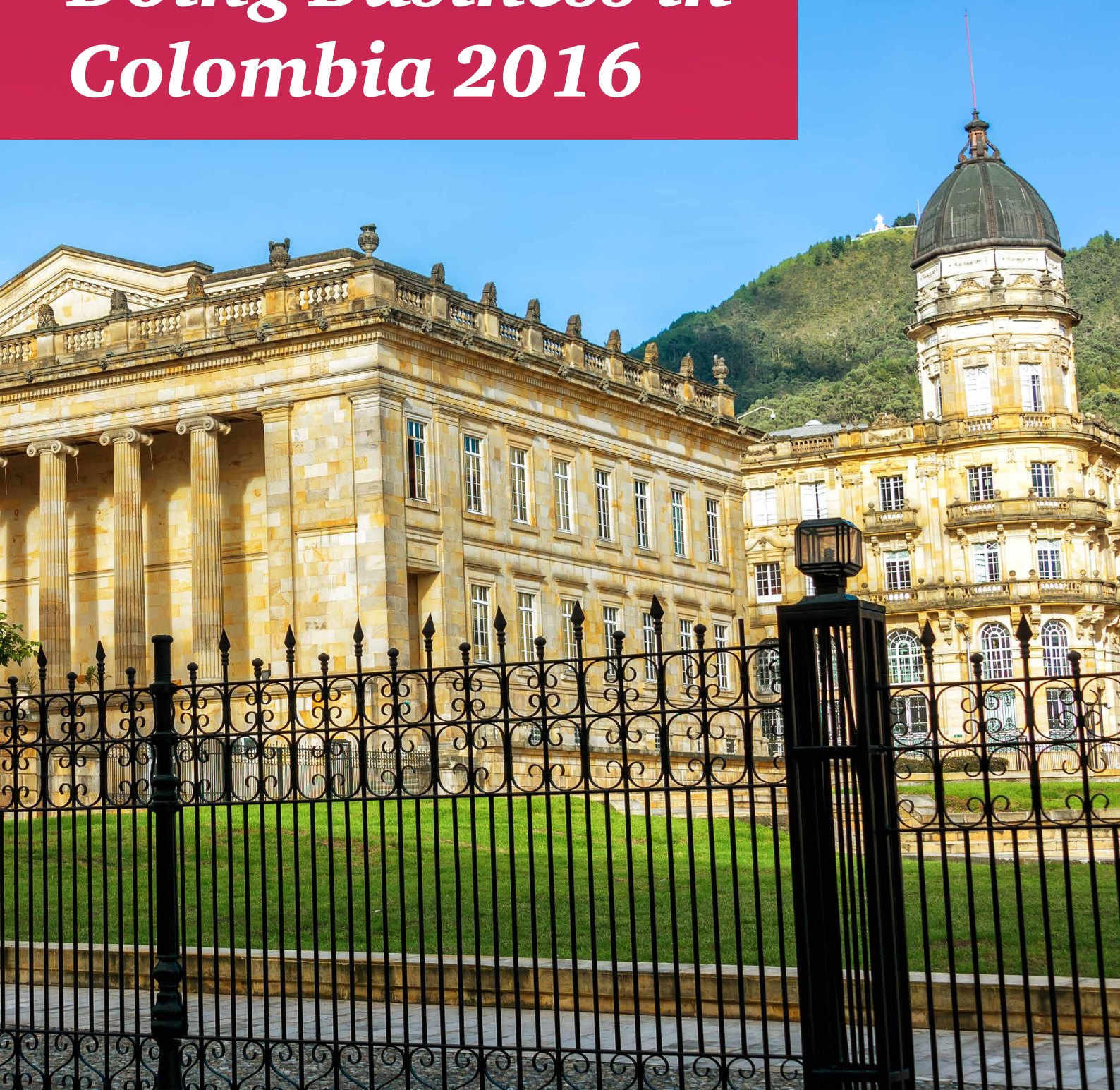


# *Doing Business in Colombia 2016*



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*The main purpose of this document is to inform the reader in a summarized way about the most relevant legal and tax matters that relate to foreign investment in Colombia. We hope this summary is useful for those interested in doing business in Colombia. The contents of this document were updated in April 2016 and the same are based upon the information available at the time.*

*It is worth noting that all the information stated in US dollars has been translated into that currency at a rate of 3,000 COP to the dollar, and that the current minimum legal monthly wage in Colombia is 689,455 COP. The SMMLV is adjusted every year, and the foreign exchange rate varies every single day depending upon market demand and supply.*

*Finally, we ought to make the point clear that this document is not or does not involve any type of professional advice whatever. Should any person intend to act based upon the information included herein, that person will have to seek help from a professional expert which is a specialist in the relevant matters with the person's own particular situation. Therefore, PricewaterhouseCoopers shall no assume any type of responsibility whatever for any decisions adopted by any person solely relying on the information contained herein, without consulting with an expert professional which is a specialist in the relevant matters.*

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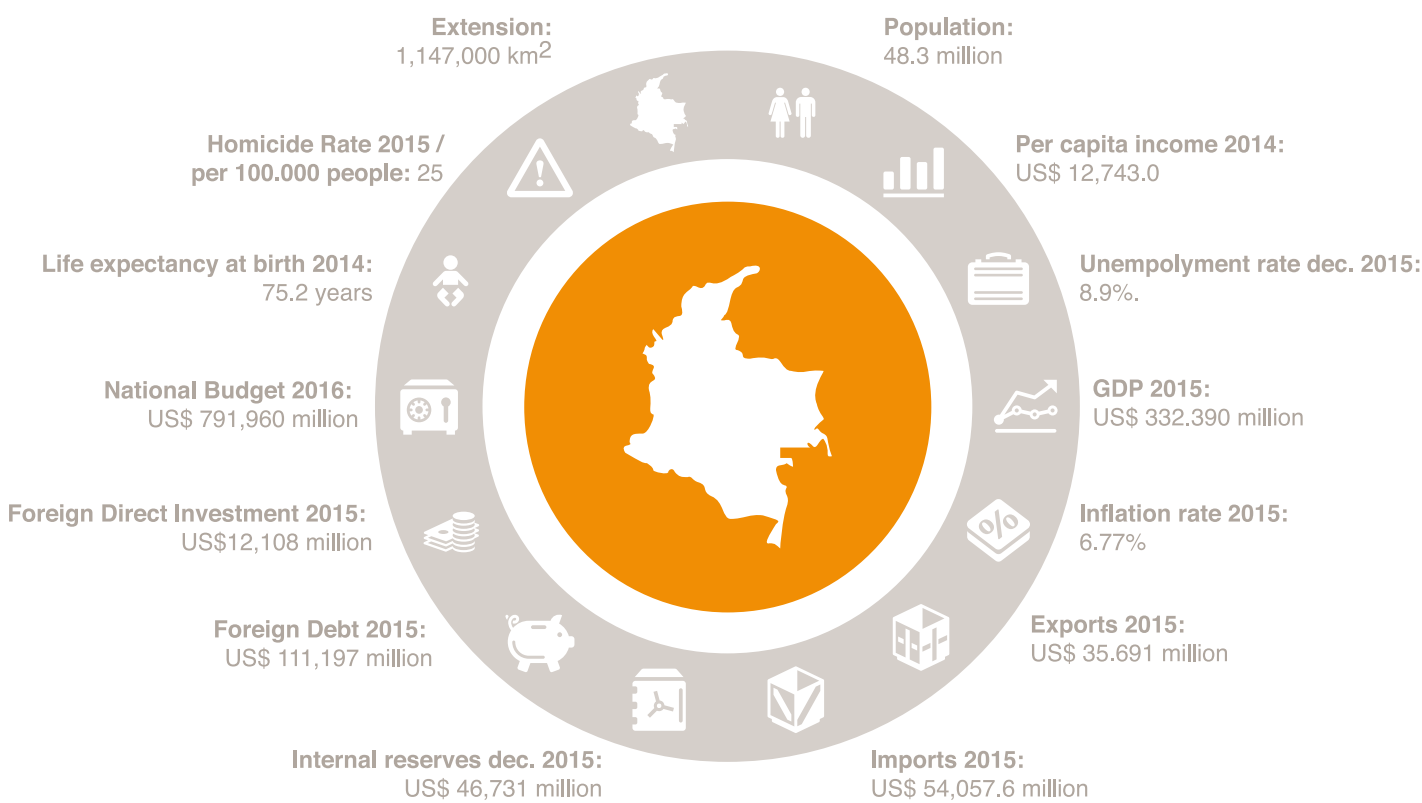


# ***Colombia General Facts***



A. Colombia in numbers

Figure 1 Colombia in numbers



## ***B. Why invest in Colombia?***

Colombia has one of the most outstanding macroeconomic performances within the region. The stability and continuity of government policies and independence of its economic bodies guarantees an ideal environment for investing.

Additionally, and not less relevant, the country is strategically located with access to the Atlantic and Pacific oceans.

It has growth rates that exceed the region's average, which in turn allows for accelerated growth of the middle class.

Several international bodies such as Standard & Poor's, Moody's & Fitch and the World Bank, identify Colombia as a trustworthy partner.

Colombia has different international commercial agreements that allow preferential access to more than 45 countries and approximately 1,500 million consumers around the world.

Qualified labor in the country exceeds that of countries such as Brazil, Chile, Peru, Argentina and Venezuela, according to the IMD ranking for 2014.

Colombia's Legal Framework is a reference for the region since it facilitates business development, promotes foreign investment and guarantees stability for investors.

The Government has established a clear road map in its National Development Plan to tackle the main economic and social needs of the country.

### ***Strategic Location***

Colombia is a country with a strategic geographic location. Its ports, both in the Caribbean and the Pacific Oceans, allow for the best position in South America as a dispatch center for Central America, North America and Europe. It has land borders with Venezuela, Peru, Ecuador, Brazil and Panama.

With 1,147,000 square kilometers of land and 930,000 kilometers of maritime areas, it is fourth in size in the subcontinent. Its population reaches 48,3 million making it the 24th most populated country in the world and the third among Spanish-speaking nations, after Spain and Mexico.

The rich Colombian topography that spans three mountain ranges is conformed of 70% plains and 30% mountainous areas, offering a variety of ecosystems and climates. The altitude variations and its location in the tropics result in temperature variations throughout the year depending on the altitude.

The country is made up of five areas, characterized by their culture, art, folklore, gastronomy and music. Each region is unique; however, the country has a sole national identity and territorial integration through land, river and air routes.



Below is a brief description of the regions:

**Andean Region:**

Located in the center of the country, agriculturally, industrially and service oriented, accounting for the largest percentage of GDP. Its main cities include Bogota and Medellin, as well as several intermediate cities such as Pereira, Manizales, Tunja, Neiva and Ibagué.

**Caribbean Region:**

Located in the northern part of the country and made up of seven departments. Barranquilla, Santa Marta and Cartagena have important maritime ports of national and international relevance. Coal production, extensive cattle farming and tourism are some of its main sources of wealth.

**Pacific Region:**

Located in the western part of the country. Its main city is Cali and it is the most important development and business center of the region. The Buenaventura and Tumaco ports are the point of departure for goods to the Pacific. The region's main production structure is mainly supported by agriculture and agro-industry, natural forests and artisanal mining.

**Eastern Region:**

Bucaramanga and Cucuta are some of its main sources of development. Its economic structure is based on small and medium enterprises and border commerce with Venezuela. Oil and mining production are also of significant importance.

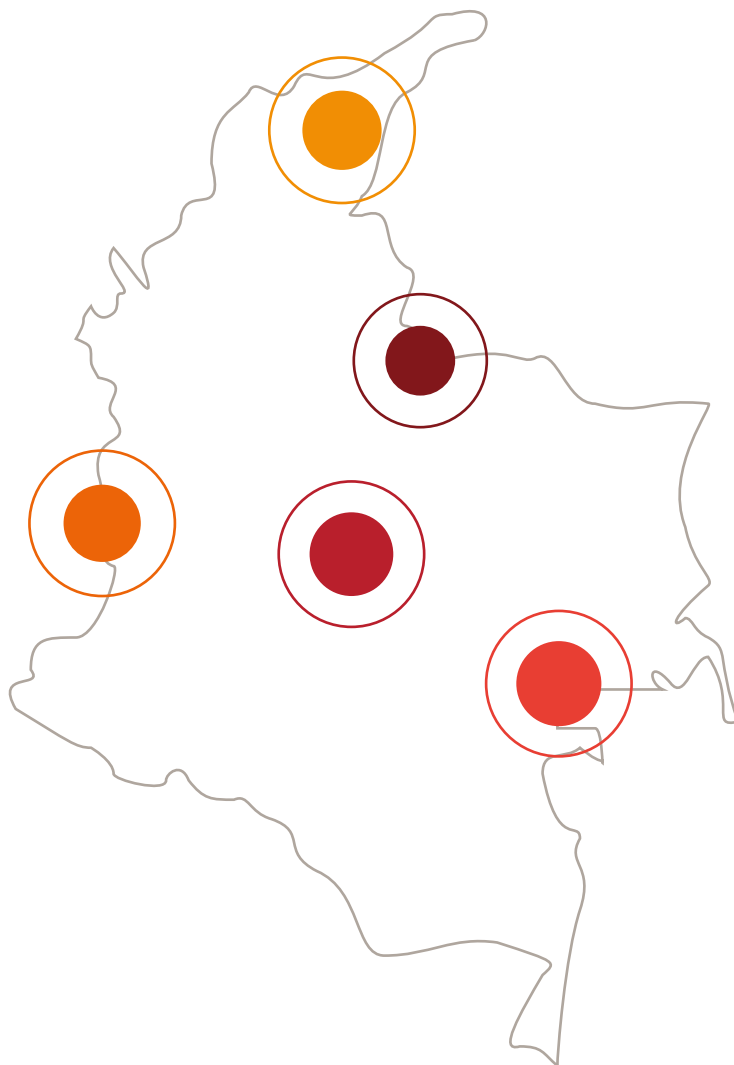
**South-Eastern or Eastern Plains Region:**

This area has become the main oil production center of the country, especially in the Meta, Arauca and Casanare Departments, accounting for 75% of crude oil production in the country. Its plains and savannas provide for important complementary cattle farming activities.

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**Figure 2 Colombian Regions**

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*Colombia has experienced a profound transformation during the past decades. It has transformed from a predominantly rural economy with low density and small provinces, into a diversified economy with urban centers populated by almost 70% of the population, including ten cities with more than 500,000 inhabitants. Bogota, its administrative and political capital, located in the center of the country, is home to more than 9 million people and contributes approximately 30% of the GDP.*

*However, this vibrant economic development is not only witnessed at the district capital. This dynamic is followed by other very important urban centers such as Medellin, Cali, Barranquilla, Bucaramanga, Pereira and Cartagena.*

### **1. Pluralist Democracy**

The country enjoys great political stability. Colombian democracy is considered one of the oldest in Latin America. The last Political Constitution of 1991 defined Colombia as a unified, democratic, participative and pluralist republic.

Colombia has a presidential political regime that elects its president for four-year periods. The country has made significant progress regarding decentralization and democratic opening. The system allows electing governors democratically in 32 departments and more than 1,015 mayors every four years, as well as the Congress of the Republic, which is conformed of 166 house representatives that represent different regions of the country and 102 senators under the national circumscription scheme.

### **2. Structure of the State**

The three branches of government – executive, legislative and judicial – are independent and have their own structure. The central executive branch, comprised of the Presidency, ministries, administrative departments and state industrial and commercial companies, designs and administers government policy through 15 ministries and affiliated and related entities.

The legislative branch is comprised of two chambers: The Senate of the Republic and the Chamber of Representatives, which together have the main duties of passing laws, reforming the Constitution and exercising political control over the government's actions.

Several political parties have seats in the parliament, but the government generally seeks a coalition to guarantee governability; however, there are a significant number of members in the opposition.

The judicial power is composed of the Courts, the Superior Council for the Judiciary, the Attorney General's Office, the Tribunals and the Judges of the Republic. The Armed Forces have their own structure to try their members for crimes committed while on duty.

Additionally, the country has control instruments that supervise the behavior of public officers, the administration of resources and community interests; these are the Attorney General's Office, the Office of the Comptroller and the Ombudsman.

### **3. Independent Central Bank**

The Central Bank is a body of the State of a unique nature, with administrative, capital and technical autonomy that acts as a central bank. Its main objective regarding monetary policy is to preserve the currency's purchasing capacity, in coordination with general economic policy, understood as that which tends to stabilize products and employment at long-term sustainable levels.

This body executes the necessary policy measures to regulate the economy's liquidity and facilitate normal functioning of the payments system, overseeing the stability of the currency's value.

The special functions assigned to the Central Bank include: regulating currency, international exchange and credit; issuing Colombian legal tender, administering international reserves, act as a lender and banker to credit establishments and act as a fiscal agent for the Government. Contributing to the generation of growth and cultural activity of the country are also among its functions.

As of 1991, the Board of Directors of the Central Bank acts independently to guarantee due performance of their functions. The Board is elected for terms of four years, with the possibility to extend said term for an equal period. No government may change more than two of its six non-official members. The general manager is designated by the members of the board, one of which is the Ministry of Finance.

### **4. Development Planning**

The Political Constitution establishes that the democratically elected government must have a social and economic development plan that determines the priorities and programs that will be executed during the corresponding term. The plan must be approved by Congress and is fundamental in determining its funding sources, which must be included in the annual income and expenses budget which must in turn follow the fiscal guidelines that limit public finance imbalance.

The National Planning Department (DNP), created in 1958 and that answers directly to the Presidency of the Republic, is the body responsible for planning and follow-up of the Plan. Additionally, it acts as a technical secretariat to the National Economic and Social Policy Council (CONPES), the highest conciliation authority, together with the Ministry of Finance and Public Credit, to reconcile the sectorial development policies with budgetary availability.

Following presidential mandate, development priorities are established for every four-year period, many of which are inherited from previous administrations. This practice has been current in Colombia since the 1960s and has become a sign of continuity and security for the national and foreign private sectors.

The current government, presided by Juan Manuel Santos Calderón, has an approved plan named "All for a new country". Peace, improvement of education and social equity are the basis for official action for the 2014-2018 period.

### **5. Environmental Protection**

Colombia ranks second in biodiversity in the planet and first at a global level for flora and fauna species per square kilometer. Its ornithological diversity is unique as 20% of known bird species fly through Colombian skies. The country has three biosphere reserves, 54 natural reserve areas and 56 natural parks distributed around its territory.

The Colombian State places great importance in environmental policy directed at achieving sustainable development and a balance between economic and productive growth, regional development and preserving the environment.

Law 99 from 1993 took environmental protection to ministerial level. Said law, modernized the institutional instrument for administration, preservation and protection of natural resources and organized the National Environmental System. The most recent normativity split environmental policy administration to grant permits and licenses to exploit natural resources.



Currently, the bodies charged with granting licenses, surveillance and control are the National Environmental Licenses Agency (ANLA) at the national level, and the Regional Autonomous Corporations (CAR) at the regional level.

Environmental licenses are the main environmental planning resource. They are granted by the state to individuals and other official entities that intend to carry out projects in various sectors, establishing industries or exploiting resources that according to the law may harm natural resources or cause changes to the ecosystem. Its bestowal implies defining environmental plans that define prevention, mitigation, correction and compensations measures for possible negative effects.

In cases where a project affects ethnic minorities, the National Constitution establishes a prior consultation mechanism with these communities, which is led by the Ministry of the Interior with the objective of achieve social conciliation between the State, the investor and the affected community.

## **6. Business and Competitiveness**

The main risk agencies have improved the country's rating. Standard & Poor's and Moody's and Fitch have certified investment grade and as of mid-2014, Moody's improved the country's rating.

This continuous improvement to investment conditions is complemented by a good business environment. According to the Doing Business 2014 report from the World Bank, Colombia is ranks sixth in the world and first in Latin America in protection to investors. Additionally, this ranking places the country third as the "friendliest" destination for doing business in the region.

Colombia rose to the 66th from the 61st position in the World Economic Forum's Competitiveness Ranking (2015), with an outstanding performance in the macroeconomic environment as a result of its stability, although some deficiencies regarding the quality of institutions are reported.

In the macroeconomic realm, Colombia has stable conditions with a manageable fiscal deficit, low levels of public debt and a controlled inflation. The World Economic Forum also highlights Colombia's network of relatively sophisticated financial services in relation to the region.

According to the report, the country has improved in technology, especially in the information and telecommunications area. Although this report highlights improvements in infrastructure it also constitutes the second most troublesome factor for doing business, which opens a great opportunity for foreign investment. The United States ranks third, up from fifth place in 2013. In Latin America, Chile (35) is still the most competitive country in the region, followed by Panama (50), Costa Rica (52) and Mexico (57).

## **7. Social Advancement**

In spite of the generalized wealth inequality in Latin American countries, Colombia has achieved an important increment of the middle class. For 2020, 44% of the population is expected to move to that range, and 60% for 2025. Fifty-five percent of the Colombian population, about 26 million people, is less than 30 years old. According to the IMD ranking, Colombia has the most qualified labor in South America, surpassing countries such as Brazil, Chile, Peru, Argentina and Venezuela, among others.

Since the early 90s, the country began a social transformation process in the area of health, with the purpose of increasing service coverage to reach most of the population. Currently, 100% of Colombians have access to basic health services with an insurance system that coexists with the private sector and public aid.

Public services in Colombia have consolidated during the past two decades as a decisive sector for the country's competitiveness, but at the same time as an indispensable factor for social development as far as basic needs.

## 8. Public Utilities Coverage (% of the population)

Power coverage reaches 96% in interconnected areas with first quality service. Virtually, the entire population has the service.

Domestic natural gas connections amount to 7,3 million, servicing approximately 30 million Colombians, equivalent to more than 60% of the population. Liquefied Natural Gas services another 10 million people, which results in coverage of almost the entire population.

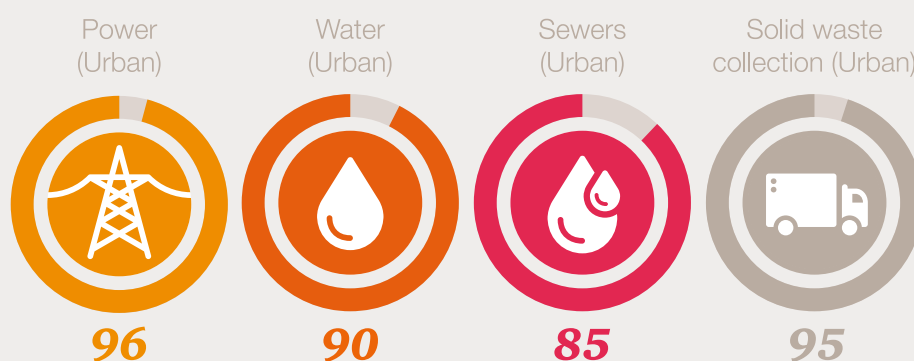
Regarding information technologies and communications, mobile penetration is universal. The country registers 49 million mobile phone lines (that is there are more mobile phone lines than people); there are approximately 7 million land lines. Additionally, the general population has access to last generation devices and constantly seeks updating in this regard.

