Daniel Cardoso

Natural Persons

Director

Telephone - (571) 634 0555 Ext. 10233

daniel.cardoso@co.pwc.com

Hernán Díaz

Tax Consulting

Director

Telephone - (571) 634 0555 Ext. 10294

hernan.diaz@co.pwc.com

Transfer Pricing

Carlos Mario Lafaurie

Tax & Legal Services Lead Partner
Telephone - (571) 6340555 Ext. 10404
carlos_mario.lafaurie@co.pwc.com

Rafael Parra

Transfer Pricing Director
Telephone - (571) 634 0555 Ext. 10403
rafael.parra@co.pwc.com

Ricardo Suárez

Transfer Pricing Director
Telephone - (571) 634 0555 Ext. 10357
Ricardo.suarez@co.pwc.com

Francisco González

Transfer Pricing Director
Telephone - (571) 634 0555 Ext. 10331
francisco.j.gonzalez@co.pwc.com

PwC Tax & Legal Times Newspaper

Alba Gómez

Tax consulting Director
Telephone - (571) 6340555 Ext. 10322
alba.gomez@co.pwc.com

General information about Tax & Legal services

Daniel Orrego

Clients & Markets Manager
Telephone - (571) 634 0555 Ext. 10356
daniel.orrego@co.pwc.com



Bogotá

Calle 100 No. 11A-35, 5th Floor

Telephone - (57-1) 634 0555

Fax- (57-1) 218 8544

Cali

Edificio Torre de Cali

Calle 19 Norte No. 2N-29, 7th Floor

Telephone - (57-2) 684 5500

Fax- (57-2) 684 5510

Medellín

Edificio Forum

Calle 7 Sur No. 42-70, Tower 2, 11th Floor

Telephone - (57-4) 325 4320

Fax- (57-4) 325 4322

Barranquilla

Smart Office Center

Carrera 51B No. 80 - 58, 7th Floor, Office 701

Telephone - (57-5) 378 2772

Fax- (57-5) 378 2772 Ext. 217

Cartagena

Bocagrande Carrera 2 No. 11 - 41

Torre Empresarial Grupo Área

Office 2205

Telephone - (57-5) 693 7742

The representative exchange rate used in this document is COP 2,956.43 and was calculated from the 2018 average of the daily series of the Colombian Central Bank - Banco de la República.

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers does not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

PwC helps organizations and individuals create the value they're looking for. We're a network of firms in 158 countries with more than 250,000 people who are committed to delivering quality in assurance, tax and advisory services. Find out more and tell us what matters to you by visiting us at www.pwc.com.

© 2019 PricewaterhouseCoopers. PwC refers to the Colombian firms, part of the global network of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity. All rights reserved.