

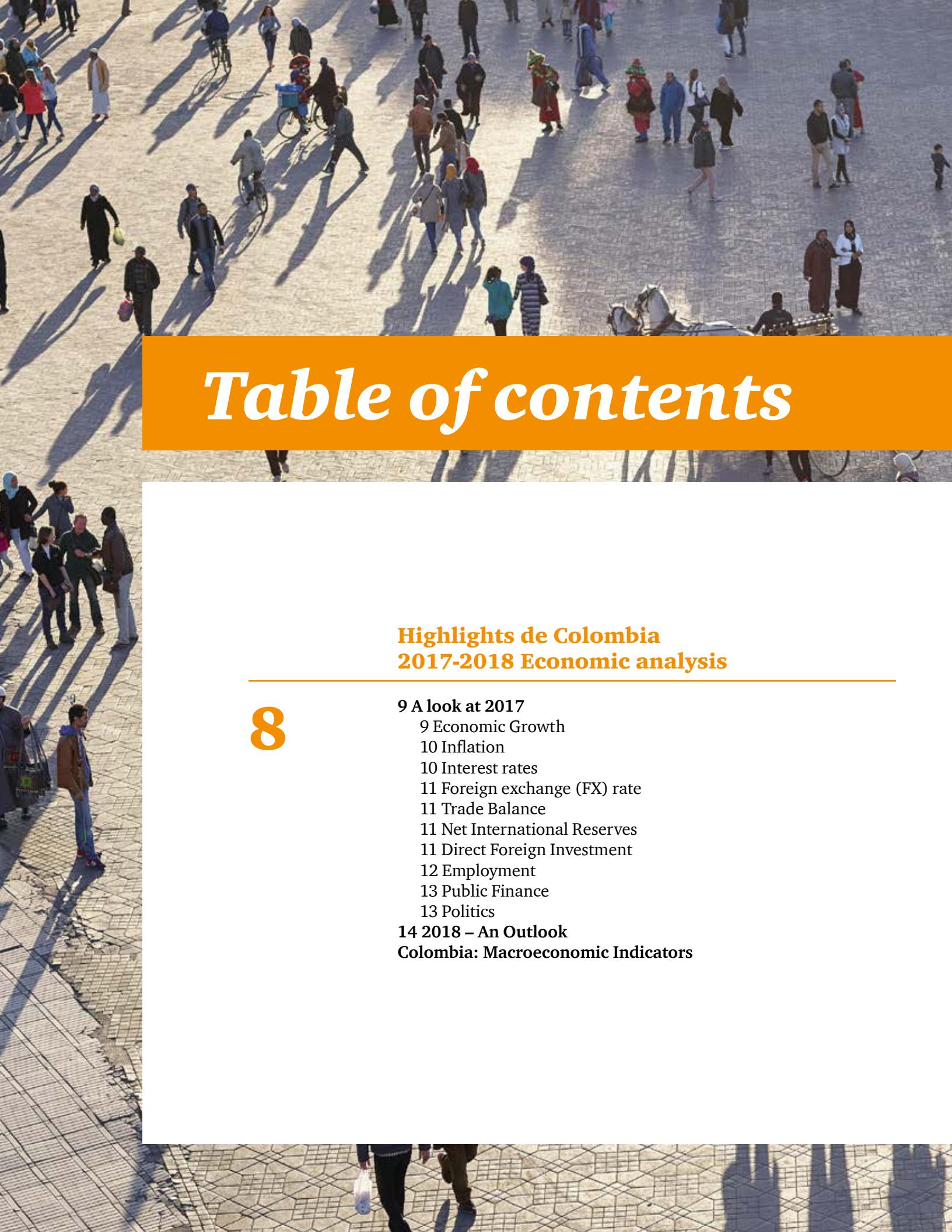


# 2018

## Doing Business In Colombia

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By PricewaterhouseCoopers

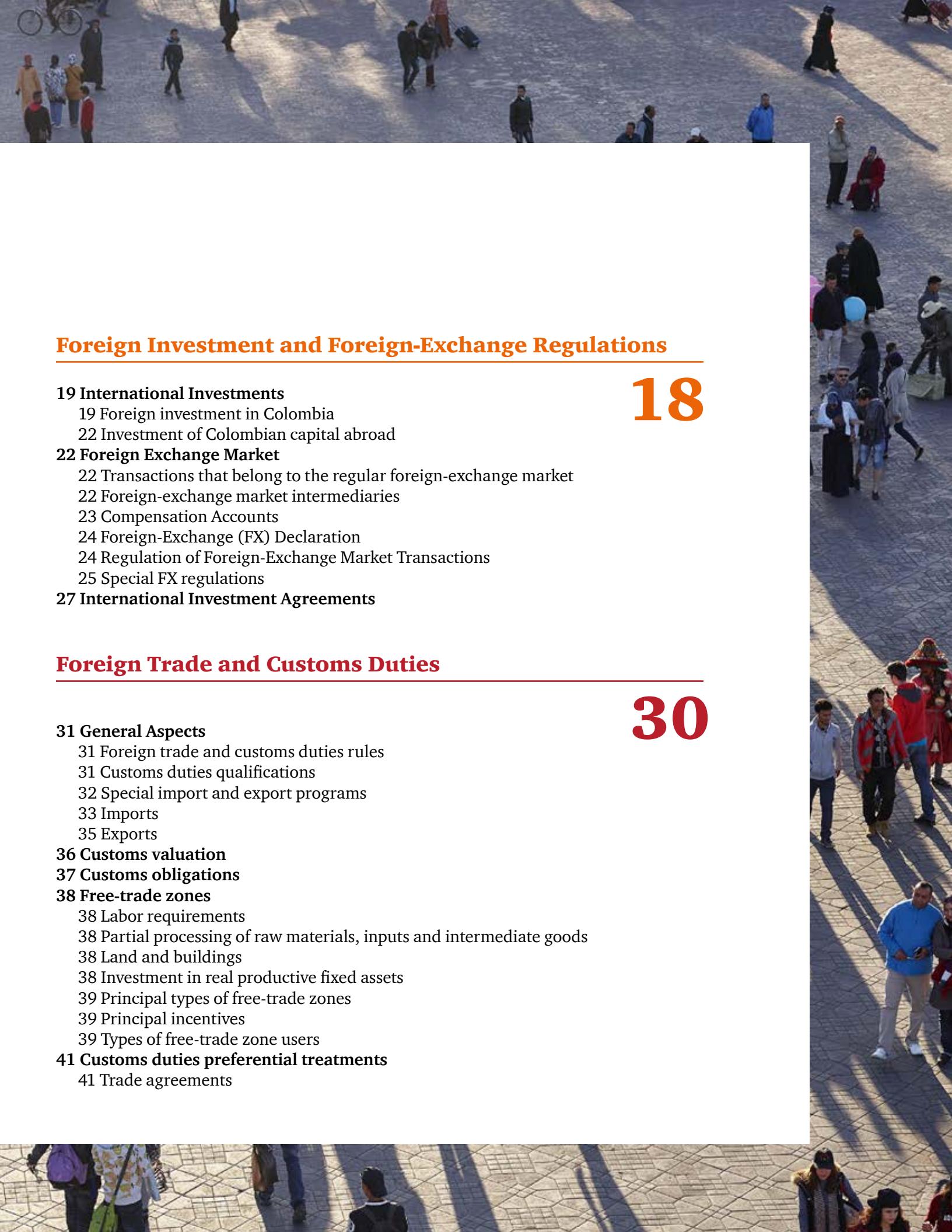


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# 2018

## Doing Business

In Colombia

By PricewaterhouseCoopers



# 1.

## Colombian Highlights 2017-2018 Economic analysis

- From January through December 2017, the growth of Colombian economy was of 1.8%. The agriculture sector and the financial sector drove this growth principally.
- In 2017 the inflation rate was of 4.09%. This was a drop of 1.66% points with respect to the prior year, and was close to the target range set by the Colombian Central Bank - Bank of the Republic (between 2% and 4%).
- The unemployment rate in 2017 was up 9.4%. This was an increase with respect to the prior year unemployment rate, which was of 9.2%.
- The control of inflation, the reduction of central-bank interest rates, increased oil prices, the strengthening of exports and the carrying out of the so-called 4G infrastructure program are some of the factors that will drive growth in 2018.



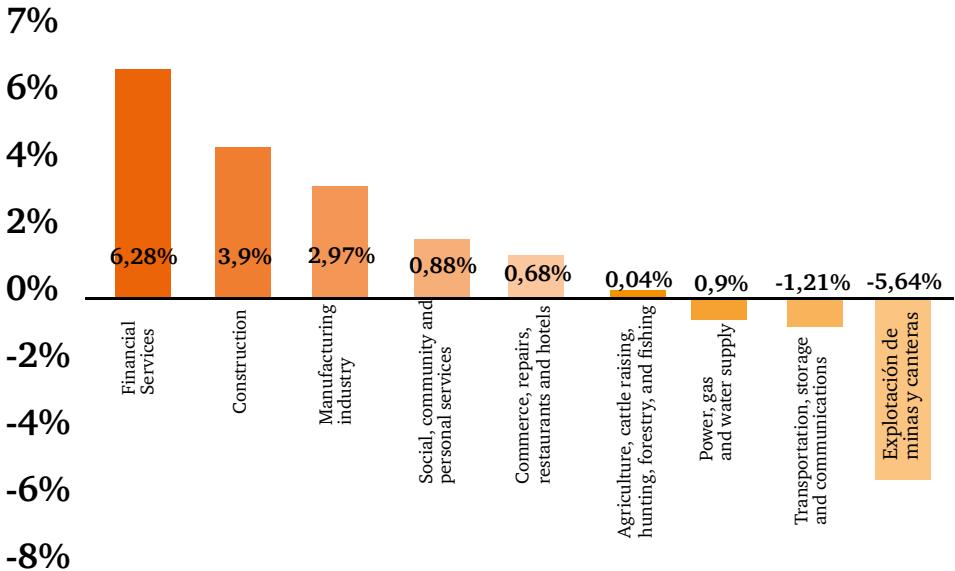
## Economic Growth

From January through December 2017, the growth of Colombian economy was of 1.8%. This growth rate was less than the growth rate of 2016, of 2.0%, which continued the economic slowdown that started in 2015. Even if this rate is low with respect to the estimates set at the beginning of the year, it is worth noting that by September 2017 six of the nine industries at shown positive growth, with three of this showing average growth rates above the general economic growth rate.

The three sectors that had grown above 1.8% by September 2017 were the following: agriculture, cattle raising, forestry, hunting and fishing (6.28%); financial institutions, insurance companies, real estate investments and corporate services (3.9%); and social and community services (2.97%). The sectors which growth rates were below the average growth rates were the following: power, water and gas (0.88%); commerce, repairs, restaurants and hotels (0.68%); transportation, storage and communications (0.04%). The sectors which contracted were the following: construction (-0.9%); manufacturing industry (-1.21%) and mines and quarries production (-5.64%).



**Figure 1: Economic Growth for 2017 (January – September)**



Source: Bank of the Republic

## Inflation

In 2017 the inflation rate was 4.09%. This was a drop of 1.66% points with respect to the prior year, and was close to the target range set by the Colombian Central Bank – Bank of the Republic (between 2% and 4%). This drop is explained from an increase in the supply of food products which has restrained increase in prices and a reduction in the prices of commodities as indicated by Fedesarrollo.

## Interest rates

2018 started with an intervention interest rate set at 4.75%. Still furthering the course to hit the objective of reducing interest rates that the Board of Directors of the Bank of the Republic had set, 2017 started with a 7.5% rate, and showing a continuing reduction throughout the year, reaching 7% in the first quarter, 6.25% in the second quarter, and 5.25% in the third quarter, and closing the year at 4.75%, with all of this generating a stimulus for the economic activity.

The average 90 day fixed term deposit rate close at 5.21% as opposed to 6.86% in 2016, whereas the average placement rates dropped from 14.40% in December 2016 to 11.59% in December 2017.



## Foreign exchange (FX) rate

In 2017 the Colombian peso appreciated with respect to the US dollar by 0.56%, with this appreciation being less than the 2016 figure of 4.72%. This behavior was mainly influenced by variations in oil prices and changes in international expectations.

Along the year several fluctuations took place in US dollar prices. In January 2017 the dollar was priced at 3001 COP, reaching its lowest in April where the price had dropped down to 2838 COP and reaching the peak in July at 3092 COP. Finally, the price closed at 2984 COP.

## Trade Balance

From January through December 2017 export sales increased by 19% with respect to what had been accomplished in 2016. Export sales went from US\$31.8 billion FOB to US\$37.8 billion FOB. This result is explained mainly by an increase of 32.4% in fuel exports and exports of mining products, an increase of 7.2% in the group of farming, food and beverage products, an increase of 2.4% in manufacture products, and an increase of 15.7% in other sectors.

During 2017, the main export destinations which counted for the above increase were China, Panama and Turkey. Generally, exports to Andean community countries increased in 14% with respect to the same period of the prior year (January through December) and exports to the European Community increased in 9.4%.

With respect to imports, in 2017 foreign purchases of the country increased by 2.6%, as they went from US\$44.9 billion CIF in 2016 to US\$46.1 billion CIF in 2017. This increase is explained mainly by the increase of manufacture product imports, of 3.9%.

In 2017, the trade balance showed a deficit in the amount of US\$6.2 billion FOB. This deficit was less than the same deficit for the same period of the prior year, which was of US\$11.1 billion FOB.

## Net International Reserves

According to the Bank of the Republic, by December 2017 the average figure for net international reserves reached a total of US\$47.4 billion dollars, which is an increase of 2.04% with respect to December 2016.

## Direct Foreign Investment

Between January and September 2017 the flow of direct foreign investment to Colombia dropped by 3.1% with respect to the same period in 2016, with total DFI being of US\$10.2 billion dollars. The amount of direct foreign investment of the third quarter in 2017 was a US\$4.9 billion, which is the highest quarterly amount recorded for the last two years, exceeding the US\$4.6 billion of the first quarter of 2016.



The sectors which have the greater impact with respect to the receipt of foreign direct investment flows during the period of January through September are the following:



Oil industry (20.7% in 2017 v. 16.7% in 2016); transportation, storage and communications (28.6% in 2017 v. 9.3% in 2016) and manufacturing companies (17.3% in 2015 v. 12.7% in 2016); corporate and financial services 8.3% in 2017 v. 13.37% in 2016) and commerce, restaurants and hotels (7.4% in 2017 v. 5.6% in 2016).

With respect to the countries that invested in Colombia there were changes with respect to the same prior year period. During the first three quarters of 2016, the main countries that invested in Colombia were Canada (20.5%), United States (14.6%), Bermuda (13.8%), Spain (10.2%) and Panama (7.1%). In 2017, Spain (21.7%), the United States (13.8%) and Panama (9.9%) stayed in the list, and Mexico (13.2%) and England (8.82%) added to the list.

### Employment

According to a report by the National Department of Statistics (DANE for the Spanish initials) for January through December 2017 the unemployment rate was of 9.4%, which means an increase with respect to the same figure for the same prior year period, 9.2%.

Of 23 cities surveyed, 9 reduced their unemployment rates, 2 held their rates and 7 showed a single digit rate. The cities showing the highest unemployment rates were the following: Quibdó (16.1%), Cucuta (15.9%) and Armenia (14.3%), whereas the cities showing the lowest unemployment rates were the following: Santa Marta (8%), Barranquilla (8.2%) and Bucaramanga (8.5%).

If we analyze the quarter of October through December 2017, the fields of activity that helped more in providing employment were the following: commerce, restaurants and hotels of 27.2%; community, social and personal services with 18.6%; agriculture, cattle raising, hunting, fish cultures and fishing with 17.1%; and manufacturing industry with 12.2%. These 4 sectors held 75.1% of the total employee population of the country.

For 2018, the minimum wage was set at 781,242 COP (265 USD at an exchange rate of 2951 COP to the dollar), which means an increase of 5.9% with respect to 2017. The transportation allowance one from 83,140 COP (28 USD) to 88,211 COP (30 USD).



## Public Finance

The total 2017 projected fiscal deficit of the national government is of 3.6%, which is below the 2016 rate of 4%. Notwithstanding, Standards & Poor reduced the foreign-currency sovereign credit rating for Colombia from BBB to BBB - considering that the objectives of the fiscal rule have been partially based upon extraordinary resources to compensate for the behavior of the 2016 tax reform – which has been lower than as expected.

For 2018, the Ministry of Finance established a stark at the rate of 3.1%, a feature that goes hand-in-hand with the expected growth for Colombia of 2.7% (according to the same Ministry) and the internal revenue collection rate expected by DIAN (the Directorate of National Taxes and Customs Duties) which is of 135 billion COP for this year.

## Politics

In 2017 the political environment went on being similarly framed as in 2016, mainly by the peace process. After the signing of the peace accords and the end to the armed conflict with FARC, 2017 was a year in which the party started to consolidate the conditions to meet what they had signed under the accords.

