II. Operating a Business in Colombia

A. Foreign Investment Regulation

1. In General

The Colombian Government recognizes the need for foreign investment.[16] As such, the cornerstone of the country's foreign investment law is the principle of equal treatment of foreign capital entering the country, i.e., that such foreign capital should be treated as if it were domestic capital.[17] This means that special conditions within the Colombian marketplace may not be created through the promulgation of new laws to disfavor or negatively target a foreign investor, and that conditions for the reimbursement of investments and the remittance of profits in force on the date on which an investment is registered may not be changed in any way that could be detrimental to the investor, except on a temporary basis, based on a substantial decrease in the country's international reserves (to less than three months of imports).[18] A foreign investor is any nonresident person for exchange purposes,[19] whether an individual or an entity, that has title to either a direct capital or a portfolio investment in Colombia.[20]

Conversely, foreign investors may not be granted special treatment by being given disproportionate advantages over Colombian investors.[21] International investments subject to the rules of the foreign investment law consist of foreign capital investments made by non-Colombian residents (either individuals or entities) in the territory of Colombia and investments made abroad by Colombian residents.[22] Colombia recognizes two types of foreign capital investment: direct capital investment and portfolio investment.[23] Direct foreign capital investment includes:[24]

> (i) The acquisition of shares, participation quotas, contributions to the capital of a company, or investments in the form of bonds convertible into shares (BOCEAS), that are neither registered in the National Registry of Securities and Issuers (RNVE) nor registered in a system for the quotation of foreign securities;
>
> (ii) The acquisition of shares of the kinds referred to in (i), in a company resident in Colombia and registered with the RNVE, if the investor declares that the shares have been acquired for the purposes of creating a permanent involvement with the country;
>
> (iii) The acquisition of property rights in an autonomous patrimony (which is similar to an Anglo-Saxon trust) created by way of a mercantile fiduciary (trust) instrument, except when the purpose of the trust is to engage in making portfolio investments;
>
> (iv) The acquisition of real estate assets, whether directly or through trusts, construction projects or titles to participation issued as a result of a securitization process (provided the titles are not registered with the RNVE);
>
> (v) Contributions made by investors in the form of contracts or corporate resolutions, such as concessions, the rendering of administrative services, and the licensing of intellectual property rights or rights implying the actual transfer of technology, when the contribution does not entail a capital participation in a company and the profits realized by the title holder depend on the recipient company's profits;
>
> (vi) Supplementary investment in the capital assigned to a foreign branch incorporated in Colombia and investment in a private equity fund; and
>
> (vii) The acquisition of intangible assets for the purposes of using them to obtain an economic benefit in Colombia.

Portfolio investments are investments in securities and instruments registered with the RNVE or listed in the Foreign Securities Listing Systems, participations in collective investment vehicles, and participations in certificate programs with respect to negotiable deposits representing securities.[25]

The law does not consider a transaction involving indebtedness to be a foreign investment.[26] Moreover, Colombian residents that conduct foreign indebtedness operations with foreign currency initially reported as foreign investment are deemed to be in violation of the country's foreign exchange control regime.[27] Foreign indebtedness operations are discussed further below.

2. Investment Restrictions

Foreign investment is allowed in Colombia in almost every sector of the economy, except: (i) the defense and national security sectors; (ii) toxic and radioactive waste processing and the disposal industry, where the waste concerned is not produced in the country;[28] and (ii) surveillance and the activities of private security companies.[29]

In addition, foreign investors may not hold more than 40% of the capital of television service concessionaires. As a general rule, foreign investors do not need approval from governmental entities to invest in Colombia, except in the case of investments in the financial and insurance sectors. Investments in the hydrocarbon and mining sector are subject to a special regime

[16] Law 9 of 1991, art. 9, and General Foreign Investment Regime.

[17] Decree 119 of 2017, art. 2.17.2.2.1.1.

[18] Decree 119 of 2017, art. 2.17.2.2.3.2. However, it should be noted that this has never happened.

[19] In accordance with Decree 119, 2017, art. 2.17.1.2, residents under the Colombian exchange regime are (i) any individual that remains in the country for more than 183 calendar days; and (ii) public law entities and legal entities, including nonprofit entities, that have their main domicile in the country. Likewise, the branches of foreign companies established in Colombia have also the status of residents for exchange purposes. Nonresidents are any (i) Colombian national or foreigner that does not comply with the condition of permanence aforementioned; (ii) legal entity that does not have its main domicile within Colombia, including nonprofit entities; and, (iii) other entity that does not have legal status or domicile within Colombia.

[20] Decree 119 of 2017, art. 2.17.2.2.1.2.

[21] Decree 119 of 2017, art. 2.17.2.2.1.1.

[22] Decree 119 of 2017, art. 2.17.2.1.1.

[23] Decree 119 of 2017, art. 2.17.2.2.1.2.

[24] Decree 119 of 2017, art. 2.17.2.2.1.2 (a).

[25] Decree 119 of 2017, art. 2.17.2.2.1.2 (b).

[26] Decree 119 of 2017, art. 2.17.2.2.1.2, ¶1.

[27] Decree 119 of 2017, art. 2.17.2.2.1.2, ¶1.

[28] Decree 119 of 2017, art. 2.17.2.2.2.1.

[29] Decree 356 of 1994, art. 12.

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and may require prior authorization from the Ministry of Mines and Energy.

3. Registration of Foreign Investments

All foreign direct investment and portfolio investment in Colombia must be registered with the Central Bank.[30]

Registration of a foreign investment provides the investor with the rights to:[31]

(i) Remit abroad any business profits associated with the investment (for example, dividends, as evidenced in the periodic balance statements relating to the investment and the relevant corporate resolution, or in the account statement prepared by the local administrator of a portfolio investment);

(ii) Reinvest business profits in its operations in Colombia;

(iii) Capitalize any amounts with remittance rights, which include resources in local currency or any other asset or right, as a result of obligations derived from the investment; and

(iv) Remit abroad amounts received as a consequence of the disposition or sale of the foreign investment, or as a result of the liquidation of, or a reduction in the capital of, the recipient entity or portfolio.