In relation to Internet connectivity, broadband penetration has increased to 8 million connections whereby more than 30 million Colombians have Internet access in their homes. The country is at the forefront regarding connectivity and is internationally renowned as one of the most advanced economies in terms of connectivity.

Urban water coverage is close to 90%. Most large and medium-sized cities achieve almost 100% coverage. Minor municipalities and rural areas face the greatest challenges to provide this service. During past years, the process has advanced notoriously via multi-million dollar investments and strategic reorganization. Sewer services coverage in urban areas is close to 85% and regarding solid waste, recollection in urban areas services 95% of users.

In conclusion, the public utilities and ICT are the most strategic sectors for the Colombian economy since they represent almost 5% of the GDP; they generate close to 100,000 direct and 300,000 indirect jobs. At the same time, they have a high impact in the community, industry and commerce.

**Figure 3 Public Utilities Coverage (% of the population)**



*Source: Dane and various ministries.*

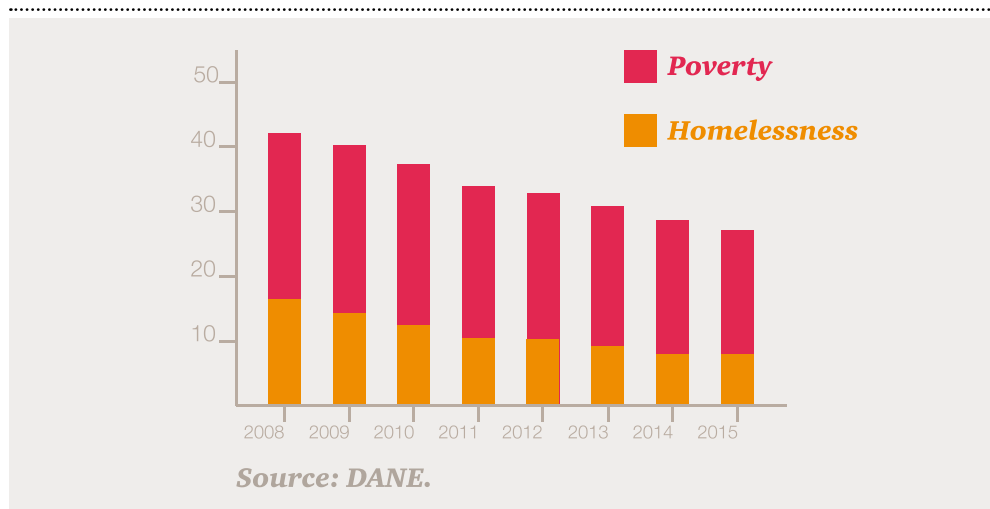
## 9. Poverty and Homelessness

Even though Colombia still shows levels of poverty and homelessness, significant progress is evident in comparison to other main economies in Latin America.

According to data from the National Statistics Department (DANE) by the end of 2014 poverty amounted to 28.5% of the population, 2.1% below the number registered for the previous year and 5.6% less than that of 2010. Multidimensional poverty, which evaluates variables such as education, childhood-youth, work, health, public utilities and housing, decreased from 24.8% to 21.9% between 2013 and 2014.

Homelessness and extreme poverty amounted to 8.1%, one percentage point below the number registered for 2013 and 50% less than in 2008. However, in rural areas poverty and homelessness doubles that of other cities. In light of the above, during the last year, 784,000 Colombians emerged from poverty and 407,000 from extreme poverty, as well as 1,228,000 people who left the qualitative multidimensional registry.

**Figure 4 Poverty and Homelessness in Colombia (% of total population)**



## 10. Security and Pacifying

Colombia's history has been linked to a violence phenomenon that has evolved from political confrontation during the early 1950s, to communist groups turned guerillas and a war against drug trafficking groups and organized crime.

For 50 years, the country has faced internal conflict with irregular communist groups currently financed by illegal activities that wreak havoc in certain regions, and even though the State has been adamant, a peaceful environment has not been achieved in all regions around the country. Even though this confrontation has been painful in terms of human lives and costly as far as resources, its interference with progress has been marginal.

During the past 30 years, various governments have attempted approaching these irregular groups to end the conflict, but results have not been exceptional. On the contrary, it has resulted in institutional impairment and polarization of public opinion against any form of negotiation.

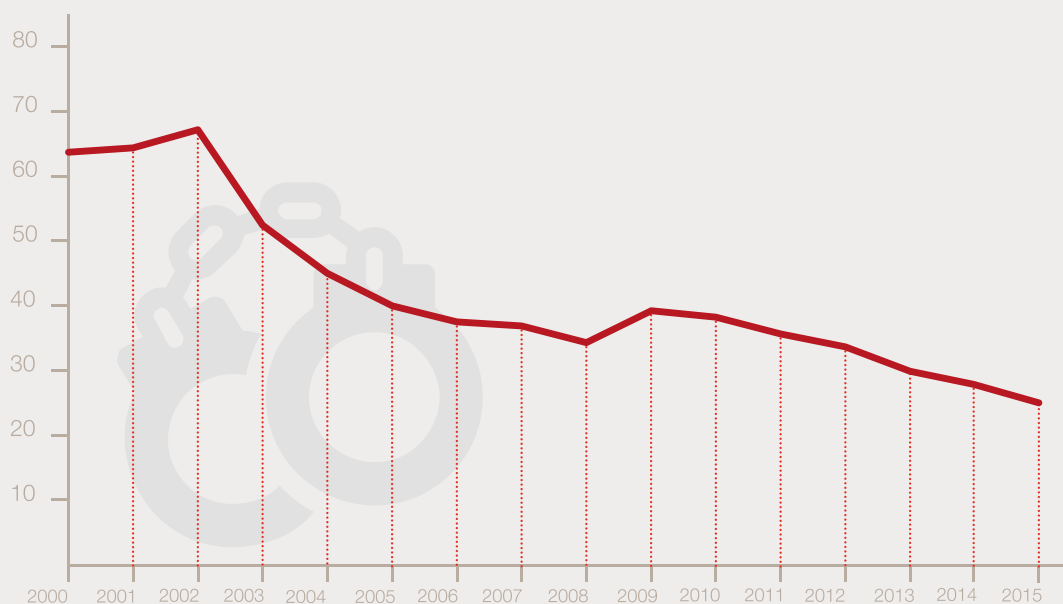
President Juan Manuel Santos began negotiations during his first administration with the main guerilla group, the FARC, a three-year ongoing process carried out in La Habana, Cuba.

His reelection was largely achieved based on his promise to attain peace, which in turn created internal expectations to this regard. A final agreement is expected by the end of 2016, which will be endorsed by the population and Congress. The scope of this achievement would strengthen economic growth and significantly improve social conditions.

Delinquency in Colombia has nonetheless diminished considerably during past years, particularly homicide rates in comparison to other countries, attaining a rate of 28 homicides per 100,000 people in 2014, which means a lower rate compared to countries like Honduras (103.9), Venezuela (57.6), Jamaica (45.1) and El Salvador (43.9).

## 11. Homicide Rate

**Figure 5 Homicide Rate (Per 100.000 people)**



Source: Ministry of Defense - National Police



## C. Recent Evolution of the Economy

By the late 1980s and the beginning of the 1990s, the Colombian economy began an aperture and internationalization process that was internally complemented by important structural reforms with the purpose of achieving a liberalization of the financial and exchange model as well as greater economic competitiveness.

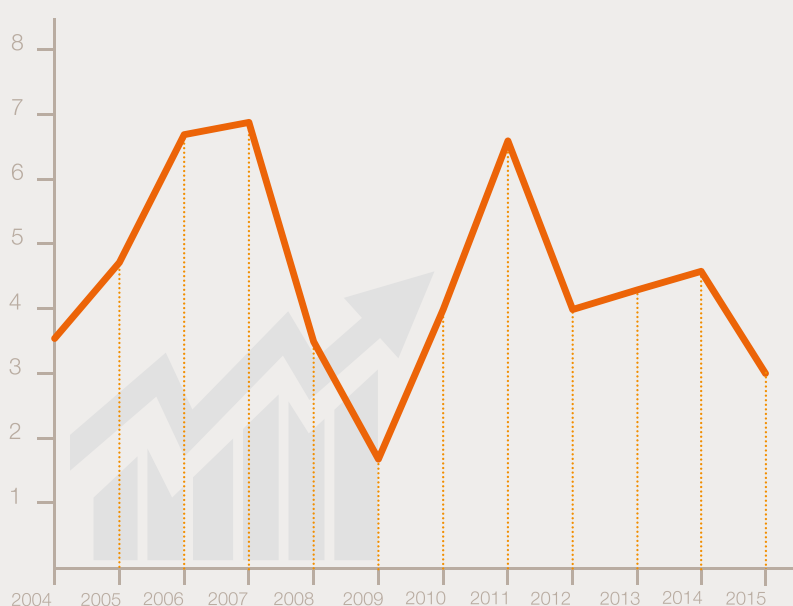
Among several reforms, currency exchange control, which existed since 1967 and fixed a different exchange rate from the one established by supply and demand, was eliminated.

On the other hand, interest rates in the financial market were released, quantitative export restrictions were eliminated and industry and agricultural sectors were exposed to greater external competition through reduction of duties for most products.

During previous years, the Colombian economy has experienced significant advances and its main indicators. Its macroeconomic aggregates and social indicators show significant improvement and a positive balance. GDP growth, low inflation, interest rate stability, significant reduction of unemployment and a lower rate of poverty and homelessness, all provide important business opportunities and reflect a good moment for the country and great future potential.

### 1. Colombia - GDP

**Figure 6 Colombia - GDP (Annual Growth)**



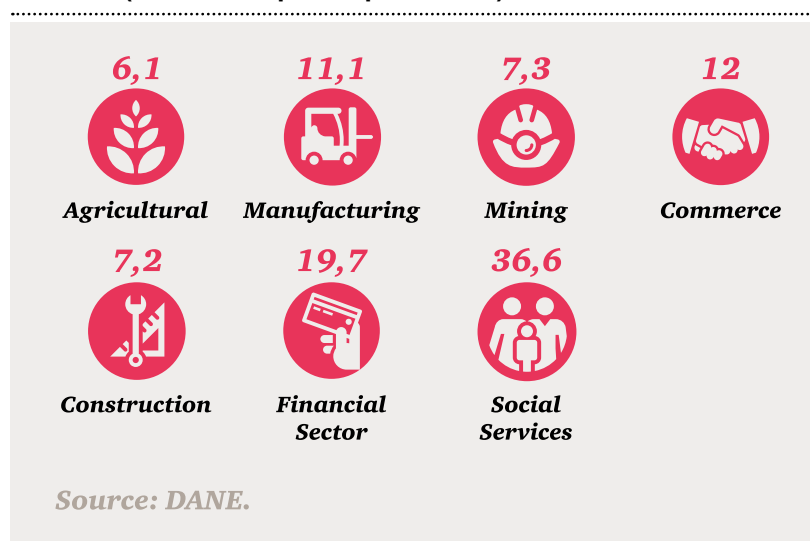
Source: DANE.

## 2. Productive Structure

The country has made advances in creating a modern economic structure in which participation of primary sectors, the agricultural sector and the manufacturing industry have reassigned importance to the financial sector, the services sectors and the exploitation of natural resources, particularly oil and mining.

### a. GDP Structure by Sector

**Figure 7 GDP Structure by Sector**  
(% of Participation per Sector)



However, the country's economic growth is backed by non-tradable sectors, such as housing and public works, financial and commercial activities, while tradable activities, which support a large portion of the aggregate value, such as industry, agriculture and mining, present very low or inexistent increments.

The decrease in economic activity in 2015 in comparison to previous years is a consequence of the standstill of oil activity worldwide and a decrease of its exports, attributable to China's restructuring and the depression of the main Latin American economies, particularly Venezuela that after being the primary market for Colombian products is now facing a severe economic, social and political crisis.

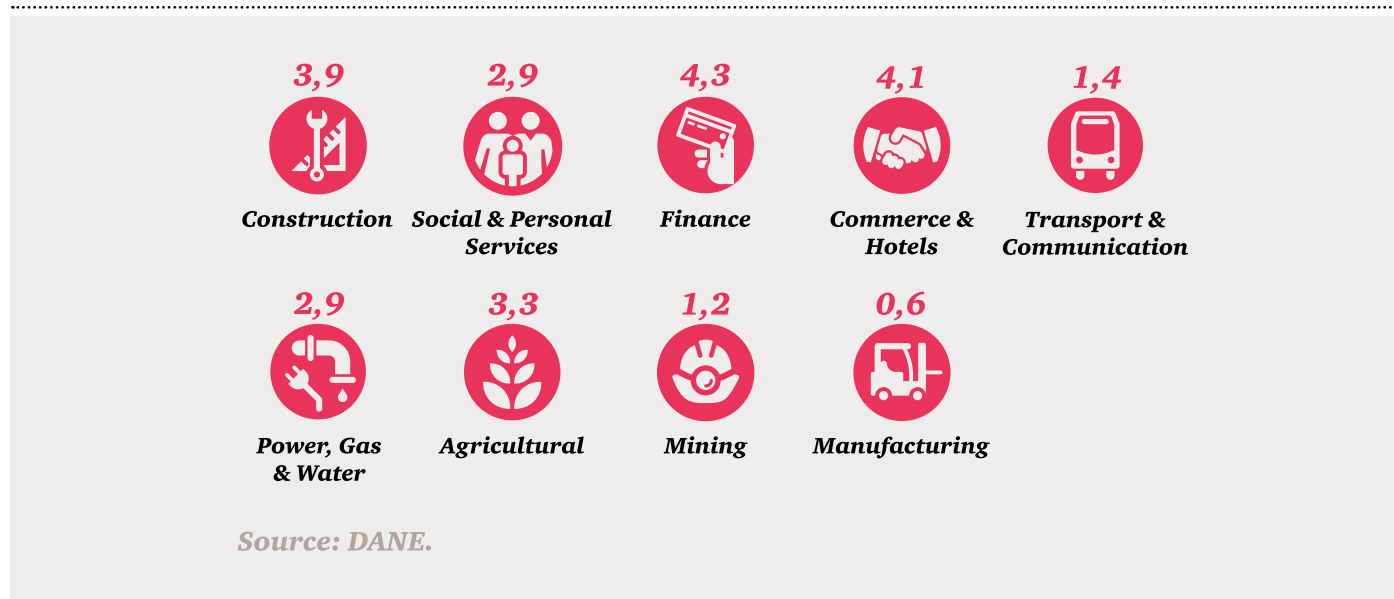
In Colombia, nine million hectares are suitable for agriculture, but only 5 million are used. On the contrary, 19 million are suitable for cattle farming and 40 million are used for this purpose. This situation offers great possibilities for agricultural and agro industrial development and opens the doors to great business opportunities for national and foreign capital in this sector.

### b. GDP Growth

Colombia is one of the most economically stable countries in Latin America. During the past 6 years, the Colombian economy grew in excess of 4% on average, which places it as the third economy after Brazil and Mexico. During the last two years, its GDP grew above the region's indicators. In 2013 the country achieved a 4.3% growth compared to 2.6% for the region. In 2014, the Colombian economy grew 4.6%, almost three times that of the region, and in 2015 local growth was 3.1 in the face of regional stagnation.

### c. Sectorial Growth

**Figure 8 Colombia GDP (Sectorial Growth 2015)**



For 2016, GDP growth is estimated at 2.5% according to forecasts of entities such as the World Bank and the IMF, below official estimates with predicted a number closer to 3.5%.

Studies conducted by PwC reassure the optimism about the future of Colombia in several areas, especially its economy. Our projections, contained in the The World in 2050 report, indicate that the country could achieve an annual average growth rate of 4.5% until 2020 if the reforms proposed by the authorities are formalized.

Growth is not only based on maintaining the main macro indicators, but on identifying the productive benefits that the Fourth Generation (4G) road infrastructure program carried out by the government and the peace talks could bring. The combination of these benefits could have a multiplying effect in sectors such as agriculture and manufacturing, resulting in an additional boost to growth, price stability and

improvement of employment levels and therefore the wellness of the general population.

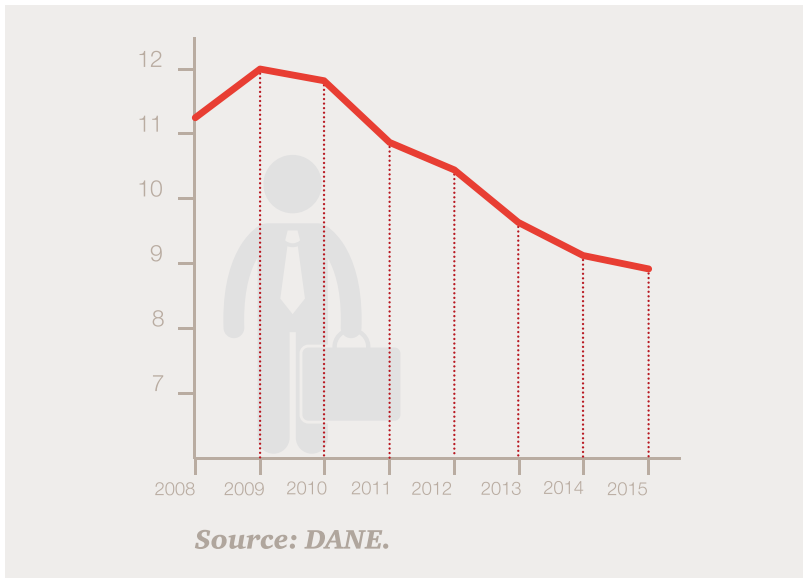
Economic behavior reflects an improvement of social indicators, especially unemployment, which by the end of 2015 reached 8.9% of the work force, which although only 0.2 percentage points below that of 2014, is the lowest rate in the past 15 years and one of the most important indicators compared to other Latin American countries.

Maintaining single-digit unemployment rates for the last three years has been a major achievement for the Colombian economy. A great percentage of this result is explained by dynamism in employment-generating sectors such as construction, infrastructure and commerce.



## D. Unemployment Rate

**Figure 9 Colombia - Unemployment Rate (End of the Term)**



The cities that experience the lowest unemployment rates in 2014 were located in the Caribbean region: Monteria (7%), Barranquilla (7.4%), as well as the country's capital, Bogota (7.7%). The largest unemployment rate was registered in Quibdo (14.2%), on the Pacific Region, Armenia (12.8%) and Popayan (11.8%), all considered intermediate cities.

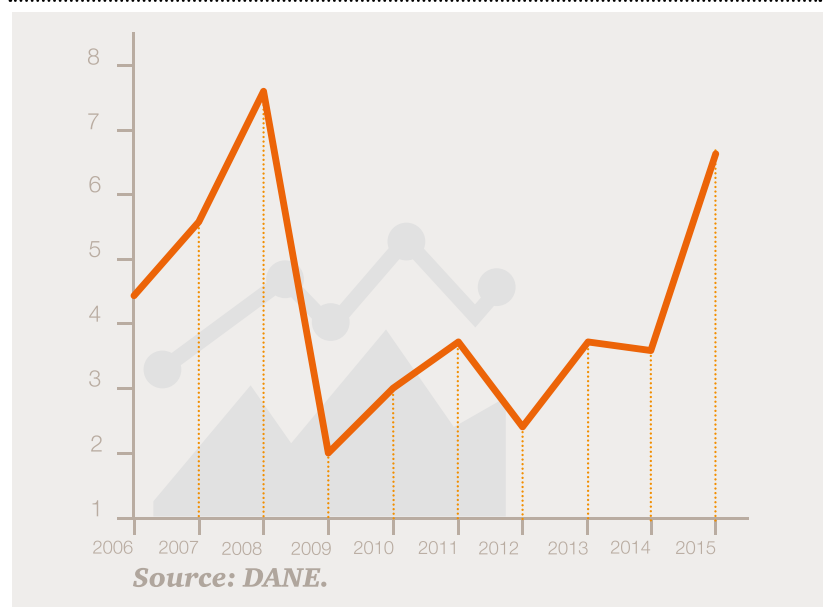
## E. Inflation & Exchange Rate

The last few months have seen a currency depreciation exceeding 50% per annum for the first semester of 2015 and 40% during the past twelve months, which has occurred simultaneously with the US Dollar's depreciation. The Peso's rapid devaluation is mainly explained by an impairment of the current account of the external sector, which reaches a deficit equivalent to 7% of the GDP, which in turn is related to a commercial deficit that exceeds US\$10,000 by the end of 2015, a decrease in external income and the revaluation of the US Dollar.

Simultaneously, inflation for 2015 was 6.77%, almost 50% more than the previous years. The situation has grabbed the attention of economic agents that expect an adjustment in monetary policy from the Central Bank and has implicated increasing the basic interest rates of the Issuer for the financial system.

Beyond this juncture, the development strategy presented by the National Government for 2014-2018, "All for a new country" shows a clear road map and centers its attention on three main and primordial areas for a greater welfare of the Colombian people: Peace, education and social equity, all of which without a doubt shall influence the growth of the economy and promotion of private sector investment.

**Figure 10 Colombia - Inflation Rate (Annual Variation)**



## F. External Sector

The country has considered external markets as a primary factor for development and growth of exports and as a result, it has a promotion policy by means of financial instruments, market intelligence and incentivizing competitiveness.

Currently, the country has 13 commercial agreements that allow preferential access to close to 1,500 million consumers in markets such as the United States, the European Union, Brazil, Mexico, Chile and Peru. Additionally, negotiations are underway to execute more commercial treaties with other regions around the world such as China and Central American countries.

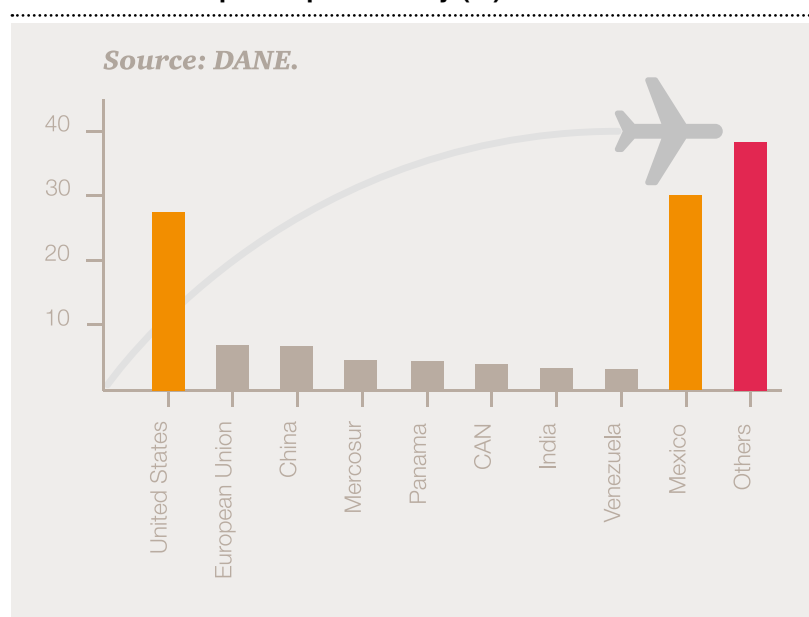
### 1. Commercial Exchange

Foreign trade reached US\$89,700 million in 2016, of which US\$35,700 million were exports and US\$ 54,000 million were imports. The United States receives a quarter of national exports, while it serves 30% of import requirements. European Union countries receive 17% and China accounts for 11%.