This started with the enactment of laws and regulations that allow to materialize the commitments made with the state. One of the main facts to highlight is the financing by United Nations of the project to start running the Special Peace Jurisdiction – the so-called JEP, for the Spanish initials, through the creation of the office of executive secretary and the office of the president, for which the official appointees took office in November 2017. In addition to the peace process with FARC, the government started conversations in 2017 in an attempt to reach a peace deal with ELN, the second-largest armed group in Colombia, the conflict with which has lasted 52 years.

Another relevant event was the issuance of Legislative Act 01 of April 4, 2017. By this piece of legislature the all-inclusive system of truth – justice – redress – no repetition was created, a system that comprises the following: the commission for shedding light on the truth; a special unit for the search of persons missing because of the conflict and the special peace jurisdiction. The committee for the appointment of the all-inclusive system members was also set up, with 38 JEP magistrates, 13 alternates and 5 commissioners which finished taking office in January 2018. Additionally, the Amnesty and Pardon Law (Law 1820 of December 30, 2016) was started to be implemented, the law made for armed conflict combatants (both guerrilla members and public armed forces).

Note: This chapter was based on the information presented by DANE, Colombian Central Bank (Banco de la República), IMF, Corficolombiana, Fedesarrollo and the Ministry of Finance and Public Credit.



Finally, we started to see and hear political discourses and speeches of the initial efforts of political campaigning for the Presidency, and members of Congress (Senators and Lower House Representatives) for 2018. These discourses are being framed in topics of anticorruption and strengthening economic growth in the country.

## 2018 – An Outlook

Despite that 2017 showed slow growth, various economic players are saying the same, that in 2018 growth will exceed 2%. The national government expects growth of 2.7%, Fedesarrollo expects 2.4% whereas the World Bank expects a growth rate of 2.9% in the country – which would make our country the fourth economy in point of greatest growth rate in South America, trailing Paraguay (4%), Peru (3.8%) and Bolivia (3.8%) periods. The control of inflation, the reduction of central-bank interest rates, increased oil prices, the strengthening of exports and the carrying out of the so-called 4G infrastructure program are some of the factors that will drive growth in 2018.

The Colombian central bank - Bank of the Republic has cut interest rates, and has done so thanks to controlled inflation. This will foster private



consumption and investment, and will thus maintain the growth monetary policy of the government. It is expected that next year inflation will continue its favorable trend and that we are able to reach the target 3% inflation rate.

From another perspective, the recovery of oil prices and coal prices will also aid in improving foreign trade and fiscal accounts, considering that it is expected that the price per barrel of crude oil will hold above \$55. In line with these all prices, it is expected that the average exchange rate of the US dollar to the Colombian peso will stay around 3000 on average, which is an adequate level for the economy which will benefit exporters especially.

Notwithstanding, 2018 will also be a year of uncertainties every considering the upcoming election. An election always impacts the level of trust for investors during the first quarter of the year, as people expect that there may be a change in the economic model depending upon the candidate that is elected. On the other hand, the fiscal environment brings uncertainties also given the possible austerity policy in public spending taking into account the challenges that the reduction of the corporate income tax will bring for the government, considering that it would come into force in 2019. That rate will drop from 40% to 33%.



Finally, the foreign trade and international relations front also generates expectations in the market. For one part, the tax reform that was submitted to Congress by the President Donald Trump in the United States may also have an impact in Colombian economy taking into account that the US is the main trade partner of Colombia. On the other hand, the consequences of the crisis of Venezuela also generates expectation given the labor and fiscal challenges that this crisis entails for Colombia.



## Colombia: Macroeconomic Indicators

### Economic indicators

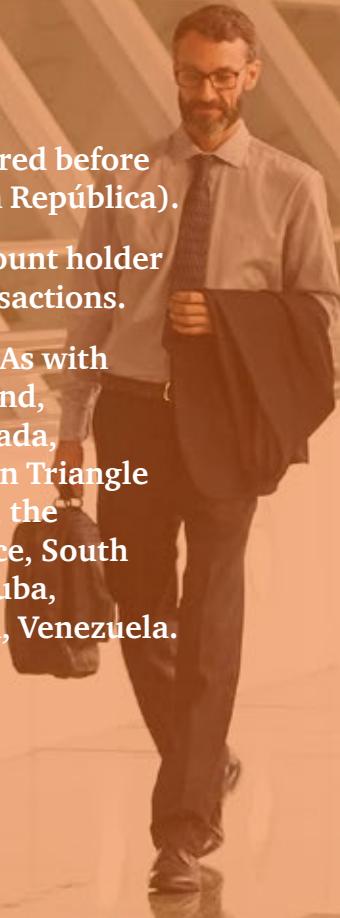
	2016	2017	2018 (proj)
<b>Gross internal product</b>			
Real growth (%)	2	1,8	2,7
<b>Population</b>			
Millions (December 31)	49	49,6	50,1
<b>Inflation</b>			
Dec-Dec CPI var.	5,75	4,09	3,3
<b>Interest rate</b>			
Intervention rates (%)	7,5	4,75	4,25
90 day fixed term deposit rate (%)	6,86	5,21	4,5
<b>Foreign exchange rate (Dec 31)</b>			
December	3.001	2.984	2.900
Devaluation	-4,71	-0,56	2,82
<b>Public finance</b>			
Fiscal deficit (% GIP)	4	3,6	3,1
Foreign debt (% GIP)	38,1	41,5	41,1
<b>Unemployment</b>			
Unemployment rate (% GIP)	9,2	9,4	9,2

Sources: DANE, Ministry of Finance, Bank of the Republic, IMF, Corficolombiana, Fedesarrollo

# 2.

## Foreign Investment and Foreign-Exchange Regulations

- Every foreign investment must be registered before the Colombian Central Bank (Banco de la República).
- It is only the so-called compensation account holder who can carry out foreign-exchange transactions.
- Currently, Colombia has international FTAs with the Andean Community, AELC (Switzerland, Liechtenstein, Norway and Iceland), Canada, Chile, United States, Mexico, the Northern Triangle (Guatemala, El Salvador, and Honduras), the European Union, the Pacific Trade Alliance, South Korea, Costa Rica, CARICOM, Panama, Cuba, Mercosur: ACE 59 and ACE 72, Nicaragua, Venezuela.





## Foreign Exchange Market

Foreign investment comprises (i) foreign capital investment made in the country (direct foreign investment and portfolio investment) and (ii) Colombian capital investment made abroad (Colombian investments abroad)

### 1. Foreign investment in Colombia

#### (a) *Types of foreign investment in Colombia*

##### (1) Direct foreign investment

This is any investment made in any of the following assets, as long as a nonresident has acquired them in any manner under a lawful act, contract or transaction:

- Equity investments made in the capital of a Colombian resident company. They can be made in shares or other types

of equity interests, corporate capital shares, or convertible bonds as long as these are not registered under the National Securities and Issuers Register (acronym in Spanish RNVE) or in any foreign securities quoting system.

- Any of the above equity investments made in a Colombian resident company, which shares, are registered under the National Securities and Issuers Register, when the foreign investor makes the statement that shares have been acquired with the intention of a permanent investment.
- Interests or shares in trusts under agreements made with trust companies subject to surveillance by the Office of the Superintendent of Finance of Colombia, whose purpose does not constitute a portfolio investment.



- Any pieces of real property located in the country and acquired in any manner, either directly or through trust agreements or as a result of the securitization of any piece of real property or of any construction projects, as long as the securities are not registered with the National Securities and Issuers Register (RNVE for the Spanish initials).
- Any interests or shares or economic rights deriving from any acts or contracts such as collaboration, concession, management services, licenses or joint venture agreements (consortiums or temporary unions) or other agreement is entailing technology transfer, when these does not represent a corporate equity interests and that the incomes derived from the investment depend on the profits made by the venture.
- Any shares in the assigned capital and any supplementary investments made in a branch established in the country of a foreign company (head office).
- Any shares or interests in private equity funds.
- Any intangible property acquired to be used to obtained economic gains in the country.

## (2) Portfolio investment

These are investments made over securities registered under the National Securities and Issuers Register (RNVE) or any securities listed in any foreign securities quoting system; investments made as interest in collective investment funds or as shares in negotiable depository certificates that represent securities.

### *(b) Registering foreign investment in Colombia*

All foreign investments must be register directly with the Central Bank (Banco de la República) or through a foreign-exchange market intermediary or through a so-called compensation account. Registration is a necessary condition for any foreign investor to be entitled to exercise his foreign-exchange rights under the local law.

This registration must be done by the foreign investor, his agent or attorney or whoever represents his interests.

- Registration of direct investment made in cash, i.e. in currencies. These investments are registered automatically upon the submission of the minimum requisite of foreign investment data (through filing of the foreign-exchange declaration), which is done at the time the currencies are channel into the foreign exchange market (through a compensation account or a local bank).



- Registration of other instances of direct investment: Any other investments made through a lawful act, contract or transaction (other than those involving currencies) must be registered at any time by filing Form 11 – "Foreign Investment Registration Declaration".

Where the investment is sold to Colombian residents or the investment is liquidated, partially or totally or where there is a capital reduction or the reacquisition of shares or equity interests, or real state selling, the investor of record must cancel the corresponding foreign investment registration within the six months following the date of the transaction.

To cancel any investment derived from the change of the owner or holder of a fixed asset, [the seller/transferring party] must file the document that proves that the tax accruing on the transaction has been reported on a tax return, computed and paid.

Likewise, were there is a change of the initial investor for another foreign investor or the investment destination changes on other Colombia resident company, this fact must be reported to the Central Bank by the procedure of substitution of investor of record. This procedure must be carried out within the six months following the transaction date.

The registration of foreign investment in Colombia must be updated every year, on and before the deadlines set by the Central Bank following the procedures set by that institution.

#### *(c) Foreign-exchange rights*

Once the investment has been registered, the investor of record has the following foreign-exchange rights:

- To remit abroad any proven net profits generated by his investment periodically.
- To reinvest any net profits or to retain as part of surplus or equity any profits or gains that have not been distributed and can be remitted abroad.
- To capitalize any amounts that can be remitted abroad and that are derived from any obligations originated from the investment.
- To remit abroad (in freely convertible currency) any proceeds from the sale of investment within the country or from liquidation of the company or the investment portfolio or from any capital reductions.



## 2. Investment of Colombian capital abroad.

These are investments made by Colombian residents which are earmarked as capital contributions into a foreign company or a foreign branch office of a Colombian company, and which are acquired by a Colombian resident through a lawful act, contract or transaction.

The way these investments are registered depends upon the type of investment, whether it was a foreign-currency investment or an investment made through a lawful act, contract or transaction.

### *(1) Financial investments or investments in foreign assets*

This type of investments includes the following:

- The purchase of securities issued or assets located abroad.
- The purchase of external private obligations or external public debts and the purchase of bonds or external public debt securities.
- The remittance of currency abroad that arise from the placement with Colombian residents of securities issued by foreign companies or by foreign governments or of securities guaranteed by foreign governments, authorized by the Office of the Superintendent of Finance.

These investments may be made through the foreign-exchange market; or they can be made through the so-called free market, using currencies that did not originate in mandatory foreign-exchange operations and that must be channeled through the foreign-exchange market.

### Foreign Exchange Market

The foreign exchange market is made of the entire foreign currencies that must be channeled through regular foreign-exchange market intermediaries or through compensation accounts. Additionally, those currencies that any person voluntarily channel through the regular foreign-exchange market these are also part of the foreign-exchange market.

## 1. Transactions that belong to the regulated foreign-exchange market

The following transactions must be monetized through the foreign-exchange market:

- Imports and exports of goods.



- Foreign debt transactions carried out by Colombian residents as well as the related financial costs.
- Foreign capital investments made in the country, as well as the gains or yields that relate to them.
- Investments of Colombian capital made abroad, as well as the gains or yields that relate to them.
- Financial investments made in foreign securities or in assets located abroad, as well as the gains or yields that relate to them, except for the investment is made with currencies that originate in transactions that are not required to be channel through the foreign-exchange market.
- Foreign-currency denominated guarantees.
- Derivative transactions.

All those other transactions which have not been classified as transactions that must be channeled through the regular foreign-exchange market belong in the so-called free market. Accordingly, they can be carried out without the parties being required to resort to any foreign-exchange market intermediary or to use a compensation account to carry them out (e.g. payments in foreign-currency for the provision of services).

## **2. Foreign-exchange market intermediaries (local banks and financial entities authorized)**

Foreign-exchange market intermediaries are those entities authorized to channel any currencies required or generated by transactions made through regulated foreign exchange market, either mandatorily or voluntarily. They do so by purchasing or selling the currencies. The foreign-exchange rates that apply for the purchase and sale of currencies will be the rates that the parties to the transaction agree upon freely; and the intermediaries cannot charge any type of commission on these transactions.

As a general rule, the intermediaries in charge of channeling foreign-exchange market transactions are the banks.

## **3. Compensation Accounts**

Compensation accounts are bank accounts held in foreign-currency with a foreign financial institution where the account holder is a Colombian resident. These accounts must be registered as such (as "compensation accounts") with the Central Bank.



The revenues and the expenditures transacted through compensation accounts may originate in the payment of foreign-exchange transactions that must or must not be channeled through the foreign exchange market, as well as in the payment of domestic (between residents) transaction obligations. In any event, please note that it is only the account holder who can carry out foreign-exchange transactions through a compensation account. The opening, handling (movements) and closure of compensation accounts must be reported to the Central Bank (through monthly reports) and to the Customs and Tax Authorities – DIAN (through quarterly reports).

#### **4. Foreign-Exchange (FX) Declaration**

The minimum requisite data FX declaration is a formal requirement that a person needs to meet to document a FX transaction entailing the purchase or sale of foreign-currency through duly authorized intermediaries. This minimum requisite data declaration is made by filing a form that each intermediary designs; in the form, the interested party enters the basic data of the transaction made. No minimum requisite data FX declaration is required for transactions made through compensation accounts.

There are other forms of that must be filed although they are not considered FX declarations. They had been provided by the Central Bank to report on FX transactions to do any of the following, among other transactions or events. Updating the foreign investment of companies that belong in the general FX regime (Form No. 15). Registering and updating foreign investment in the hydrocarbons and mining sector (Form No. 13). Registering and reporting any movements or the cancellation of compensation accounts (Form No. 10). These forms must be filed in a timely manner with the Central Bank, either in hard copy form or electronically (online).

#### **5. Regulation of Foreign-Exchange Market Transactions**

All imports or exports made by Colombian residents must be paid using foreign-exchange market currencies. The required currencies must be obtained through the intermediaries or from compensation accounts.

##### ***(1) Imports of goods***

The minimum requisite data FX declaration for imports and the related attachments will depend upon the type of payment made by the importer of record. In point of imports, the importer of record is not allowed to offset obligations; instead, as a general rule, the Colombian importer must remit abroad the currencies that correspond to the relevant importation of goods, otherwise he will be subject to a penalty equal to 100% of the transfer amount.



## *(2) Exports of goods*

Colombian exporters may also receive payment for exports in Colombian pesos for a foreign-exchange market intermediaries, or in foreign-currency channel through the foreign-exchange market, or in Colombian pesos through international credit cards. In point of exports, the exporter is also not allowed to offset obligations; instead, as a general rule, the Colombian exporter must receive the currencies from his foreign customer, otherwise he will be subject to a penalty equal to 100% of the transfer amount.

## *(3) Foreign-currency credits and debts*

All inflows and outflows of currencies for foreign-currency credit transactions where Colombian residents borrow or lend money must be channel through the foreign-exchange market.

Colombian residents and foreign-exchange market intermediaries may obtain foreign-currency denominated loans from intermediaries (local banks) and from nonresident lenders duly registered with the Central Bank, either directly or with the funds been disbursed by local public discount lending institutions; they can also obtained foreign credits by the placement of securities in international capital markets (borrowing transaction).

All foreign indebtedness (via lending or borrowing) acquired or incurred by local residents must be channel through the foreign-exchange market, and these transactions must be reported to the Central Bank before the underlying funds are disbursed, by filing the applicable FX form with a foreign-exchange market intermediary.

## *6. Special FX regulations*

Special FX regulations apply only to branch offices of foreign oil and mining companies that carry out exploration and production operations or branch offices of oilfield service companies. These operations relate exclusively to the exploration and production of crude oil, natural gas, coal, nickel or uranium.

Special FX regulations allow the mentioned branch offices to do the following:

- To remit abroad in foreign-currency an amount equivalent to the foreign capital in case the branch office is liquidated; or to remit abroad in foreign-currency an amount equivalent to the Colombian peso amounts received for domestic sales of crude oil, natural gas for the provision of oilfield services. These remittances require a certificate from the statutory auditor or outside auditor issued prior to the transaction.



- To receive abroad directly, through the head office, the foreign-currency proceeds of their sales.
- To enter into contracts and make the underlying payments in foreign-currency, provided that the foreign-currency resources are generated in their operations.
- In addition to booking the foreign-currency received from the head office as supplementary capital investment, to book the provision of capital in the manner of goods or services as supplementary capital investments too.

If a branch office wishes not to be covered by these special FX regulations, it must report this decision in writing to the Central Bank, and by doing so it will be excluded from these special regulations for a minimum term of 10 years counted from the date on which written notice of the decision is submitted. In consequence, all the transactions that they carry out will be subject to the general FX regulations.