A foreign investment (whether direct or portfolio) must be registered by the investor or a representative in Colombia that represents the investor's interests.[32] General registration with the Central Bank is effected when a foreign exchange declaration is filed or a request for registration is filed with the Central Bank.[33] Direct foreign investment made through the transfer of currency is automatically registered by the filing of a foreign exchange declaration for international investment transactions, which indicates the amount of foreign currency invested, converted into Colombian Pesos, through the Colombian exchange market (i.e., a commercial bank or compensation accounts).

An investment supplementary to the capital assigned to a branch of a foreign company engaged in activities relating to exploration for, and the exploitation of, oil, natural gas, coal, ferronickel or uranium, or providing exclusive services to the oil and gas industry is registered by the filing of a special form within six months following the expiration of the fiscal period in which the relevant investment was made.

An investment made in the form of a contribution in kind or the capitalization of profits or accounts receivables and equity is registered by the filing of an electronic form through the Central Bank System.

On the other hand, the substitution of the foreign investment must be registered with the Central Bank by filing an electronic form through the Central Bank System within six months from the relevant transfer. Similarly, if the investment is sold to a Colombian resident, liquidated or otherwise cancelled, the investor must register the cancellation of the foreign investment within a six-month period.

Late registration of an investment is a violation of the foreign exchange regulations and is subject to penalties. However, this does not prevent the Central Bank from registering such an investment extemporaneously, provided the investment has been effectively made and is in compliance with the law.[34]

4. Representation, Controversies, Controls, and Sanctions

a. Representation and Notice

A foreign investor in Colombia is required to name a representative in the country via a power of attorney for the purposes of due process among others matters.[35]

Investments by foreign individuals and companies in securities registered with the RNVE and collective portfolio investments must be made through local administrators (i.e., stock brokerage firms or investment management entities), which must be appointed as representatives for the investors and must comply with the applicable registration requirements.

b. Sanctions

The Superintendence of Companies has jurisdiction to investigate and order the closing and liquidation of business activities relating to foreign investments made in sectors that are prohibited to foreign investors or that have not been duly authorized (as applicable). The Superintendence of Companies may also require the Central Bank to cancel the registration of any such investment and impose fines, in the event of non-registration or extemporaneous registration of direct investment, of up to 200% of the amount of the investment concerned.[36]

5. Special Foreign Investment Regimes

a. Financial Sector

Foreign investors may invest capital in Colombian financial institutions. Such investment may take the form of subscription for or acquisition of shares, BOCEAS, or capital contributions made through labor associations or cooperatives.[37]

Foreign investments in the financial sector must be registered with the Central Bank like all foreign investments. They also require authorization from the Superintendence of Finance if new shareholders are to be introduced or if any investor acquires more than 10% of the issued and outstanding shares in any financial institution.

b. Fossil Fuels and Minerals Sectors

(1) In General

Foreign investors involved in exploration for and exploitation, refining, and distribution and transportation of hydrocarbons and/or minerals are subject to both the general rules related to those activities and the conditions set forth in the respective operating agreements entered into with the Colombian Government agencies, such as the National Oil Company (ECOPETROL), the National Mining Agency, and the National

[30] Cen. Bank Ext. Res. 1, May 25, 2018, art. 41.
[31] Decree 119 of 2017, art. 2.17.2.2.3.1.
[32] Decree 119 of 2017, art. 2.17.2.2.2.3.
[33] Decree 119 of 2017, art. 2.17.2.5.1.1.
[34] Decree 119 of 2017, art. 2.17.2.2.2.3.
[35] Decree 119 of 2017, art. 2.17.2.2.2.3.
[36] Decree 1746, 1991, art. 1.
[37] Decree 119 of 2017, art. 2.17.2.3.1.1.

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Hydrocarbons Agency.[38] Such foreign investment must be registered in accordance with the General Foreign Investment Regime.[39]

Colombian foreign exchange regulations provide for a special regime applicable to branches of foreign companies that engage in activities related to exploration for, and exploitation of, oil, natural gas, coal, ferronickel and uranium, or that provide exclusive services to the oil and gas industry.

Branches that access the special regime have certain special rights, including:

(i) The right to make and receive payments in foreign currency to and from companies that are engaged in activities related to exploration for, and the exploitation of, oil, natural gas, coal, ferronickel and uranium, or that provide exclusive services to the fossil fuels industry;

(ii) The right to receive payments from the sale of their products or services abroad in foreign currency; and

(iii) The right to reflect negative balances in the supplementary investment account and to record the availability of goods or services in the supplementary investment account.

However, such branches may neither acquire foreign debt with foreign residents nor purchase foreign currency on the Colombian exchange market, except for purposes of expressly authorized operations.

(2) Special Regime

A special foreign exchange control regime applies to branches in the hydrocarbon and mining sector. This regime does not reinstate a mandatory exchange market for foreign exchange originating from the sale of foreign currency by branches of foreign companies engaged in:

(i) Exploration for, and the exploitation of, oil, natural gas, coal, ferronickel, or uranium; or

(ii) Providing services intrinsic to the hydrocarbon sector, in accordance with article 16 of Law 9 of 1991 and articles 2.2.1.2.3.2 and following of Decree 1073 of 2015, as well as regulations that amend or supplement the requirements therein.[40]

Instead, such a company is required to convert only enough foreign currency to cover expenses in Colombian pesos.[41] It therefore does not have access to the exchange market to purchase foreign currency for exchange operations and is required to have its own supply of foreign currency to cover such expenses.[42] There are some exceptions to this rule relating to the acquisition of foreign currency to be remitted abroad that apply with respect to: (i) amounts received as legal tender from the domestic sale of oil, natural gas, ferronickel or uranium, or services intrinsic to the hydrocarbon sector; (ii) amounts derived from the liquidation of the company concerned; or (iii) other amounts received in legal currency related to the company's operations, including but not limited to operations involving the resources referred to in (i). These amounts can be used for current transactions entered into abroad by a parent company and accounted for as supplementary capital assigned to the branch.[43]