Exports of the agricultural and food and beverages sectors represent 19% of the total, while manufacturing represents 23% and oil and the extractive industries amount for 54%.

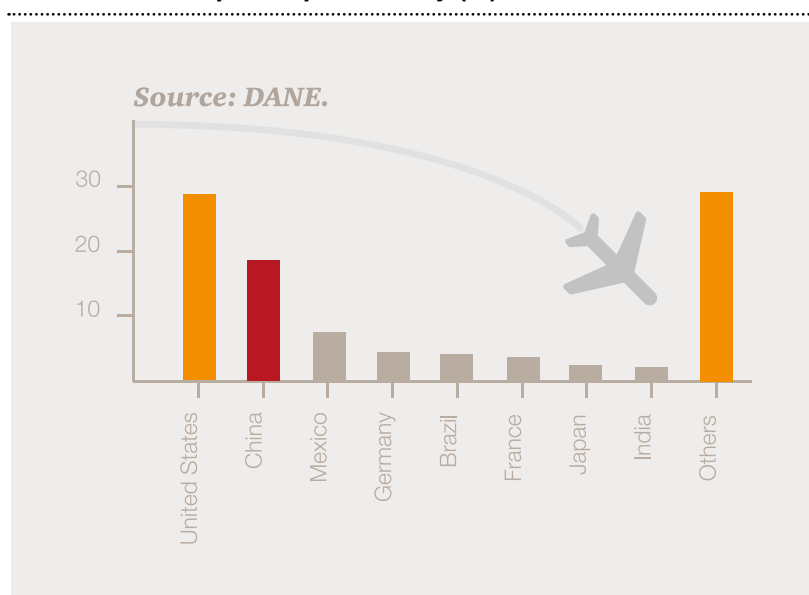
### a. 2015 Exports

**Figure 11 Colombia - 2015 Exports**  
Participation per country (%)



### b. Imports 2015

**Figure 12 Colombia - Imports 2015**  
Participation per country (%)



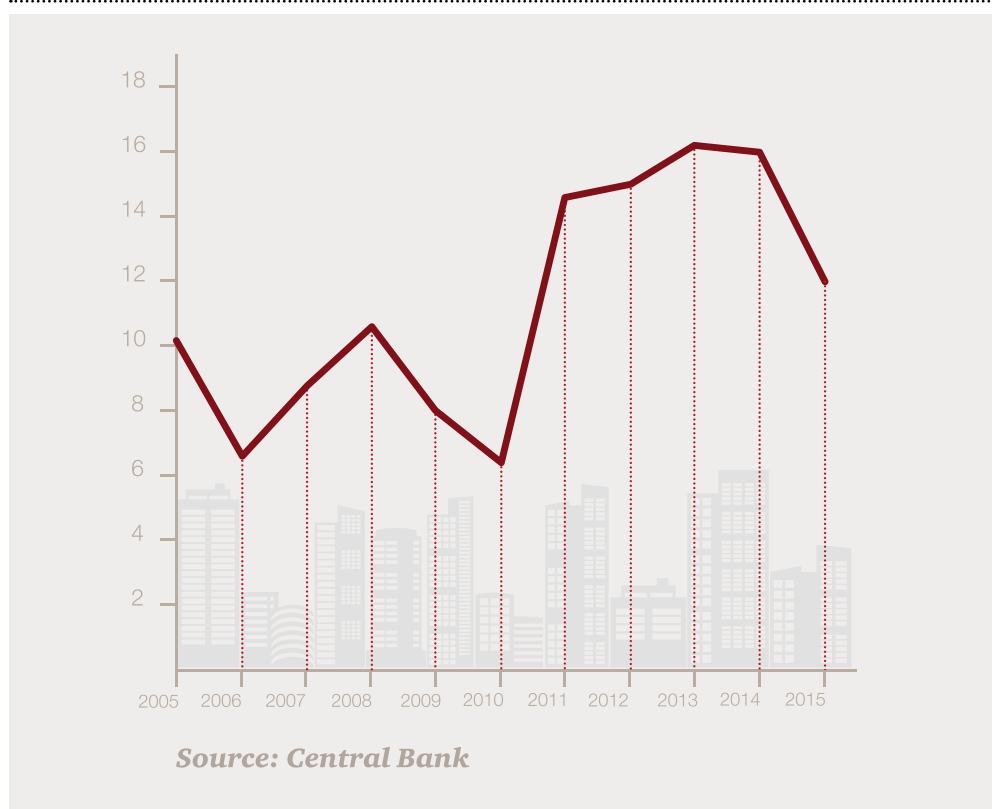
## 2. Debt and Investment

Colombia has an external debt of US\$101,000 million, according to the records of the Central Bank, which represent 26% of its GDP, an insignificant risk for public finance and the external balance. Obligations contracted by the government are equivalent to 60% of the total.

The Government has obtained external credits in bonds for US\$ 8,000 million in the past two years at favorable rates, which is a sign of trust in the country.

Foreign investment in the country was US\$16,054 million in 2014, similar to that of the previous year (US\$16,200 million). Out of last year's total, 3,063.0 million (25%) corresponded to the oil industry and 533 million (4.4%) corresponded to mining, especially coal. For the first time in many years, sectors other than the extractive industries received the most foreign investment.

**Figure 13 Foreign Direct Investment (US\$ million)**





# *Foreign Investment and Exchange Regime*



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*The Colombian Exchange Regime has the main objective of promoting internationalization of the Colombian economy, stimulating foreign trade and foreign investment, facilitating development of current foreign transactions and providing monetary authorities true and relevant information regarding entry and exit of currency to and from the country.*

*Foreign investment comprises all investment of foreign capital, whether direct or portfolio, made in Colombian territory, including Free Trade Zones, by non-residents. A Foreign Capital Investor is any legal or natural person, holder of a direct or portfolio foreign investment.*

*For exchange purposes, Colombian residents are all natural persons that inhabit the national territory, legal persons domiciled in Colombia, Foreign Company Branches established in the Country and natural foreign individuals that remain in the country for more than six consecutive or non-consecutive months during a period of 12 months.*

## **A. Direct Investment**

### **1. Foreign Direct Investment**

#### **a. Foreign Direct Investment**

This type of investment is made:

Through the acquisition of equity interests, shares, corporate interests, mandatory convertible bonds, or any representative interest in a company's capital.

Through the acquisition of rights in autonomous patrimonies established by means of a mercantile trust agreement, in order to develop an enterprise or for the purchase, sale and administrations of shares in companies that are not registered in the National Registry of Securities and Issuers.

Through the acquisition of real property or equity securities in securitization processes or investments through real estate funds, by means of public or private tender.

By taking part in activities or contracts when they do not represent equity interests in the company, and the income produced by the investment is dependent upon the company's profits. Such is the case with technology transfer, cooperation, concession, service administration, and licensing contracts.

Through investments in assigned (start up) capital or as supplementary investments to assigned capital in branches established in Colombia by foreign entities legal persons.

Through the acquisition of participating interests in private equity funds.

#### **b. Portfolio Investment**

This type of investment is made through foreign capital investment funds investing in shares, mandatory convertible bonds, and other securities registered with the National Registry of Securities and Issuers (RNVE).

There are two types of foreign investment capital funds:

#### **c. Institutional Funds**

These are funds with resources from private or public placements of shares or participation units abroad, and whose main purpose is to make investments in worldwide capital markets.

#### **d. Individual Funds**

Those that invest in negotiable securities in the public securities market in order to channel their treasury surpluses, without such operations constituting their main business purpose.

## **2. Investment Methods**

Foreign investment in Colombia can generally be executed in different ways:

- By transferring foreign currencies through the exchange market, in order to make a direct contribution a company's equity or to acquire a third party's rights and/or shares in existing companies.
- In kind, directly through delivery or transfer of tangible or intangible assets, or indirectly by means of the capitalization of a sum in favor of the investor.
- Through funds in local currency obtained from domestic credit transactions entered into with credit establishments, to be used for the acquisition of shares in the public securities market.

## **3. Registering Foreign Investment**

All foreign investments, regardless of their type or method, need to be registered with the Central Bank of Colombia as a necessary condition for the foreign investor to have repatriation rights over capital, dividends, etc. be able to exercise the foreign exchange rights conferred by law. The registration procedure for foreign investments is simple and can be conducted either directly with the Central Bank through an authorized Exchange market intermediary or a current compensation account, but always by the foreign investor, his/her agent or the person representing his or her interests.

The terms and conditions for registering foreign investments differ depending on whether the same is made directly or via portfolio, and on the method by which it is made.

In the event of the sale of the investment to Colombian residents, liquidation of the investment in whole or part, reduction of capital, buyback of shares or corporate interests, or sale of real property, the interested party must cancel the corresponding foreign investment registration.

It is important to note that foreign investment in Colombia must be updated on a yearly basis within the terms and according to the procedures established by the Central Bank of Colombia.



#### **4. Exchange Rights**

Once the investment is registered, the owner thereof acquires the following repatriation foreign exchange rights:

- To remit proven net profits generated periodically by the investments.
- To reinvest the profits or retain them in the surplus of undistributed profits with right of transfer.
- To capitalize sums with right of transfer, produced by obligations derived from the investment.
- To remit sums abroad, in freely convertible currency, received either from the transfer of the investment inside the country, from the liquidation of the company or the portfolio, or from a decrease of its capital.

### **B. Foreign Exchange Market**

The foreign exchange market is constituted by currencies which are voluntarily or compulsory channeled or negotiated through foreign exchange market intermediaries or current compensation accounts.

#### **1. Operations of the Regulated Foreign Exchange Market**

- Import and export of goods.
- Foreign debt operations executed by Colombian residents, as well as financial costs inherent thereto.
- Foreign capital investments in the country, as well as yields associated thereto.
- Colombian capital investments abroad, as well as yields associated thereto.
- Financial investments in securities issued abroad, or investments in assets located abroad, as well as yields associated thereto, except when investments are made with currencies coming from operations not required to be channeled through the foreign exchange market.

- Guarantees and surety agreements in foreign currencies.
- Derivatives operations.

All of the exchange operations which do not require to be channeled through the exchange market belong to the free trade market and can therefore be executed without having to go through foreign exchange market intermediaries or compensation accounts (i.e. payments in foreign currency for provision of services).

## **2. Foreign Exchange Market Intermediaries**

Foreign exchange market intermediaries are entities authorized to channel currencies related to operations conducted in the regulated foreign exchange market and to operations voluntarily channeled through it, by acquiring and selling the currencies required for or generated by such operations. The exchange rates for buying and selling currencies shall be those freely agreed by the parties to the operation, and no commissions may be charged by the intermediary.

Foreign Exchange Markets Intermediaries in charge of channeling exchange market operations are generally banks.

## **3. Compensation Accounts**

The foreign exchange regime has provided Colombian FX residents with a flexible mechanism for managing their exchange operations, particularly those pertaining to the regulated exchange market, without the need to turn to foreign exchange market intermediaries, by opening accounts abroad in foreign currency, which are registered as compensation accounts with the Central Bank of Colombia.

Compensation accounts may be used to pay for imports, deposit sums resulting from the payment for exports, receive sums for foreign investment in Colombia, transfer investment profits, receive disbursements of foreign loans and pay principal and interest, and even complying with internal obligations between two residents (after confirmation that both residents have compensation accounts).

Compensation accounts may also be used to pay free market obligations so that, with the fulfillment of some pre-established requirements, comply with certain procedures of the voluntary channeling of foreign currency through the exchange market.

The opening, management and closing of compensation accounts are subject to the reporting requirements of the Central Bank of Colombia (on a monthly basis) and the Directorate of National Taxes and Customs (DIAN, quarterly).

## **4. Foreign Exchange Declaration**

A foreign exchange declaration is a formality required to document the execution of a foreign exchange operation which implies the purchase or sale of currency in the exchange market when the it is channeled through the foreign exchange market by means of current compensation accounts or through duly authorized foreign exchange market intermediaries.

The foreign exchange declaration is a pre-designed form of the Central Bank to register information about an operation.

Even if they are not considered exchange returns, it is important to note that there are other forms of the Central Bank that may be used to inform of exchange operations with the purpose of updating foreign investment in companies that belong to the general foreign exchange regime (Form No. 15), register and update foreign investment for companies in the hydrocarbon and mining sectors (Form No. 13), register, report movements and cancel compensation accounts (Form No. 10), among others, which must be timely submitted before the Central Bank, physically or electronically.

## **5. Regulation of Foreign Exchange Market Operations**

Payment of the value of imports or exports made by residents of the country must be done with foreign exchange market currency. The currency required for said purpose must be obtained through the foreign exchange market intermediaries or compensation accounts.

### **a. Import of Goods**

The foreign exchange declaration for the importation of goods is made by using Form No.1 of the Central Bank, "Exchange return for importation of goods" and its attachments will depend on the type of payment made by the importer.

Regarding exports, compensation or crossing of reciprocal obligations is not admissible, and that by general rule, it is the importer's duty to transfer the currency corresponding to the import of merchandise abroad under penalty of 200% of the value of the transfer.

### **b. Export of Goods**

Payment for exports may be received in Colombian legal tender, through foreign exchange market intermediaries, in currency channeled through the foreign exchange market or in Colombian legal tender by means of an international credit card.

Compensation or crossing of reciprocal obligations and, by general rule, the currency corresponding to the payment abroad must be remitted to the Colombian exporter by its client abroad, under penalty of sanctions of 100% of the value of the transfer.

### **c. Foreign Currency Loans**

Currency inflows and outflows for loans in foreign currency or granted by residents of the country must be channeled through the foreign exchange market.

Residents and Foreign Exchange Market Intermediaries may obtain loans in foreign currency from the FEMI and from non-residents duly registered before the Central Bank, directly, or charged to resources of public rediscount entities, as well as through placement of securities in international capital markets (Passive Credit).

All external credits (active or passive), granted or obtained by residents of the country must be channeled through the foreign exchange market and reported to the Central Bank before being disbursed through completion and submission of the corresponding form before a foreign exchange market intermediary.

#### **d. Investment of Colombian Capital Abroad**

The Foreign Exchange Regime acknowledges two types of Colombian capital investments abroad: direct investments and financial or foreign asset investments.

##### **d.1. Direct Investment**

Those made by Colombian residents into a foreign company's equity.

##### **d.2. Financial Investment or Foreign Asset Investment**

These types of investments include:

- Purchase of issued securities or assets registered abroad.
- Purchase of external private obligations, external public debt and bonds or securities for external public debt.
- Transfers abroad that originate by placement of securities issued by foreign companies and governments, or guaranteed by them, authorized by the Financial Superintendency, to residents of the country.

These investments can be made through the foreign exchange market or the free trade market, with currency that does not correspond to exchange operations that are not required to be channeled.

#### **6. Special Exchange Regime**

The special exchange regime applies only to Foreign Company Branches in the hydrocarbon and mining sectors, performing exploration or exploitation activities, or rendering of services for the hydrocarbon sector. Said mining activity is exclusively related to exploration and extraction of coal, ferronickel and uranium. The main characteristics of the special regime for the abovementioned branches are:

The branches under this regime are not compelled to reimburse into the exchange market the currency derived from the export sales in foreign currency or exports, only reimbursing the currency required to cover to their needs in national currency through said market.

These branches do not have access to the exchange market to acquire currency for the operations in foreign currency in Colombia or abroad.

The sale and purchase of fuel for ships and aircraft of international travel between residents in the country may be paid in foreign currency as well as the sale and purchase of crude oil and natural gas produced locally by ECOPETROL or other entities dedicated to the industrial refinement of oil.

The sale of the natural gas produced locally carried out by companies with capital abroad which carry out exploration and exploitation activities of oil and natural gas may be paid using foreign currency.

The services inherent to the hydrocarbon sector rendered by residents exclusively dedicated to this activity may be paid according to the certification issued to that effect by the Ministry of Mining and Energy to companies in the hydrocarbon sector.

The branches which decide not to adopt the special regime must inform the Central Bank so as to be excluded for a term of ten (10) years as of the date of notification. Consequently, all will be subject to the ordinary exchange regime.



### ***C. International Investment Treaties***

As part of the strategy adopted by Colombia to improve foreign trade relations, the country is presently involved in the negotiation and signing of Bilateral Investment Treaties (BIT) as well as Free Trade Agreements (FTA) that include specific chapters regarding foreign investment.

BITs are international treaties that regulate the treatment of foreign investment. Both BITs and the foreign investment chapters in FTAs have as their main purpose of establishing clear and stable rules for investments made by nationals of one of the Parties in the other Party's territory, based on the principles of justice, transparency and international standards. In addition, they include obligations regarding the treatment and protection to be provided for investors and dispute resolution mechanisms related thereto, including the possibility to resort to arbitration in order to resolve differences between foreign investors and States, regarding breaches to the treaties.

Colombia currently has International Investment Treaties through investment chapters of the FTA with Mexico, Chile, Guatemala, Honduras, El Salvador, the United States, Canada, Iceland, Liechtenstein, Norway and Switzerland.

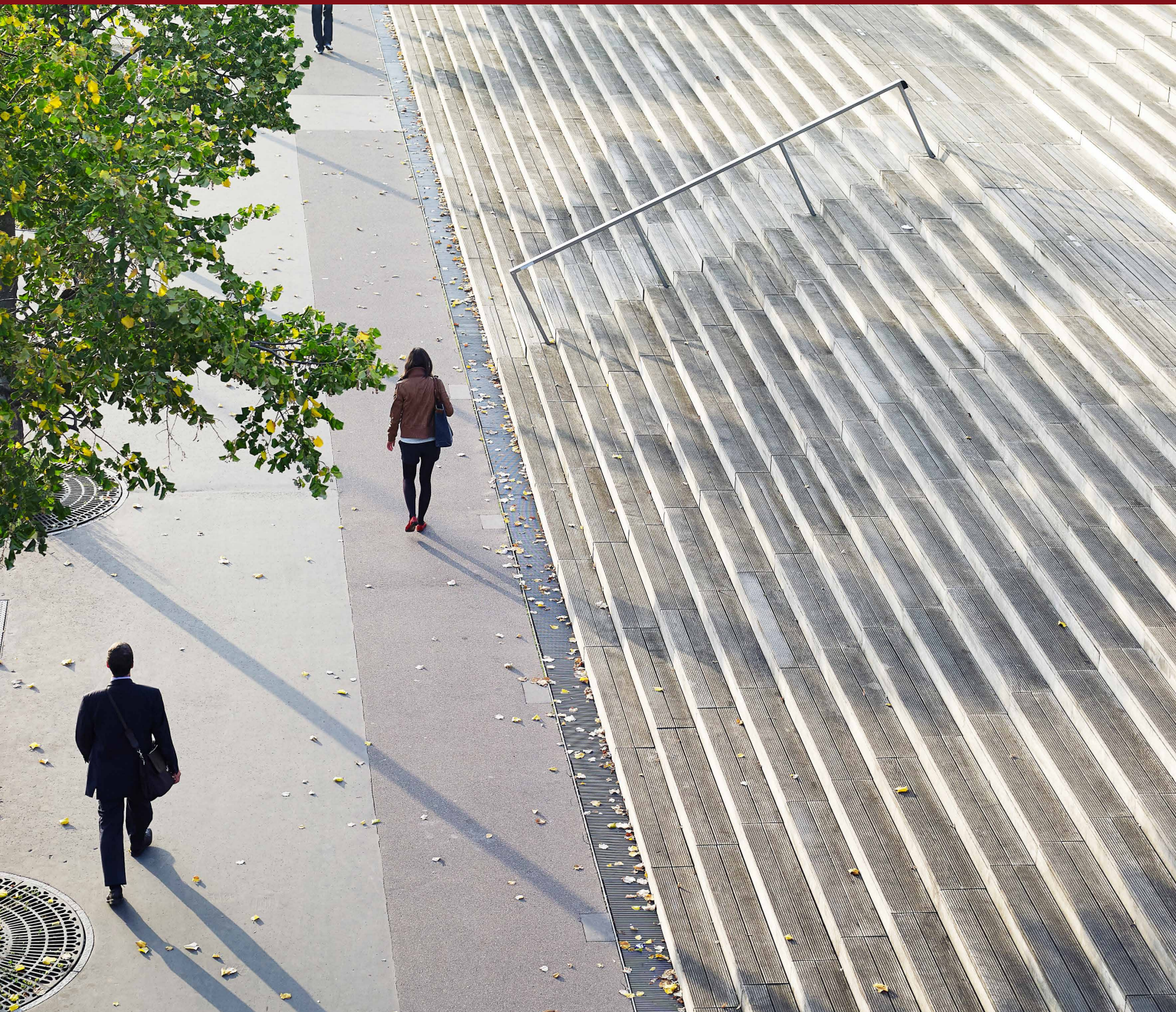
FTAs including investment chapters with South Korea, Costa Rica, Israel and Panama have been signed.

There are BIT agreements with Peru, Spain, Switzerland, India, China and the United Kingdom.

BITs have also been signed with South Korea, Japan, Singapore, France and Turkey, pending the corresponding legal procedures.



# *Foreign Commerce and Customs*





## ***A. General Overview***

### ***1. Foreign Trade and Customs Rules***

Colombian legislation has focused on facilitating customs operations for imports, exports and transit of goods by regulating the application of various forms of foreign trade, conforming to the guidelines of the World Trade Organization Treaty (“WTO”) (approved by Law 170 from 1994), aimed at promoting and supporting different benefits for companies associated with this sector in Colombia.

As of 2005, Colombia implemented the Single Window for Foreign Trade (“VUCE”) which is a digital tool developed by the Ministry of Commerce, Industry and Tourism of Colombia. This software consolidates all government procedures related to international trade operations. To achieve this purpose, it has three separate sections: Imports, Exports and the Single Foreign Trade Form (“FUCE”), that allows on-line transactions such as electronic payments, aimed at speeding up procedures. Additional information on VUCE may be found at the [www.vuce.gov.co](http://www.vuce.gov.co).