## International Investment Agreements

Colombia has launched a strategy to improve its foreign trade relations. This strategy includes negotiating and signing Agreements for the Reciprocal Promotion and Protection of Investments (APPRI for the Spanish initials) and Foreign Trade Agreements (FTA) that include chapters on foreign investments. The main purpose of both the APPRI and the foreign investment chapters of the FTA is to set clear and stable game rules for the investments made by nationals of each party in the territory of the counterparty. These rules are based upon principles of justice and transparency and on international standards. Additionally, they contain obligations of treatment and protection that must be afforded to the investments, and conflict resolution mechanisms for any conflicts that arise in relation to them, including the possibility of resorting to arbitration to settle any disputes between the foreign investors and the states that involve a violation of the relevant treaty.

Currently, Colombia has international FTAs with the Andean Community, AELC (Switzerland, Liechtenstein, Norway and Iceland), Canada, Chile, United States, Mexico, the Northern Triangle (Guatemala, El Salvador, and Honduras), the European Union, the Pacific Trade Alliance, South Korea, Costa Rica, CARICOM, Panama, Cuba, Mercosur: ACE 59 and ACE 72, Nicaragua, Venezuela.



FTAs with investment chapters have been signed with Israel and Panama, and negotiations are underway for the signing of treaties with Japan, Australia, New Zealand and Singapore.

Additionally, Colombia has signed APPRIs with Canada, Chile, United States, India, Mexico, the Northern Triangle, the Pacific Trade Alliance, South Korea, Costa Rica, China, Spain, Switzerland, Japan, Peru, and the United Kingdom.

Additionally, we have signed APPRIs with Brazil, France, Israel, Panama, Singapore, Turkey, United Arab Emirates, in respect of which the internal legislative enactments and approvals are still pending.

Finally, negotiations for the entering into APPRIs with Qatar and Kuwait.



# 3.

## Foreign Trade and Customs Duties

- A process for exporting from Colombia starts by filing and securing acceptance of a ship loading permit shipping permit.
- Colombia has been structuring and 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 duties rules

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

Our legislation conforms to the guidelines of the WTO Treaty, which seeks to promote and support a number of benefits for companies that belong in the exporting sector in Colombia. (This treaty was approved by Law 170 of 1994).

Colombia implemented the so-called Single Foreign Trade Dealing Office (or VUCE for the Spanish initials of Ventanilla Unica de Comercio Exterior) since 2005. This is an electronic online system

developed by the Ministry of Commerce, Industry and Tourism of Colombia. Through the relevant application the government consolidates the whole procedures/proceedings that relate to foreign trade transactions.

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

### 2. Customs duties qualifications

#### a) Authorized Exporter

Any person who is qualified as an authorized exporter may certify the origin of its merchandise or goods by way of a statement in the sales invoice or by a declaration of origin



under any foreign trade agreements that require this condition to be met. This is allowed provided that toward 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 interested party and after the customs authority evaluates compliance with the requirements it has set in after it has made the corresponding risk assessment.

*b) Trusted User*

These are persons authorized as such by DIAN by an official letter. These persons will benefit from special treatments under article 42 of Decree 390. To receive this qualification, interested party needs to have a low risk assessment issued by the entities risk management system; and it has to meet other requirements.

*c) Authorized Economic Operator*

Natural or legal person based in Colombia which is a part of an international supply chain, and carries out activities that are regulated by customs duties law, or is a person subject to surveillance and control by the Office of the Superintendence 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 it 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 by customs duties law. For these programs, a person may import property or equipment with tax and duties benefits, [provided] that services or finished good export agreements are met.

*a) The so-called Plan Vallejo for raw materials*

Under this plan, a person may introduce to national customs duties territory specific products earmarked for total or partial export within a certain period of time after being transformed, made or repaired. This includes the materials required for these operations. And the benefit is that the importer of record gets a total or partial exemption from customs duties. Plan Vallejo benefits are given to the importer of merchandise, raw materials or supplies that produces and exports finished products directly (here the benefits are given for "direct operations"). Or the PV benefits are given to the importer or producer of intermediate goods that are sold to the exporter or to a person providing services associated with the production of export products (here the benefits are given for "indirect operations").



## 4. Imports

According to current customs law, an import is the entry of merchandise from foreign territory into "national customs duties territory".

The introduction of merchandise from a free-trade zone to national customs duties territory also qualifies as an import, or the merchandise is imported to stay in the territory for a defined or undefined term and for a specific purpose.

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

The resulting 10 digit sub code is listed in the Colombian customs duties tariff classification set by Decree 2153 of 2016. Every sub code 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% – and the majority of cases.

### a) Ordinary import

#### (1) Short-term import

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

The obligations include filing a goods declaration (on the forms established by customs authority and by the electronic system), meeting labeling requirements (indicating reference numbers and filling out requisite prior licenses depending upon 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 (or merchandise) is made according to the method set in the Valuation Agreement established by the WTO which is based upon on the General Accord on Customs Duties and Trade of 1994,

<sup>1</sup>Decree 2685 of 1999 – Section 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 absent international law".



which is regulated by the CAN and internal legislations. This is a part of the documents that prove the legal introduction of merchandise to national customs territory.

*b) Temporary imports – Temporary imports for export under the same conditions*

Temporary imports or imports or customs duties are exempted or deferred (principally duties and VAT) – for certain products. At the fine of the specified period of time, the relevant product must be exported in the same conditions in which it entered national customs territory. Sale or disposal of the property is restricted. These imports are classified into three types:

*(1) Short-term imports*

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

Customs duties and this type of temporary import are exempted permanently, unless the importer of record decides to retain the property in the country for a longer period of time (under a long-term import) or permanently.

*(2) Long-term import*

Long-term imports apply to imports of capital assets and accessories – spare parts and other parts – provided that they are made into one single shipment. The term for this type of imported from 1 to 5 years. In this case, customs duties or deferred and are paid in half year installments which must be paid during the time in which the property stay in national customs territory.

*(3) Temporary import repairs or overhauls.*

These type of imports are permitted by customs legislation as follows:

Temporary imports for repairs or overhauls of capital assets. Under this type of import, the importer of record may import a capital assets for further re-exportation after being repaired and overhauled over a term not to exceed 6 months (which may be extended for an extra 6 months). These imports qualify for customs duties exemption.

Temporary imports for industrial processing. Under this type of import, the importer of record may import temporarily raw materials and supplies that



will undergo transformation or industrial processing or manufacturing by industries recognized as Highly Exporting Users (ALTEX for the Spanish initials) which are authorized by DIAN. The sale of the property in the country is restricted.

**Cross-border Leasing.** Cross-border leasing applies to long-term financing of temporary import of capital assets that may be kept in national customs territory over more than 5 years. Under this method, a foreign company (the foreign provider, a foreign financial institution or a foreign leasing company) grants a Colombian residents the right to use the imported capital assets in exchange for periodical installments paid by the resident.

The payments must be made by mechanisms authorized by foreign-exchange regulations and taking into account the procedure established for foreign indebtedness because this transaction qualifies as a financed import.

In this case, customs duties accrue every half-year. The maximum deferral term is of 5 years, regardless of the length of the actual stay in the country of the property which can be longer than 5 years.

## 5. Exports

Exports of goods are foreign trade transactions that relate to the exit of goods or property from national customs territory any countries other than Colombia 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 the Spanish initials) following procedures established by customs regulations (mainly online procedures).

Once the shipment has been authorized, and the products have been loaded onto the ship and the carrier has issued the bill of lading, the SAE is deemed to be for all purposes the respective 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 imported previously.

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



## Customs valuation

Colombian legislation has focused in 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 by Law 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 or computed and paid on the customs value of imported merchandise (or goods) and that is set off based upon the customs tariff classification of the merchandise (or 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 Office of the Superintendent of Industry and Commerce is in charge of controlling and surveiling.

- Registration must be made online, in the webpage [www.sic.gov.co](http://www.sic.gov.co); and it may take about 1 hour.
- The company data and particulars are provided to make the registration 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 every year. The password is known because it is associated with the commercial registration number that appears on the certificate of good standing and signatory authority. This ensures that only the person in charge of doing registration by the company may alter the information of this registration.



This requires compliance with technical regulations for imperfect products, or used, repaired or remanufactured products in respect of which the government has authorized the importation, assembly, distribution use or sale [in Colombian territory].

## **Free-trade zones**

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

### **1. Labor requirements**

- To have a formal and direct open ended labor contract
- To be related to the production or service provision process
- To make payroll tax and Social Security contribution payments

### **2. Partial processing of raw materials, inputs 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 was to be agreed-upon with the user operator.
- The maximum term of duration for property to be held outside a free-trade zone is of 6 months plus a 3 month extension.

### **3. Land and buildings**

They may be owned or they may be rented depending upon the operations and the negotiations with the user operator.

### **4. Investment in real productive fixed assets**

Prohibited goods that are used in the country and that may be related to the inheritance of the user.

Only new assets are taken into account as part of the requisite investment commitments and are made a part of the income-producing activity and are depreciated for accounting purposes.



## 5. Principal types of free-trade zones

- Special permanent free-trade zone (ZFPE for the Spanish initials) 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 the Spanish initials) which are zones for several users may locate, including industrial and commercial users.

There is a user operator who manages every free-trade zone, whatever the type.

## 6. Principal incentives

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

### *a) Single 15% flat tax rate for the following:*

Income tax for all free-trade zone users that applies for free-trade zones that were designated as such before December 2012. The so-called social equity income tax (or CREE) may also apply to free-trade zones designated since 2013.

### *b) Import taxes exemption (VAT and customs duties)*

This applies to the introduction of goods and merchandise coming from abroad provided that they stay in the free-trade zone.

### *c) Possibility of importing and clearing through customs goods manufactured in free-trade zones*

This may be done under the customs tariff classification code of the finished product, and paying import taxes on the added value of the foreign raw materials; or clearing through customs the raw materials before they are incorporated in the production process, with their specific tax applying (only for free trade zones designated as such through December 2012).

### *d) Possibility of storing foreign goods for indeterminate period of time*

### *e) Possibility of importing secondhand goods without a prior license*



## 7. Types of free-trade zone users

### *a) User operator*

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

### *b) Goods industrial users*

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

Or products to be exported from a free-trade zone to the rest of Colombia, the importer will have to file and import declaration and apply for any requisite license during the import process.

The client must contract the transportation and logistics services elsewhere in the world or in Colombia.

### *c) Services industrial users*

These are users that provides services within the free-trade zone area or from the free-trade zone area. They do so carrying out activities that relate to logistics, transportation, distribution, telecommunications, scientific and technological research, medical assistance, dental health services and general health services, tourism, technical support, naval and air equipping, consulting or similar services, among others.

### *d) Commercial users*

These are users that store, sell and preserve products within the respective 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.

### *e) Support companies*

These are companies that are authorized by the operator user to carry out the following activities. Vigilance, maintenance, babysitting,



cafeterias, financial institutions, restaurants, basic medical attention, employee transportation and other services that are required to support operations of companies in the free-trade zone area. These companies do not enjoy the special free-trade zone tax benefits and there are subject to strict controls for the introduction and removal of property to and from free-trade zone areas.

## Customs duties preferential treatments

### 1. Trade agreements

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

Below we make a list of the various agreements or treaties that Colombia has subscribed:

#### *a) Andean Community of Nations (CAN for the Spanish initials)*

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 turned into a free-trade zone with Bolivia, Ecuador, Peru and Venezuela through 2011.

Besides, 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 by a common market regulated by so-called 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).

#### *b) 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 Colombian Mexico only, given that Venezuela withdrew from the treaty in



November 2006.

This treaty includes an asymmetric elimination calendar for customs duties that applies to the universe 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 agriculture and automobile industries.

*c) Economic complementation agreement (ACE for the Spanish initials) between Chile and Colombia – Free-Trade Agreement (FTA) with Chile*

Se crea una zona franca entre Colombia y Chile mediante un ACE, con lo There is a free-trade zone that was created between Colombia and Chile by this ACE. This secures the progressive elimination of customs duties and non-customs trade barriers. It eliminates 95% of customs duties in bilateral trade which corresponds to 96% of Colombian customs duties. The remaining percentage was totally free achieving zero customs duties in year 2012.

The ACE with Chile was thus strengthened, and so both countries decided to initiate negotiations for a free-trade agreement. In consequence, on November 27, 2006 they signed the final wording of the FTA which came into force on May 8, 2009.

*d) FTA between Colombia and the Northern Triangle*

With a view to 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 topics such as the following. National treatment and access of merchandise to markets; investment services; international services trade; electronic commerce; cooperation; conflict solutions; public contract making; commercial facilitation; sanitary measures; technical standards; the rules of origin; and trade defense measures.

*e) 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,



was signed in 2012, and started to be applied provisionally in 2013. On November 5, 2014, the national government issued decree 2247 by which the agreement signed by the parties came into force.

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

*f) FTA with the United States*

This 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 of the entire customs duties universe; 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 these measures involve human, animal and vegetal life.

*g) FTA with Canada*

This FTA between Colombia and Canada came into force on August 15, 2011. The treaty includes a calendar for the asymmetrical elimination of customs duties of the entire customs duties universe; 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 these measures involve human, animal and vegetal life.

*h) Economic supplementation agreement between CAN and MERCOSUR*

On October 18, 2014 and 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 duration of this agreement is limited. It takes into account the lack of symmetry that derive from the different levels of economic development of the parties. As a 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 or relate to conflict resolution, sanitary standards and factory safety, technical regulations and safeguards.

*i) Colombia and the Pacific basin*

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

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

This is a nongovernmental organization made 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.

*j) 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.

*k) Economic complementation agreement between Colombia and Cuba*

This agreement came into force on July 10, 2001 and it has two amendment protocols.



This agreement includes topics that relate to the following. 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 4600 Colombian lines. This includes customs duties 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, siderurgia products, construction materials, among others.

#### *l) Colombia – Costa Rica FTA*

This treaty provides 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 Northern Triangle countries (El Salvador, Guatemala, Honduras and Panama).

#### *m) Compromisos de inversión y empleo*

Real productive fixed assets	New investment	Employment
From 0 to 500 minimum wages	No new investment required	Start of operations: 3 direct and formal jobs The following year: 2 additional jobs The third year: 2 additional jobs <b>Total: 7 jobs</b>
501 to 5000 minimum wages	1000 minimum wages within 3 years following qualification	Start of operations: 20 direct and formal jobs
5001 to 30,000 minimum wages	5000 minimum wages within 3 years following qualification	Start of operations: 30 direct and formal jobs
30,000 minimum wages or more	11,5000 minimum wages within 3 years following qualification	Start of operations: 50 direct and formal jobs

*Minimum monthly wage in 2018 = \$781,242 (265 USD based on an FX rate of 2951 COP to the dollar)*

# 4.

## Labor Law

- Labor Law in Colombia is regulated by the 1991 Constitution, the international treaties and conventions subscribed by Colombia and the Colombian Labor Code.
- Labor law is divided into 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\*.
- During their first 3 years, small and medium-size companies enjoy reduced payroll taxes that are paid and earmarked for the national apprenticeship system (SENA for the Spanish initials), the National Family Welfare Institute (ICBF for the Spanish initials) and family subsidy funds.



## General aspects



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

## Types of labor contracts

Labor contracts may be classified in different ways. Depending upon their term of duration they are classified as follows:

- Fixed term contracts. Their term of duration cannot exceed 3 years. However, the parties may extend the contract indefinitely.
- Specific project contracts.
- Transitory contract. The term of

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

- Indefinite term labor contract. No term of duration is stipulated; and the duration of that is not dependent upon 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 stipulations must be set down in writing and the contract made between the employer and the employee:

- Trial period. Initial stage of the work contract the purpose of which is to enable the employer to get to know the skills of the employee and to enable the latter to evaluate the convenience of work conditions for him/her. This trial period cannot exceed 2



months. For those fixed term contracts set for a term that is less than 1 year, the trial period cannot exceed 1/5 of the initial term agreed to in the contract.

- **Integrated salary:** This is a type of salary made of one lump sum payment which compensates for regular work and compensates in addition and beforehand for social legal benefits, subsidies, over time, and generally any compensation items included in the stipulation of this special salary – except for vacation rest compensation. And all-inclusive salary must always be agreed to in writing.

Integrated salaries may only be agreed to be paid to those employees who earn as salary an amount that exceeds 10 minimum monthly wages, which includes a social legal benefits factor that cannot be less than 30% of 10 minimum monthly wages. For 2018, 10 minimum monthly wages amount to \$10,156,146 (3419 US the using an FX rate of 2970 COP to the US dollar).

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

- **Exclusions:** The employer and the employee may agree in writing which benefits or payments will not be considered salary factor for purposes of removing them from the salary base that is used to compute social legal benefits and Social Security contributions. Notwithstanding, this is a limited ability to the extent that are those payments that are made to compensate directly for the personal service of the employee will be considered salary always, 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 for the employees.

Day working hours cover the period of time that goes from 6 AM through 10 PM, and night working hours cover the period of time that goes from 10 PM to 6 AM.