Oil companies involved in exploration and exploitation, oil service companies falling within this category or sector as recognized by the Ministry of Mines and Energy, and companies dedicated to exploration for, and the mining of, coal, ferronickel, or uranium in Colombia may enter into and settle contractual obligations with one another, in foreign currency. Colombian residents are also allowed to make payments in foreign currency for the purchase of natural gas produced in Colombia by companies that finance oil and natural gas exploration and exploitation with foreign capital.[44]

Entities covered by the special foreign exchange regime can opt to be subject to the regular exchange regime by submitting a request to the Central Bank. The change, however, must be maintained for a minimum, nonnegotiable, period of 10 years.[45]

c. Foreign Portfolio Investment

Investments made by foreign individuals and companies in securities registered with the RNVE, as well as investments in collective portfolios, must be made through local administrators (stock brokerage firms or investment management entities that are subject to the surveillance of the Superintendence of Finance), which must be appointed as representatives of the investors and comply with the applicable registration requirements.

The foreign exchange regime also establishes certain special registration procedures for investments made under integration agreements between various stock exchanges, programs concerning certificates representing depositary receipts (ADRs, GDRs), and exchange traded funds (ETFs).

The return, profits, yield and dividends of portfolio investments must be channeled by the portfolio investment manager, together with the minimum data required for exchange operations for international investments, using exchange operation code number 4571, "Return, profits, yield and dividends of capital investment from outside the portfolio."[46]

Generally, to register foreign portfolio investments made via transfers of foreign currency, the administrators will need to file an exchange form, based on the type of foreign exchange intermediary being used.[47]

There are two general types of foreign investment funds:

(i) Institutional funds, where the resources derive from the public or private placement abroad of participation quotas or units, and whose main purpose is to make investments in one or more capital markets. There is a special type of institutional fund called an "omnibus fund" that is organized under the modality of collective accounts without an undivided participation in the equity of the institutional in-

[38] Decree 119 of 2017, art. 2.17.2.3.2.2.
[39] Decree 119 of 2017, art. 2.17.2.3.2.1.
[40] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 94.
[41] Cen. Bank Ext. Res. No. 7/March 7, 2020, art. 95.
[42] Cen. Bank Ext. Res. No. 7/March 7, 2020, art. 95.
[43] Cen. Bank Ext. Res. No. 7/March 7, 2020, art. 95.
[44] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 97.
[45] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 96.
[46] Cen. Bank Ext. Reg. DCIP 83, Sec. 7.2.2.1.
[47] Cen. Bank Ext. Reg. DCIP 83.

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vestor and administered by international financial entities; and

(ii) Individual funds, which channel treasury balances in capital markets as a consequence of financial strategies, but whose main purpose is something other than carrying out transactions in capital markets.

B. Currency and Exchange Controls

1. In General

Currently, Colombia has foreign exchange controls promulgated by a resolution issued by the Board of Directors of the Colombian Central Bank.[48] Under the existing foreign currency and exchange regime, any individual or legal entity domiciled in Colombia is deemed to be a resident of Colombia.[49] Branches of foreign companies operating in Colombia also qualify as residents, as do individuals (whether Colombian or foreign) who remain in the country, whether continuously or not, for more than 183 calendar days, including the days of entry into and exit from the country, in a period of 365 consecutive calendar days.

2. Channeling of Foreign Currency

There are two markets for transacting foreign exchange operations in Colombia: the exchange market and the free market. Colombian regulations[50] set out an exhaustive list of operations that must be carried out through the foreign exchange market and, as a result, must be channeled through authorized intermediaries, such as commercial banks and local administrators (stock brokerage firms or investment management entities that are subject to the surveillance of the Superintendence of Finance), or through a *Cuenta de Compensación*.[51]

a. The Exchange Market

The exchange market comprises all foreign currency transferred through authorized exchange intermediaries (banking institutions and other financial entities), or a *Cuenta de Compensación*.[52]

The following transactions must be carried out via the exchange market:

(i) Imports and exports of merchandise;[53]

(ii) Foreign indebtedness operations carried out by Colombian residents, including related financing costs;[54]

(iii) Foreign capital investments, including related profits;[55]

(iv) Colombian foreign capital investments abroad, including related profits;[56]

(v) Financial investments in securities issued abroad, investments in assets located abroad and related profits, except in cases where the initial investment is made with foreign currency from transactions that do not have to be carried out via the authorized exchange market;[57]

(vi) Endorsements and guaranty bonds in foreign currency;[58] and

(vii) International derivatives transactions.[59]

Foreign exchange transactions must be performed through authorized intermediaries or a *Cuenta de Compensación*.[60]

(1) Exchange Market Transactions

(a) Imports and Exports of Merchandise

Residents are able to channel their payments for imports through the foreign exchange market.[61]

Imports can be financed by foreign exchange intermediaries, the supplier of the merchandise or other nonresidents.[62] Additionally, the law provides that the temporary importation of capital goods/assets may be financed through international lease operations.

Residents must channel foreign currency derived from exports through the exchange market, including amounts received directly from a foreign purchaser in cash, within six months of the date such amounts were received. This obligation is met by selling foreign currency through exchange market intermediaries, or by making a deposit in a *Cuenta de Compensación* registered with the Central Bank, both in the case of currency received for exports already delivered and currency received by way of advance payments for future exports of goods.[63] Additionally, exporters must channel currency corresponding to guarantees relating to export operations through the exchange market.[64] The relevant amount may be reduced by any foreign currency used for the payment of freight, insurance and other costs associated with the export.[65]

Exporters may obtain loans from exchange market intermediaries or nonresidents to finance their exports of goods. Such loans must be reported to the Central Bank as external debt of the resident concerned prior to disbursement.[66] Export prepayments, i.e., foreign currency received from buyers abroad on accounts of future exports of goods, do not constitute financial obligations that generate interest, do not generate obligations for the exporter other than the delivery of the relevant goods and are not considered as foreign debt. For these reasons, these payments must be channeled as exports of goods and, therefore, the minimum information required for exportation purposes must be provided in the exchange return, using the corresponding code.[67]

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[48] Col. Const., art. 372.