### ***2. Customs Qualities***

#### ***a. Permanent Customs Users***

Permanent Customs Users (PCU) are acknowledged as such by Tax Authorities for a term of five (5) years if they have carried out foreign commerce operations during the previous twelve (12) months for an FOB value equal to US\$ 5,000,000 or the same value as a yearly average during the previous three (3) years and have filed at least 100 import or export declarations during the previous twelve (12) months. The value of USD\$ 5,000,000 may be reduced by 60% if the taxpayer is classified as a Major Taxpayer.

Those making use of the Plan Vallejo during the past three (3) years as of the filing date and demonstrating exports of USD\$2,000,000 during the previous twelve (12) months will be considered PCUs.

PCUs must provide a bank or insurance company guarantee which will be determined by the Tax Authorities and may not exceed 5% of the FOB value of the imports and exports carried out in the previous twelve (12) months after filing the request for acknowledgment and enrollment. The warranty must be submitted within the following fifteen (15) days after acknowledgment and enrollment. PCUs will have the following benefits once they are acknowledged and registered:

- Automatic release of imported merchandise.
- Possibility of importing raw materials or supplies under the temporary import for industrial processing, which allows importation exempt from customs duties for raw materials or supplies that are used for manufacturing goods that will be subsequently exported.
- Granting of a global guarantee that covers all foreign trade operations before the authorities (DIAN).

Please note that the Colombian Government will not approve extensions on PCU status following the introduction of *is* trying to eliminate the PCU from the legislation and replace it with the Authorized Economic Operator (OEA).

#### ***b. Highly Exporting Users – ALTEX***

Companies recognized as “Highly Exporting Users –ALTEX” by the DIAN, enjoy a series of tax and administrative benefits. They must meet the following requirements to be recognized as such:

- Exports of more than US\$2,000,000 during the 12 months prior to filing of the request.
- The value of exports made directly or through an International Marketing Agent, must represent at least 30% of the amount of its domestic sales for the same period.
- If the above conditions are not met, the company must certify, prior to the request, exported FOB amounts equal or higher than US \$21,000,000, directly or indirectly, regardless of the percentage sold to the export markets.

Tax benefits for ALTEX include:

- No levy of VAT over ordinary imports of industrial machinery that is not produced in the country, intended for transformation of raw materials.
- The possibility of obtaining authorization from the DIAN for an industrial processing warehouse to import supplies and raw materials with suspension of customs duties and VAT, as long as they are used for production of export products.
- Authorized Customs Warehouses



### **c. Special import and export programs – Vallejo Plan**

In order to promote foreign trade operations, Colombia has included special import -export programs in its customs legislation in order for goods or equipment to be imported with tax benefits as long as they comply with export agreements for finished goods or services.

#### **1. Plan Vallejo for raw materials**

This modality allows reception within the national customs territory, with total or partial suspension of customs duties, of specific goods intended for total or partial export within a certain period of time, after having undergone transformation, manufacturing or repair, including the materials needed for said operations.

Plan Vallejo's benefits are granted by direct operation to the importer of goods, raw materials or supplies, that produces and exports finished goods, or by indirect operation to the importer or producer of intermediate goods sold to the exporter, or to whomever provides the associated services with the production of the goods to the exporter.

### **3. Imports**

According to current customs regulations (Decree 2685/1999, as amended) imports include the entry of goods to the “national customs territory”<sup>1</sup> from the rest of the world, or from a Free Trade Zone (FTZ), with the purpose of remaining permanently or temporarily therein to fulfill a specific purpose.

Anyone who is registered with the Customs Authority on the Unique Tax Registry (RUT) may perform imports into Colombia. Only those authorized by the Customs Authority (DIAN)<sup>2</sup> are able to present import returns through the Customs Information System.

According to the Harmonized Commodity Description and Coding System of the WTO, imported goods are classified into sub entries or sub codes composed of six (6) digits (international code). Also, two (2) digits are added for exclusive use of the Andean Nations Community (CAN), as well as two final digits that correspond to the digits used by Colombia. The resulting ten (10) digit custom sub code is exposed in the Colombian Customs Tariff, which is governed by decree 4927 of 2011 (as amended) and also reflects the general tariff of each duty. The value added tax (VAT), also a part of customs taxes, is regulated in the Colombian Tax Code at a 16% general tariff in most cases.

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<sup>1</sup>D. 2685, 1999, Section 1. “National Customs Territory: Limit within which customs laws apply, covers the entire national territory, including the subsoil, the territorial sea, contiguous zone, continental shelf, exclusive economic zone, airspace, the segment geostationary orbit, the electromagnetic spectrum and the space where the Colombian state acts in accordance with international law or the laws of Colombia in the absence of international standards.”

<sup>2</sup> The Colombian Internal Revenue and Customs Service

### ***a. Ordinary Import***

This is the most widely used import method. With this method, the importer in Colombia receives freely available merchandise, once customs clearance is granted electronically or manually by Customs.

Obligations include declaring the goods, in the formats established by the customs authorities and through the electronic system, complying with the labelling requirements, indicating the references, and fulfilling previous licenses required according to the quality of the imported goods, payment of all applicable customs duties, including tariffs and value added taxes ("VAT"), and obtaining clearance on each import return.

Valuation of the goods is done according to the methods established by the Valuation Agreement approved by the WTO which is based on the General Agreement on Tariffs and Trade (GATT) from 1994, ruled by the CAN and internal rulings.

The import declaration has a 3-year statute of limitations term as of the filing and acceptance date. It is part of the documents that accredits the legal introduction of goods into the National Customs Territory.

### ***b. Temporary Imports - Temporary Imports for exports in the same Condition***

Temporary import is defined as the importation with suspension or deferral of customs duties (mainly tariffs and VAT) for certain goods. Said goods must be exported in the same condition as they came in to the national customs territory at the end of the specified period, without having undergone any modification, except for the normal depreciation originated by their use or declaration on a permanent basis. Sale or disposal of the merchandise is restricted. These imports may be classified into three categories:

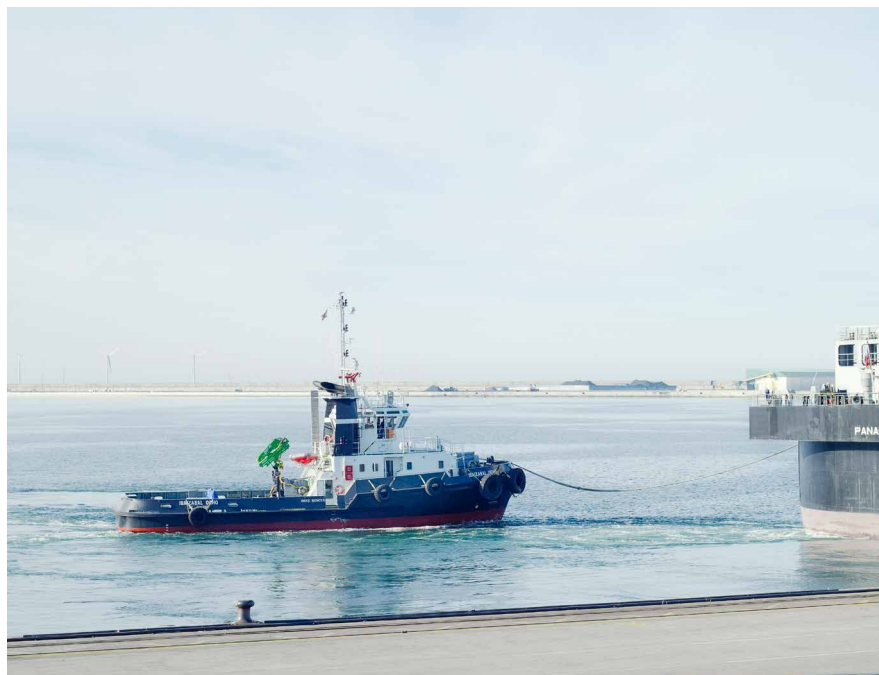
#### **1.Short Term Import**

The maximum import term is 6 months, which may be extended up to 3 additional months and in exceptional cases for up to 6 more months with prior customs authorization until completing 15 months.

Customs duties on this type of temporary import are permanently suspended, unless the importer decides that the goods will stay for a longer period (long-term) or permanently in Colombia.

#### **2. Long term Import**

Long term applies to the import of capital goods, their accessories, parts, and spare parts, as long as they comprise one single shipment. The term for this import is between 1 and 5 years. Customs duties will be deferred in biannual payments, which in any case must be paid during the time for which the goods stay in the national customs territory.



### 3. Temporary imports for inward processing

The types of temporary imports for inward processing allowed in the customs code are:

#### *Temporary import for inward processing of capital goods*

This type of importation allows temporary imports with suspension of customs duties of capital goods intended to be re-exported after being subjected to repairs and reconditioning in a term not to exceed 6 months, which can be extended for an equal term. The disposition of the goods will be restricted.

#### *Temporary importation for industrial processing*

This type of importation allows temporary imports of raw materials and supplies that are going to be subjected to transformation, processing or industrial manufacturing by industries recognized as “Highly Exporting Users” (“ALTEX”) and authorized by the customs authority (DIAN). The sale of the goods will be restricted.

#### *International leasing*

The concept of international leasing may be applied to long-term financing of temporary imports of capital assets, which may remain in the national customs territory for more than 5 years. Under this concept, a foreign company (foreign supplier, foreign financial institution or leasing company) grants the right of use of imported capital assets in Colombia to a Colombian resident in exchange for regular payments by the latter. Payments must be made through the mechanisms authorized by the foreign currency exchange regulations and following the procedure established for passive external debt operations, because the operation is considered to be a financed importation. In this case, customs duties are accrued biannually. The maximum term for deferral is 5 years, regardless of the fact that their actual stay in the country may be higher than this period.

### c. Exports of Goods

Exports constitute foreign trade operations whereby goods exit the national customs territory and are shipped abroad or to a free trade zone within Colombia.

The process of an export from Colombia starts with filing and acceptance of an authorization of shipment (Solicitud de Autorización de Embarque- SAE) through the procedures set forth by customs regulations, mainly based on electronic procedures.

Once the shipment has been authorized, the goods are loaded, and the shipment certificate has been issued by the transporter, the application for authorization of shipment is considered, for all purposes, as the respective export return.

In Colombia, exports are not subject to any customs duties. There is no general “draw back” program implemented in Colombia for the export of formerly imported goods.

If the Exporter of Records needs to export products or parts to be repaired or replaced abroad (outside Colombia) it may apply the temporary export regime in order to re-import them without paying customs duties or VAT. The Customs Authority (DIAN) could ask the Exporter of Records to present an import return of the products or parts that are being exported in order to prove legal introduction thereof into the Colombian customs territory.



## ***B. Customs valuation***

Colombian legislation has focused on facilitating customs operations for imports, exports and transit of goods by regulating the application of various forms of foreign trade. The legislation conforms to the guidelines of the World Trade Organization Treaty (“WTO”) (approved by Law 170 from 1994) aimed at promoting and supporting different benefits for importers and exporters in Colombia.

The customs value on imported goods will be the value of the transaction, that is, the price actually paid or payable for the goods, when they are sold for export to the importing country and must be determined.

Customs duties are settled and paid over the customs value of imported goods, in the state subject to the timing of the valuation, and offsetting the VAT tariff and corresponding to the tariff classification of the goods.

## ***C. Customs Obligations***

Registration is mandatory for importers of products subject to compliance with technical regulations, as is the case for refurbished goods whose control and surveillance is the responsibility of the Industry and Trade Superintendency.

- Registration must be done through the website [www.sic.gov.co](http://www.sic.gov.co) and could take about 1 hour.
- Registration is done with the data of the company such as: the commercial registration number, name, address, phone, etc. The information you provide must match the commercial registry of the company to continue with the registration process.
- A password is required for updates, which must be performed annually. The password is known to be associated with the commercial registration number indicated in the certificate of existence and legal representation, which ensures that only the person commissioned by the company can modify the information of your registration.

Requires compliance with technical regulations for imperfect, used, repaired and remanufactured product, for which the Colombian government has previously authorized importation, assembly, distribution, use, or marketing.



## ***D. Free trade zones***

In order to promote commerce, investment and job creation in the country, Colombia has a Free Trade Zone regime comprised by geographic areas within the national customs territory with boundaries established by the national customs authority, within which customs duties do not apply and in most cases reduced rates in income taxes also apply. It is not permitted to change/relocate an entity into a free trade zone.

### ***1. Job requirements:***

- Formal and direct labor contract with indefinite term
- Related to the production process or service.
- Compliance with parafiscal contributions and social security contributions.

### ***2. Partial processing of raw materials, inputs and intermediate goods***

There is no partial percentage of processing defined by the law allowed to be performed outside the free trade zone. It should be discussed with the operator user. The maximum term of stay outside of a FTZ is 6 months plus an extension of 3 months.

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

May be owned or leased depending on the development and negotiation with the operator user.

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

- Prohibited goods used in the country, which you can link to the user's heritage.
- Only new assets count as part of the commitment to invest, become part of the income-producing activity and are depreciated for accounting purposes.

### ***5. The main types of free trade zones are:***

- Special Permanent Free-Trade Zones or "Single-Company Free-Trade Zones" (SPFTZ) required to comply with several commitments regarding investments and job creation within a 3-year term; and
- Permanent Free-Trade Zones (PFTZ) which are those where several users can be located, including industrial and commercial users.

In both cases, each free trade zone is managed by an Operator User.

### ***6. Main Incentives***

Free-Trade Zones offer the following incentives to their users for a period of up to thirty (30) years with a possible extension of an equal period:

- Single, flat 15% income tax rate for all users of the Free-Trade Zones for those free trade zones assigned before December 2012. For those FTZ set up after assigned as of 2013 Income Tax for Equality (CREE) may also apply.
- Exemption from customs taxes (VAT and tariffs) for the introduction of goods from abroad, as long as the goods remain at the Free-Trade Zone.

- Possibility of nationalizing the goods manufactured in the Free-Trade Zone, using the tariff sub code of the finished product and paying taxes on the added value of the foreign supplies, or nationalizing the raw materials before entering the production process, with their own tax entry (only for those FTZ appointed until December 2012).
- The possibility to store foreign goods without term.
- The possibility to introduce second hand merchandise without getting prior license.

## 7. Types of users

### a. Operator User

The user Operator is a company dedicated to the management and control of customs matters.

### b. Industrial users of goods

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

In order to exit the Free Trade Zone to the rest of Colombia an import statement must be completed and the licenses required for the import process must be requested.

The transport and logistics processes should be contracted by the customer in the rest of Colombia or in the rest of the world.

### c. Industrial users of services

These are users that render services within or from the Free-Trade Zone area, to develop logistics, transportation, distribution, telecommunications, scientific and technological research, and medical assistance, dental and medical health in general, tourism, technical support, ship and airplane equipment, consulting or similar activities, among others.

### d. Commercial users

These are users that store, market, preserve and sell within the corresponding Free-Trade Zone. They may occupy up to 5% of the total area of the PFTZ. They cannot be located in a SPFTZ and cannot use the income tax benefits.

### e. Non-qualified users

Below are the commitments on employment and investment according to the initial capital of the company if you intend to qualify as a user of free trade zone.

Figure 14

| Total assets of the company |               |                   |                  | Commitments |                 |      |
|-----------------------------|---------------|-------------------|------------------|-------------|-----------------|------|
| MMLS                        |               | Equivalent in COP |                  | Investment  |                 | Jobs |
| Desde                       | Hasta         | Desde             | Hasta            | SMMLV       | COP             | #    |
| 0                           | Less than 500 | \$0               | \$322.175.000    | None        | None            | 0    |
| 500                         | 5.000         | \$322.175.000     | \$3.221.750.000  | None        | None            | 20   |
| 5.001                       | 30.000        | \$3.222.394.350   | \$19.330.500.000 | 5.000       | \$3.221.750.000 | 30   |
| 30.001                      | or more       | \$19.331.144.350  | Or more          | 11.500      | \$7.410.025.000 | 50   |

## ***E. Tariff Preferences***

### ***1. United States: ATPDEA***

Initially, the Andean Trade Preference Act –ATPA was a unilateral preferential tariff program granted by the United States in 1992 to favor economic growth and support the fight against drugs in the Andean countries (Colombia, Bolivia, Ecuador and Peru).

In October 2002, the United States Congress enacted a law by which it extended the ATPA and expanded the preferences to products of great importance that were previously excluded. This new law, which is known as the ATPDEA (Andean Trade Preference and Drug Eradication Act), allows entry without tariffs into the United States of certain products that are grown, produced or manufactured in a beneficiary country in the initially approved sectors, including chemical, agricultural, metalworking, plastics, crafts, wood and furniture, paper and lithography, shoes and leather manufactures, oil and its derivatives, among others.

The ATPDEA preferences will be in effect until December 31, 2010 for Colombia, thanks to the latest extension granted by the United States Congress in December 2009.

### ***2. Commercial agreements***

In addition to the commercial preferences mentioned above, Colombia has been structuring a policy of open integration, thanks to which it enjoys free markets in the Latin American arena, within the Latin American Integration Association – ALADI.

Among the different agreements signed by Colombia, the most relevant are:

### ***3. Andean Community of Nations (CAN)***

One of the strategic integration plans for Colombia is the Andean Community of Nations that works under the auspices of ALADI. By virtue of this agreement Colombia is exempt from duties and restrictions, resulting in a free-trade zone with Bolivia, Ecuador, Peru and Venezuela until 2011. Additionally, in September 2006, the Council of Ministers of Foreign Relations of the Andean Nations granted the condition of associated member country to Chile, reaffirming the economic commitments established with that country and expanding the integration framework in the region.

The main objective of the CAN is to deepen the integration through a common market, in which agreements are reached by consensus and with a supranational character (means that a regulation prevails over National law), on monetary, fiscal, currency exchange, environmental and public services policies.

### ***4. Mexico –Colombia Free Trade Agreement (TLC –G2)***

This treaty came into effect in 1995 with the participation of Colombia, Mexico and Venezuela. Currently, it only includes Colombia and Mexico, since Venezuela withdrew in November 2006. The agreement includes a schedule of asymmetric elimination of tariffs from the entire set of tariffs that aims to equalize, within a period of 10 years, the tariffs of the three countries, giving special treatment to the agricultural and automotive sectors.

### **5. Economic Complementation Agreement (ACE) with Chile and Colombia – Chile Free Trade Agreement (TLC)**

Through the ACE, a free-trade zone between Colombia and Chile is created, with gradual elimination of customs duties and non-tariff barriers, eliminating 95% of the duties in bilateral trade, corresponding to 96% of all Colombian tariffs. The remaining percentage was fully released, with zero tariffs in year 2012.

The ACE with Chile was strengthened and both countries decided to initiate negotiation of a Free Trade Agreement. As a result of these negotiations on November 27, 2006, the final text of the FTA was signed and came into effect on May 8, 2009.

### **6. TLCs (FTAs) – TLC Colombia – Northern Triangle**

With the objective of strengthening the regional economy as an essential instrument for the progress of social-economic development of Latin-American countries, Colombia, Guatemala, El Salvador and Honduras began a negotiation process in June 2006 for a FTA. The Agreement was signed on August 9, 2007. The treaty came into effect with Guatemala on November 12, 2009, with El Salvador on February 1, 2010 and Honduras on March 27, 2010.

The treaty includes issues such as: National Treatment and access of goods into markets, investment services, international service commerce, electronic commerce, cooperation, dispute resolution, government contracting, commerce facilitation, sanitary measures, technical norms, origin norms and commercial defense measures.

### **7. TLCs (FTAs) European Free Trade Association (EFTA) Switzerland, Liechtenstein, Norway, Iceland**

This treaty came into effect on July 1, 2011, but only with Switzerland and Liechtenstein. The agreement includes a schedule of asymmetric elimination of tariffs from the entire set of tariffs that aims to equalize, within a period of 10 years in different sectors.

The treaty establishes mechanisms to prevent the application of internal protective measures to health, intellectual property, labor, the environment and the consumer involving human, animal and plant life.

### **8. TLCs (FTAs) US**

This treaty between Colombia and the United States of America (USA) came into effect on May 15, 2012. The agreement includes a schedule of asymmetric elimination of tariffs from the entire set of tariffs that aims to equalize, within a period of 10 years in different sectors.

The treaty establishes mechanisms to prevent the application of internal protective measures to health, intellectual property, labor, the environment and the consumer involving human, animal and plant life.



### **9. TLCs (FTAs) Canada**

This treaty between Colombia and Canada came into effect on August 15, 2011. The agreement includes a schedule of asymmetric elimination of tariffs from the entire set of tariffs that aims to equalize, within a period of 10 years in different categories and sectors.

The treaty establishes mechanisms to prevent the application of internal protective measures to health, intellectual property, labor, the environment and the consumer involving human, animal and plant life.

### **10. Economic Complementation Agreement with CAN and MERCOSUR**

On October 18, 2004, the Economic Complementation Agreement was signed between Argentina, Brazil, Paraguay and Uruguay (the MERCOSUR countries), and Colombia, Ecuador, and Venezuela, members of the Andean Community of Nations - CAN. The agreement has unlimited duration and takes into account the asymmetries derived from the different levels of economic development of the parties. As a consequence, it determines sub-items for immediate tariff elimination and periods for tariff elimination between 6 and 15 years for sensitive products such as vehicles, auto parts and electric appliances.

The Agreement includes topics such as dispute resolution, health and plant safety standards, technical regulations and safeguards.

### **11. Colombia and the Pacific Basin**

Moving closer and strengthening the ties with the Pacific basin countries are priorities of Colombian foreign policy. The Colombian Council of Cooperation with the Pacific (COLPECC) was created for this purpose. Currently, Colombia is a member of the Pacific Basin Economic Council (PBEC), also known as the Pacific Club. This is a non-governmental association comprised by the most important entrepreneurs of countries with coasts on the Pacific, with the purpose of increasing mutual knowledge, business and investment flow, economic cooperation, transfer of technology and tourism, among others.

Likewise, Colombia is a full member of the Pacific Economic Cooperation Council (CCEP), a three party non-governmental organization, made up of the public sector, private enterprise and academia.

Colombia is currently in the process of changing its customs legislation. However, the entry into force of Decree 390 from 2016 is conditioned to issuance of its guidelines. Therefore, Colombia the abovementioned is still valid in Colombia.

# *Labor Framework*



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*Labor law in Colombia is regulated by the Political Constitution of 1991, by international treaties and agreements signed by Colombia and by the Labor Code.*

*Labor law is divided into two areas: individual labor law, that regulates the relationships between the employer and his employees, and collective labor law, that regulates the relationship between the employer and his employees when united in associations, whether unions or otherwise.*

## **A. General Overview**

The “labor contract” constitutes the agreement reached between an employee and his employer by which the employee personally provides certain services, under continuous subordination to the employer in exchange for a compensation known as a salary.