## Flexible working hours

Employers may agree upon with employees successive work shifts during the entire days of the week provided that every shift does not exceed 6 daily hours and 36 weekly hours, without paying any overtime.

They may also agree that the daily working hours be flexible, in such a manner that 48 hour for completed in 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 by shifts without a continuing activity being required, the law allows that the total working hours may be extended to cover more than 8 hours a day and more than 48 hours a 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 pay accrues either.

## Payments under the labor relationship

### 1. Salary

Salary is the direct compensation that an employee receives in consideration for the provision of his personal 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 wage. For 2018, the minimum monthly wages 781,242 COP (which is 263 USD at an FX rate of 2970 COP to the dollar).

- Integrated salary

This is a type of salary made of one lump sum payment which compensates for social legal benefits, surcharges and benefits such as over time, Legal and extralegal bonuses, severance pay and related interest, subsidies and in-kind supplies; and generally any compensation items included in the stipulation of this special salary – except for vacation rest compensation. Integrated salaries must always be agreed to in writing, And no all-inclusive salary may be less than 13 minimum monthly wages which or equal to \$10,156,146 COP in 2018 (that is 3419 USD at an FX rate of 2970).



## 2. Labor benefits

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

### Social legal benefits

Item	Period of 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	\$88,211 COP in 2018 (29 USD approximately at an FX rate of 2970). 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 (\$1,562,484 COP at an FX rate of 2970)



### 3. Mandatory days off

#### *a) Day off on Sundays and holidays*

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

If an employee works on Sundays occasionally (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.

Even employee works on Sundays regularly (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 6 actual working days of paid vacation leave for each year of service. The additional data may be accumulated for up to 2 years for regular employees and for up to 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 his/her family resides.

### 4. Legal indemnifications

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

#### *a) Legal indemnification for dismissal without cause*

In the case of 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.

In the case of 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 15 days worth of pay.



In the case of indefinite term contracts, the legal indemnification is calculated as follows:

For employees who earn a salary that is less than 10 minimum monthly wages:

- If the employee has worked continuously for less than 1 year, he/she will be paid 30 days worth of salary.
- If the employee has worked continuously for more than 1 year, he/she will be paid 30 days worth of salary for the first year and 20 days worth of salary for each one of the following years and prorated to fractions or year.

For employees who earn a salary that is equal to or more than 10 minimum monthly wages:

- If the employee has worked continuously for less than 1 year, he/she will be paid 20 days worth of salary.
- If the employee has worked continuously for more than 1 year, he/she will be paid 20 days worth of salary for the first year and 15 days worth



of salary for each one of the following years and prorated to fractions or year.

***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

### Social Benefits

Obligation	Period of payment	Percentage												
Contributions to the General Pension System. The maximum contribution base is 25 minimum monthly wages which is \$19,531,050 COP in 2018 (6576 USD at an FX rate of 2970).	Monthly	<p>This is equal to 16% of the monthly salary pay of the employee. Of this, the employer pays 12% and the employee pays 4%.</p> <p>Any employee earning more than 4 minimum wages must pay in additional 1% for the Solidarity fund. Any employee earning 16 or more than 16 minimum wages must pay an additional contribution depending on his contribution salary base as follows:</p> <p>From 16 to 17 minimum wages: 0.2%</p> <p>From 17 to 18 minimum wages: 0.4%</p> <p>From 18 to 19 minimum wages: 0.6%</p> <p>From 19 to 20 minimum wages: 0.8%</p> <p>From 20 to 25 minimum wages: 1.0%</p> <p>Those foreigners who keep contributing to their home country pension system must not contribute any money to the Colombian pension system.</p>												
Contributions to the healthcare Social Security system. The maximum contribution base is 25 minimum monthly wages.	Monthly	<p>This is equal to 12.5% of the monthly salary pay of the employee. Of this, the employer pays 8.5% and the employee pays 4%.</p>												
Contributions to the Labor Risk Social Security system. The maximum contribution base is 25 minimum monthly wages.	Monthly	<p>Payable to every employee depending upon the level of risk of the company set as follows:</p> <table border="1"><thead><tr><th>Type of risk</th><th>Initial value</th></tr></thead><tbody><tr><td>I</td><td>0,522 %</td></tr><tr><td>II</td><td>1,044 %</td></tr><tr><td>III</td><td>2,436 %</td></tr><tr><td>IV</td><td>4,350 %</td></tr><tr><td>V</td><td>6,690 %</td></tr></tbody></table> <p>This amount is paid on the monthly salary of the employee. The employer pays 100% of the contribution.</p>	Type of risk	Initial value	I	0,522 %	II	1,044 %	III	2,436 %	IV	4,350 %	V	6,690 %
Type of risk	Initial value													
I	0,522 %													
II	1,044 %													
III	2,436 %													
IV	4,350 %													
V	6,690 %													



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 quoted to the pension system in any of the two 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 employees home country legislation in force at the time pension payments are applied for.

## 6. Payroll fees

Payroll fees or payment that every employer who employs more than one employee must make to the Colombian Family Welfare Institute (ICBF), the national apprenticeship system (SENA) and Family Compensation Funds. Under the law, 3% of the monthly salary payroll is paid as ICBF contributions; 2% of the monthly salary payroll is paid as SENA contributions and 2% of the monthly salary payroll is paid as family subsidy contributions.

### *a) Reduced payroll fees for micro, small and medium-size enterprises (MIP and ME companies, for the Spanish initials).*

Under article 43 of Law 590 of 2000 MIP and ME companies are entitled to pay during their first three years reduced payroll taxes as indicated below. This reduction works with respect to the full amounts payable to SENA (2%), ICBF (3%) and family subsidy funds (4%) as follows:

- 75% during the first year of operation;
- 50% during the second year of operation; and
- 25% during the third year of operation.

To secure the mentioned benefit, the company must carry out the requisite update of the unified tax register (RUT for the Spanish initials) with the national tax authority (DIAN), reporting its condition of an MIP or ME and its wish of enjoying the benefit. To do so it must mark the proper box on the RUT form (box 89). Likewise, as it pays the corresponding payroll taxes, the company must report this special circumstance by marking the corresponding box.

Micro, small and medium-sized enterprises or companies are classified as follows:

- Micro company: a company with 10 or less employees and total assets (personal home excluded) for less than 500 minimum monthly wages (\$390,621,000 COP or 131,522 USD at an FX rate of 2970).



- Small company: a company with 11 or more employees but no more than 50 employees, and total assets the value of which is between 501 minimum monthly wages (\$391,402,242 COP or 131,785 USD at an FX rate of 2970) and 5000 minimum monthly wages (\$3,907,120,000 COP or 1,215,528 USD at an FX rate of 2970).
- Medium-sized company: a company with 51 or more employees but no more than 200 employees, and total assets the value of which is between 5001 minimum monthly wages (\$3,906,991,242 COP or 1,315,485 USD) and 30,000 minimum monthly wages (\$23,437,260,000 COP or 7,891,333 USD at an FX rate of 2970).

## 7. Leaves of absence

### *a) Maternity leave*

Every pregnant employee is entitled to a leave of absence of 18 weeks which can start 2 weeks ahead of the foreseen birthdate. This leave of absence is paid by the Social Security healthcare system. No employee may be dismissed for pregnancy or nursing, unless there is just cause duly certified in advance by a work inspector. Any potential employer is forbidden from requiring a candidate to take a pregnancy test.

### *b) Paternity leave*

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

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

### *c) Bereavement leave*

In case 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 5 working days, regardless of the type of labor contract that the employee has.



## Workplace regulations

Employers are required to issue the following workplace regulations:

### 1. Workplace regulations

Any commercial company with more than 5 permanent employees and any industrial company with more than 10 permanent employees or any agriculture, farming or forestry company with more than 20 permanent employees must adopt workplace regulations.

### 2. Hygiene and industrial safety regulations

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

## Labor harassment

Law 1010 of January 23, 2016 defines, prevents, corrects and penalizes labor harassment as any form of aggression, ill-treatment 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 together committee. This committee must establish mechanisms to prevent any labor harassment conducts and to establish and follow an 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 enjoy the same rights and have the same obligations as Colombian employees or workers. Notwithstanding, under any labor contract between a foreign person in the local employer, 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.

### 1. Right to Unionize

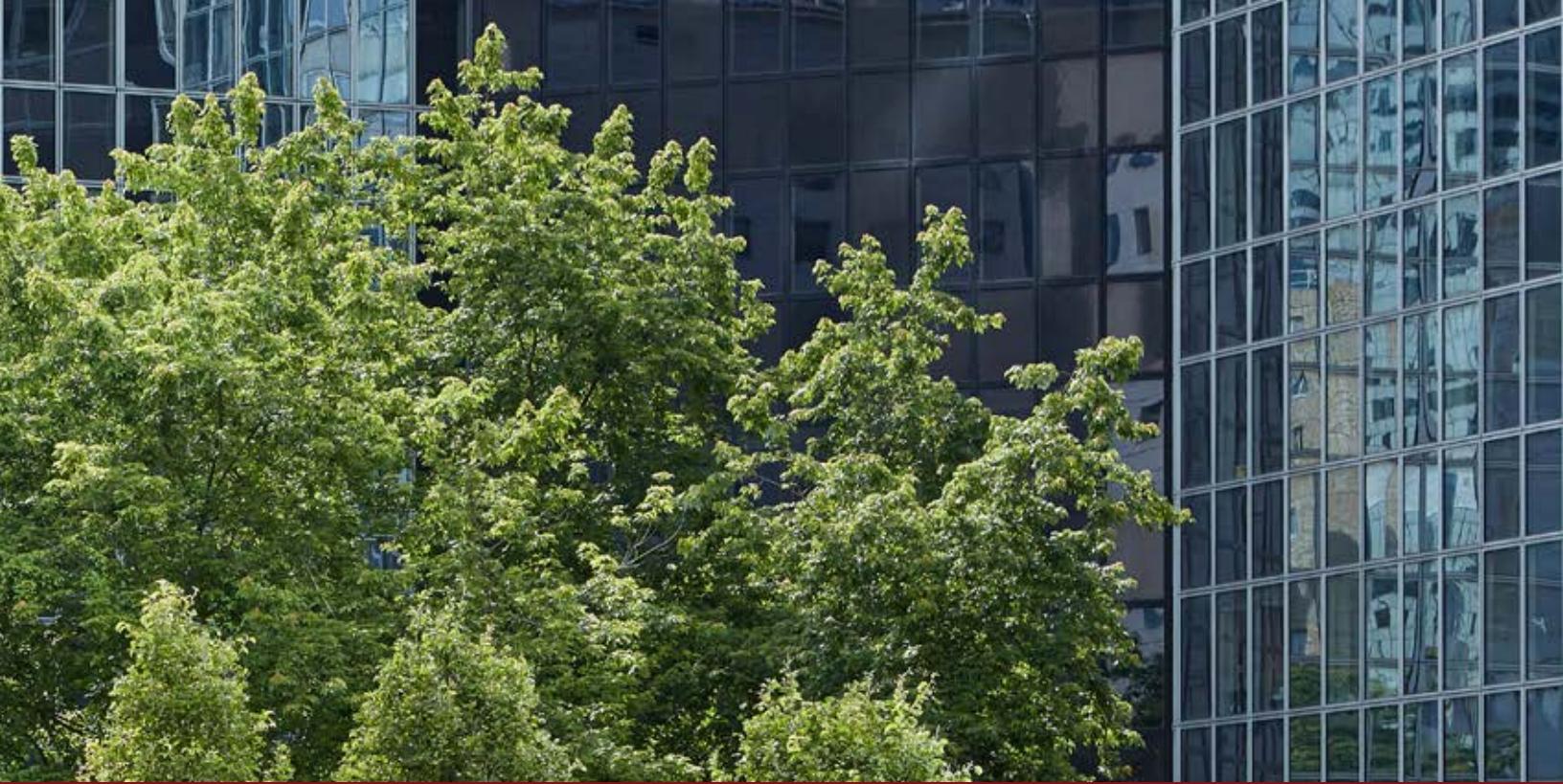
Colombian employees and workers enjoy the right to unionize as a way to exercise collective labor guarantees. This is a constitutional right that seeks to protect the creation and development of unions and seeks to guarantee the exercise by workers of the right to defend their interests – both labor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



# 5.

## Immigration Law – Visas

- Colombian immigration law provides more than different types of visas which are divided into categories of visitors, migrants, and residents. Permits may be requested by foreigners to carry out any commercial, business or investment activities in the country.
- Where a foreigner enters into a labor contract in Colombia, both the employer and the employee must meet certain obligations that derive from foreign employee immigration law and the controls that apply during their stay in the country.



Colombia controls and regulates the entry to and permanence of foreigners in the country by immigration law. This chapter presents the regulations issued by the Ministry of Foreign Affairs respect of the countries whose nationals are exempted from applying for a visitor's visa. Additionally, we present the principal categories of visas that a foreigner may apply for depending on whether he/she plans to enter into contracts, provide services or carry out business, commercial, corporate or investment activities in Colombia.

### **Countries That Do Not Require Tourist Visas**

The nationals of the following countries do not require a temporary tourist visa.

Germany, Andorra, Antigua and Bermuda, Argentina, Australia,

Austria, Azerbaijan, Bahamas, Barbados, Belgium, Belize, Bolivia, Brazil, Brunei-Darussalam, Bulgaria, Bhutan, Canada, Czech Republic, Chile, Cyprus, the Republic of Korea, Costa Rica, Croatia, Denmark, Dominican Republic, Ecuador, El Salvador, United Arabian Emirates, slowly, Slovenia, Spain, the United States of America, Estonia, Fiji, Philippines, Finland, France, Georgia, Granada, Greece, Guatemala, Gaglano, Honduras, Hungary, Indonesia, Ireland, Iceland, Marshall Islands, Solomon Islands, Israel, Italy, Jamaica, Japan, Kazakhstan, leaked on you, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Mexico, Micronesia, Monica, Norway, New Zealand, the Netherlands, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, the United Kingdom of Great Britain and Northern Ireland, Dominican Republic, Romania, Russia, San



Christopher and Nieves, Samoa, San Marino, Santa Lucia, the Vatican (or Holy See), St. Vincent and the Grenadines, Singapore, South Africa, Sweden, Switzerland, Surinam, Trinidad and Tobago, Turkey, Uruguay, Venezuela.

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

At the time of their entry to the country, the nationals of these countries are given an entry and permanence permit (PIP for the Spanish initials) or a temporary permanence permit (PTP) in their condition as tourists (coming for leisure or rest); and the time of their permanence is noted through a stamp affixed by immigration authorities [on their passports].

Permanence in the country is granted for a period of 90 days which may be extended for an extra 90 days should these be required – within the same calendar year.

## **Classification of Visas**

### **1. Visitors Visa –V Visas**

#### *a) Leisure or Tourism Visitors Visa –*

Person applying for visa: This visa is issued to a foreigner who plans to carry out leisure or entertainment activities. This visa apply for those foreigners with restricted nationality, meaning those who may not enter the country without holding some Colombian visa.

Term: This visa is granted for a maximum term of 2 years with multiple entries, and authorizes the foreigner to stay in the country for up to 180 continuous or discontinuous days during every 365 days of validity of the visa.

#### *b) Business Visitor Visa:*

Person applying for visa: This visa is issued to a foreigner who plans to enter Colombia to carry out business management or promotion activities, marketing studies, direct investment plans or paperwork, or incorporation of a commercial company.

Term. This visa is granted for a maximum term of 2 years with the



foreigner being allowed to stay in the country for up to 180 continuous or discontinuous days during every 365 days of validity of the visa.

*c) Visitor's visa as vessel or coastal platform crew member*

Person applying for visa: 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.

Term: This visa is granted for a maximum term of 2 years with multiple entries, and authorizes the foreigner to stay in the country for up to 2 continuous or discontinuous years during the term of validity of the visa. (This visa will have a work permit).

*d) Visitor's visa. This visa is issued to a person who comes to participate in any event as a speaker, exposor, contestant, jury, or logistic personnel:*

Person applying for visa: This visa is issued to the foreigner that plans to enter the country to participate in academic, scientific, artistic, cultural, or sports events.

Term: This visa is granted for a maximum term of 2 years with multiple entries, and authorizes the foreigner to stay in the country for up to 180 continuous or discontinuous days during every 365 days of validity of the visa. (This visa will have a work permit).

*e) Visitor's visa as an intern in a Colombian company:*

Person applying for visa: This visa is issued to the foreigner who plans to enter Colombia to participate in a corporate practice or as an intern in a company established in Colombia.

Term: This visa is granted for a maximum term of 2 years with multiple entries, and authorizes the foreigner to stay in the country for up to 2 continuous or discontinuous years during the term of validity of the visa. (This visa will have a work permit).

*f) This term visa to make an audiovisual production or produce digital content work:*

Person applying for visa: This visa is issued to the foreigner who plans to enter the country to make an audiovisual production or produce any digital content work.

Term: This visa is granted for a maximum term of 2 years with multiple entries, and authorizes the foreigner to stay in the country for up to 2 continuous or discontinuous years during the term of validity of the visa.