[49] Decree 119 of 2017, art. 1.

[50] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 36.

[51] I.e., foreign bank accounts opened abroad by Colombian residents that are subject to registration and periodic reporting before the Colombian Central Bank when used for foreign exchange purposes.

[52] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41.

[53] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(1).

[54] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(2).

[55] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(3).

[56] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(4).

[57] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(5).

[58] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(6).

[59] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 41(7).

[60] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 69.

[61] Cen. Bank Ext. Res. No. 1/May 5, 2000, art. 10.

[62] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 69.

[63] Cen. Bank Ext. Reg. DCIP 83, art. 4.

[64] Cen. Bank Ext. Reg. DCIP 83, Chapter 4.

[65] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 78.

[66] Cen. Bank Ext. Reg. DCIP 83, art. 4.3.

[67] Cen. Bank Ext. Reg. DCIP 83, art. 4.1.3.

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Colombian residents may receive payments for exports or pay for imports in Colombian currency. However, such payments must be made via an authorized foreign exchange intermediary or a clearing account (*Cuenta de Compensación*).[68]

(b) Foreign Indebtedness Operations

Colombian residents may obtain credit in foreign currency from Colombian foreign exchange intermediaries or foreign residents, including foreign financial entities. In addition, they may obtain credit in foreign currency by placing bonds on foreign stock markets. Colombian residents are also allowed to grant loans to foreign residents. The entry and exit of foreign currency arising from foreign debt transactions must be channeled through the foreign exchange market. Foreign loans must be reported to the Central Bank by filing an electronic form with a foreign exchange intermediary. Payments with respect to such loans (disbursements, and payments of capital and interest) must be made through the exchange market and reported by filing a foreign exchange declaration of foreign indebtedness with the authorized intermediary or the Central Bank if the payments are made through a *cuenta de compensación*.[69]

Residents and foreign exchange intermediaries may grant external credits disbursed in legal currency in favor of nonresidents. Credits granted by residents are not reported to the Central Bank.[70]

(c) Foreign Capital Investment

Foreign currency for capital investments in Colombia must be transferred through an authorized exchange intermediary or a *Cuenta de Compensación*.[71] Direct investments made in a foreign currency must be recorded by filing a foreign exchange return for international investments. In cases where channeling took place through a *Cuenta de Compensación*, the amounts channeled are understood to be registered on payment into the account and the furnishing of the respective statement of exchange.[72] Certain forms of foreign investment, such as contributions-in-kind (whether of tangible or intangible assets), are not automatically regarded as registered with the presentation of a form or the declaration of funds, but instead require compliance with a special procedure before the Central Bank (*Sistema de Información Cambiaria*).[73] Failure to register foreign capital investments will affect the exchange rights of the investor (including remittance rights) and can result in fines being imposed on the investor and/or the company receiving the investment.[74]

Likewise, payments for utilities that generate regular investments of foreign capital in Colombia and amounts raised by way of sale of an investment within the country, or from the liquidation of a portfolio, the liquidation of a company or a reduction of capital or supplementary capital in an allocated investment must also be channeled through the exchange market.[75]

Additionally, an operation involving the replacement of foreign investors (for example, the sale of investments, a merger, or the liquidation of an investment entity) must be registered with the Central Bank[76] and also requires the filing of a special purpose tax return whereby a duty is charged on the operation that resulted in the substitution; such filing may be required by the Central Bank, even in the event that no tax liability is generated by the operation.[77]

Transfers of foreign currency between a foreign entity and its branch in Colombia may only be conducted by way of a transfer of assigned or supplementary capital, the reimbursement/return of assigned or supplementary capital or the remittance of profits, or for the payment of reimbursable foreign trade operations (transactions) related to goods and services.[78]

(d) Colombian Investment Abroad

The foreign exchange regime provides for two types of Colombian investments abroad: (i) investments of Colombian capital abroad; and (ii) investments in financial assets.[79] Investments in corporate capital made abroad by Colombian residents must be conducted on the exchange market through an authorized foreign exchange intermediary or using a registered *Cuenta de Compensación*.[80] Moreover, an investment of this type requires Central Bank registration and subsequent filings as to fluctuations and activity related to the investment.[81]

(e) Endorsements and Guarantees

Foreign exchange intermediaries, residents and nonresidents, may grant endorsements and guarantees.[82] Endorsements and guarantees may be granted to support compliance with another endorsements. Commission payments in foreign currency derived from the contracting of endorsements and guarantees may be channeled through the foreign exchange market by supplying the foreign exchange declaration for services, transfers and other transactions.[83]

(2) Exchange Declaration

To conduct foreign exchange transactions properly, an exchange declaration must be filed, and such transactions must be conducted through an exchange intermediary or a registered *Cuenta de Compensación*. The foreign exchange declaration form is a document that is filled out and subscribed to by the person conducting the foreign exchange transaction or by its legal representative. The form contains basic information on the transaction that must be reported to the Central Bank.[84]

In the case of transactions conducted through an authorized exchange intermediary, the exchange declaration is pre-

[68] Cen. Bank Ext. Res. No. 1/May 25, 2018, arts. 70 and 77.
[69] Cen. Bank Ext. Res. No. 1/May 25, 2018, arts. 44 and 45.
[70] Cen. Bank Ext. Reg. DCIP 83, Sec. 5.2.6.
[71] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 54.
[72] Cen. Bank Ext. Reg. DCIP 83, Sec. 7.2.1.1.
[73] Cen. Bank Ext. Reg. DCIP 83, Sec. 7.2.1.2.
[74] Decree 119 of 2017, art. 2.17.2.5.1.1.
[75] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 55.
[76] Decree 119 of 2017, art. 2.17.2.5.1.1 .
[77] *Estatuto Tributario Nacional* (Colombian Tax Code or Col. Tax C.), art. 326; Decree 4907/2011, art. 1.
[78] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 56.
[79] Cen. Bank Ext. Res. No. 1/May 25, 2018, arts. 58, 60.
[80] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 58; and Cen. Bank Ext. Reg. DCIP 83, Sec. 7.3.
[81] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 59.
[82] Under terms provided in lit. k) of numeral 1 of art. 8 and in arts. 52 and 53 of the Cen. Bank Ext. Res. No. 1/May 25, 2018.
[83] Cen. Bank Ext. Reg. DCIP 83, Chapter 6.
[84] Cen. Bank Ext. Reg. DCIP 83, Sec. 1.1.