## **B. Types of Labor Contracts**

Labor Contracts can be classified in different ways. Depending on their duration they are classified in the following manner:

- Fixed term contract: Its duration cannot exceed three (3) years. However, the parties may extend it indefinitely.
- Contract for the duration of a work or contracted job.
- Indefinite term contract: A term is not specified and its duration is not determined by the task or the nature of the contracted job, nor does it refer to an occasional or temporary job.

Contracts can also be classified as verbal or written. The following types of contracts must always be in writing:

- Fixed term contract, its extensions and the advanced termination notice.
- Contract for the duration of a work or contracted job: its duration is equivalent to the term of the contracted task.
- Contracts signed with foreign nationals not residents of the country.
- Contracts through which ten (10) or more employees are moved outside the country to render their services (collective hiring).

Similarly, the following agreements or covenants between employee and employer must be in writing:

**Trial period:** It is the term in which the work performed by the employee is appraised by the employer, and, at the same time, the employee evaluates the conditions of labor conditions. During this period, which should be stated in writing, any of the parties may terminate the employment contract without prior notice or thereby incurring into indemnification payments. The trial period in no case may exceed from two (2) months in indefinite term contracts.

- In fixed term contracts with duration of fewer than one (1) year, the trial period cannot exceed 1/5 of the initial duration agreed to by the parties.

**Integrated salary (Lump-Sum Salary):** It is a sole sum that in addition to compensate the ordinary work, remunerates in advance social legal benefits (severances payment, interests on severance, legal bonus) and overtime and surcharges.

The Integrated salary can be variable, must be established in writing and in no case can be lower than thirteen (13) minimum monthly legal salaries (MMLS) with a value of Col\$8,962,915 for year 2016 (approximately US\$2,987).

**Non-salary benefits/payments:** Employers are allowed to grant non mandatory benefits to its employees. These benefits can be excluded from the salary base to calculate labor obligations such as social legal benefits and social security contributions. This exclusion must be expressed in a written document. The possibility to treat some payments as non-salary items is limited; all payments made as a direct retribution of the employees' work, such as sales commissions or individual performance bonuses must be deemed salary and therefore the agreement that intends to exclude such payments from the employees' salary base might be considered void.



### ***C. Working Hours***

Ordinary working hours cover a maximum of eight (8) hours a day and forty-eight (48) hours per week that can be distributed between Monday and Friday or from Monday and Saturday. By Law, flexible working hours may be agreed to by the employer and employee.

Daytime working hours correspond for the period between 6:00 a.m. and 10:00 p.m. and night hours correspond to the period between 10:00 p.m. and 6:00 a.m.

### ***D. Flexible Working Hours***

The worker and employer may agree on successive work shifts, every day of the week, that do not exceed six (6) hours per day and thirty-six (36) hours per week, without payment of a surcharge for work at night, on Sundays or holidays.

Similarly, they may agree on a flexible workday, so that the 48 weekly hours may be distributed in a maximum of six (6) days, where the number of daily working hours may go from four (4) to ten (10), without payment of the overtime surcharge, as long as these do not exceed 48 hours per week, and the work is done on daytime hours.

When the commercial activity implies shifts without continuous activity, by Law, the eight (8) hour daily period and forty-eight (48) week period may be extended as long as the estimate of a three (3) week period does not overpass the eight (8) hour daily period and forty-eight (48) week period. There is no surcharge for supplementary work or extra time in this case.





## ***E. Payment Derived from the Labor Relationship***

### ***1. Salary***

Salary is the direct compensation received by the employee in exchange for the personal rendering of his services in favor of the employer.

#### ***a. Types of Salary***

##### **• Ordinary Salary**

Ordinary Salary is the monthly compensation that pays for ordinary work. At the end of each year, the Government establishes the current MMLS. FY 2016 CO\$689,455 (US\$230)

If the employee receives an ordinary salary, he/she is entitled to legal fringe benefits, overtime, night time, Sunday and holiday surcharges and vacations.

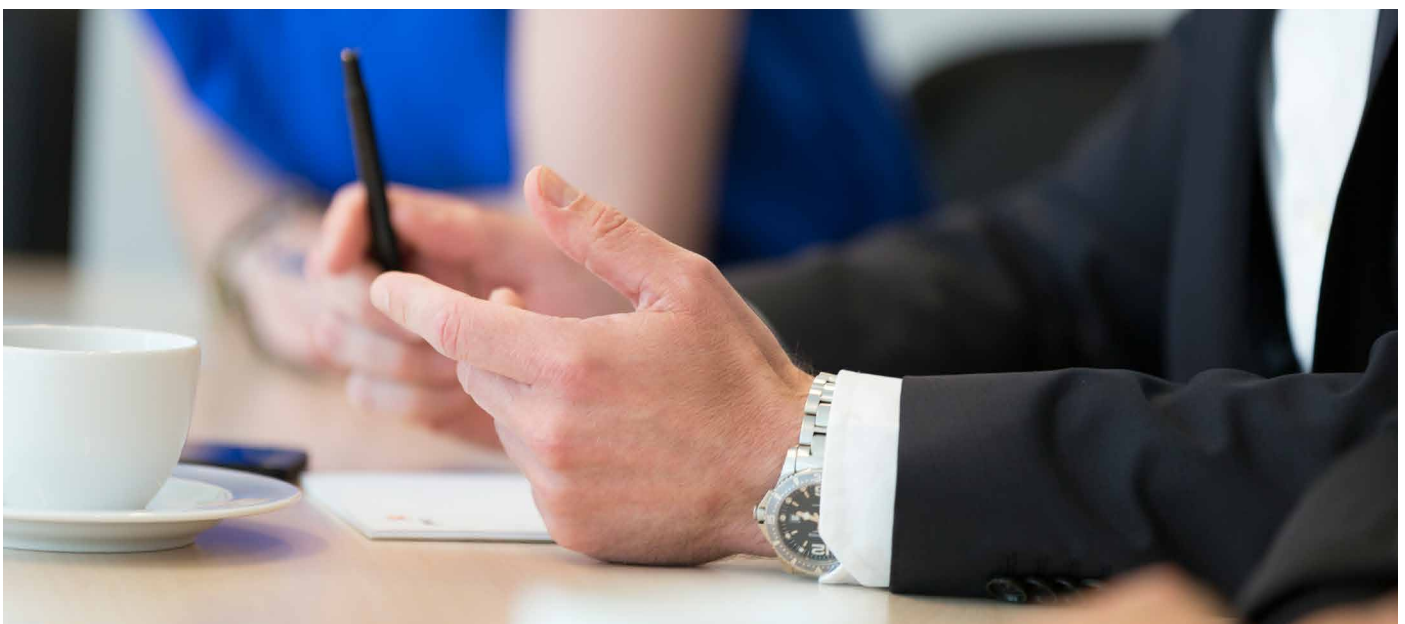
##### **• Lump-sum Salary–**

It is a sole sum that in addition to compensate the ordinary work, remunerates in advance social legal benefits (severances payment, interests on severance, legal bonus) and overtime and surcharges.

The Integrated salary can be variable, must be established in writing and in no case can be lower than thirteen (13) minimum monthly legal salaries (MMLS) with a value of Col\$8,962,915 for year 2016 (approximately US\$2,987).

If the employer decides to pay a so-called ‘integrated salary’, the employee is only entitled to receive vacation pay. Thus, employees that are subject to “integrated salary” do not receive social legal benefits nor overtime work or surcharges.

It is common practice that employees that perform managing positions and receive a salary that exceeds thirteen (13) times the MMLS are engaged based upon the “integrated salary”.



## 2. Social Benefits

Every employer is required to pay the following social benefits to employees earning an ordinary salary:

**Figure 15**

| Concept                   | Payment Period    | Description  |
|---------------------------|-------------------|--|
| Severance Payment         | Annual            | Employers must make an annual deposit to a severance fund (Independent Financial Institution), on behalf of every employee, equivalent to one (1) month's salary for every year of service and proportionally for a fraction thereof. Said deposit must be made before February 14 of each year and at the termination of the employment contract. |
| Interests on severance    | Annual            | Twelve percent (12%) per annual on the balance of each year's severance owed to the employee as of December 31 of the preceding year, which must be paid January 31st of each year at the latest.  |
| Service bonus             | Bi-annual         | One (1) month's salary per year of service, payable half in June and half in December of each year.  |
| Transportation Aid        | Monthly           | It is a fixed sum of money established annually by a government decree which has to be paid monthly by the employer to all the employees whose salary is up to two (2) times the MMLS (CO\$1,378,000 – US\$460).   |
| Footwear and Work Clothes | Every four months | It is an endowment of one (1) pair of shoes and (1) labor dress that has to be provided three (3) times a year to every employee, in accordance with the task to be performed. Employees entitled to this benefit are those that earn up to twice the MMLS (CO\$1,378,000 – US\$460) and that have been employed for at least three (3) months.    |

### **3. Required Rest Periods**

#### ***a. Paid rest on Sundays and holidays***

The employer is required to give the paid Sunday rest to his employees and the paid holidays for civil and religious holidays. This payment is included in the monthly amount to be paid as wages.

If the employee occasionally works on Sunday, (up to two (2) Sundays on the same calendar month) he or she must receive a surcharge of 75% over the ordinary salary in proportion to the hours worked on a Sunday, or one (1) day's paid compensatory rest to be enjoyed any other work day of the following week.

If the employee works Sunday's regularly (three or more Sundays during one calendar month), he must receive a surcharge of 75% over the ordinary salary in proportion to the hours worked on a Sunday, in addition to one (1) day's paid compensatory rest to be enjoyed any other work day of the following week.

#### ***b. Annual Paid Vacations***

Employees have the right to enjoy fifteen (15) working days of paid vacation for each year of work. As a minimum, the employee must enjoy six (6) vacation days for each year of service. The remaining days may be accrued for up to two (2) years for ordinary workers and up to four (4) years for specialized workers, technicians, trusted staff or foreign staff that render their services at a location other than the place of residence of their family.

### **4. Indemnities**

Indemnities are payments resulting from failure to comply by the employer of his legal or contractual obligations, or for the lack of compliance with the obligations imposed by labor law. The most common compensations are:

#### ***a. Indemnity for unilateral termination of a contract without just cause***

For fixed term contracts, compensation is equivalent to the remaining time of the agreed term.

For contracts for the duration of a work or contracted job, compensation is equivalent to the time remaining for completion of the work or job, with a minimum of fifteen (15) days.

For indefinite term contracts, compensation is calculated as follows:

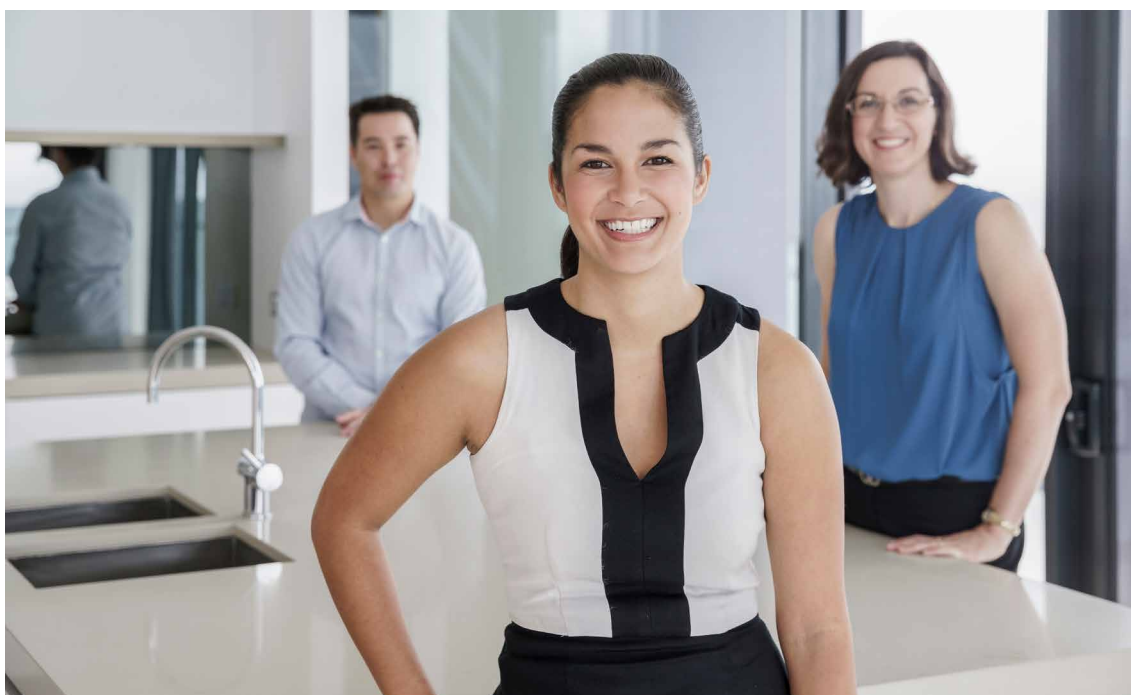
For employees earning a salary less than ten minimum legal monthly wages (10 SMLLV):

- If the employee has completed less than one (1) year of continuous services he or she is entitled to thirty (30) days salary.
- If the employee has completed more than one (1) year of continuous service, he or she is entitled to thirty (30) days salary for the first year and twenty (20) days salary for each of the subsequent years of service after the first year and so forth, proportionally per fraction thereof.
- For employees earning a salary equal to or above ten minimum legal monthly wages (10 SMLLV):
- If the employee has completed up to one (1) year of continuous service, he or she will be paid twenty (20) days salary.

- If the employee has completed more than one year of continuous service, he or she will be paid twenty (20) days salary for the first year and fifteen (15) days salary thereafter for each of the subsequent years and so forth proportionally per fraction thereof.

***b. Indemnity for lack of payment of salary and benefits***

In case the employee at the termination of the labor contract does not pay the employee the sums owed for salary or additional benefits in due time and form, the employee will have the right to receive as compensation for such delay, one (1) day of salary for each day of failure to comply, for the first 24 months.



## 5. Contributions to the Comprehensive Social Security System

**Figure 16 Contributions to the Comprehensive Social Security System**

| <i>Obligations</i>  | <i>Payment period</i> | <i>Percentage</i>  |
|---|-----------------------|--|
| Contribution to the general pensions system. Maximum contribution base is 25 MMLS with a value of Col\$17,2363,375 for FY 2016 (Approx. US\$5,745 using Col\$3,000 to the dollar as reference exchange rate). | Monthly               | <p>16% of employee's monthly salary, of which the employer pays 12% and the employee 4%. Employees who earn more than four (4) MMLS must pay an additional one (1%) percent for the solidarity fund. Employees earning 16 MMLS or more, will have an additional contribution over their contribution base income, as follows:</p> <p>Between 16 and 17 MMLS 0.2%<br/> Between 17 and 18 MMLS 0.4%<br/> Between 18 and 19 MMLS 0.6%<br/> Between 19 and 20 MMLS 0.8%<br/> Between 20 and 25 MMLS 1.0%</p> <p>Foreigners who contribute to the pension system of their countries of origin will not have the obligation of contributing to the pension system in Colombia.</p> |
| Contribution to health social security system. Maximum contribution base is 25 MMLS.  | Monthly               | Equivalent to 12.5% of employee's monthly salary of which the employer pays 8.5% and the employee 4%.  |
| Contribution to professional risk system. Maximum contribution base is 20 MMLS.   | Monthly               | Rate varies between 0.348% and 8.7% depending on level of risk of the company. The total amount is paid by the employer.   |

Colombia has signed bilateral social security agreements with Chile, Argentina and Spain. The object of these agreements is to guarantee that citizens of the contracting countries can accrue their contributions to the pension systems in any of the countries (according to each treaty) for the purpose of recognizing retirement, disability or survivor's pensions, under the conditions and with the characteristics of the legislation of the country of residence of the employee requesting the benefit at the time.



## 6. Parafiscal Contributions (Payroll Taxes)

Employers are required by law to make some additional payments, calculated as percentages of the total value of their payroll. Said payments must be made to a Family Compensation Bureau (Caja de Compensación Familiar), to the National Apprenticeship Service (Servicio Nacional de Aprendizaje “SENA”) and to the Colombian Family Welfare Institute<sup>3</sup> (Instituto Colombiano de Bienestar Familiar), according to the parameters listed in the following chart:

|                                 |           |
|---------------------------------|-----------|
| <b>Family Compensation Fund</b> | <b>4%</b> |
| <b>SENA</b>                     | <b>2%</b> |
| <b>ICBF</b>                     | <b>3%</b> |
| <b>TOTAL</b>                    | <b>9%</b> |

### a. Reduction of parafiscal contributions for micro, small and medium enterprises - MIPyMEs:

Article 43 of Law 590 of 2000 establishes that Micro, Small and Medium companies have, during their first three years, the right to reduce their parafiscal contributions to SENA (2%), ICBF (3%) and Family Compensation Funds (4%), according to the following rules:

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

To qualify for the abovementioned benefit, the company must update its Tax ID (RUT) before the National Directorate of Taxes and Customs (DIAN), reporting its capacity as a micro, small or medium enterprise as well as its desire to obtain said benefit on the RUT form (space 89). Likewise, when paying said contributions it must report this circumstance on the form, ticking the appropriate box.

Micro, Small and Medium Enterprises are classified as follows:

- **Micro Enterprise:** A company that has a staff of no more than 10 employees, or total assets, excluding housing, valued at less than 500 MMLS (COL \$ 344,727,500).
- **Small Enterprise:** A company that has between 11 and 50 employees, or total assets valued between 501 MMLS (COP\$ 345,416,955) and 5,000 SMLLV (COL\$3,477,275,000).
- **Medium Enterprise:** A company that has between 51 and 200 employees, or total assets valued between 100.000 UVTs (Tax Value Unit) (COL\$ 2.827,900,000) y 610.000 UVTs (COL\$ 17,250,190,00).

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<sup>3</sup>Colombian Family Welfare Institute - ICBF

## **7. Leaves**

### **a. Maternity Leave**

Every pregnant employee has the right to a fourteen (14) week leave, which may begin two (2) weeks before expected date for childbirth. This leave is paid by the health-care social security system. No employee can be terminated by reason of pregnancy or breastfeeding, except if there is a just cause previously qualified by a work inspector. It is forbidden to request pregnancy tests from job candidates.

### **b. Paternity Leave**

The husband or permanent companion will have the right to eight (8) working days paid leave for paternity, whether both parents or only the father contributes to the social security system.

In both cases, the husband or permanent companion must have contributed the same number of weeks which are required from the mother to have the right for a maternity leave.

### **c. Bereavement Leave**

In case of death of the spouse or permanent companion, or of a family member up to second degree of consanguinity, first degree of affinity and first civil degree, the employee will have the right to a paid bereavement leave of five (5) working days whatever the type of contract or labor relationship.

## **F. Regulations**

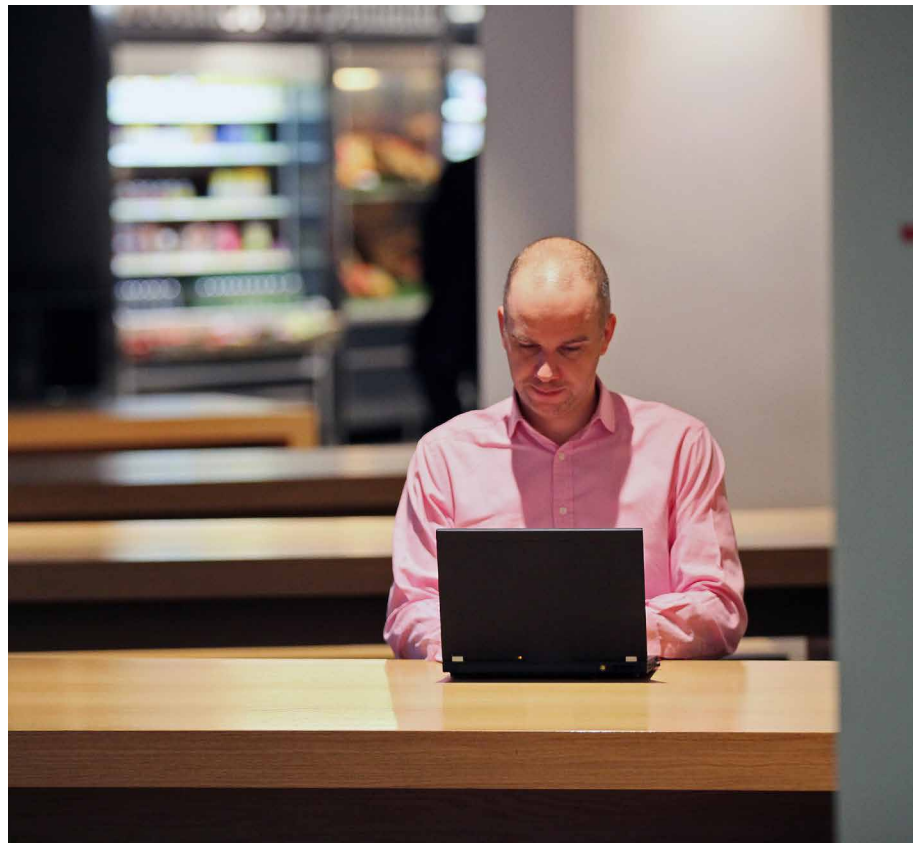
Employers have the obligation to issue the following regulations:

### **1. Workplace Regulations**

Any company that employs more than five (5) permanent employees in commercial companies, or more than ten (10) in industrial companies, or more than twenty (20) in agricultural, livestock or forestry companies, has the obligation of adopting workplace regulations.

### **2. Workplace Safety and Health Regulations**

Every company that employs ten (10) or more permanent employees must prepare a special Workplace Safety and Health Program.



## ***G. Workplace Harassment***

Law 1010 of January 23, 2006, defines, prevents, corrects and punishes all forms of aggression, mistreatment and generally any assault to human dignity occurring in workplace relations.

This law required employers to modify their internal workplace regulations and create a coexistence committee in charge of establishing mechanisms to prevent for workplace harassment behaviors and follow an internal, confidential, conciliatory and effective procedure in order to overcome any such conduct that may occur at the workplace.

## ***H. Foreign Workers***

Foreign workers have the same rights and the obligations as Colombian workers. However, when a foreign person enters into a work contract in Colombia, both the employer and the employee must meet certain additional obligations that they must comply with, that originate in the administrative procedures for the admission and control of foreigners during their stay in the country.

Companies with more than ten (10) employees in their payroll cannot hire more than 10% of foreign employees, as ordinary employees, nor more than 20% as management and trust employees. Only in special cases and for certain industries can these percentages be higher, for which it is necessary to obtain an authorization of the Ministry of Social Protection certifying that in contracting the foreign employee the stated proportion is respected.