*g) Visitor's visa to carry out journalism reporting or to stay temporarily as a foreign news press correspondent:*

Person applying for visa: This visa is issued to the foreigner who plans to enter the country to carry out journalism reporting or to stay in the country temporarily as an international news press correspondent.

*h) Visitor's visa as a provider of temporary services to a natural or legal person in Colombia:*

Person applying for visa: This visa is issued to the foreigner who plans to enter Colombia to provide temporary services to a Colombian company or to a natural person under a labor contract.

Term: This visa is granted for a maximum term of 2 years with multiple entries, and authorizes the foreigner to stay in the country for up to 2 continuous or discontinuous years during the term of validity of the visa. **(This visa will have a work permit).**

*i) Visitor's visa to hold a position in a company that has base in Colombia under an intercompany transfer:*

Person applying for visa: This visa is issued to the foreigner who plans to enter Colombia to hold a position in a company that has a base in Colombia under an intra-company transfer program established in any international instrument binding upon and in force with Colombia (example, an FTA).

Term: This visa is granted for a maximum term of 2 years with multiple entries, and authorizes the foreigner to stay in the country for up to 2 continuous or discontinuous years during the term of validity of the visa. **(This visa will have a work permit).**

*j) Visitor's visa to visit the national territory under vacation-work programs:*

Person applying for visa: This visa is issued to the foreigner who plans to enter Colombia to visit national territory under a vacation-work program established in any treaty of a foreign state with Colombia.

Term: This visa is granted for a maximum term of 1 year with multiple entries, and authorizes the foreigner to stay in the country for up to 1 continuous or discontinuous year during the term of validity of the visa. **(This visa will have a work permit).**

*Without detriment to the activity for which any type "V" visa is applied for, this type of visa will allow the bearer to carry out business*



*promotion or management activities, marketing studies, direct investment plans or paperwork, and the creation of companies. This is so provided that the visa is not requested for airport transit.*

## **2. Migrant Visa – M visas**

### *a) Migrant visa as spouse or permanent companion of a Colombian national:*

Person applying for visa: This visa is issued to the foreigner who plans to enter national territory as the spouse or permanent companion of a Colombian national.

Term: This visa is granted for a maximum term of 3 years and authorizes the holder to stay during the term of validity of the visa. **(This visa will have a work permit).**

### *b) Migrant visa as the father or the child of a Colombian national by way of adoption:*

Person applying for visa: This visa is issued to the foreigner who plans to enter national territory as the father or the child of a Colombian national by way of adoption.

Term: This visa is granted for a maximum term of 3 years and authorizes the holder to stay during the term of validity of the visa. **(This visa will have a work permit).**

### *c) Migrant visa as national of MERCOSUR member states:*

Person applying for visa: 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.

Term: This visa is granted for a maximum term of 3 years and authorizes the holder to stay during the term of validity of the visa.

### *d) Migrant visa as a refugee in Colombia:*

Person applying for visa: This visa is issued to the foreigner that 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 will have a work permit).**



Term: This visa is granted for a maximum term of 3 years and authorizes the holder to stay during the term of validity of the visa.

*e) Migrant visa for long-term worker:*

Person applying for visa: This visa is issued to a foreigner who plans to enter the country under a labor contract or a service contract.

Term: This visa is granted for a maximum term of 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 labor contract, and will have a work permit issued exclusively for the activity declared in the application).**

*f) Migrant visa as businessperson:*

Person applying for visa: This visa is issued to the foreigner who plans to enter the country as the partner, member or owner of a company holding a



stake in it worth at least 100 minimum monthly wages which is equivalent to \$78,124,200 COP (\$26,304 USD at an FX rate of 2970) in 2018.

*Term: This visa is granted for a maximum term of 3 years with multiple entries and authorizes the holder to stay during the term of validity of the visa. (This visa will have a work permit issued solely to work in the company that the businessperson acquired.)*

*g) Migrant visa as a freelance professional*

*Person applying for visa: This visa is issued to the foreigner who plans to enter the country as a freelance professional or worker with qualifications or experience to practice a profession.*

*Term: This visa is granted for a maximum term of 3 years with multiple entries and authorizes the holder to stay during the term of validity of the visa. (This visa will have a work permit issued exclusively for the activity declared in the application.)*



*h) Migrant visa as member of a religious order, missioner, or novice of a religious order (member of religious order undergoing formation).*

Person applying for visa: This visa is issued to the foreigner who plans to enter the country in his/her condition as a member of a religious order duly recognized by the Colombian state.

Term: This visa is granted for a maximum term of 3 years with multiple entries and authorizes the holder to stay during the term of validity of the visa.

*i) Migrant visa as student:*

Person applying for visa: This visa is issued to the foreigner who plans to pursue an academic program, provided that this program is taught by a certified education institution.

Term: This visa is granted for a maximum term of 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).

*j) Migrant visa as real estate investor:*

Person applying for visa: This visa is issued to the foreigner who plans to enter the country in his condition as owner of a piece of real property. He or she must make an investment worth at least 350 minimum wages, the approximate Colombian peso value of which is \$273,434,700 (92,065 USD at an FX rate of 2970) in 2018.

Term: This visa is granted for a maximum term of 3 years with multiple entries and authorizes the holder to stay during the term of validity of the visa.

*k) Migrant visa as retiree or as capital investment income beneficiary:*

Person applying for visa: This visa is issued to the foreigner who plans to enter Colombia as a retiree receiving a monthly payment worth no less than 3 minimum monthly wages, the approximate Colombian peso value of which is \$2,343,726 (789 USD at an FX rate of 2970) in 2018. Or it is issued to the foreigner who shows that he's receiving income from a private or public institution for an amount worth no less than 10 minimum monthly wages, the approximate Colombian peso value of which is \$7,812,420 (2630 USD at an FX rate of 2970) in 2018.

Term: This visa is granted for a maximum term of 3 years and authorizes the holder to stay during the term of validity of the visa.



### 3. Resident visa – R visas

Person applying for visa: This visa is issued to the foreigner who plans to enter the country and stay in it; it may be applied for it in the following cases:

- Where the foreigner is the father or the mother of a Colombian national.
- Where the foreigner, having been a former Colombian national either by way of adoption or by birth, gave up his/her Colombian nationality.
- Where the foreigner has been formerly the holder of a migrant visa as 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 5 continuous or discontinuous years.
- Where the foreigner has been the holder of a migrant visa as spouse or permanent companion, 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 of a MERCOSUR member state during at least 2 continuous and uninterrupted years.
- Where a foreigner, of legal age, has held an R-type visa for at least 5 continuous and uninterrupted years.
- The foreign investor who has registered a foreign investment with the Bank of the Republic for an amount exceeding 650 minimum monthly wages, the approximate Colombian peso value of which is \$505,807,300 (170,978 USD) in 2018.

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

In case the foreigner leaves the country and stays outside for a term of 2 continuous years or longer, he/she loses his/her right to the visa.

### Entry and permanence permits

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

The Special Colombia Migration Administrative Unit (UMC for the Spanish



initials) is the agency in charge of issuing entry and permanence permits (PIP for the Spanish initials) and temporary permanence permits (PTP) for the foreigners who do not require a tourist visa to enter the country.

i. PIP are granted to foreigners will enter the country to carry out any of the following activities:

- PIP-1: To carry out international conventions or treaties, and whose presence is of vital importance for the country.
- PIP-2: To pursue academic programs provided that they do not exceed one half year in duration.
- 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 who come to have an interview in a personnel recruiting process of public or private entities, or corporate training, or journalist reporting provided this is not done 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 90 days except for those for a specific term is set and except for the PIP that is issued for technical assistance activities (PIP 7), or the term of validity will not exceed 30 calendar days per year.

ii. PTP are permits granted by the Special Colombian Migration Administrative Unit (UMC) to any foreigners who do not require a visa, who have already used a PIP and plan to obtain an extension for their stay in the country or to change the authorized activity.

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



## Foreign Citizen ID card

This ID card is issued to foreigners who have obtained a visa for a term exceeding 3 months except for those who have visitor's visas. In the latter case, they must register with the UMC within 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 a term equal to that of the visa.

This is the ID document of the foreigner while he/she is in Colombia; it enables him/her to enter into contract, open bank accounts and make different transactions. The foreigner must keep it during the entire time of his/her stay in Colombia.

# 6.

## Tax Law

- Starting in taxable year 2018 the new general corporate income tax rate of 33% came into force and the transitory 34% rate no longer applies.
- The income surtax continues to apply during taxable year 2018 for those taxpayers who taxable income exceeds \$800,000,000 COP, with the marginal rate being reduced to 4%.
- Net tax losses generated from taxable year 2017 and thereafter may only be carried forward for set off only over the 12 taxable years following the tax year in which they were generated.
- The recently enacted single tax (or monotributo in Spanish) was regulated. This single tax seeks to simplify compliance with tax obligations of those taxpayers who carry out activities such as retail commerce, haircut and hair salons.
- By issuance of a special Legislative Decree, the number of taxpayers was amplified who may carry out certain civil works in lieu of the payment of taxes, by incorporating company devoted to the exploration for and production of minerals and hydrocarbons.



- About 39 regulatory degrees were issued in 2017 to regulate the latest tax reform (Law 1819 of 2016). A pleased regulations, the following topics stand out:
- Guidelines were set for granting incentives for the increase of investments in the expiration foreign production of hydrocarbons and minerals through the so-called CERTs (Spanish initials of Tax Reimbursement Certificates).
- Regulations were issued for the rules that apply to donations made to not-for-profit entities and about the conditions set for qualification, permanence in an exclusion from the so-called special tax regime.
- Conditions were set to qualify for exemption in the provision of river transport services.
- Requirements were set to be entitled to claim an income tax credit for investments made in the control, preservation and improvement of the environment.
- Special system for controlling or reconciling differences between the new accounting standards and the provisions of the Tax Code.
- Provisions regulating the application of the carbon tax which applies to carbon content of all fossil fuels.
- The so-called single tax (or monotributo) was regulated in point of taxpayers and the essential aspects for the application of this tax (which is an optional tax that would replace income tax and was created to make compliance with tax obligations easier for certain people).



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

The main national taxes for the following. The income tax and the related capital gains tax. The wealth 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.

As part of territorial taxes we have the following. The industry and commerce tax. The property tax. And if the registration tax.

With a view to avoiding double taxation and prevent tax avoidance in respect of the income tax and the patrimony tax, Colombia has been making 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 the United Kingdom and France, and the related domestic procedure for approval of these treaties by internal legislation will be completed soon.

## **Income tax and capital gains tax**

The so-called income tax and supplementary taxes is a single tax, and it comprises the income tax and the capital gains tax.

The **income tax** applies to corporate entities and natural persons and to entities or persons that are assimilated to one or the other. Generally, the income tax is set to tax any gains or profits that may generate a net increase in the patrimony of the taxpayer at the time they are realized in which have not been exempted by law expressly.

By the latest tax reform enacted as Law 1819 of 2016, an income tax surcharge was created for taxable years 2017 and 2018 for those taxpayers reporting taxable income in excess of \$800,000,000 COP.

Revenues that constitute capital gains are those specifically indicated by the law. Essentially, they correspond to revenues or income that do not originate in the normal course of business of taxpayers. These include (by way of example) income obtained in the sale of fixed assets held for more than 2 years, inheritances and legacies or income from lotteries, prizes and similar events or items.



## 1. General aspects of 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 the 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, the principle of domicile applies. In other words, they must report both their Colombian and foreign source income. On their side, foreign companies are subject to tax only on their Colombian source income and capital gains.

Finally, branch offices of foreign entities and permanent establishments of foreign natural and legal persons are also income tax payers in respect of their Colombian source income and capital gains to the extent these are attributable to the branch office or permanent establishment. This attribution of income is made based upon several criteria, namely the functions, assets, risks and personnel involved in obtaining the mentioned income and capital gains.

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

## 2. Income tax base and rate

*The general income tax rate is of 33%. This applies to Colombian companies and similar entities, permanent establishments, nonresident foreign persons required to file a tax return and commercial users of free-trade zones.*

*For taxable years 2017 and 2018, income tax payers whose taxable income exceeds 800,000,001 pesos must pay an income tax surcharge which is subject to a prepayment of 100% of the surcharge, payable in two equal annual installments at the following rates:*



Range of taxable income in COP		Taxable year	
Bottom limit	Top limit	2017	2018
0 <	800,000,000 COP	(Taxable base) * 0%	(Taxable base) * 0%
>=800,000,000 COP	And above	(Taxable base - 800,000,000 COP) * 6%	(Taxable base - 800,000,000 COP) * 6%

As from the tax reform enacted by Law 1819 of 2016, the following special rates were maintained and created:

Item/Type	Rate
Industrial users of goods and services in free-trade zones	20%
Industrial users of goods and services in free-trade zonesUsers of new free-trade zones created in Cucuta between January 2017 and December 2019 which (i) have more than 80 hectares and (ii) have more than 40 users counting national or foreign companies.	15%
The following activities which had claimed and secured an income tax exemption before enactment of Law 1819 of 2016, the income tax rate will be of 9% starting in 2017 and will go through the end of the term of validity of the initial exemption: (i) Hotel services provided in hotels that qualified as "new" under the law; (ii) Hotel services provided in hotels that were refurbished or amplified within the term set by the law; (iii) Ecological tourism services certified by the Ministry of the Environment, which were expanded within the term set by the law; (iv) Financial leasing contracts considered as "new" under the law.	9% (through expiry date)
(i) State owned industrial and commercial companies and departmental, municipal and District privately owned and state-owned mixed economy companies where the state holds more than 90% of the shares and which hold gaming and liquor monopolies. (ii) Publishing companies Incorporated in Colombia as legal persons which exclusive economic activity or line of business is the publication of scientific or cultural books, magazines, booklets or collectible serialized issues. (iii) Income generated by the centralization reserve established by pension fund and severance pay fund management companies.	9%



Hotel services provided by new hotels, or by refurbished or expanded hotels, where the construction, refurbishment or expansion takes place within the 10 years following the date of the law, in municipalities of up to 200,000 inhabitants, over a term of 20 years.	9% (through expiry date)
If before enactment of Law 1819 of 2016 a company had been qualified for the benefit of "a progressive income tax rate", the progressive rate shown in the following table will apply according to the number of years counted from the date of inception of the economic activity:	Progressive rate

Year	Rate
First year	$9\% + (TG9\%) * 0$
Second year	$9\% + (TG9\%) * 0$
Third year	$9\% + (TG9\%) * 0.25$
Fourth year	$9\% + (TG9\%) * 0.50$
Fifth year	$9\% + (TG9\%) * 0.75$
Sixth year and thereafter	TG

TG = General income tax rate of the taxable year

#### *a) 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 value of the taxable income that derives from applying the above two systems. The income tax payable for the taxable year will be the one that is computed on the highest value that derives from the mentioned comparison.

##### *(1) Regular system of determination of taxable income*

Under this system, the taxpayer includes the entire revenue obtain in the



**Gross revenue**

Minus: discounts, returns and rebates

**Net revenue**

Minus: nontaxable revenue

**Taxable net revenue**

Minus: costs

**Gross income**

Minus: deductible expenses (or "deductions")

**Taxable income**

Minus: exempt income

**Net taxable income**

Times tax rate

**Basic income tax**

Minus: tax credits

**Net income tax**



year to the extent they are revenue capable of generating a net increase of patrimony at the time of realization. This revenue is then netted as shown in the table below:

#### **(2) Alternate, presumptive income system**

The so-called presumptive income system is an alternate income tax computation method. Under this method, [taxable income] cannot be less than 3.5% of the taxpayers tax equity as of the last day of the prior tax year. In other words, presumptive income is the minimum estimated, acceptable 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 order of the law (as a rebuttable presumption) and under parameters established by the same law.

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

- The net book value of any shares and equity interests held in Colombian companies.



- The net book value of any property affected by force majeure or unforeseen, uncontrollable events (or so-called Acts of God).
- The net book value of any property associated with enterprises undergoing the initial unproductive stage.
- The net book value of any property directly associated with companies which exclusive line of business is mining other than the production of liquid and gaseous hydrocarbons.
- The first 19,000 tax value units worth of the taxpayer's property used in agricultural and farming activities.
- The first 8000 tax value units' worth of the taxpayer's personal home.
- The net book 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 taxable 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, any companies undergoing liquidation are not subject to this PI alternate computation method during the first 3 years.

### **3. 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. 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 indemnifications to the extent they correspond to the direct loss suffered by the taxpayer.

### **4. 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 in order to obtain income or revenues. Costs are deductible for income tax purposes provided they meet the cause-to-effect connection test and are necessary for the production of income, they are reasonable and they have accrued or have been paid in

\* Unidad de Valor Tributario fijada en COP \$33.156 para el 2018 por la DIAN.



the corresponding taxable 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.

*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 and 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) consortiums or joint ventures, temporary unions and separate patrimonies (trusts) where the members are exonerated from paying payroll taxes.

*b) Taxes paid*

100% of the industry and commerce tax and 100% of property taxes effectively paid in the respective taxable year are deductible for income tax purposes provided that they meet the cause-to-effect connection test in the taxpayer's income-producing activity.