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sented to the intermediary.[85] In the case of transactions involving a clearing account, the foreign exchange declaration is electronically transmitted to the Central Bank with the monthly report on the account.[86] The person conducting the transaction in compliance with the foreign exchange regulations has the sole responsibility for the information contained in the declaration.

The exchange declaration form and all supporting documents must be kept for a period equal to that of the statutory period for violations of the exchange rate regime, which depends on the type of transaction in question and, as a general rule, may be up to five years.[87]

(3) Authorized Foreign Exchange Intermediaries

Foreign Exchange Intermediaries are financial institutions authorized to conduct a series of exchange transactions, such as purchasing and selling foreign currency, depositing foreign currency received from qualified entities for such purpose, sending or receiving payments in foreign currency, etc. The operations in which each type of intermediary is authorized to partake depends on the type of entity (bank, financial corporation, stock brokerage company, etc.) and its level of wealth.[88] Intermediaries are required, among other things, to submit exchange statements for operations they carry out and to provide information to the Central Bank regarding such operations.[89] The entities authorized to act as Foreign Exchange Intermediaries are banks, financial corporations, commercial finance companies, the *Financiera Energética Nacional* (FEN), BANCOLDEX, financial cooperatives, brokerage firms and other entities subject to the surveillance of the Superintendence of Finance.

Rates of exchange for the purchase and sale of foreign currency are decided freely by the parties and may not involve the charging of any fee, except in the case of transactions carried out by brokerage firms entering into and performing brokerage agreement contracts.[90]

Foreign exchange intermediaries may receive demand deposits in checking accounts, savings, electronic deposits, and term deposits in Colombian legal currency, of nonresidents individuals or legal or similar persons.[91]

(4) Cuentas de Compensación

Residents of Colombia are permitted to open foreign bank accounts in which they can deposit foreign currency acquired in the exchange market or currency that was not required to be channeled through the exchange market. Amounts deposited in such accounts may be used for transactions other than those that must be channeled through the exchange market.[92] The accounts may also be used for compulsory operations that must be channeled through the exchange market, in which case the foreign bank account must be registered with the Central Bank as a *Cuenta de Compensación*.[93]

Payments between Colombian residents are in principle not allowed to be made in foreign currency. However, a *Cuenta de Compensación* may be used for payments in foreign currency for operations between Colombian residents, if so agreed by the parties to the relevant transactions. In such case, both Colombian residents must maintain a *Cuenta de Compensación*.[94]

For purposes of the foreign exchange regulations, the flow of currency to and from these accounts is considered to be an exchange transaction that is part of the regulated exchange market (as opposed to the free market) and, therefore, operations that must be channeled through the regulated exchange market (such as direct foreign investment) may be channeled through these accounts.[95]

The balance in these accounts may be used to make investments abroad that must be reported to the Central Bank.[96]

In addition to a *Cuenta de Compensación* having to be registered with the Central Bank, any financial transactions carried out through such an account (including the payment of any funds out of or into the account) must be reported to that entity on a monthly basis (by submitting a Transactions Information Form), even if no financial transaction was performed through the account.[97] This requirement does not relieve a person of the obligation to provide to the Central Bank exchange declarations for transactions carried out through such an account that relate to external debt or international investments.[98]

The registration of a *Cuenta de Compensación* that does not show financial transactions for 12 continuous months will be canceled by the Central Bank.[99]

b. Foreign Free Market Exchange

Foreign exchange transactions not classified as exchange market transactions may be carried out on the free market.[100]

(1) Utilization of Foreign Currency from the Free Market

Foreign currency received by residents in relation to transactions that are not required to be channeled through the exchange market may still be voluntarily channeled through the free market, which may also be used to conduct foreign exchange market operations.

In the event such transactions are not channeled through the exchange market, foreign currency may be used for foreign investments and assets and operations other than those that must be channeled through the exchange market, and for payments expressly authorized.

(2) Transactions between Colombian Residents

Unless expressly authorized (such as, for example, payments made through a duly registered *Cuenta de Compen-*

[85] Cen. Bank Ext. Reg. DCIP 83, Sec. 1.1.
[86] Cen. Bank Ext. Reg. DCIP 83, art. 1.1; Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 37.
[87] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 90; Decree 1746/1991, art. 6; Decree 2245/2011, art. 5.
[88] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 98.
[89] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 9.
[90] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 38.
[91] Cen. Bank Ext. Reg. DCIP 83, Sec. 10.4.2.
[92] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 81.
[93] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 37.
[94] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 37.
[95] Cen. Bank Ext. Reg. DCIP 83, arts. 8.3.1, 8.3.2.
[96] Cen. Bank Ext. Reg. DCIP 83, art. 8.3.3.
[97] Cen. Bank Ext. Reg. DCIP 83, art. 8.2.
[98] Cen. Bank Ext. Reg. DCIP 83, art. 8.4.1.
[99] Cen. Bank Ext. Reg. DCIP 83, art. 8.2.2.
[100] Cen. Bank Ext. Res. No. 1/May 25, 2018, Art. 41 defines the transactions that must be conducted through the Exchange Market.