## ***I. Collective Rights***

Collective law is in charge of regulating relationships between the employer and union organizations, collective contracting and the defense of common interests, both of employers as well as of employees, during the course of a collective work conflict. Its purpose is to develop the right of union association and the right to collective contracting and bargaining, as well as to establishing the mechanisms to guarantee the right to unionize and to go on strike.

### ***1. Right to Unionize***

Colombian employees have the right to unionize as an exercise of common labor guarantees. This constitutional right seeks to protect the creation and development of labor unions, as well as guarantee the exercise on the part of the employees of the defense of their labor and union interests.

# *Immigration Framework - Visas*



*Colombia regulates the entry and permanence of foreigners in the country by means of an immigration regime. This chapter presents the regulations that the Ministry of Foreign Affairs has established for citizens from restricted countries. Additionally, the main categories of visas that may be requested by foreigners planning to come and domicile in Colombia with the intention of render services, conduct business or invest in Colombia.*

## **A. Countries that do not require a visitor's visa**

Citizens from non-restricted countries are allowed to enter Colombian territory without requiring a visa for the following activities: tourism, academic programs up to 6 months, medical treatments, to be part in an administrative or judicial litigation/procedure, for business or cultural purposes.

These citizens will receive a temporary permit to perform one of the above mentioned activities by the Colombian immigration upon their arrival to the Colombian territory. This permit will allow foreigners to stay in Colombia for an initial term of 90 days, renewable for an additional 90 days.

Citizens of the following countries are non-restricted:

Germany, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belgium, Belize, Bolivia, Brazil, Brunei-Darussalam, Bulgaria, Bhutan, Canada, Korea, Costa Rica, Croatia, Chile, Cyprus, Denmark, Dominica, Ecuador, El Salvador, United Arab Emirates, Slovakia, Slovenia, Spain, United States of America, Estonia, the Russian Federation, Fiji, Philippines, Finland, France, Georgia, Granada, Greece, Guatemala, Guyana, Honduras, Hong Kong, Hungary, Indonesia, Ireland, Iceland,

Marshall Islands, Solomon Islands, Israel, Italy, Jamaica, Japan, Kazakhstan, Latvia, Liechtenstein, Lithuania, Luxemburg, Malaysia, Malta, Mexico, Micronesia, Monaco, Norway, New Zealand, The Netherlands, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, United Kingdom of Great Britain and Northern Ireland, Czech Republic, Dominican Republic, Romania, Saint Kitts and Nevis, Samoa, San Marino, Saint Lucia, the Vatican, Saint Vincent and the Grenadines, Singapore, South Africa, Sweden, Switzerland, Suriname, Taiwan, Trinidad and Tobago, Turkey, Uruguay, Venezuela.

Even though India, China, and Vietnam are considered by Colombian law as restricted countries for immigration purposes, their citizens can enter into Colombian territory for tourism or business purposes if they have a Schengen C or D visa or if they hold a USA visa (any category excluding C-1).



## **B. Visa Classification**

### **1. Business Visa – NE**

#### **NE-1 Visa:**

**Applicants:** issued to a foreign national intending to enter Colombia in order to carry out commercial or business activities, such as promoting economic exchange, making investments and creating companies.

**Term:** This visa is granted for a maximum term of three (3) years with multiple entries and authorizes a permanence of up to one-hundred and eighty (180) continuous or discontinuous days per year.

#### **NE-2 Visa:**

**Applicants:** Issued to a foreign national intending to enter Colombia in order to carry out business activities within the framework of international instruments such as international treaties, association agreements and the Pacific Alliance.

**Term:** This visa is granted for a maximum term of three (4) years with multiple entries and authorizes a permanence of up to two (2) continuous or discontinuous years during the term of the visa.

#### **NE-3 Visa:**

**Applicants:** Issued to a foreign national intending to enter Colombia as a director or representative of a governmental foreign commercial office.

**Term:** This visa is granted for a maximum term of four (4) years with multiple entries and authorizes a permanence of up to four (4) continuous or discontinuous years during the term of the visa.

#### **NE-4 Visa:**

**Applicants:** Issued to a foreign national intending to enter Colombia as a President or top executive of a multinational company with the intention of making investments and creating companies.

**Term:** This visa is granted for a maximum term of five (5) years with multiple entries and authorizes a permanence of up to one-hundred and eighty (180) continuous or discontinuous days per year.

## **2. Temporary Visa – TP**

### **TP-1 Visa:**

**Applicants:** Issued to foreign nationals intending to enter Colombia for the development and compliance of international conventions or treaties, to students or teachers intending to carry out cultural or academic exchange activities, and also granted to production personnel for foreign movies.

**Term:** The visa is granted for a maximum term of one (1) year with multiple entries and authorizes permanence for the duration of the visa.

### **TP-2 Visa:**

**Applicant:** Issued to foreign crew or member of an international means of transportation.

**Term:** The visa is granted for a maximum term of one (1) year with multiple entries and authorizes permanence for up to ninety (90) days for each entry.

### **TP-3 Visa:**

**Applicants:** Issued to a foreign national intending to develop an academic program, as long as it is taught at a certified educational entity.

**Term:** The visa is granted for a maximum term of five (5) years with multiple entries (considering the duration of the academic program) and authorizes permanence during the term of the visa. The visa is cancelled in the event the foreign national exits the country for a term of more than one-hundred and eighty (180) consecutive days.

### **TP-4 Visa:**

**Applicants:** Issued to a foreign national intending to enter Colombia by virtue of a work relation or contracted to render services.

**Term:** The visa is granted for a maximum term of three (3) years with multiple entries and authorizes permanence for the duration of the visa.

### **TP-5 Visa:**

**Applicants:** Issued to a foreign national intending to enter Colombia as a member of a religious order.

**Term:** The visa is granted for a maximum term of two (2) years with multiple entries and authorizes permanence for the duration of the visa.

TP-6 Visa:

Applicants: Issued to a foreign national intending to enter Colombia as a contributor or volunteer with a non-governmental or non-profit organization.

Term: The visa is granted for a maximum term of one (1) year with multiple entries and authorizes permanence for the duration of the visa.

TP-7 Visa:

Applicants: Issued to a foreign national intending to enter Colombia to develop the following activities or duties: retired, financial expert, partner or owner of a company, owner of a real estate property, recipient of medical treatment and foreign nationals that intend to develop independent activities.

The Foreigner intending to enter as a partner or owner of a company must have a minimum invest of one-hundred (100) MMLS, equivalent to Col\$68,945,500 for year 2016 (approximately US\$22,981).

A foreign national intending to enter the country as owner of a real estate property must make an investment of three-hundred and fifty (350) MMLS, approximately Col\$241,309,250 for year 2016 (approximately US\$80,436).

Term: The visa is granted for a maximum term of one (1) year with multiple entries and authorizes permanence for the duration of the visa.

TP-8 Visa:

Applicants: Issued to a foreign national intending to enter Colombia to carry out adoption processes and participate in legal or administrative processes.

Term. The visa is granted for a maximum term of one (1) year with multiple entries and authorizes permanence for the duration of the visa.

TP-9 Visa:

Applicants: Issued to foreign nationals categorized as refugees or receiving asylum from the National Government, at the request of the Advisory Commission to Determine Refugee Status, and according to current international instruments on the subject matter.

Term: The visa is granted for a maximum term of five (5) years and authorizes permanence for the duration of the visa.

TP-10 Visa:

Issued to a foreign national intending to enter Colombia as a spouse or permanent companion of a Colombian citizen.

Term: The visa is granted for a maximum term of three (3) years with multiple entries and authorizes permanence for the duration of the visa.

TP-11 Visa:

Applicants: Issued to foreign nationals intending to develop leisure or recreational activities. This visa applies to those foreign nationals with restricted nationalities, that is, that they are not authorized by the national norm to enter the country without holding a Colombian visa.

Term: This visa is granted for a maximum term of one (1) year with multiple entries and authorizes permanence of up to one-hundred and eighty (180) consecutive or non-consecutive days during the term of the visa.

TP-12 Visa:

Applicants: Issued to foreign nationals intending to enter Colombia with the purpose of participating in academic, cultural or sporting events, as well as participating in a selection process or business training. Like the TP-11 Visa, this visa applies to foreign nationals with restricted nationalities.

Term: This visa is granted for a maximum term of ninety (90) days with multiple entries and authorizes permanence for the duration of the visa.

TP-13 Visa:

Applicants: Issued to foreign nationals with restricted nationality that intends to provide specialized technical assistance whether or not bound by a labor relationship.

Term: This visa is granted for a term of one-hundred and eighty (180) days with multiple entries and authorizes permanence for the duration of the visa.

TP-14 Visa:

Applicants: Issued to foreign nationals who irrespective of their nationality intend to enter the national territory in transit to a country other than Colombia.

Term: The visa is granted for a term of thirty (30) days for multiple transits and authorizes permanence for up to twenty-four hours (24) during the term of the visa.

TP-15 Visa:

Applicants: Issued to citizens who are members of the countries that conform MERCOSUR (Member and associate countries). Currently, this visa may be issued to citizens of Argentina, Brazil, Bolivia, Peru, Chile, Ecuador, Uruguay and Paraguay.

Term: The visa is granted for a period of up to two (2) years and authorizes permanence during the term of the visa.

TP-16 Visa:

Applicants: Issued to foreign nationals from countries that have entered into a “vacations and work” agreement with Colombia.

Term: The visa is granted for a period of one (1) year and authorizes permanence during the term of the visa.



### 3. Resident Visa – RE

**Applicants:** Issued to a foreign national who intends to enter the country with the intention to remain therein and may be requested in the following cases:

When the foreign national is the mother or father of a Colombian national.

When the foreign national used to be a Colombian due to adoption or birth but renounced his or her nationality.

When he or she has held TP-3, TP-4, TP-5, TP-7 and TP-9 visas for five (5) consecutive and uninterrupted years.

When he or she has held a TP-10 visa for a minimum period of three (3) consecutive and uninterrupted years.

When the foreign national of legal age is the beneficiary of a RE visa for at least five (5) consecutive and uninterrupted years.

The foreign national investor who has registered a foreign investment with the Central Bank for an amount exceeding six-hundred and fifty (650) MMLs (approximately \$448,145,750 (US\$149,381) for 2016.

**Term:** The visa is granted for a term of five (5) years, except in the case of point 3, when the term of the visa is indefinite. This visa authorizes permanence during the term of the visa.

In the event the foreign national is absent for a period of two (2) or more continuous years, he will lose the right to this visa.



### ***C. Entry and permanence permits***

When travelers are from a non-restricted country they are allowed to enter Colombian territory for a short term training with a temporary permit (PIP) which will be stamped in his/her passport by immigration authorities upon arrival.

The Immigration Administrative Colombian Unit (UMC) is the entity in charge of issuing PIP and its renewal (PTP), to foreign nationals from non-restricted nationalities willing to enter into Colombia for short periods.

PIPs are granted to foreign nationals who enter into the country to develop the following activities:

PIP-1: Compliance with international conventions or treaties, whose presence is of vital importance to the country.

PIP-2: Developing academic programs as long as they do not exceed one semester.

PIP-3: Medical treatment.

PIP-4: Participation in legal or administrative processes.

PIP-5: Tourism.

PIP-6: Academic, scientific or artistic events with no labor relationships.

PIP-7: Development of specialized technical assistance.

PIP-8: Member of a means of international transportation.

PIPs will have a validity of ninety (90) days, except for those issued for technical assistance (PIP-7) which duration shall not exceed thirty (30) days.

## ***D. Foreigner's Identity Card***

Granted to foreign nationals who have obtained a visa for a term exceeding three (3) months. For the latter, they must register and request the Foreign ID before the UMC within 15 days after their arrival to Colombia or the date of visa issuance, in case it was issued in Colombia.

The foreigner's identity card will be issued for the term of the visa and will be the foreigners' identification within their stay in Colombia.





# *Tax Framework*





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*The Colombian tax system contemplates taxes at the national and territorial level (departmental and municipal).*

*The main national-level taxes are the income tax and capital gains tax, income tax for equality or – CREE –, the wealth tax (temporary), VAT, national excise tax and the financial transactions tax. Taxes at the territorial level include industry and commerce tax, property tax, registry tax, etc.*

*Colombia's tax treaty network has grown over the past 10 years and includes tax treaties with Spain, Chile, Korea, India, Mexico, Canada and Switzerland, India, France, Portugal, Korea among others.*

*Legal entities and even individuals required to have accounting are subject to the accrual method of taxation. While Colombia is currently transitioning to IFRS, taxes are recognized, prepared and remitted on the basis of the legacy Colombian GAAP during a 4-year transition period at the end of which legislative actions are expected to come into force to regulate IFRS as the basis for taxation.*

## **A. Income Tax and Capital Gains Tax**

As a direct form of taxation, income tax is levied on earnings and profits obtained by taxpayers in the regular course of business. Capital gains tax is imposed on certain non-regular transactions and circumstances as further set out below.

### **1. Overview**

Generally, tax residents are taxed on a worldwide basis while non-residents, branches and permanent establishments are exposed to taxation on a domestic basis only.

As a general rule, fiscal year for direct taxes is the same as the calendar year.

### **2. Rates and Taxable Base**

The general rate for income tax is 25%. For industrial users located in Free Trade Zones (manufacturers and toll manufacturers, including exploration and production companies exclusively operating offshore) there is a preferential rate of 15%.

Income tax rate is applied to the greater of regular or ordinary taxable income or presumptive taxable income.

#### **a. Ordinary System to Determine Taxable Income**

This system includes all revenues, ordinary and extraordinary, for the year or taxable period likely to generate an increment to gross equity when received and determined as per the following table:



**Figure 17 Determination of ordinary taxable income**

***Determination of ordinary taxable income***

Gross Revenue  
Minus: Discounts, Refunds and Rebates

Net Revenue  
Minus non-taxable income or capital gains

Net Taxable Revenue  
Minus: Costs

Gross Income  
Minus: Deductions

Net Income  
Minus: Exempt income

Net Taxable Income  
Multiplied by: Rate

Basic Income Tax  
Minus: Tax credits

Net Income Tax

***b. Presumptive Income System***

The presumptive income system constitutes an alternate basis for taxation measured at 3% of net equity for tax purposes as of December 31 of the year prior to the current taxable year.

The net asset value of the following can be subtracted from the total amount of net assets, which is the base to calculate presumptive income:

Of the shares owned in national companies.

Of the assets affected by force majeure or unforeseen events.

Of assets associated with operations in unproductive periods.

Where the presumptive taxable income, as a basis, is greater than regular taxable income, the gap can be carried forward (adjusted for inflation) over the next five (5) taxable years and set off against regular taxable income.

Certain areas are exempted from the alternative basis for taxation. Companies in liquidation are not subject to presumptive taxable income over the first three years of the process.

### **3. Non Taxable Income**

The legislation includes certain special tax treatments that allow for the exclusion of certain income or revenue from the calculation of the taxable base. Among these are dividends and share profits (as long as they are paid out from profits that have been taxed at the corporate level), certain profits from the sale of shares, the capitalization of certain items and compensations from property casualty insurance.

### **4. Costs, Deductible Expenses and Other Deductions**

Costs are payments or charges incurred in the acquisition or production of goods, or to provide a service in order to obtain revenues. Costs connected with the taxpayer's profit-rendering activity are deductible (subject to certain other requirements including, but not limited to, being necessary, proportionate).

#### **a. Salaries and Payroll taxes**

Salary payments are generally subject to employer-borne payroll taxes (“aportes parafiscales”) (ICBF<sup>3</sup>, SENA<sup>4</sup>, Family Subsidy) as well as social security contributions. Certain ceilings and exemptions apply. These contributions are also deductible, and full compliance is a pre-requisite for salaries to be deductibles.

This deductibility requirement does not apply to workers earning less than ten MMLs.

#### **b. Deductibility of taxes**

One hundred percent (100%) of the industry and commerce tax (and the supplementary billboard tax) and the real property tax actually paid in the respective taxable year, provided they have a causal nexus with the economic activity of the taxpayer.

Fifty percent (50%) of the tax on financial transactions actually paid during the fiscal period, whether or not there is a causal nexus with the economic activity of the taxpayer (See Tax on Financial Transactions – GMF).



<sup>3</sup>Colombian Family Welfare Institute (ICBF)

<sup>4</sup>National Apprenticeship Service (SENA)

### *c. Thin capitalization*

Deductibility of interest is subject to a 3 to 1 thin cap rule the basis of which is net equity for tax purposes as of the preceding year. Certain areas such as banking and infrastructure are out of scope. Thin cap rules apply to interest in the course of related or unrelated party transactions, whether local or cross-border.

### *d. Expenses Abroad*

These are generally deductible if related to the taxpayer's profit-rendering activity (among other tests) and provided withholding tax, if applicable, is remitted. Otherwise, deductibility is generally capped at 15% of the taxpayer's taxable income before these expenses. The 15% rule includes certain exemptions.

### *e. Donations*

Donations made to certain qualified entities are deductible for income tax purposes in the period or tax year when made. Certain caps and requirements may impact the ability to deduct and the amount of the allowable expense.

### *f. Investment on Scientific and Technological Development*

Taxpayers who invest, directly or indirectly, in projects that qualify as scientific, technological or which involve technological innovation, according to its legal definition, have the right to deduct from their net income 175% of the amount invested in the taxable year in which the investment was made. This deduction cannot exceed 40% of the taxpayer's net income, determined before the investment.

Also available is a deduction for 75% of the value of donations made to centers or groups dedicated to technological development and investigation. Likewise, this deduction cannot exceed the above 40% cap.

### *g. Environmental control and improvement*

Investments for the control and improvement of the environment will enjoy a deduction when made subject to a cap of 20% of the taxpayer's taxable income before these expenses.

#### ***h. Tax loss carryforwards***

Starting in 2007 tax losses can be set off against any regular taxable income with no expiration. Tax losses cannot be transferred to the shareholders or company members.

Certain limitations apply to the transfer of losses under mergers and spin-offs, where such losses are transferable to the surviving entity to the extent of the share of the disappearing entity's equity relative to that of the surviving entity. In addition, the participating entities must have the same business purpose prior to the reorganization, both on paper and substance.

#### ***i. Amortization of Investments***

Amortization is the distribution of the cost of an intangible asset during its useful life or during any other period of time, determined by valid criteria. According to the current tax system, necessary investments, that is, those made in furtherance of the business or activity of the taxpayer, other than investments in land or depreciable fixed assets, are amortizable. The foregoing includes disbursements made for the purpose of the business or activity, susceptible to impairment, that must be recorded as assets for their amortization in more than one year or fiscal period or that must be deferred because they constitute preliminary expenses of installation, organization or development.

These investments must be amortized in a term not shorter than five (5) years, except when, due to the nature or duration of the business, they need to be amortized in a shorter period of time.

#### ***j. Depreciation***

Fair values of depreciation caused by the normal wear and tear or obsolescence of fixed assets used in business or income producing activities are deductible in the amount or percentage necessary to amortized 100% of the cost during the useful life of such property.

#### ***k. Exchange Rate Differences***

Payments made in foreign currency are estimated at the acquisition price in Colombian currency. When there are debts or assets in foreign currency, their amount is adjusted at the market rate of exchange – TRM- on the last day of the year, and any difference is generally taxable or deductible, as the case may be.

#### ***l. Dividend***

When paid out fully taxed profits, there is no dividend tax. Otherwise, a 33% rate applies for non-residents, except where treaty relief is available. These rules also apply to Branch profits.

#### ***m. Tax Havens***

Since 2013 Colombia released a blacklist which has been updated periodically. Transactions with a party located or resident in a blacklisted jurisdiction are generally subject to withholding tax at the top rate as well as more demanding requirements for deductibility.

## **5.Exempt Income**

Some of the currently available exemptions apply to (inter alia):

- Publishing companies dedicated to the publication of books, magazines, brochures or collectible, numbered publications of a scientific nature, are exempt beginning 2014 for 20 years.
- Government debt provided creditors are not residents.
- The sale of electric power generated from wind, biomass, or agricultural waste produced by generating companies is exempt until 2018, provided the company sells the energy itself and issues and negotiates Certificates of Reduction of Greenhouse Gasses.
- River transportation services with shallow draft vessels and barges are exempt for a period of 15 years, beginning 2003.
- Hotel services offered at new hotels that are built within a period of fifteen (15) years as of 2003 are exempt for a term of 30 years from the date operation begins.
- Hotel services offered in remodeled and/or expanded hotels, within fifteen (15) years as of 2003, for a term of 30 years, proportionately to the cost of the remodeling and/or enlargement prorated to the tax basis of the remodeled and/or expanded facility.
- Ecotourism services for 20 years as of 2003.
- Investment in new forestry plantations, sawmills and plantations of timber-yielding trees.
- New medicinal and software products developed in Colombia and protected under new patents registered with the authorities, with a high content of national research and technology are exempt until 2018.



## 6. Tax Credits

- Tax credits for taxes paid abroad by resident taxpayers that receive foreign source income.
- Tax credits to Colombian air and maritime transportation companies.
- Tax credits for tree plantations in reforestation areas.
- Tax credit for the sales tax paid on the importation of heavy equipment for basic industries.
- Tax credit for investment in the stock market of shares of companies dedicated to agricultural industries.

In no case can the tax credits exceed the amount of income tax. Income tax after discounts may in no case be lower than 75% of the income tax calculated by the presumptive income method over net assets, before any tax credit.

## 7. Transfer Pricing

Colombian rules generally follow the guidelines of the Organization for Economic Cooperation and Development – OECD – and came into effect in 2004.

With the entry into force of this system, income and CREE taxpayers who carry out operations with foreign related parties must determine their income, costs and deductions taking into account the prices and profit margins used in comparable operations with or between independent parties.

Additionally, income and CREE taxpayers who carry out operations with non-resident related parties, with gross assets of more than one-hundred thousand (100,000) UVTs (approximately US\$942,000 ) and with gross revenue in excess of 61,000 UVTs (US\$ 575,000) are required to file an annual informative report of the operations carried out with their related parties and to prepare and file documentation for each of the operations in order to prove the compliance with the arm's length principle.



Also subject to transfer pricing rules are resident taxpayers engaging in transactions (expenses) located or resident in blacklisted jurisdictions.

### 8. Capital Gains Tax

This tax is imposed, among other, on the gains for the sale of fixed assets held for at least two years. Capital gains cannot be affected by regular tax losses as well as capital losses cannot be used against regular taxable income.

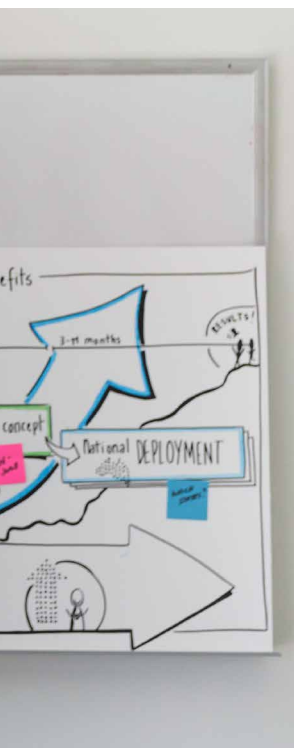
Capital gain tax rate is generally 10%.