For taxpayers required to keep accounting books, these taxes are deductible in the taxable year in which they accrue provided that they had been effectively paid before the taxpayer files its initial income tax return.

Likewise, 50% of the financial transactions tax effectively paid in the taxable year is deductible for income tax purposes, regardless of the actual connection of this tax with the taxpayer's into and production activity. (See Financial Transactions Tax or GMF the Spanish initials).

*c) Interest*

As a general rule, the taxpayer may deduct any interest paid on debts where the total average debt amount during the corresponding taxable year does not exceed the following result: taxpayer's tax equity as of December 31 of the prior tax year times 3.

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<sup>2</sup> Instituto Colombiano de Bienestar Familiar.

<sup>3</sup> Servicio Nacional de Aprendizaje.



*d) Expenses incurred abroad*

Income taxpayers may deduct any expenses incurred abroad that meet the cause-to-effect connection test in respect of Colombian source income, provided that they have collected the applicable withholding taxes where the amounts paid constitute Colombian source income for the beneficiary of the payment.

For the expenses incurred abroad are not subject to any 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 tax payers that make investments in projects that qualify as technological research and development projects (as defined by law) may deduct those investments in the taxable year in which they were made according to criteria and conditions set by the National Council of Economic and Social Policy in meeting 3892 of 2017, in which that counsel updated CONPES document 3834 of 2015. It is worth noting that this deduction does not exclude the taxpayer's ability of claiming at the same time a tax credit for having made 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 the Spanish initials) which are earmarked to finance scholarships or condonable loan programs approved by the Ministry of National Education. This deduction is subject to certain requirements.

*f) Net loss carry forwards*

Ever since year 2007, taxpayers have been entitled to carry forward net losses for set off against any regular taxable income obtained in any following tax years, without any restrictions in future time – and without detriment to computation of the current year's alternate presumptive taxable income. These net losses cannot be pushed down to the company's shareholders or members.

Notwithstanding, Law 1819 of 2016 limited loss carry forwards for



losses generated from taxable year 2017 to setoffs against income of the following 12 taxable years – following the year in which the losses were generated. For any losses that were generated before 2017, there are transition rules made to determine the portion that may be set off by applying the formula set by the very 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 companies or of the spinoff company 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 a straight line method at an annual rate of 20% of the tax basis, [or] during the life of the contract counted 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, and in any event the deductible amount cannot exceed an annual fraction of 20% of the related tax basis.

In the case of intangible property that is created as investments made in intangible property for the ends of the business or the activity, 20% of the tax basis is deductible every year under application of certain rules established by the law.



Costs are expenditures incurred to acquire or produce a good or piece of property or to provide a service in order to obtain income or revenues. Costs are deductible for income tax purposes provided they meet the cause-to-effect connection test and are necessary for the production of income, they are reasonable and they have accrued or have been paid in the corresponding taxable 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*

Assets	Annual tax depreciation rate
Constructions and buildings	2.22%
Aqueduct, plant and networks	2.50%
Thoroughfares	2.50%
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 fixtures	10%
Scientific medical equipment	12.5%
Containers, packaging and tools	20%
Computer equipment	20%
Data processing networks	20%
Communication equipment	20%

Reasonable amounts of depreciation accruing for the normal wear and tear or obsolescence of fixed assets used in any income-producing business activities is deductible according to the table below:

Law 1819 introduced the following changes:

- The useful life of assets is determined in accordance with IFRS (international financial reporting standards), but it is possible to use other methods.
- The annual depreciation rate 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.
- For assets acquired after January 1, 2017, the depreciation base will be the acquisition cost minus the asset's residual value.
- The depreciation of any balances of fixed assets costs or basis yet to be depreciated as of December 31, 2016 will be completed during the remaining useful life of the depreciable fixed asset under certain transition rules set by Law 1819 of 2016.

*i) Exchange gains and losses*

Any foreign-currency denominated revenues, costs, deductions, 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.

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 payment 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.
- Starting in taxable year 2018, for any payments in excess of 100 tax



value units to be deductible for income tax purposes or to be creditable for tax purposes, the payments must be made through the financial system.

The following are nondeductible:

- Any expenses originating in the commission of crimes (or conducts that may be subject to civil or commercial penalties as malicious conducts).
- Any costs and expenses for any transactions that are subject to the national excise tax and that are paid to persons that should belong in the so-called VAT regular system or in the VAT simplified system, where the payer does not retain a copy of the payee's RUT.
- 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 taxable year where the same are associated with the acquisition of finished goods or products.



## 5. International Taxation

### a. Withholding taxes for payments made abroad

The main withholding tax rates that apply to payments made abroad are the following:

Type of payment	Rate
Interest, commissions, royalties (1), rentals, compensation for personal services (paid to individuals), industrial property or know-how	<b>15%</b>
Technical services, technical assistance and consulting services	<b>15%</b>
Loans for a term equal to or greater than 1 year; financial lease payments (transition)	<b>15%</b>
Loans for a term of less than 1 year	<b>15%</b>
Financial leases of aircraft, helicopters and other airplanes	<b>1%</b>
Loans for the financing of PPA projects	<b>5%</b>
Management services provided in Colombia or from abroad	<b>15%</b>
Film royalties	<b>15%</b>
Cession of reinsurance premiums	<b>1%</b>
International transport	<b>5%</b>
Computer software royalties	<b>26.4%</b>
Residual/marginal rate**	15% or 10% if it is the case of a capital gain



### *a) Taxation of dividend distributions*

The distribution of dividends and shares in profits to Colombian residents and their corporate entities qualify as nontaxable income provided 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 taxable year 2017 (without detriment to the application of any double taxation treaty subscribed by Colombia):

<b>Payment Beneficiary</b>	<b>Distribution origin</b>	<b>Withholding tax rate</b>
Nonresident foreign companies	Profits already taxed in the hands of the distributing company	5%
	Profits that were not taxed in the hands of distributing company	35%. In this case, the 5% withholding tax applies after deduction of this tax
National companies	Profits already taxed in the hands of the distributing company	N/A
	Profits that were not taxed in the hands of distributing company	20%
Resident natural persons	Profits already taxed in the hands of the distributing company	5% and 10% progressive rates
	Profits that were not taxed in the hands of distributing company	35%. In this case, the 10% or 5% withholding tax will apply after deduction of this tax.
Nonresident natural persons	Profits already taxed in the hands of the distributing company	10%
	Profits that were not taxed in the hands of distributing company	35%. In this case, the 10% withholding tax applies after deduction of this tax



*b) Payments to non-cooperative jurisdictions, to low or no tax jurisdictions and to entities that belong in preferential tax systems*

**Non-cooperating jurisdictions and low or no tax jurisdictions.**

They are determined by the government based on the following criteria:

- 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.
- 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.
- e)** Besides the above criteria, the national government will use as reference internationally accepted criteria for the determination of non-cooperative jurisdictions or low tax or no tax jurisdictions.

**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.
- 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.
- d)** The requirement of an actual substantial presence does not apply, nor that of the exercise of a real activity with economic substance.
- 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).

Any payments or credits to account to non-cooperative jurisdictions or low tax or no tax jurisdictions or payments or credits to account made to entities belonging in any preferential tax regimes will not be deductible [unless they are subject to withholding tax collection whenever this is 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 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 person or company to carry out the company is the 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 that is located in or that is a resident of the noncooperative jurisdiction or the low tax or no tax jurisdiction or the entity that belongs to a preferential tax system.

### *c) Effective beneficiary*

Subsidiaries of foreign companies, as well as any permanent establishment of foreign companies, and any separate patrimonies or trusts and any collective investment portfolios are required to provide detailed



information about the effect beneficiaries of their payments or credits to accounts. The information includes the definition [identification] of the effect beneficiary.

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

- To exert effective control, directly or indirectly, of a national company, of an agent, of a separate patrimony or trust, of a collective portfolio investment, or of the 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 separate patrimony or trust, the collective portfolio investment or the foreign company which has a permanent establishment in Colombia.

The law establishes that the following items of income are tax exempt:

- The items of income established as such by Decision 578 of the CAN.
- The resources of any pension funds of the solidarity individual savings system, the pension distribution of funds for medium premium/specific benefit pension systems, the funds set for payment of pension bonuses installments, the Pension Solidarity Fund, and the



mathematical reserves of pension insurance funds and their yields.

- Any gains derived from the sale of property earmarked for public utility or social interest purposes (social interest personal home projects).
- Loan transactions, insurance and reinsurance and any other financial activities carried out by financial governmental institutions that belong to countries with which Colombia has subscribed specific cooperation agreements.
- The financial income of any mortgage receivable certificates and bonds with a term of maturity greater than 5 years and which were placed through 2004.
- 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 solely applied to the purpose of the donation.

## 6. Tax credits

Under tax law, certain amounts may be discounted directly from the income tax liability computed by the taxpayer. Among others, we have the following:

- Foreign tax credits for taxes paid abroad by resident taxpayers earning foreign source income.
- Tax credits for the planting and culture of trees in reforestation areas.
- The VAT paid upon the importation of heavy machinery for basic industries.
- Stock exchange investments in shares of companies devoted to the agriculture industry.
- 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 solely applied to the purpose of the donation.



## 7. Tax credits

Under tax law, certain amounts may be discounted directly from the income tax liability computed by the taxpayer. Among others, we have 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.
- The VAT paid upon the importation of heavy machinery for basic industries.
- 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.

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 reputation method before any tax credit.

## 8. Transfer pricing regulations

Colombian transfer pricing regulations were drafted based upon the guidelines set by the Organization of Economic Cooperation and Development – or OECD –, and they came into force as from year 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 by using prices and profit margins that would have been used in comparable transactions with or between unrelated parties.



Additionally, those income tax payers who meet the requisite gross assets and gross revenue thresholds noted below must file an annual transfer pricing information return. In that return, they must report all the transactions that they carried out with their related parties and they must prepare the supporting documents for each one of those transactions to prove to the authority that they applied current transfer pricing regulations correctly. The mentioned gross assets and gross revenue thresholds are the following: (i) Amount of gross assets greater than 100,000 tax value units or UVT (for the Spanish initials) (\$1,088,000 USD at an FX rate of 2990) (in 2017). (ii) Amount of gross revenue greater than 61,000 tax value units or UVT (for the Spanish initials) (\$649,966 USD at an FX rate of 2990) (in 2017).

## 9. Capital gains tax

As a complementary tax in respect of the income tax, the capital gains tax taxes certain items of income that is obtain in certain transactions defined by the law expressly. Capital gains may not be reduced by the regular deductible costs and expenses of the taxpayer as capital gains may not be used to offset the regular taxable income of the taxpayer.

The current capital gains flat tax rate is 10%.

## 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.

As a consequence of the existence of different withholding tax collection rates on local payments and on payments paid abroad, specific withholding tax collection rates depend upon the specific nature or type



of payment being made.

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

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 is the party that is required to collect and pay the taxes 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. Within the taxable base of the VAT, their VAT taxpayer must include any 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 differential 5% rate.



## 2. VAT exempt goods

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

- 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 tax value units.
- Smart phones and tablets where their value does not exceed 22 tax value units.
- Regular permanent imports made by ultra-frequent exporters (ALTEX for the Spanish initials) of industrial machinery that is not manufacturing the country, earmarked for the transformation of raw materials.

## 3. VAT exempt services:

We highlight the following:

- Public or private cargo transport, national and international.
- Public transport of passengers in national territory, whether land, maritime or river transport.
- National air transfer of passengers to national destinations without any 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.



#### 4. Creditable VAT

The VAT that is 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 that they pay on acquisitions of personal property and services and unimportant personal property or 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 creditable VAT may be booked by the VAT collection agent in any of the following VAT terms: (i) For those who file bimonthly VAT returns, in the term in which the VAT accrues or in any of the three following VAT terms. (ii) For those who file quarterly VAT returns, and the term in which the VAT accrues or in the following VAT term.

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

- Acquisition of fixed assets.
- Uncollectible credits and debts.
- Acquisitions from unregistered suppliers.
- Acquisitions from insolvent or fictitious suppliers.

#### 5. Determination of VAT liability

The tax is determined by the difference between the tax accruing on taxable transactions and the credits authorized by law as follows:

#### The Monotributo or Single Simplified Tax

This is an optional tax that accrues every year and is set or is chosen as a

##### Determination of VAT liability

VAT accrued

Minus: VAT credits

VAT liability (VAT payable)



tax that supersedes the income tax.

Only natural persons who meet the following requirements may elect to pay this single simplified tax or Monotributo:

- That they have earned regular gross revenues or extraordinary gross revenues equal to or greater than 1400 tax value units but less than 3500 tax value units in the course of the year.
- That they carry out their economic line of business in a physical space or establishment which area is equal to or less than 50 m<sup>2</sup>.
- That they are eligible to belong in the so-called supplementary social service for Periodical Economic Benefits or BEPS (for the Spanish initials).
- That their line of economic activity is one or more of the activities that fall within classification 47 – retail commerce – and activity classification 9602 – haircutting and other beauty treatments – of the economic activities classification adopted by the Colombian national tax authority – DIAN.

The [taxable event] of this tax is the obtaining of regular and special revenues; and the taxable base is the addition of the total gross revenues, both regular and special, realized in the taxable year.

This tax was created to simplify compliance with tax obligations for certain taxpayers who meet certain conditions of revenue amounts, size of their commercial establishments and to carry out certain retail commerce activities, haircutting and hairdressers and beauty salons.

The single unified tax (or monotributo) comprises a national tax and the contribution to supplementary social services as follows:

Category	Annual gross revenue Min.	Annual gross revenue Max.	Annual monotributo payable	Tax component	BEPS contribution component
A	1.400 UVT	2.100 UVT	16 UVT	12 UVT	4 UVT
B	>2.001 UVT	2.800 UVT	24 UVT	19 UVT	5 UVT
C	>2.800 UVT	3.500 UVT	32 UVT	26 UVT	6 UVT



## The Carbon Tax

This tax is levied upon the carbon content of all fossil fuels including any oil derivatives that are used for our generation purposes. The taxable event is the sale, withdrawal, importation for own use or importation for sale of any fossil fuels; and it is a tax that accrues in a single phase in respect of the taxable event that occurs the first.

A specific rate applies depending upon the carbon dioxide issue factor (CO<sub>2</sub>) for each specific fuel fossil; it is expressed in a volume unit (CO<sub>2</sub> kilograms) per power generating unit (Terajouls) in accordance with the fuel volume or weight.

Additionally, starting in 2017 a motor fuel payroll tax is created which taxable event is a sale in Colombia of any regular motor fuel 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 or) is at the same time the wholesale fuel 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 importation by the end-user of the following services and goods, which are taxed at the following rates:

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



## **The Financial Transactions Tax – GMF (for the Spanish initials)**

The financial transactions tax is an instantaneous event tax. Among others, the taxable event is making 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 an instantaneous event tax, the tax accrues at the time the resources are disposed by the financial transaction.

The tax rate is four per thousand ( $4 \times 1000$ ) of the total value of the financial transaction by which the taxpayers disposal of their resources. 50% of the GMF paid is deductible for income tax purposes regardless of whether the tax relates to 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 in which the respective checking or savings account is held for the other types of account were 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 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 revenue realized by the taxpayer in the respective taxable year, including any financial income, commissions, and generally any type of revenue that has not been expressly excluded by the law.

Any revenues derived from exempt or nontaxable activities are not included as well as sales returns, discounts and rebates, exports revenue and revenues from the sale of fixed assets.

The city Council sets the industry and commerce tax rates within the following limits:

1. From  $2 \times 1000$  to  $7 \times 1000$  for industrial activities
2. From  $2 \times 1000$  to  $10 \times 1000$  for commercial and service activities



## 2. 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, and the tax rate is of 15%.

## The Unified Property Tax

The unified property tax taxes ownership of real properties located in urban, suburban or rural areas, with or without constructions on them. In consequence, the property tax taxpayers for 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 condition or qualification of the property. In other words, if the property is rural or urban or suburban property; and the rate ranges between 4 and  $12 \times 1000$  (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 meets the cause-to-effect connection test in respect of the taxpayer's income-producing activity.

## The Registration Tax

The registration tax is levied upon all the documentary legal acts, contracts or transactions that must be registered with Chambers of commerce and Registers of Public Deeds.

The taxable base of this tax is the transaction value set down in writing 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:



- Legal acts, contracts or transactions with a transaction or contract value and subject to registration with registers of public deeds, between 0.5% and 1%.
- Legal acts, contracts or transactions with a transaction or contract value and subject to registration with chambers of commerce, between 0.3% and 0.7%.
- Legal acts, contracts or transactions with no transaction or contract value and subject to registration with registers of public deeds or chambers of commerce, between 2 and 4 minimum daily wages.

### **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



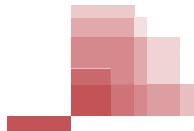
Decision 578 which corresponds to the new Andean community regulation to avoid double taxation and prevent tax evasion between the member countries of the CAN (Colombia, Peru and Ecuador). In regulating the taxing power of the member states, this decision favors the criterion of source-based taxation 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 the countries to better implement transfer pricing regulations; they recognize the principles of nondiscrimination of nationals and nonresidents which carry out activities in any of the 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 and Switzerland. Double taxation treaties were also signed with the United Kingdom and France, and the related, internal approving legislation is expected to be promulgated soon.