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sación, transactions in the hydrocarbon sector and the payment of freight rates, among other transactions), contracts for transactions between Colombian residents are not deemed to be foreign exchange transactions. Therefore, payments derived from such contracts must be paid in Colombian Pesos at the representative market exchange rate as of the effective date of the contract, unless the parties have otherwise agreed to an alternate date or reference rate.[101]

(3) Ordinary Foreign Currency Accounts

A Colombian resident (whether an individual or a legal entity) may open a bank account abroad in foreign currency to be used exclusively for free-market transactions. Such an account does not require authorization from the Colombian authorities or the filing of any documentation.[102] It may not be used for operations (transactions) that are required to be channeled through the exchange market (otherwise such an account is deemed to be a *Cuenta de Compensación*, requiring registration, as explained above).

C. Trade and Commerce Regulation

1. Imports and Exports

a. International Trade Agreements

(1) In General

In the last few years, Colombia has entered into a number of Free Trade Agreements (FTAs) to meet the demands of global markets. These FTAs have introduced tools to simplify the procedures for trading in goods and services.

As a result of its entry into these FTAs and because it is an attractive country for carrying out foreign trade operations, Colombia is expected to become a platform for capital investment to and from different countries.

(2) Andean Community of Nations/Cartagena Agreement

Operating under the ALADI umbrella, the Andean Community of Nations (CAN), which comprises Bolivia, Colombia, Ecuador, and Peru, is one of Colombia's most important integration agreements. It is a sub-regional organization, endowed with international legal status.

CAN dates back to 1969, when a group of South American countries signed the Cartagena Agreement, also known as the Andean Pact, with the purpose of establishing a customs union within a period of 10 years. The main objectives set out by the Cartagena Agreement include the liberalization of trade in goods in the sub-region, the adoption of a common external tariff, and the harmonization of foreign trade instruments and policies and economic policy. As a consequence, Colombia may trade freely with the other member countries of CAN.[103] Under institutional reforms, the scope of integration was broadened to cover other areas beyond trade, such as intellectual property and double taxation between members of the Community (see XVIII.B.2., below).

CAN commenced operations on August 1, 1997. The Community's executive body is the General Secretariat, the headquarters of which are in Lima, Peru. The Council of Presidents and the Council of Foreign Ministers have been formally established as new policy-making and leadership bodies.

(3) Free Trade Agreements

Colombia has enacted FTAs with Canada, Chile, the European Free Trade Association (EFTA) States (Iceland, Liechtenstein, Norway and Switzerland), the European Union, Mexico, the United States, Venezuela, South Korea, Costa Rica, the countries in the Northern Triangle of Central America (i.e., El Salvador, Guatemala and Honduras), the Caricom Countries, CAN, Israel, the United Kingdom, the United Arab Emirates, Panama and CAN-Mercosur. Colombia has other commercial agreements with Cuba, South Korea, Nicaragua, and the Alianza del Pacifico countries (i.e., Chile, Mexico, and Peru).

Additionally, Colombia is in negotiations with Singapore and Turkey. It is also currently involved in the Trade in Services Agreement (TiSA) negotiations.

Under these FTAs, Colombia obtains access to various industrial markets, as well as guaranteed access to necessary capital goods, through the elimination or reduction of customs duties. The agreements negotiated and signed by Colombia generally cover issues such as market access, intellectual property, investment regimes, government procurement, dispute resolution, competition, commerce, services, labor, and the environment. Specific provisions in some of the FTAs are described in (a) to (n), below.

(a) Colombia-United States Free Trade Agreement

The FTA with the United States is a comprehensive agreement that covers topics such as trade in goods and services, intellectual property, the investment regime, dispute settlement, government procurement, trade facilitation, sanitary and phytosanitary measures, technical regulations, standards of origin, and trade defense measures. Regarding the trade in goods, the FTA reduces tariffs and taxes to allow producers of the two countries to trade freely. Under the treaty, Colombia has eliminated tariffs for entry into the country for about 82% of industrial products produced in the United States, while the United States has eliminated tariffs for almost all Colombian products that cross its borders.

Nevertheless, pursuant to the U.S. reciprocal tariffs policy, as announced by the U.S. Administration in Executive Order 14257 of April 2, 2025, the United States has imposed an additional ad valorem duty on all imports from all of its trading partners, including on some goods from Colombia, starting at 10%. The rates of duty are in addition to any other duties, fees, taxes, exactions, or charges applicable to imports. These duties are to remain in place until such time as the U.S. President determines that the conditions related to the U.S. goods trade deficits are satisfied, resolved, or mitigated. For some trading partners, the additional ad valorem duty will increase at the rates set forth in Annex I two of the Executive Order 14257, but Colombia is not included in this group of countries.

[101] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 86; Law 9/1991.

[102] Cen. Bank Ext. Res. No. 1/May 25, 2018, art. 81.

[103] See Andean Community Decision 507/June 22, 2001; Andean Community Decision 477/June 8, 2001; Andean Community Decision 379/June 19, 1995; Andean Community Decision 378/June 19, 1995.

ISBN 978-1-63359-276-6

(b) Colombia-Canada Free Trade Agreement

The FTA with Canada includes three separate but interrelated agreements: the Free Trade Agreement, which covers trade agreements and the reciprocal granting of tariff preferences; the Labour Cooperation Agreement, which sets out obligations with regard to the protection of labor rights and compliance with internal rules; and the Agreement on the Environment, which sets out the obligations of the parties with regard to environmental protection standards to be applied within their territories.

(c) Colombia-Mexico Free Trade Agreement

The Colombia-Mexico FTA, formerly known as the Group of Three (G3), was created in 1995 between Colombia, Mexico and Venezuela. It is now known as the G2, following Venezuela's withdrawal in 2006. The integration initiative under the agreement is based on an asymmetrical tariff-reduction schedule, which was intended to equalize the tariffs of the three countries within a 10-year period and in many respects accomplished this goal.

(d) Colombia-Chile Free Trade Agreement

The FTA between Colombia and Chile, which became effective on May 8, 2009, phases out customs duties and non-tariff barriers between the two countries.