### 9. Withholding at the source

The Colombian tax system provides for withholding taxes as a method of advance tax collection. This mechanism authorizes a private or public entity, by law or regulation and under certain special conditions, to collect, withhold or withhold at the source certain taxes. According to the Tax Code, the withholding agents are (inter alia) the legal entities that due to their activities participate in acts or operations in which they must withhold the tax (or a portion of it) by express order of the law.

The main obligations of the withholding agents in this regard consist of carrying out the applicable withholding, depositing the withheld amounts where and when the government determines, filing the monthly withholding tax returns and issuing the corresponding withholding tax certificates.

As a result of differential local rates and special rates for payments made abroad, the withholding rate applicable to a specific operation depends on the nature of said operation.



## **B. International Tax**

Colombia is applying for OECD membership and tax changes are on the agenda for consideration. At the same time, Colombia is actively participating in the BEPS effort as part of some of the working groups. Colombia is also a signatory party to the Convention on Mutual Administrative Assistance in Tax Matters.

## **C. Wealth Tax**

Wealth Tax originates with possession of wealth equal to or in excess of COP\$1,000 million pesos (approximately US\$333,333) as of January 1, 2015.

Taxpayers include: a) Natural persons, unliquidated successions, legal persons and de facto companies, income taxpayers; b) non-resident natural persons, national or foreign, regarding their wealth in the country, except for the exceptions provided in international treaties and internal laws; c) non-resident natural persons, national or foreign, regarding their wealth related to permanent establishments in the country, except for exceptions provided in international treaties and internal laws; d) foreign companies or entities regarding their wealth in the country; e) foreign entities or companies regarding their wealth in the country through branches or permanent establishments in the country; f) unliquidated successions of non-residents at the time of death, related to the wealth in the country.

This tax will be applied to legal persons on January 1, 2015, January 1, 2016 and January 1, 2017. For individuals it shall be applied on the same dates as well as on January 1, 2018.

The taxable base for this tax is comprised of the taxpayer's net worth (gross worth minus debts) on each taxation date, and certain deductions are permitted including the net equity value of shares in resident companies, among other.

Also, in case the taxable base established for any of the above-mentioned years exceeds (or is below) that of January 1, 2015, the taxable base will be the lesser (or the greater as the case may be) between that calculated in 2015 plus 25% inflation certified by DANE<sup>3</sup> for the immediately preceding year and the taxable base determined on the reporting year.

The tax rate for legal persons is determined for each tax year based on the following table:

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<sup>3</sup>National Administrative Department of Statistics - DANE

**Figure 18**

| Lower Limit (USD) | Upper Limit (USD) | 2015 Rate | 2016 Rate | 2017 Rate |
|-------------------|-------------------|-----------|-----------|-----------|
| 0                 | 666,666           | 0,20%     | 0,15%     | 0,05%     |
| 666,666           | 1,000,000         | 0,35%     | 0,25%     | 0,10%     |
| 1,000,000         | 1,666,666         | 0,75%     | 0,50%     | 0,20%     |
| 1,666,666         | and above         | 1,15%     | 1,00%     | 0,40%     |

## ***D. VAT***

This is a national level tax that mainly taxes the sale of items of tangible personal property other than fixed assets, the provision of services within the national territory and the importation of tangible personal property, except where an exemption is available.

VAT is credit-debit tax which general rate is 16%. Only registered entities and businesses can account for VAT in the course of taxable transactions. For taxable supplies by non-residents, reverse charge rules apply.

## **1. Out of scope supplies**

### **A. Goods:**

- National or imported equipment and materials destined for the construction, installation, assembly and operation of environmental monitoring and control systems.
- Importation of raw materials and supplies under special import-export programs - Vallejo Plan – when said materials and supplies are incorporated into products that will subsequently be exported
- Temporary importation of heavy machinery and equipment for basic industries provided that they are not produced in the country. Basic industries are considered mining, hydrocarbons, heavy chemistry, iron and steel industry, metallurgy, extraction of natural resources, generation and transmission of electrical energy, and obtaining, purifying and conducting hydrogen oxide.
- Importation of machinery and equipment not produced in the country, for recycling and processing of waste and refuse.
- Ordinary importations on the part of highly exporting users – “ALTEX”, of industrial equipment not produced in the country destined for the transformation of raw materials, for an indefinite period of time.
- Sales of fixed assets.





***B. Exempt Services:***

- Public and private, national and international freight transportation.
- Public transportation of passengers in the national territory by water or land.
- National air transportation of passengers to national destinations, where there is no organized land transportation.
- Transportation of gas and hydrocarbons.
- Interest and other financial income from credit operations and financial leasing.
- Medical, dental, hospital, clinical and lab services for human health.
- Public utilities including power, water, sewage, street cleaning, garbage collection and gas distribution.

2. Input VAT

VAT incurred in the purchase and import of supplies is generally creditable unless related to fixed assets or unconnected with the business' taxable sales.

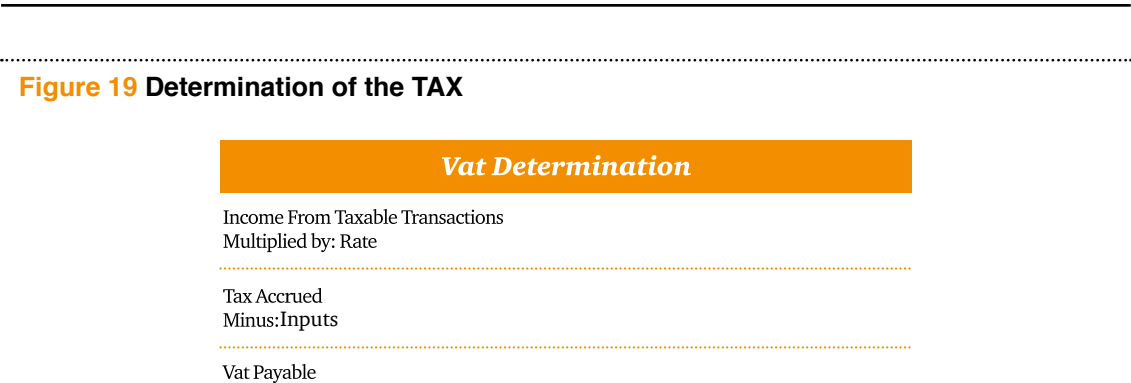
The creditable tax may only be registered in the tax period that corresponds to its accrual date or in one of the following two bi-monthly periods and requested on the period on which it was registered.

Input VAT is not available for:

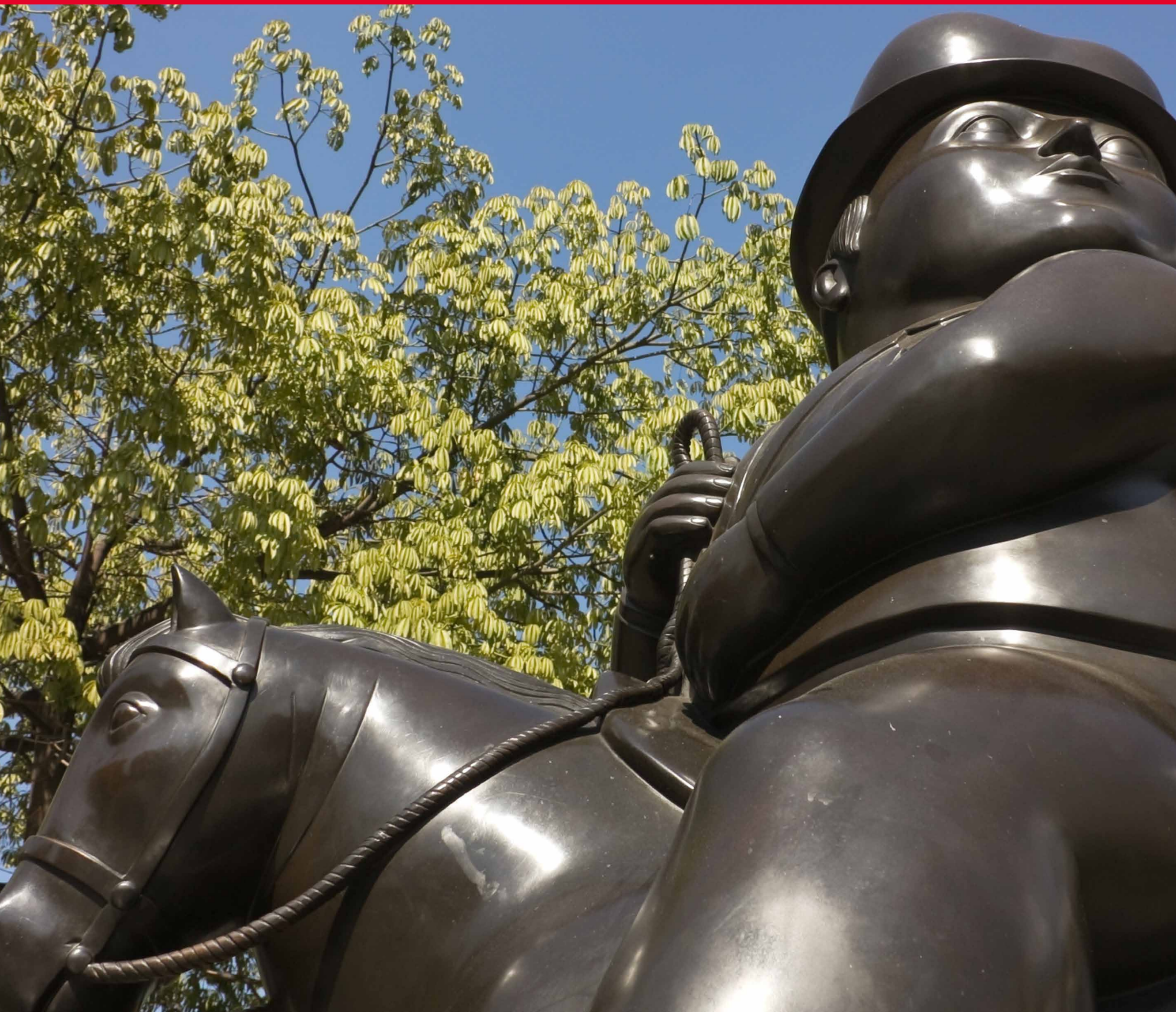
- Acquisition of fixed assets
- Unrecoverable trade receivables
- Acquisitions made from suppliers that are not registered as VAT taxpayers
- Acquisitions made from fictitious or insolvent suppliers

3. Determining the VAT liability

VAT is determined by the difference between output and input VAT as follows:



# ***Excise Tax***



*Excise tax is generated by provision or sale to a final consumer or importation by the final consumer of certain products or services, such as mobile telephony, certain vehicles, dispensing of prepared meals, among others.*

*The basis for excise tax does not include VAT. The rates are as follows:*

**Figure 20**

|                                |          |
|--------------------------------|----------|
| Mobile Telephony               | 4%       |
| Vehicles                       | 8% - 16% |
| Restaurants and prepared meals | 8%       |

## **A. Financial Transactions Tax**

This tax imposed on the movement of cash (out) through the local banking system.

Exemptions apply including those for capital markets transactions. The rate is 0.4% and is currently set to phase out beginning 2019 until being 0% in 2022.

50% of this tax is deductible for income tax and CREE purposes. Banks and financial institutions are required to withhold and remit the tax to the Tax Authority.

## ***B. Industry and Commerce Tax and Complementary Billboard Tax***

### ***1. Industry and Commerce Tax***

This is a territorial tax that is imposed on revenue obtained from the performance of industrial, commercial or service activities that are carried out directly or indirectly by individuals, legal entities or unincorporated entities in any of the Colombian municipal jurisdictions. The definitions of the above types of activities are shown below according to Colombian law.

The taxable base for this tax is the gross value determined by the taxpayer minus deductions and exemptions to which he or she is entitled.

The rate for this tax is determined by each municipality, with the municipality being allowed to establish any rate within the following limits established by law:

For industrial activities, between two (2) and seven (7) per thousand (from 0.2% to 0.7%)  
For commercial and services activities, between two (2) and ten (10) per thousand (from 0.2% to 1%).

### ***2. Complementary Billboard Tax***

This is a back up tax which triggers upon the public display of billboards and the like. The taxable base for this tax is the payable value for Industry and Commerce Tax and the rate is 15%.

This tax is deductible for income and CREE tax when paid.



## ***C. Unified Property Tax***

The Unified Property Tax is imposed on ownership of land or real estate located urban, suburban or rural areas, whether or not constructed land. Therefore, the property tax payers are the owners or holders of the real property. This tax is justified because real estate is the hallmark of concentration of income and it is on account of that fact that real property is subject to this tax.

The taxable base of this tax is the current cadastral value of the property, as adjusted by the Price Consumer Index – IPC -. In areas such as the Capital District of Bogota, the taxable base is a self-valuation made by the taxpayer.

The applicable rate depends on the nature of the property; that is to say, if it is rural, urban or suburban, and varies between 4 per thousand and 12 per thousand (0.4% and 1,2%), differentially, taking into account the economic use of each property.

This tax is 100% deductible for income tax and CREE purposes, as long as there is a causal nexus with the income producing activity of the taxpayer.

## ***D. Registry Tax***

The registry tax is levied over all the acts, contracts or business set in documents that a required to be registered before the Chamber of Commerce and before the Public Registry Office.

The taxable base is the value incorporated into the document that contains the act, agreement or legal business. The tax base of the documents that do not have a stated value will be that of the nature thereof.

- Acts, agreements, or judicial contracts without a stated value that are subject to registry either before the Office of Public Instruments or Chamber of Commerce will accrue a tax between two and four minimum daily wages.

When a document is subject to Registry Tax, Stamp Tax will not be applied.

- Acts, agreements, or judicial contracts with a stated value subject to registry at the Offices of Public Instruments will accrue a tax rate between 0.5% - 1%.
- Acts, agreements, or judicial contracts with a stated value subject to registry before the Chambers of Commerce will accrue a tax rate between 0.3% and 0.7%, and



## ***E. Decision 578 of the Andean community of nations***

At the Andean Community level, Colombia, Perú, Ecuador and Bolivia are signatories of Decision 578 of 2004, which is the regional tax treaty to avoid double taxation. Unlike OECD-like treaties, Decision 578 privileges the source over residency to define taxation power.

## ***F. CREE - Income Tax for Equality***

This tax is effective as of January 1, 2013 and represents another form of direct taxation very similar to income tax. Taxpayers include entities and certain other subjects provided they are income tax payers as well. Residents are subject to CREE on a worldwide basis. Branches and permanent establishments are exposed to CREE on a domestic basis only. Structurally, CREE follows the same rules as for income tax except for donations and certain incentives and tax holidays.

Non-profit organizations are not taxable subjects for this tax. Free Trade Zones, authorized before December 31, 2012 or those who requested authorization to be incorporated as such as of that date, are also exempt from this tax, as well as users that have qualified or will qualify as such therein.

The tax event for this tax is income susceptible of increasing net worth. Capital gains are not subject to CREE.

CREE rates are applied to the greater of regular taxable income and presumptive taxable income. Unlike income tax, very limited exemptions from presumptive taxable income are available for CREE.

### ***1. Rate increase to the Income Tax for Equality***

A rate increase was introduced temporarily for the years 2016, 2017 and 2018.

The applicable rate will be determined as provided in the following table:



**Figure 21**

| <b>Surcharge to the Income Tax for Equality - CREE 2016</b> |                 |                      |                                       |
|---|-----------------|----------------------|---------------------------------------|
| <b>Taxable base range in \$</b>                             |                 | <b>Marginal rate</b> | <b>Rate</b>                           |
| <b>Over</b>   | <b>Not over</b> |                      |                                       |
| 0   | < 800.000.000   | 0.0%                 | (Taxable base) * 0%                   |
| > = 800.000.000   | Henceforth      | 6.0%                 | (Taxable base - \$800.000.000) * 6,0% |

The asterisk (\*) represents multiplied by, the  $\geq$  symbol means greater than or equal to.  
The < symbol means less than.

| <b>Surcharge to the Income Tax for Equality - CREE 2017</b> |                 |                      |                                       |
|---|-----------------|----------------------|---------------------------------------|
| <b>Taxable base range in \$</b>                             |                 | <b>Marginal rate</b> | <b>Rate</b>                           |
| <b>Over</b>   | <b>Not over</b> |                      |                                       |
| 0   | < 800.000.000   | 0.0%                 | (Taxable base) * 0%                   |
| > = 800.000.000   | Henceforth      | 8.0%                 | (Taxable base - \$800.000.000) * 8,0% |

The asterisk (\*) represents multiplied by, the  $\geq$  symbol means greater than or equal to.  
The < symbol means less than.

| <b>Surcharge to the Income Tax for Equality - CREE 2018</b> |                 |                      |                                       |
|---|-----------------|----------------------|---------------------------------------|
| <b>Taxable base range in \$</b>                             |                 | <b>Marginal rate</b> | <b>Rate</b>                           |
| <b>Over</b>   | <b>Not over</b> |                      |                                       |
| 0   | < 800.000.000   | 0.0%                 | (Taxable base) * 0%                   |
| > = 800.000.000   | Henceforth      | 9.0%                 | (Taxable base - \$800.000.000) * 9,0% |

The asterisk (\*) represents multiplied by, the  $\geq$  symbol means greater than or equal to.  
The < symbol means less than.

Each of the taxable years requires determining an advance payment of 100% of the CREE determined for the previous year.

## **G. Tax Normalization Tax (Amnesty)**

This is a complementary tax to the Wealth Tax which will be applicable for the years 2015, 2016, 2017 and 2018, payable by Wealth Tax taxpayers and voluntary payers of said tax that have omitted assets.

Assets subject to tax normalization that have been levied during one period will not be levied during subsequent periods. The taxable base of the tax comprises the net value of the assets.

| <b>Year</b> | <b>Rate</b> |
|-------------|-------------|
| 2016        | 11,5%       |
| 2017        | 13,0%       |



# *Corporate Matters*



## **A. Investment Vehicles**

In Colombia, domestic and foreign investment vehicles are supported by Constitutional principles, such as the right to equality, protection of free enterprise and private initiative. Following is a summary of the most relevant legal aspects regarding of the most commonly used investment vehicles in Colombia, as well as incorporation procedures.

### **1. Types of Investment Vehicles**

The most commonly used investment vehicles by foreign investors in Colombia are:

- **Simplified Joint-Stock Company (S.A.S.):** This type of company may be incorporated by one or more legal or natural persons (Colombian or Foreign) who will be the liable up to the amount of their contributions. It should be noted that in its incorporation as well as amendments to its by-laws may be done through a private document. Its name must always be followed by the expression “S.A.S.”.
- **Corporation (Sociedad Anónima) S.A.** This company type must have at least five (5) shareholders (whether natural or legal persons, Colombian or foreign) who will be liable up to the value of their corresponding contributions. It is incorporated through public deed granted before a public notary, as are its by-laws. Its name must always be followed by the expression “S.A.” and they are required to appoint a statutory auditor (external auditor).
- **Limited Liability Company (Ltda.):** This type of company must be incorporated through public deed granted before a public notary, with a minimum of two (2) partners and a maximum of twenty-five (25) (whether natural or legal persons, Colombian or foreign), who will be liable up to the value of their contributions, except for labor or tax obligations, in which case they will be severally liable. Any amendment of the by-laws or transfer of shares must be made through public deed. Its name must be followed by the expression “Ltda.”.



- **Foreign Company Branch.** According to Colombian commercial legislation, a foreign company branch is a commercial establishment, necessary so that a company incorporated and domiciled abroad may carry out permanent activities and business in Colombia. From the legal standpoint, a Foreign Company Branch or its Home Office is the same legal person, so that the Home Office is fully liable for all the branch's obligations. The branch must be incorporated through public deed and its by-laws and governing bodies must be those of its Home Office. The branch must appoint a statutory auditor (external auditor).

However, Colombian legislation provides for other company types which are rarely used, such as limited partnerships and collective companies.

Lastly, the S.A.S. should be highlighted among the abovementioned investment vehicles, which as of its creation in 2008 has become the preferred investment vehicle for foreign investors as well as local investors, mainly due to its flexibility regarding its incorporation procedure and functionality.

On the other hand, the foreign company branch is still a widely used investment vehicle in Colombia, especially by foreign investors in the mining and hydrocarbon industries, given the foreign exchange advantages for this sector.



## 2. Comparative Chart between a Foreign Company Branch and a Simplified Joint-Stock Company

**Figure 22**

| <i>Branch of Foreign Company</i>  | <i>Simplified Joint-Stock Company</i>   |
|---|---|
| <b>Members, Legal Nature and Liability</b>  |   |
| The branch is a commercial establishment owned by the Home Office, which is why it has a different legal status. Therefore, contingencies of the Colombian branch are handled by the Home Office.   | <p>It is an autonomous legal person and different from its shareholders. It may be incorporated by one or several natural or legal persons. Shareholders are liable up to the amount of their contributions.</p> <p>Shareholders will not be liable for labor, tax or any other kind of obligations incurred by the company, except when the company is used for fraud under the Law or against third parties.</p>  |
| <b>Name, Duration and Object</b>  |   |
| <p>As a general rule it must use the same name as its Home Office adding the expression "COLOMBIAN BRANCH".</p> <p>Its validity must be defined.</p> <p>Its object must be determined and circumscribed to specific commercial activities.</p>  | <p>The name or business name must be followed by the expression "SIMPLIFIED JOINT-STOCK COMPANY OR S.A.S.".</p> <p>Unlike other commercial companies, an S.A.S. has indefinite duration and its object can be the performance of any legal civil or commercial act, without the need to specify a commercial activity.</p>  |
| <b>Capital</b>  |   |
| <p>Branches have a capital assigned by their Home Office which constitutes, just like commercial companies, the general lien of its creditors and must be paid in full at incorporation.</p> <p>Additionally, the Branch has a "floating" capital called Supplementary Investment to the Assigned Capital which may be increased or decreased without the need to modify the by-laws or previous authorization.</p>         | <p>Capital is represented by nominal shares, divided in three classes: authorized, subscribed and paid-in.</p> <p>The term to pay for subscribed shares may not exceed two (2) years. Minimum or maximum percentages or amounts of share capital can be established which are controlled by one or more shareholders, directly or indirectly.</p> <p>The by-laws can establish the prohibition to negotiate stock issued by the company or any of its classes, as long as the term of the restriction does not exceed ten (10) years, as of the date of issuance. This term may be extended for additional periods of no more than ten (10) years, by unanimous will of the shareholders.</p> <p>Negotiation of the shares may be subject to previous approval of the assembly.</p> |
| <b>Governing Bodies</b>   |   |
| <p>Since it is a commercial establishment, its main governing bodies are those of the Home Office. However, it has the figure of General Manager, who serves as manager for the establishment and as representative before third parties.</p> <p>Additionally, by legal disposition, Foreign Company Branches are required to name a statutory auditor, who will fulfill the same functions as in commercial companies.</p> | <p>The by-laws will freely determine the organic structure of the company and other norms governing its operation and may have one or more legal representatives.</p> <p>An S.A.S. is not required to have a board of directors. In case of agreeing to create said body, it may be composed by one or several members for whom deputies may be established.</p> <p>Statutory Auditor: Does not require a statutory auditor, except if statutorily established or when the value of its gross assets exceed five-thousand (5,000) MMLs, as of December 31 of the immediately preceding year, or its gross income exceeds three-thousand (3,000) MMLs as of the same date.</p>   |

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### Special Grounds for Dissolution due to Losses

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Branches agree if they dissolve according to the same grounds established for the Home Office, considering the Branch depends from it for its existence or due to expiration of the term.