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# 7.

## Corporate aspects

- The preferred investment vehicle for foreign and local investors is the so-called simplified stock company, widely known for its Spanish acronym, SAS. This is so because they are very easy to incorporate and they are very functional.
- Branch offices of foreign companies are also very used in Colombia as investment vehicles, especially by foreign investors in the mining and hydrocarbons industries because of the related FX 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 free initiative. Below we include a summary of the most relevant legal aspects that relate to the investment vehicles that are mostly used in Colombia, including notes about their procedure of incorporation.

### 1. Types of investment vehicles

The investment vehicles mostly used by foreign investors in Colombia are the following:

- Simplified Stock Company (SAS). 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 SAS may be incorporated by a private document, and the bylaws of the company may also be amended by private document. The company name must always be followed by the acronym S.A.S. or by the words "simplified stock company" (in Spanish of course – sociedad por acciones simplificada).

- Stock Company or Corporation (sociedad anónima). 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. Corporations are incorporated by means of a public deed executed before a notary public; 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". Corporations must appoint an external statutory auditor.



- Limited Liability Company. This type of company must be incorporated by a public deed executed before a notary public. 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 and severally with the company. Any bylaws amendment or any transfer of company shares or equity interests must also be made by a public deed. The company name as always be followed by the abbreviation Ltda.
- Branch office of 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 head office are considered to be the same and only legal person. In this way, the head office is totally 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 head office. The branch office of a foreign company must appoint an external statutory auditor.

Now, Colombia legislation has also provided for other types of companies. However these are not used very much, such as limited partnerships (sociedades en comandita) and pure partnerships (sociedades colectivas).

Of the above, we must say that SAS stand out among investment vehicles. This is so because ever since its creation in 2008, SAS have become the investment vehicle of choice of foreign investors and also of local investors, because they are very easy to incorporate and are quite flexible in point of functionality.

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

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



## 2. Comparison table – Branch office of foreign company v. simplified stock company (SAS)

<b>Branch office of foreign company</b>	<b>Simplified stock company (SAS)</b>
<p><b>Members, Legal Nature and Liability</b></p> <p>The branch office is a commercial establishment owned by the head office. For this reason, it lacks any legal personality other than that of the head office. In consequence, the liabilities of the branch office in Colombia flow through directly to the head office.</p>	<p>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 where the company is set up to defraud the law or the interests of third parties.</p>
<p><b>Name, Term of Validity and Business Purpose</b></p> <p>As a general rule, it must use the same name of the head office, adding the expression COLOMBIAN BRANCH ("SUCURSAL COLOMBIANA"). The term of duration of the branch office must be defined, confined to specific commercial activities.</p>	<p>The company name must be followed by the expression (in Spanish) SIMPLIFIED STOCK COMPANY or SAS. As opposed to other commercial companies, the term of duration of an SAS 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 the same.</p>
<p><b>Capital</b></p> <p>In principle, branch offices have an assigned capital which they receive from their head office. As is a case of commercial companies, this assigned capital of the branch office works as a general collateral for the protection of the creditors. The assigned capital must be paid entirely upon registration of the branch office in Colombia.</p> <p>Additionally, the branch office has a "floating capital" which is 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 or</p>	<p>The capital is divided into registered shares, and is divided into three bands of capital: the authorized capital, the subscribed capital and the 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 stipulated 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 is not to exceed 10 years counted from the date of issuance. This term may be extended for an additional terms of 10 years maximum, by the unanimous vote of the shareholders. Share negotiations may be subjected to prior authorization by the shareholders meeting.</p>



Branch office of foreign company	Simplified stock company (SAS)
<p data-bbox="507 418 992 840">As this is the case of a commercial establishment, its main corporate organs are those of the head office. However, it has the General Agent which carries out the functions of the manager of the establishment and represents the company before third parties. Additionally, under the law, branch offices of foreign companies are required to point to an external statutory auditor which is to meet the same duties as external auditors do with respect to commercial companies.</p>	<p data-bbox="1019 430 1512 1085">In the bylaws of a SAS, the constituents will freely determine the structure of the organs of the company and any other functioning rules. A SAS may have one or more statutory representatives. A SAS is not required to have a Board of Directors. In case the considerations agree that he should have one, the board may operate with just one member or with several or many members, and there may or may not be alternates to the main members of the board. A SAS is not required to have an external 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 5000 minimum monthly wages at December 31 of the prior year or unless the amount of gross revenue of the company exceeds 3000 minimum monthly wages at the same date.</p>
<p data-bbox="616 1115 992 1396">Branch offices are dissolved according to the same grounds for dissolution established for the head office, because the existence of the branch office depends upon that of the head office. Or branch offices are dissolved because their term of duration expires.</p> <p data-bbox="507 1431 992 1712">Branch offices are also required to dissolve on the grounds of accumulation of losses. Under this rule, a branch office must dissolve and liquidate where it reaches the point where 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 occurrence of it.</p>	<p data-bbox="1019 1170 1512 1431">Among the grounds for dissolution of a SAS we can highlight dissolution for accumulation of losses. This is triggered when there are losses that accumulate and reduce net equity of the company below 50% of the subscribed capital. The term to enervate this grounds is of 18 months following the occurrence of it.</p>



Branch office of foreign company	Simplified stock company (SAS)
<b>Profits</b>	
This follows the same treatment of commercial companies. In other words, the profits must be approved by the head office.	Unless a different majority is established in the bylaws of the company, this decision is adopted by the favorable vote of a number of shareholders representing at least one half plus one share of total shares present at the meeting of shareholders. A SAS is not required to distribute any minimum amount as profits or earnings.
<b>Inspection, surveillance and control</b>	
All commercial companies are subject to inspection and, eventually, to surveillance and control exerted by the Office of the Superintendent of Companies, except for such capacity has been transferred to another Office of a Superintendent.	Those companies which have assets at December 31 of the prior year (adjustment for inflation included) that are worth 30,000 minimum monthly wages or more (which is approximately 23,437,260,000 COP or 7839 USD at an FX rate of 2990). Also, those companies which realize revenues at the same date that are worth more than 30,000 minimum monthly wages (adjustment for inflation included) must also appoint an external statutory auditor. Also those companies which meet any of the conditions established at subparts 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 must appoint an external statutory auditor.
	Branch offices of foreign companies are always subject to inspection by the Office of the Superintendent of Companies. And they can become subjected to surveillance and control event meet any of the conditions set by Decree 2300 of 2008.

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Branch offices of foreign companies are always subject to inspection by the Office of the Superintendent of Companies. And they can become subjected to surveillance and control event meet any of the conditions set by Decree 2300 of 2008.



### 3. . Incorporation procedure

Taking into account that the investment vehicles that foreigners use the most are the SAS and branch offices of foreign companies, we will only review the incorporation procedure of these two vehicles.

#### *a) Documents required to incorporate a SAS or to register a branch office of a foreign company in Colombia*

- Certificate of good standing and signatory authority of each one of the shareholders or members (in case they are legal persons).
- Copy of the ID documents of each one of the shareholders or members (in case there natural persons).
- Articles of incorporation and articles of Association (or bylaws) of the new company.
- As the case may be, powers of attorney granted by each one of the shareholders or members.



*b) Documents for branches of foreign companies*

- Certificate of good standing signature authority of the head office.
- Complete articles of incorporation and articles of Association (or bylaws) of the head office.
- Resolution deciding the registration of the branch office [in Colombia], issued by the competent corporate organ of the head office. This resolution must indicate the items set out in article 472 of the Colombian Code of Commerce.
- Powers of attorney, as the case may be, granted by the head office.

Requirements for legalization of documents issued or executed abroad:

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



#### 4. Steps to incorporate a SAS or a branch office of a foreign company in Colombia

	Activities	Business days
1	<p>Signing the document of incorporation including the bylaws of the new company, and appointments of statutory representatives and external statutory auditor (as the case may be).</p> <p>Notarization of signatures on documents of incorporation or acknowledgment of content before notary.</p> <p>In the case of a branch office of a foreign company a public deed must be executed. This may take about 4 days.</p>	1
2	<p>Preliminary procedure for issuance of tax ID number and unified tax registration certificate (RUT) before national tax authority. Among other requirements, the following is necessary:</p> <p>To indicate the address of the domicile of the new company or of the branch office.</p> <p>To indicate the economic activities or lines of business. No more than 4.</p>	1
3	<p>To register the new company or branch office with the Chamber of Commerce.</p> <p>Expenses:</p> <p>The registration tax will be computed at a rate ranging between 0.7% and 1% of the subscribed capital of the SAS or of the assigned capital of the branch office, depending upon the city of the domicile. For example, in Bogotá Colombia the authority charges 0.7%; in Barranquilla, they charge 1%.</p> <p>Registration rights and commercial registration rights (computed according to a table of values set by the Chambers of commerce).</p> <p>Both the registration rights and commercial registration rights and 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 by debit or credit card.</p>	4



	Activities	Business days
4	<p>Final registration and 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:</p> <p>To indicate the address of the domicile of the new company [or of the branch office].</p>	1
5	Updating the commercial registration to include the NIT.	1
6	Transferring corporate capital. Preparing FX form no. 4	1

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

### 1. Functioning

In a general way, commercial companies do not require any permit from any public authority to be able to function or operate. By way of exception, commercial companies devoted to financing, stock exchange or insurance activities required a prior permit to operate from administrative authorities. This requirement also applies to any company which activity relates to the management, use an investment of resources or funds collected from the public.

### 2. Bylaws amendments

As a general rule, bylaws amendments to not require any permit 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 publicity and convening or call of the shareholders or members and of the creditors of the companies involved in the transaction are subject to verification. Capital reductions with cash reimbursement of contributions requires an authorization also – among other types of bylaws amendments.



### 3. Right to withdraw from company

The right to withdraw is the ability that a shareholder or member has to withdraw from the company, with the ensuing reimbursement of the contributed capital. This right arises where 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 interest of the shareholder or member to continue being associated with the company. Company transformations, mergers or spinoffs are the events where shareholders or members may exercise the right to withdraw from the company.

## **Parent companies and subsidiaries. Corporate groups**

A company is a subsidiary or a control entity where its decision making power is subject to the will or the decision of another legal person which is called the parent company (or to the will or decision of several other legal or natural persons). This control may be economic, political or commercial.

Mainly, control may be exerted by a majority shareholding position in respect of 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 entity.

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 capital shareholding existing.
- 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 take over control.
- 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 unified purpose and unified direction where all the entities are pursuing a common objective or goal determined by the parent company or 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.
- vi. If there is a situation of control or the existence of a corporate group, that situation or the corporate group must be registered with the Chamber of Commerce to make this circumstance known to any third parties who may enter into contracts with the corporate group entities; also, this circumstance triggers the obligation for the parent company to consolidate the financial statements [of the group].

## 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 know about the resources controlled, the obligations that required 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 as of 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 that are prepared at the close of a determined reporting period to be disseminated amongst 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 upon financial statements prepared in accordance with generally accepted accounting principles. They are distributed pro rata to the paid up portion of the par value of all shares or equity interests held by every shareholder of member – except where the articles of incorporation or the bylaws have provided otherwise validly.

If there are any stipulations that deprive any shareholder or member of its right to receive a share in 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 surveillance by some Superintendence in Colombia – to a certain degree. This circumstance will be determined based upon the specific activity that is the line of business of the respective company.

The various degrees of surveillance are the following:

- i. Inspection: The Office of the Superintendent may request, verify and analyze occasionally any information that it requires to see about the legal, economic, accounting, and administrative situation of the corresponding company.
- ii. Vigilance (or surveillance): The Office of the Superintendent may verify permanently that the incorporation and operations of the company are in conformity with the law and the bylaws.

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

- ii. Control: The Office of the Superintendent may remedy a critical situation, whether legal, accounting, economic or administrative.

As a general rule, commercial companies are subject to inspection, surveillance and control by the office of the superintendent of companies. By exception, these competences of surveillance may be assigned to other agencies such as the Office of the Superintendent of Finance of Colombia, the Office of the Superintendent of Public Utilities, the Office of the Superintendent of Health, the Office of the Superintendent of Ports and Transportation, and the Office of the Superintendent of Vigilance and Private Security, among others.



## Capital Reductions

Under article 145 of the code of commerce, a company or a branch office may carry out in amendment of the bylaws that consists of reducing the corporate capital with a reimbursement in cash of contributions. This must be done on the prior approval by the Office of the Superintendent 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. That the corporate creditors accept expressly and in writing the reduction of the capital, whatever the amount of corporate assets.

The Basic Circular Letter of the office of the superintendent 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 sole proprietorships that are not subject to surveillance of control by that agency nor to surveillance of control by any other Superintendence, unless they are in any of the following situations:

- a. Where, notwithstanding compliance with any of the conditions set by article 145 of the code of commerce, the financial situation of the respective entity shows one or more delinquent and overdue obligations, where noncompliance as extended for more than 90 days, and where they represent in total 10% or more of external liabilities.
- b. Where the total value of the contributions to be reimbursed Represents 50% or more of the total asset value.
- c. Where it is a case of legal persons involved in a control situation, either as controlling entities or as subsidiaries and in respect of one or more different legal persons that are subject to control or surveillance of the office of the superintendent of companies or of any other superintendence.
- d. Where it is a case of companies with liabilities that derive from the issuance of bonds.
- e. Where it is a case of companies, branches of foreign companies or sole proprietorships that have pension liabilities.



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.

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 Office of the Superintendent of Companies.

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

## **Liquidation**

Where a company rep branch office of the foreign company liquidates on the decision of the shareholders or members or of the head office (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 head office (as the case may be) adopt the decision of dissolving the company with the branch office and appointing liquidators. Once dissolution is approved by the top corporate body, the legal capacity of the company narrows down to those 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**

Notices and inventory – In this stage, the liquidator carries out those 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 head office. To this end, the liquidator must do the following. (i) Give notice to the national tax authority – DIAN. (ii) Make the liquidation process public, by publishing a notice in a widely circulated daily newspaper of 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 dissolution. At this point, it is worth noting the following. Stock companies



and branch offices of foreign companies that are subject to surveillance of control of the office of the superintendent 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.

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 I 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 manner in which any remaining assets will be distributed between the shareholders or remitted back to the head office should there be any remainder, and how the legal personality or legal existence of the company or branch office will extinguish.

# 8.

## Legal Compliance

- Under the law, commercial companies and other legal entities are required to meet 5 periodical obligations.

1. To renew commercial registration (or mercantile registration). Reuniones ordinarias
2. To hold annual meetings. Reporte de estados financieros.
3. To submit financial statements to the Chamber of Commerce of the main domicile. En Colombia existen algunas obligaciones especiales que se deben cumplir ante los entes de vigilancia y control.
4. To file a report on the financial statements.
5. To appoint an external statutory auditor.

There are in Colombia certain special obligations that must be met before certain surveillance and control agencies.

1. To review the state of risks LA/FT
2. Transparency and business ethics programs and international corruption prevention mechanisms.
3. Personal data protection.



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



### 1. Compliance with periodical obligations

#### Renewing Mercantile Registration

<b>Obligation</b>	Before March 31 every year, every registered business must renew its mercantile registration and that of its commercial establishment.
<b>Who must do this:</b>	Every commercial company and branch offices of foreign companies.
<b>Value:</b>	The value payable for renewal of the mercantile registration is made depending upon the assets reported in the financial statements as of December 31 of the preceding year.
<b>Time limit for compliance:</b>	Within the 3 first months of the year, on or before March 31.
<b>Penalty:</b>	Fines of up to 17 minimum monthly legal wages.



Annual meetings	
<b>Obligation</b>	Shareholders meetings or meetings of boards of members (per type of company) must take place at least once a year; Boards of Directors must also meet at least once a year.
<b>Who must do this:</b>	Every commercial company.
<b>Value:</b>	Not applicable.
<b>Time limit for compliance:</b>	On the dates set in the bylaws. If these are silent, within the 3 months following the close of every reporting period.
<b>Penalty:</b>	Penalties or fines of up to 200 minimum monthly wages.

Filing of financial statements with the Chamber of Commerce of the principal domicile	
<b>Obligation</b>	Within 1 month following the date of approval, companies must file a copy of their general purpose financial statements (with accompanying notes and opinion of the auditor) with the Chamber of Commerce of the corporate domicile.
<b>Who must do this:</b>	Every commercial company, except where the company is required to file the financial statements with the office of the superintendent of companies.
<b>Value:</b>	Value: 19,300 COP (8 USD approximately)
<b>Time limit for compliance:</b>	Within 1 month following the date of approval by the top corporate body.
<b>Penalty:</b>	Penalties or fines of up to 200 minimum monthly wages.

## Report on the financial statements



<b>Obligation</b>	Any company subject to surveillance and control by the Office of the Superintendent of Companies must report financial statements for the close of the fiscal year, stated as of December 31, 2017, certified and with the opinion of the statutory auditor. This obligation applies every year, without a specific requests issued by the entity being needed.
<b>Who must do this:</b>	Every commercial company and branch offices of foreign companies that are subject to surveillance and control by the office of the superintendent of companies.
<b>Value:</b>	The agency charges nothing for this report on the financial statements.
<b>Time limit for compliance:</b>	On or before the deadline set and published by the agency, depending on the two last digits of the NIT of each company.
<b>Penalty:</b>	Penalties or fines of up to 200 minimum monthly wages.