(e) Colombia-Venezuela Free Trade Agreement

With the denunciation by Venezuela of the Cartagena Agreement (CAN) on April 22, 2006, it was necessary to establish a legal framework regulating the bilateral trade relationship between Colombia and Venezuela. Although tariff preferences under the scheme of CAN stopped completely as of April 22, 2011 (i.e., five years after the date of Venezuela's denunciation), bilateral trade flows continued to benefit from preferential tariffs under unilateral concessions granted by Venezuela and under reciprocal trade preferences granted by Colombia in accordance with Decision 746 of 2011.

A bilateral Agreement signed on November 28, 2011, as complemented by annexes and appendices adopted on April 15, 2012, with effect from October 19, 2012, defines the applicable preferential treatment applicable to exports from Colombia to Venezuela and vice versa. Such preferential treatment is defined based on historical trade that existed between the two countries, covering all product categories that were the object of trade between 2006 and 2010.[104]

(f) Colombia-South Korea Free Trade Agreement

The FTA between Colombia and South Korea became effective on July 15, 2016. The FTA covers issues such as national treatment and market access for goods, investment, services, trade in services, electronic commerce, cooperation, dispute settlement, government procurement, trade facilitation, sanitary and phytosanitary measures, technical regulations, standards of origin, and trade defense measures.

(g) Colombia-Costa Rica Free Trade Agreement

The FTA between Colombia and Costa Rica, which became effective on August 1, 2016, phases out customs duties and non-tariff barriers between the two countries.

(h) Northern Triangle Free Trade Agreement

An FTA was signed between Colombia, El Salvador, Guatemala and Honduras, on August 9, 2007. The FTA is in force from November 12, 2009, with respect to Guatemala, from February 1, 2010, with respect to El Salvador and from March 27, 2010, with respect to Honduras. The FTA covers issues such as national treatment and market access for goods, investment, services, trade in services, electronic commerce, cooperation, dispute settlement, government procurement, trade facilitation, sanitary and phytosanitary measures, technical regulations, standards of origin, and trade defense measures.

(i) Colombia-European Free Trade Association Free Trade Agreement

An FTA was signed between Colombia and EFTA on November 25, 2008. The FTA entered into force on July 1, 2011, with respect to Switzerland and Liechtenstein, on September 1, 2014, with respect to Norway, and on October 1, 2014, with respect to Iceland.

The agreement with the EFTA States includes a free trade agreement applicable between the four EFTA countries and three complementary bilateral agreements, negotiated and signed individually with Switzerland, Norway, and Iceland. This treaty has among its objectives to create a commercial environment free of restrictions and to promote the economic development of the signatory countries.

(j) Colombia-Caribbean Community

The Caribbean Community (Caricom) is a trade liberalization program that began on January 1, 1995. Colombia is regarded as the country with the greatest level of relative economic development among the nations that participate in Caricom. The member countries of Caricom are Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Surinam, and Trinidad & Tobago. Colombia has eliminated tariffs on all items on an agreed Caricom list. In 1999, the more developed Caricom countries (Barbados, Guyana, Jamaica and Trinidad & Tobago) began a tariff reduction program designed to eliminate or lower the duty on a negotiated list of products exported by Colombia. The less-developed member countries are under no obligation to make tariff concessions to Colombia.

(k) Andean Community-Mercosur

An FTA between CAN and the Mercosur nations (Argentina, Brazil, Paraguay, and Uruguay) was concluded in 2005. The FTA calls for the elimination of all trade tariffs among the member countries of both trade blocks within the next 10 to 15 years.[105]

[104] Ministry of Commerce, Industry and Tourism, available at: http://www.mincit.gov.co/tlc/publicaciones.php?id=2573.

[105] Decree 141 issued by the Ministry of Commerce in Jan. 2005.

ISBN 978-1-63359-276-6

(l) European Union

An FTA between Colombia, Peru, and the European Union was concluded in June 2012. The FTA calls for the preferential entrance of Colombian and Peruvian products into the territory of the EU Member States. It also calls for the elimination of trade tariffs, and the simplification of certification procedures and of requirements established for the entrance of products into the territory of the parties to the FTA, plus the elimination of unnecessary procedures that are obstacles to free trade between the parties.

The FTA also calls for free trade in the context of the cross-border supply of services.

(m) Cuba

The Economic Cooperation Agreement concluded between Colombia and Cuba entered into force in July 2001. It calls for tariff preferences by a reduction of tariffs with respect to the importation of goods arising from the territory of one of the parties. Under this agreement, the Colombian products that can enter the Cuban market subject to preferential tariffs include: live animals, beef, dairy products, flowers, potatoes, vegetables, bananas, coffee, rice, palm oil, margarine, candy, confetti, baked chocolate products, jams, mineral and aerated water, beer, poultry and meat, fish fillets, birds' eggs, natural honey, onions, beans, cheese, canned meat, canned fruit, fruit juices, alcoholic beverages, and animal feed.

(n) Nicaragua

The commitments to which Colombia agreed in the Partial Scope Agreement concluded with Nicaragua were adopted in Decree 2500 of 1985. Colombia, unilaterally, granted tariff preferences to the goods classified in 25 customs subheadings contained in Annex I of the agreement.

(o) Israel

An FTA between Colombia and Israel was concluded in accordance with Article XXIV of the WTO General Agreement on Tariffs and Trade 1994 and Article V of the WTO General Agreement on Trade in Services.

The objectives of the Agreement are to:

(i) Eliminate trade barriers in relation to goods and services and facilitate the movement of goods between the parties;

(ii) Promote conditions of competition relating to economic relations between the parties;

(iii) Increase investment opportunities;

(iv) Create effective procedures for the application and joint administration of the FTA as well as ensuring compliance with the Agreement; and

(v) Promote further bilateral and multilateral cooperation to expand and enhance the benefits of the Agreement.