Grounds for dissolution due to losses apply to branches whereby the branch is required to dissolve when its net equity is less than fifty percent (50%) of the assigned capital and the situation is not reverted within 18 months of its occurrence.

Dissolution due to losses stands out among legal grounds for dissolution, established when there are losses that reduce the Company's net worth below fifty percent (50%) of the subscribed capital. The term to rebut these grounds is eighteen (18) months.

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### Profits

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They are handled in the same way as commercial companies, that is, profits must be approved by the Home Office.

Except if a different majority is established in the by-laws, this decision will be made by favorable vote of a singular or plural number of shareholders who represent at least half plus one of the shares present at the meeting.  
It is not obligated to distribute a minimum profit.

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### Inspection, Surveillance and Control

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All commercial companies are subject to inspections, and eventually, surveillance and control by the Superintendency of Companies when fulfilling certain requirements, except this duty has been conferred upon another Superintendency.

Companies that as of December 31 of the immediately preceding year, register assets, including comprehensive adjustments for inflation, equivalent or in excess of thirty-thousand (30,000) MMLs (COP\$20,683,050 – approximately US\$6,894,550) are subject to surveillance. Also, those that register as of the same date total income, including comprehensive adjustment for inflation, that exceeds thirty thousand (30,000) MMLs will be subject to surveillance.

Foreign Company Branches are subject to inspection by the Superintendency of Companies and could be subject to surveillance as long as they are involved in any of the factual premises included in Decree 2300 of 2008.

## 3. Procedure for Incorporation

Considering that the most used vehicles for investment by foreigner are the S.A.S. and the Foreign Company Branch, we will only present the incorporation procedure for these two options.

### *a. Necessary documentation to incorporate an S.A.S. or a Foreign Company Branch.*

#### 1. Documents for an S.A.S.:

- Incorporation and Representation Certificate of each of the shareholders.
- Copy of the identification document of each of the shareholders (if they are natural persons).
- Incorporation Document and By-laws of the new company.
- Powers of Attorney (if needed) granted by each of the Shareholders.

## 2. Documents for Branches:

- Incorporation and Representation Certificate of each of the Home Office
- Complete by-laws of the Home Office and incorporation documents.
- Resolution to incorporate the branch issued by a competent body of the Home Office.
- Powers of attorney (as applicable) granted by the Home Office.

### 3. Requirements to legalize documents granted abroad:

- All documents granted abroad must be apostilled or legalized through diplomatic means at the country of origin.
- All documents drafted in a language other than Spanish must be translated by an official translator in Colombia.

## b. Steps to Incorporate an S.A.S. or a Foreign Company Branch

**Figure 23**

| Activities   | Working Days  |
|--|---|
| Signature of incorporation document which includes the new company's by-laws, as well as appointment of legal representatives and statutory auditor (if applicable).<br>Authentication by a notary of the signatures in the incorporation document.<br>For the Foreign Company Branch a public deed must be granted, which takes approximately 4 days.   | 1   |
| Processing of the Pre-RUT before the national tax authorities, for which the following are required, among other things:<br>Indicate the address of the new company or branch<br>Indicate economic activities (maximum 4)  | 1   |
| Registration of the company or branch before the Chamber of Commerce.<br>Expenses:<br><ul style="list-style-type: none"> <li>The Registration Tax will be liquidated at a rate of 0.7% and 1% of the subscribed capital of the S.A.S. or the assigned capital of a Branch, depending on the city of domicile. For example, in Bogota it is 0.7% and in Barranquilla it is 1%.</li> <li>Registration Rights (these will depend on the appointments and other characteristics of the new company. Normally, around US\$500).</li> </ul> <p>It should be noted that the Registration Rights as well as the Registration Tax must be paid at the corresponding Chamber of Commerce at the moment when the documents are submitted, in cash or cashier's check.</p> | 4   |
| Processing of the 1648 Form, assigning the Pre-NIT, which is necessary to open a bank account. It is valid for 1 month and its only use is to open said account.   | 1   |
| <ul style="list-style-type: none"> <li>Opening of a bank account at the bank selected by the shareholders.</li> <li>The requirements will depend on the policies of the selected bank, but generally they all require, among other documents, an Incorporation and Representation Certificate of the new company or branch and an initial balance sheet signed by a Colombian public accountant, as well as a definition of the persons authorized to manage the account on behalf of the company.</li> </ul>  | 5<br>(depends on prior knowledge of the shareholders by the bank) |
| Final recordation on the Unique Tax Record (RUT) and obtaining the Final Tax Identification Number (NIT) before national tax authorities, for which the following will be required, among others:<br><ul style="list-style-type: none"> <li>Indicate the address of the new company or branch.</li> <li>Present the certificate of opening of the bank account.</li> </ul>   | 1   |
| Updating the Commercial Register so as to include the NIT  | 1   |
| Transfer of the capital stock:<br>Preparation of foreign exchange Form No. 4   | 1   |

## ***B. Capital Reduction***

possible, with previous authorization from the Superintendency of Companies, which will authorize it when it coincides with one of the following circumstances:

- The company has no external liabilities.
- Once the reduction is made, the social assets represent no less than twice the external liabilities.
- The social creditors expressly accept it in writing, whichever the value of the social assets.

The Basic Legal Circular of the Superintendency of Companies establishes a general authorization regime for capital reductions with effective reimbursement of contributions for companies, foreign company branches and sole proprietorship companies that are not subject to surveillance or control of said Superintendency, nor to surveillance of any other Superintendency except if they fulfill one of the following assumptions:

- a. When, notwithstanding compliance with any of the budgets contained in Article 145 of the Commerce Code, the financial situation of the corresponding entity registers one or more past due obligations, with noncompliance exceeding 90 days and together represent 10% or more of the external liabilities.
- b. When the total value of the contributions being reimbursed represents 50% or more of the total assets.
- c. In the case of legal persons under a control situation, whether as controller or subordinate, in relation to each other or the legal persons subjected to control or surveillance from the Superintendency of Companies or any other Superintendency.
- d. In the case of companies with obligations that originate from issuance of bonds.
- e. In the case of companies, foreign company branches or sole proprietorship companies with a pension liability.
- f. In the case of companies, foreign company branches or sole proprietorship companies performing a concordat, restructuring or reorganization agreement.

In this way, in the event the Company should be subject to any of the grounds to request authorization, it must follow the corresponding procedure before the Superintendency of Companies.

It should be noted that the same procedure applies for cases that require reimbursement of the share placement premium.



## C. Liquidation

In the event a company's or a foreign company branch's liquidation is undertaken by will of its shareholders or the Home Office (as applicable) it is necessary to follow the provisions of articles 218 and subsequent of the Colombian Commerce Code and the additional norms that regulate the matter. In general terms, voluntary liquidation includes the following stages:

- a. Dissolution: The first stage of the initial voluntary liquidation process takes place when the General Shareholders Meeting or the competent body of the Home Office (as applicable) adopts the decision to dissolve the Company or Branch and appoint liquidators. Once the dissolution is approved by the maximum social body, the legal capacity of the Company is restricted to those acts which are intended to liquidate.

As an effect of the declaration of dissolution by the General Shareholders Meeting, it will be required to add the expression "under liquidation" after the name of the Company or the Branch.

- b. Liquidations

- b.1. Notices, Inventory. During this stage the liquidator will perform the acts tending to liquidate the corporate assets in order to cover the liabilities and subsequently distribute the remainder between the shareholders, or the Home Office. In order to do this the liquidator must perform the following acts: (i) Notify the National Directorate of Taxes and Customs – DIAN, (ii) publicize the liquidation process by means of notification on a widely circulated news journal in the domicile of the Company or branch, (iii) request permission from the Ministry of Labor when necessary, (iv) prepare financial statements within a month after dissolution. It is important to note that joint stock companies and foreign branches subject to surveillance or control from the Superintendency of Companies must submit for approval, before said entity, the inventory as long as once it is prepared it determines that the assets cannot cover the external liabilities or that at the moment of dissolution or termination the businesses in the country have pension liabilities, bonds or pension securities.

- b.2. . Realization of assets and payment of liabilities. The process to realize assets addresses the need to transform all of the company's assets of the company or branch into cash in order to have sufficient resources to pay for third-party obligations.

- c. Final liquidation account, remainder, extinction of legal person. The final stage of the liquidation process implies preparation of the final liquidation account that indicates how the remainder, if any, of the corporate assets will be distributed among the shareholders or Home Office, as well as extinction of the legal person or existence of the company or branch.

# *Government Contracting*



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*Colombia has a General Statute for Public Administration Contracting. In absence of express normativity in the General Statute for Public Administration Contracting, the rules of the Colombian Civil and Commercial Regime shall apply. Public contracting has a superior character derived from the government purposes it pursues. These purposes are an obligation for the respective government entities as well as for individuals contracting with the State, insofar as the latter always act in their capacity as Collaborators of the Administration.*

## **A. Government Contracts**

The Contracting Statute establishes which contracts are subject to the regulations provided therein. By legal mandate, and with the purpose of achieving contractual security, government contracts must be in writing, except in urgent situations that do not allow execution of a written agreement. In exceptional cases, contracts must be elevated to public deed (mainly when they imply transfer of immovable goods). Likewise, all clauses and conditions agreed in contracts must agree with the contents of the Political Constitution, the law, public order and the principles and purposes consecrated in the Government Contracting Statute.

### **1. Framework Price Agreements**

Through Decree 4170 of 2011 the National Agency for Public Contracting was created “Colombia Purchases Efficiently” with the purpose of performing, among other tasks, the design, organization and signing of framework price agreements for the acquisition of goods and services of uniform technical characteristics and common use, through the abbreviated selection mechanism or catalog purchasing.

Through this mechanism, the Colombia Purchases Efficiently Agency achieves global pricing for certain products for hundreds of national entities in certain items, such as fuel and oils, vehicles, stationery, work clothes, software, cleaning and cafeteria items, among others.



## **B. Subjects of Government Contracting**

Natural or legal persons, national or foreign, considered legally capable under current dispositions may enter into contracts with government entities; that is, those who are not included in any grounds for incapacity or incompatibility.

Consortiums or temporary unions, contractual figures recognized under the Contracting State as forms of association to contract with the Governments (internationally known as joint ventures) may also enter into agreements with government entities.

## **C. Modes of Contractor Selection**

As a general rule, selection of a contractor must be done through public bid; however, there are certain cases in which the administration contracts by means of shorter but equally transparent, equitable and objective process, as is the case of merit-based contracting, abbreviated selection or direct contracting. This faculty is fully regulated by the law, which establishes grounds that justify the mode used to select a contractor other than public bid, by reason of the object, nature or conditions of the contract being entered into, the amount of the contract or the legal nature of the contracting entity.

### **1. Public Bid**

Bidding is a regulated procedure through which a public invitation is made by the Administration so that those interested in contracting present their proposals, from which the most favorable is chosen, subject to the basis and conditions established by the public entity tenderer.

### **2. Abbreviated Selection**

This mode of contracting is provided for those cases where, due to the characteristics of the object being contracted, the circumstances of the contract or the amount or use of the property, works or service, a simplified process of objective selection can be carried out. The latter does not imply that the procedure is not public and open, but that it will be carried out in a simplified manner<sup>7</sup>.

The grounds for abbreviated selection are determined by reason of the nature of the contracting object, its value, the administrative sector that requires the contracting object or a failed bidding process.

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<sup>7</sup>Law 1150 of 2007, Article 2, Second paragraph

### **3. Merit-based contracting**

Choosing contractors in situations where the intellectual supersedes the material requires a selection mode of prequalified bidding processes and open bidding processes. Conforming work teams, experience and, in certain cases, development of methodologies shall prevail as evaluation factors, leaving the economic criteria as an enabling requirement to participate in the process. This seeks favoring the entity with the best talent, experience and capacity of the contractor, regardless of the price offered<sup>8</sup>.

### **4. Direct Contracting**

Direct contracting is an exceptional selection mechanism, by virtue of which public entities, expressly limited to a certain number of cases set forth in the law, can enter into contracts without the need to previously carry out a competitive selection process. The contracting is carried out by means of a simplified procedure, abbreviated, agile and expeditious and follows objective and public interest criteria to select the most convenient proposal for the interests of the Administration.

Direct contracting is applicable to the cases restrictively established in the normativity.

## **D. Contracting by Electronic Means**

Government entities must publish all the pertinent information of different selection processes they are undertaking, so that the general public has knowledge thereof and eventually is able to submit their observations or present themselves as proponents thereto.

In cases where the entity does not have the technological resources necessary to do so in its own portal, the publication will be made on the Unique Contracting Portal.

The Unique Contracting Portal is a tool that public entities have publicized the contractual processes that are in progress within each of them. Through this easily accessible electronic means, they can inform themselves regarding selection processes being conducted by different entities. In this manner, the Unique Contracting Portal guarantees and promotes the principles of transparency and efficiency through the use of technology applied to the publication of the contracting of goods and services by the Administration, thus favoring both businesses or possible proponents (domestic and foreign) as well as government entities.

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<sup>8</sup>Law 1150 of 2007. Article 2, Third paragraph



## ***E. Unique Proponents Register***

The Unique Proponents Register RUP is a register where individuals or legal entities who aspire to enter into contracts with government entities must be registered. Its purpose is to provide the necessary information of a registered contractor regarding his experience, technical capability, organizational capability and financial capability, and to verify the enabling requirements of the contractor. This is done by the qualification and classification that each interested party realizes at the moment of its registration, renewal or update, providing the required documentation. The register is subject to documentary verification by the corresponding Chamber of Commerce.

The Unique Proponents Register will not be required for the following events:

- In the aforementioned direct contracting cases.
- Contracting that does not exceed ten percent (10%) of the lesser quantity of the respective entity.
- Health Service provision contracts.

- Concession contracts.
- Contracting for disposal of Government goods.
- Contracting for the acquisition or agricultural use offered in legally constituted commodity exchanges.
- Acts and contracts with the direct object of commercial or industrial activities characteristic of industrial and commercial Government companies and mixed economy companies.

## ***F. Public Services***

Public services may be rendered by the Government, directly or indirectly; by organized communities or by individuals, but in any case, they will be supervised, controlled and regulated. Also, the State may reserve certain strategic activities or public services, with some conditions that include the duty to previously and fully compensate those prevented from exercising a legal activity.

Therefore, the most developed figure by the Colombian government for the efficient provision of public services is “concession of public services”, through a contract or a license granted to a person, or concessionaire, for the provision, operation, exploitation, organization or administration, fully or partially, of a public services, by which the term for provision of said service will be established, as well as delimitation of the territory, regulation of the rate regime and operational conditions, as well as the use of government or private goods to provide said service.

### **1. Direct Provision of Services**

It occurs when the Government contracts a private company for direct operation of part or an entire project. This modality is used for services to provide water, television, cellular communications, local communications, generation and distribution of power.

### **2. Association with Public Sector Companies**

Public sector companies may be linked to private companies to promote public services, forming associations in which the Government does not assign its interest in said company.

### **3. Acquisition of Public Companies**

Private investors may acquire part or the totality of the shareholding interest in public utility companies, acquiring a package of shares or the company’s most important assets.

### **4. Domestic Public Utilities**

Law 142 of 1994 establishes the applicable regime for domestic public utilities of aqueduct, sewer, cleaning, power, gas distribution, fuel, basic public commuted telephony and local mobile telephony in rural sectors.

Any person who intends to provide domestic public utilities must create a company to which the norms regarding corporations must apply and submit to a special regime contained in the law. The contributions to the company may be made by national or foreign investors. These companies shall be regulated by the Public Services Superintendency and the initials E.S.P. must appear after the S.A. acronym in its name.

In order to operate, public utilities companies must obtain from competent authorities, as applicable, the necessary concessions, permits and licenses to operate, according to the nature of their activities<sup>9</sup>.

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<sup>9</sup>Law 142 of 1994. Article 22

## ***G. Privatization (Disposal of Shares)***

Law 226 of 1995 includes a procedure whereby private parties will be given the possibility to gain access to disposal of Government interests. This process includes several stages: the making of the decision to proceed to the sale of interest; the offers of interested parties; the award; entering into and perfecting the contract. Inevitably, there is a public interest in these stages requiring protection by all authorities that make up the Colombian Government.

We therefore find a constitutional and legal framework where private participation in government institutions is coherently developed by the legislature and applied by the national government, under an economic model that makes inflows of private capital viable, both domestic and foreign, under the supervision and control of the government entities with the mission of complying with the principles of the public interest at stake.

## ***H. Legal Regime for Oil Exploration and Exploitation***

The implementation of a new organic structure of Ecopetrol S.A. (formerly Empresa Colombiana de Petróleos – ECOPETROL S.A.) and the creation of the National Hydrocarbons Agency – ANH - as the entity that administers Nation's oil resources, began a new stage in the development of hydrocarbons in Colombia began through the new regime for contracting for the exploration and production of hydrocarbons.

Under the new scheme, investors and Ecopetrol S.A. compete under the same conditions, without the previously required association contract. One of the new models contract has the following characteristics:

- a. It is a government contract under a special regime, not subject to the contract system of Law 80 of 1993.
- b. The contract must be negotiated and approved by the ANH.
- c. The contractor assumes 100% of the work programs, assets, costs and risks.
- d. The contractor has total independence and operational responsibility.
- e. The contractor has rights over all the production, after discounts for royalties have been made, which must be placed at the disposition of the ANH.

The ANH administers the resources of the Nation, following-up on the contracts and managing the royalties received therefrom.

For the allocation of areas of exploration and exploitation, the new scheme allows a direct allocation without necessarily requiring a tender for the allocation.

## ***I. Risk Management: Insurance***

### ***1. Multilateral Investment Guarantee Agency – MIGA***

As a member of the World Bank Group, this institution has the purpose of promoting investments of foreign investors in developing countries (Direct Foreign Investment), insuring the investments against non-commercial risks, such as inconvertibility of currency, discriminatory expropriation, war, civil disturbances and breach of contract.

MIGA insures investments in a wide range of industries and covers several types of investment. Investors who may recur to the coverage offered by MIGA must be nationals of member countries of the agency, but from a different country to that where the project will take place, with certain exceptions under special conditions. Eligible companies must, in turn, have been incorporated or have their main offices in a member country of MIGA.

Investment projects electable by MIGA must be financially viable, environmentally safe, consistent with international labor standards and must comply with the minimum development objectives of the investing country.

Since its creation, MIGA has guaranteed around 800 projects and has intervened in several cases of conflict resolution between investors and local governments, which allowed for the continuation of the projects.

Since its creation in 1988, 5 guarantee contracts have been issued in Colombia, with an approximate coverage of US\$255 million to mitigate the risks of investors from the Netherlands, Spain and the US, mainly in projects in the areas of financial services (leasing and mortgages), telecommunications, electricity and mining.

### ***2. Overseas Private Investment Corporation - OPIC***

Investments in Colombia are covered by OPIC since 1985. It has as purpose to promote United States investments in developing countries, financing and insuring long-term private investment projects against risks such as non-convertibility of currency, expropriation and political violence.

Direct loans are reserved for small American companies, and the private capital funds guaranteed by OPIC serve as catalysts for the activities of the private sector in developing countries through investment in new or expanding companies or those undergoing privatization.

OPIC covers investments in several economic sectors including infrastructure, manufacturing and financial services and does not require a minimum investment amount.

### ***3. Spanish Company for Export Credit Insurance***

A company that specializes in coverage of risks for nonpayment derived from the sale of products and services in domestic and foreign markets of companies.

CESCE provides coverage on its own account for short-term commercial risks, both inside and outside of Spain, and on account of the Government, for commercial long-term risks and political risks, both long and short-term, related to the foreign activity of Spanish companies.

Commercial risks are defined for these purposes as those produced in private commercial activity and correspond mainly to breaches by private entities, usually related to bankruptcy situations or suspension of payments, and by political risks those that have their origin in the sovereign activity of a State. In this case, CESCE manages and covers, on account of the government, the risks of omission of foreign currency transfers, lack of public purchasers, catastrophic or extraordinary circumstances and war, revolution or similar occurrences.

### ***4. Andean Development Corporation – CAF***

CAF executed an agreement with AIG – Global Trade & Political Risk Insurance Company in order to incorporate the Compañía Latinoamericana de Garantías de Inversiones, which offers insurance policies against political risk and investment guarantees for external credit operations, foreign trade and capital investment.

Through an agreement executed entered into between the CAF and AIG insurance the LAGIC (Latin American Investment Guarantee Company) was created, in order to offer political risk insurance and investment guarantees allowing financial institutions and private companies with interests in Latin America and the Caribbean to expand their businesses with confidence; protect them against unforeseen losses of assets or

investments; offer the shareholders, counsel, directors and managers a higher level of security when authorizing business abroad, and access to financing.

Since its creation, the use of LAGIC has been concentrated in Mexico, with 23%, Argentina, with 22% and Chile, with 12%. In turn, Colombia has participated with 2% in the subscription of financial stability and political risk policies.

### ***5. International Center for Settlement of Investment Disputes – ICSID***

Since August 14, 1997 Colombia is a member of this organization, designed with the purpose of providing solutions to the problems arising between governments and foreign nationals.

It is an organization of the World Bank Group, created in 1966, charged with providing reconciliation and arbitration procedures that manage to create an environment of legal security for foreign investors.

### ***6. International Bank for Reconstruction and Development – IBRD***

Since December 24, 1946 Colombia is part of the IBRD, which was established in 1944. It has the main purpose of contributing to the development and reconstruction of the territories of its member countries, facilitating loans and assistance for development; some of its most important functions are the search for equilibrium in the balance of payments and maintaining a balanced growth in foreign trade. All the funds provided by the IBRD to member states must be used for productive purposes, in a coherent manner with the growth policies that previously have been studied for the development of that State.



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