## Report on the financial statements

<b>Obligation</b>	For certain companies appointing a statutory auditor is mandatory, either at company inception or at the time they become required to do so.
<b>Who must do this:</b>	Branch offices of foreign companies must always do it.
<b>Value:</b>	Corporations must always do it.
<b>Time limit for compliance:</b>	Companies where a number of shareholders or members that represent at least 20% of corporate capital request that a statutory auditor be appointed. In this case, the request in shareholders or members must be shareholders or members who do not participate in company management as provided for in the law.
<b>Penalty:</b>	Commercial companies with assets worth 5000 minimum monthly wages or more at December 31 of the prior year.
<b>Who must do this:</b>	Commercial companies with revenues worth 3000 minimum monthly wages or more at December 31 of the prior years.
<b>Value:</b>	To register the appointment with the Chamber of Commerce, this entity charges a predefined registration fee and the registration tax set by law.
<b>Time limit for compliance:</b>	Once the company becomes obligated as indicated above.
<b>Penalty:</b>	<ol style="list-style-type: none"> <li>1. Penalties or fines of up to 200 minimum monthly wages.</li> <li>2. 1 UVT (tax value unit) for each day of delay in updating the unified tax register (RUT), counted from the month following the date on which the obligation arose for the company.</li> </ol>



## 2. Special obligations before surveillance and control agencies

Under the law, companies must comply with certain obligations listed below provided that they meet the conditions that trigger these obligations:

LA/FT Risk Prevention	
<b>Obligation</b>	The company must adopt a system for the control and management of the risk of laundering of assets (LA) and financing of terrorism (FT).
<b>Description:</b>	In this manner, for a better performance of the system for control of the risk of laundering of assets and financing of terrorism the company must appoint a local compliance officer that can carry out the duties stipulated by current laws and regulations.
<b>Observations:</b>	If the surveiled entity recorded gross revenues or total assets for an amount exceeding 160,000 minimum monthly wages, 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.
<b>Penalty:</b>	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 a LA/FT risk prevention system based on different criteria.
	Penalties or fines of up to 200 minimum monthly wages.



Transparency and business ethics programs and international corruption prevention mechanisms	
<b>Obligation</b>	As a new obligation, companies must implement international corruption prevention programs that meet criteria established by the Office of the Superintendent of Companies. This relates to corruption acts which any of these companies could eventually commit.  Appointment of the compliance officer.
<b>Description:</b>	Description: Any companies subject to surveillance by the Office of the Superintendent of Companies which have carried out regularly international business transactions of any type with foreign persons – whether natural or legal persons –, provided that any of the following situations occurs: <ol style="list-style-type: none"><li>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).</li><li>2. International transactions in specified economic sectors where any of the three conditions defined by the Office of the Superintendent of Companies is met (gross revenue, total assets, or number of personnel), depending on the economy sector:<ul style="list-style-type: none"><li>• Pharmaceutical</li><li>• Infrastructure and construction</li><li>• Manufacturing</li><li>• Power and mining</li><li>• Information technologies and telecommunications</li></ul></li></ol>
<b>Observations:</b>	The time limit for compliance with this obligation is as fixed by the relevant agency. Those companies who met the conditions as of December 31, 2015 have until December 31, 2017 to implement the system.
<b>Penalty:</b>	Penalties or fines of up to 200 minimum monthly wages.



## Personal data protection

### Obligation

The company carries out any activities that make it responsible for the treatment of personal data it must implement the following mechanisms:

### Description:

Privacy notice.  
Procedure to obtain authorization of the data owner before starting any data treatment. Tools that guarantee adequate safety conditions to avoid adulteration, loss, [unauthorized] querying, fraudulent use of or access to the information.

Technological measures to protect personal in sensible data. Internal policy and procedure manual to comply with data protection laws. Prepare policies for the treatment of data and provide into the national database register managed by the Office of the Superintendent of Industry and Commerce.

### Observations:

Only the entities noted below 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). These must be commercial companies and not-for-profit entities that are responsible for the treatment of personal data. Any data bases that are created after the above deadlines must be registered within two months following the date of their creation.

### Penalty:

- 1) Fines for natural or legal persons of up to 2000 minimum monthly wages.
- 2) Suspension of the activities that relate to the data treatment for up to 6 months.
- 3) Suspension of the operations that relate to the treatment of personal data.
- 4) Immediate and final closure of the operation involving the treatment of personal data.



# 9.

## Resolution of Conflicts

- Colombian law establishes different conflict resolution mechanisms for conflict between private citizens and the state and that operate in accordance with the Constitution and the law.
- Reconciliation and arbitration have been amply developed in Colombia by our laws. Because of this, more and more persons every day resort to these mechanisms to settle and resolve their conflicts in a quick and reliable manner by using them.
- 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. They can be named peace justices/judges, reconciliation agents or arbiters, transitorily, so that they can hand down decisions based on to equity or on the law, in accordance with the guidelines and the restrictions that specific law sets for each specific case.

## Regular Courts of Law

Regular courts of law are in charge of settling conflicts between private parties in respect of civil, commercial, labor, agricultural, criminal and family matters.

Regular courts of law is made up of all-inclusive competency judges, municipal judges, circuit Judges, Higher Tribunals and the Supreme Court of Justice – the highest court of law for this universe of courts of law.

For these courts of law, the rules of procedure are framed under Law 1564 of 2012, the so-called General Rules of Procedure. These rules are provided for civil, commercial, agricultural and family matters. And also under Legislative-Decree 2158 of 1948, the so-called Labor and Social Security Procedural Code. And also under Law 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 owned agencies or entities. This system of courts this made of administrative circuit judges, 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 by Law 1437 of 2011, the so-called Code of Administrative Procedure and of Contentious Administrative Matters.

## Alternate Conflict Resolution Mechanisms

Because of high judicial congestion in Colombia, settling a case before the regular and the contentious administrative courts of law may take several years – or many years. For this circumstance, article 116 of the Constitution provides for the possibility that private parties may be invested with the power to administer justice transitorily acting as reconciliation agents and arbiters.

Reconciliation and arbitration in Colombia are already amply developed. Thus more and more people in persons are resorting to these mechanisms in an attempt to settle their controversies in a quick and reliable manner.

### Reconciliation

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

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

This alternate conflict resolution method is being used more and more in Colombia. Today there are 364 active centers of reconciliation, and 95,000 reconciliation applications or requests were filed with these centers. (1)

<sup>1</sup> Information taken from <https://conciliacion.gov.co/portal/Estadistica/Estadisticas 2015>



## Arbitration

Arbitration is an alternate conflict resolution mechanism, by which the parties referred to arbiters a controversy for the arbiters to settle the controversy. This 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.

### *a) National arbitration*

National arbitration will be ad hoc if the arbiters managing carry out arbitration directly. Or it will be institutional arbitration, if managed by a center of arbitration. Absent an agreement of the parties in respect of the nature of arbitration, the arbitration will be institutional.

Where the controversy is about contracts entered into with a public or state entity or with a private entity that carries out public administrative functions, then the proceedings will be regulated by the rules set by Law 1563 of 2012 – in the case of institutional arbitration.

### *b) International arbitration*

Se entiende que el arbitraje es internacional cuando: (i) las partes tengan domicilios en diferentes estados; (ii) el lugar para cumplir con las obligaciones que son el tema de la disputa, o el lugar [para solventar] la disputa, está fuera del país en el que las partes tienen sus domicilios; y (iii) donde la disputa que es sometida a un arbitraje tiene un efecto en los intereses de comercio internacional.

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.

### *c) Investment arbitration*

DSince August 14, 1997, Colombia is a member of the International Center for the Settlement of Investment Related Conflicts – CIADI for the Spanish initials –, which was created to provide solutions to problems that stem from [dealings with] foreign governments and investors.

<sup>3</sup> Artículo 1º Ley 1563 de 2012.

# 10.

## State Contract Making

- The state contract is any contract that any party (natural or legal persons) enters into with the state, to provide a service or sell a piece of property.
- The types of state contracts are the following: works contract, consulting contract, service contract, concession contract, trust agreements and public trust contracts.
- Any natural and legal persons, whether national or foreign, which are legally capable under current law 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 Contracting Statute recognizes these figures which are normally and internationally known as public-private partnerships and joint ventures.



There is in Colombia a General Contract Making Statute for the Public Administration and some related laws and regulations. This body of law sets the guidelines for public contract making. In case any specific needed rule is missing and not found in this Statute, the general rules of the law contained in the Colombian Civil Code and the Colombian Commercial Code will apply.

State contract making is privileged contract making, where its privileged position derive from the state purposes and ends that it pursues. These ends and purposes comprise an obligation for both the respective state agencies and the private parties that enter into contract with the state. This is to the extent that the latter are always acting in their condition of collaborators of public administration.

## **State Contracts**

The State Contract Making Statute establishes which contracts must follow the rules set in this statute. Under the law, and for the sake of contract security, all state contracts must be set down 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 State Contract Making Statute.



## Parties to State Contracts

All natural and legal persons, whether national or foreign, which are legally capable under current law may enter into contract with state entities and agencies. This means any persons which are not disqualified or rendered incompatible for state contract making purposes under the law.

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

## Ways of selecting a contractor

As a general rule, a contractor must be selected through a public bidding process. The law has provided for cases however where the administration makes contract by more abbreviated procedures but which are still equally transparent, equitable and objective. This is a case of the merits contest, abbreviated selection and direct contract making.

These powers are entirely regulated by the law. The law has established the reasons why carrying out the selection of a contractor through 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 state contracting party.

### Methods for selecting contractors:

#### 1. Public Bidding

Public bidding is a regulated procedure through which the administration makes a public invitation to parties that are potentially interested in entering into contract with the administration. It invites them so that they can submit their proposals; and then it chooses the most favorable for the purposes sought by the contracting procedure, in observance of certain guidelines established by the public entity that opened the bid.

#### 2. Abbreviated Selection

This way of contract making has been provided for those cases where a simplified objective selection process may be carried out. This is so because of the characteristics of the subject matter, the circumstances surrounding the contract making procedure, or the destination of that these of property, works or service. The above will not be carried out in a simplified manner (Law 1150 of 2007, Article 2 (2)).



An abbreviated selection procedure is carried out because of the nature of the subject matter to be contracted, the underlined contract value, the administration sector which requires the contract, or because of the fact that a bidding process turned out a failure.

### 3. Merits-based contest

This is a way of selecting contractors where the intellectual is considered to be more important than the material. A modality that pertains to selections in prequalified contests and open contests applies here. The integration of work teams, experience, and, in certain cases, the development of methodologies, will be primordial evaluation factors – where the economic requirement will just be a qualifying requirement for a person to participate in the selection procedure. This is so because what an entity ceases to secure the best talent, experience and capacity in a contractor, over and above considerations on the price offered (Law 1150 of 2007, article 2 (3)).

### 4. Direct Contract Making

Direct contract making is an exceptional selection procedure. Under this procedure, public entities, and certain cases specifically provided for in the law, may enter into contracts without needing to carry out any contest based selection procedure. Here, a contract is made by a simplified, abbreviated, and quick procedure that follows objective criteria and public interest criteria so that the offer which is more convenient for the interests of the administration is selected.

State entities must publish the entire information that pertains to the different selection procedures that they carry out. In this way, the public at large may know about these procedures and may – eventually – put forth observations or even put forth a proposal as participants.

In those cases where the entity does not have the necessary technological resources to make these publications in its own webpage, the publication will be posted on the online public contracting system (SECOP for the Spanish initials).

SECOP is a tool that public entities have to publish all contractual proceedings and procedures that are under way and managed by them. For these easily accessible online portal, easy to be queried by an interested party, any interested party may obtain information about any selection procedures that are being carried out by the various state entities.

In this manner, SECOP guarantees and promotes the principles of transparency and efficiency by using technology that is applied for



publication of contracts made by the state for the purchase of goods and services by the administration. This is for the benefit of business people, possible proponents (national and foreign) and state entities.

## **Unified Proponents Register (RUP for the Spanish initials)**

This is a register created by law. By delegation, it is operated by chambers of commerce throughout the country. It was created so that all natural or legal persons, national or foreign, seek to enter into contracts with state agencies for the making of civil works, the provision of goods or property for the provision of services, save for any specific exceptions set by the law.

The purpose of this register is to provide the necessary information about any contractor that is registered in it in point of its experience, legal capacity, organization capacity and financial capacity; and, with this information, anyone can verify if this contractor meets the requisite qualifications. This is done by the grading in classification that each interested party does 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 the register.

These are the benefits for any person to be registered in the Unified Proponents Register:

1. To provide 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. To obtain the RUP certificate which operates as full evidence of information contained in it, provided that the registration is valid and current.

## **Public-Private Associations (PPA)**

These are of instruments for raising private capital. Ultimately, they materialize by way of a contract between a state entity and a private person, made to provide public property and services in productive infrastructure sectors (roads, ports, airports, railroads) and social infrastructure (schools, universities and colleges, hospitals, public buildings, etc.).



## Public Utilities and Services

Colombia is a social law of the land. Hence the provision of public services and utilities is an inherent purpose of this date. The state may provide public utilities directly or indirectly; through organize communities or through private citizens; but, in every case, the state will retain surveillance, control and regulation of said services, and will ensure that the provision of them to all the inhabitants is efficient.

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

For the above, the Colombian state has chosen to use the so-called "public utility concession contract" as the most useful means to ensure the efficient provision of public utilities. It is mostly used by the Colombian state, by means of the contract or license for which the state provides a person call the concessionaire the right to provide, operate, exploit, organize and manage, totally or partially, a certain public utility or public service, and by which the following is defined. The total term during which the service will be provided; the geographical territory in which it will be provided; the regulations on service rates and fees and on the operating conditions; and regulations on the utilization of state or private property for the provision of the public utilities.

Likewise, Law 1508 of 2012 established the rules for Public Private Associations as an instrument for the raising of private capital which enables the state/the parties to provide, operate and maintain public services infrastructures. The contract is using this type of contract more and more every day, given the benefits that it can obtain in point of technology and innovation, risk spreading, infrastructure development, among others.

### 1. Residential Public Utilities

Law 142 of 19 any for established the rules that apply to residential public utilities. These include water, sewage, cleaning and garbage collection, electric power, distribution of fuel gas, basic telephone services and local mobile telephone services in rural areas.

Any person who purports to provide residential public utilities must incorporate a special-purpose company that will be regulated by the rules that apply to corporations (stock companies or sociedades anónimas), and must abide by special rules contained in the law.



National investors for foreign investors make contributions into these companies. They will be regulated by the Office of the Superintendent of Public Utilities, and her name must contain the special Spanish acronym E. S. P. after the common acronym S. A.

To operate, public utility companies must obtain, as the case may be, the requisite permits and licenses for operation according to the type of activities that they carry out. They will obtain these permits or licenses from the pertinent competent authorities.

## **2. Direct Provision of Services**

This happens where the state retains by contracted private company to operate directly the entirety or a part of the project. This modalities used for projects involving the supply of water, TV services, cellular phone 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. In doing so they acquire part of the shares or important assets of the company.



## **Privatizations (sale of state-owned shareholdings)**

Under Law 226 of 1995, there is a procedure by which private persons are given the possibility of acquiring the total or a portion of state-owned shareholdings in a public company. Several moments occur in these processes: the making of the decision to sell the shareholdings; offers by interested parties; the award of the sale/purchase contract; the making and the perfecting and consummation of the contract; all of these are stages where there is a visible public interest of Colombian authorities to protect public property or interests.

Hence we find a constitutional and legal framework where the participation of private persons is developed consistently by the law and consistently applied by the national government. And this is done under an economic model that calls for the entry of private capital, both national and foreign, under surveillance and control of state agencies.



## **Regulations on the Exploration for and Production of Oil in Colombia**

A new era was ushered by the reorganization of the Colombian state oil company, called Ecopetrol (formerly Empresa Colombiana de Petróleos - ECOPETROL S.A.) and by the creation of the National Hydrocarbons Agency – ANH for the Spanish initials – as the entity in charge of managing the oil resources of the country. This started a new era for the development of the hydrocarbons sector in Colombia as it started A new contract making system for the exploration for and production of hydrocarbons.

Under the new system, the investors and Ecopetrol compete under the same conditions and the former Association contracts are no longer required.

The new [exploration and production] contract has the following characteristics:

- a. It is a state contract governed by special rules, which is not subject to the contract making rules of Law 80 of 1993.
- b. The contract must be negotiated with and approved by ANH.
- c. The contractor assumes 100% of the work programs, the assets, the costs and the risks.
- d. The contractor has full autonomy and operating responsibility.
- e. The contractor is entitled to the whole production after deduction for applicable royalties which must be paid to ANH.

ANH manages the resources of the nation, follow-ups on the contracts and manages the royalties received thereunder.

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

# *Estatuto Tributario PwC 2018*



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