(p) United Kingdom

The objective of the Trade Continuity Agreement between Colombia and the United Kingdom is to guarantee that the existing conditions of integration and preferential access are maintained following the United Kingdom's exit from the European Union. The agreement provides that the current tariff preferences for both agricultural and industrial products will continue to apply as per the agreement with the European Union.

(4) Pacific Alliance

The Pacific Alliance (*Alianza del Pacifico*) is a regional integration initiative composed of four countries: Chile, Colombia, Mexico, and Peru. The Alliance was formed following the Lima Declaration, which was signed on April 28, 2011, and legally constituted on June 6, 2012, with the signing of the framework agreement.

The objective of the Pacific Alliance is to create a space of deep integration that promotes further growth, development and competitiveness of the economies it comprises, by progressively seeking free movement of goods, services, capital, and people; with a projection towards the Asia-Pacific region.

(5) Latin American Integration Association

The Latin American Integration Association (ALADI) provides preferential access to a variety of products from the sub-region, which includes Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela, based on bilaterally negotiated lists and considerations relating to the balanced development of the countries in the region.

ALADI encourages the creation of an area of economic preferences in the region, with the ultimate goal of achieving a Latin American common market, through the following mechanisms:

(i) Regional tariff preferences applicable to products originating in member countries, subject to tariffs in force *vis-à-vis* third countries;

(ii) Regional agreements (common to all member countries); and

(iii) Partial agreements with the participation of two or more countries in the area.

Both regional and partial agreements may deal with various issues, such as tariff reductions and trade promotion, economic cooperation, agricultural trade, financial cooperation, tax, customs, health, environmental protection, scientific and technological cooperation, the promotion of tourism, and technical standards.

(6) World Trade Organization

Colombia's agreement with the World Trade Organization (WTO) went into effect on April 30, 1995.[106] As a WTO member, Colombia is entitled to the rights stipulated in the most-favored nation (MFN) clause, i.e., all benefits or trade concessions granted to third countries must be extended to all parties to the agreement. It also must fulfill all commitments corresponding to its full membership in the organization that call for global trade liberalization.

[106] See Colombia Marco Legal 2001-2 (*Coinvertir — Corporacion Invertir en Colombia*).

ISBN 978-1-63359-276-6

(7) Pacific Basin Economic Council

Colombia is a member of the Pacific Basin Economic Council (PBEC). PBEC is a non-governmental association made up of prominent businesspeople from countries in the Pacific Basin. PBEC's purpose is to build mutual understanding and enhance the flow of business and investment, economic cooperation, technology transfers and tourism.[107]

b. Licenses and Quotas

Colombia has the following import regimes:

(i) Free Importation Regime: free importation involves the removal of as many administrative requirements and conditions as possible, to maximize imports of goods listed as necessary for the economic and social development of the country. However, a number of goods identified by the Government as needing specific permits or authorizations require import registration.

(ii) Prior License Regime: according to Decree 925 of 2013, a prior license is required for the following goods: (a) all goods classified under the customs subheading numbers established in Annex I of Decree 925 of 2013; (b) goods that qualify as surplus inventory;[108] (c) goods imported in special market conditions; (d) goods with respect to which an exemption from tariffs is claimed; (e) goods controlled by the National Narcotics Fund (*Fondo Nacional de Estupefacientes*), the National Narcotics Council (*Consejo Nacional de Estupefacientes*) and the Military Industry (*Indumil*); (f) goods earmarked for the Military Forces and the National Police, when the goods imported have national security or national defense purposes, or are military or reserved material; and (g) goods covered by the Annual License System. The prior license for the goods set out above must also comply with any requirements, and permit or authorization obligations established by the competent authority.

(iii) Prohibited Import Regime: as the name implies, certain goods that may endanger the health or safety of persons may not be imported. These include chemical, biological and nuclear weapons, nuclear and toxic waste, and war toys or weapon replicas.

c. Customs Duties and Other Taxes

Along with the other Andean Pact countries, Colombia has adopted (through Decision 571 and Resolution 1684) the General Agreement on Tariffs and Trade (GATT) (now WTO) customs valuation code.[109] Colombia incorporated the GATT code into its own domestic legislation in 1993 through enabling legislation.[110]

Importers of goods with a value of US$5,000 dollars or more must present an additional form, known as the "Andean value declaration," in which the importer must state the real value of the merchandise.[111] This document supports the import declaration and import registration documents.[112] The customs valuation is based on the real transaction value (commercial invoice).[113]

In Colombia, import duties are quoted *ad valorem* on the cost, insurance and freight (CIF) value of goods shipped.[114] All duties (subject to a few exceptions) have been consolidated into four tariff levels, as follows:

(i) 0% and 5%: raw materials, intermediate goods, and capital goods not produced in Colombia;

(ii) 10% and 15%: goods in the categories above in (i), but whose domestic production is registered in Colombia;

(iii) 20%: finished consumer goods; and

(iv) By way of exception to the general rules, 35% and 40%: automobiles and a variable import duty system (price band), textiles and certain agricultural products.

d. Duty Drawback/Deferral Programs

To promote foreign trade operations and investments, the Colombian Customs Regime provides for various mechanisms under which it is possible to develop efficient trade operations (import, export). The most significant mechanisms are described in II.C.1.d.(1) to II.C.1.d.(3), below.

(1) Plan Vallejo or Special Import-Export Regime

The Plan Vallejo or special import-export is a special import-export regime used by companies to import raw materials and some capital goods, with full or partial exemption from customs duties and value-added tax (VAT) (see II.C.1.e., below).[115] Plan Vallejo requires items imported into Colombia under this regime to be utilized exclusively for the production of goods and services that are eventually to be exported.[116] Raw materials that are essential for the production of merchandise that is eventually to be exported may also be imported into Colombia under Plan Vallejo.[117]

(2) Temporary Imports for Export in the Same Condition

The Colombian customs regime allows the temporary import of goods into Colombian territory subject to the condition that the goods will be "re-exported" within a prescribed period of time in an unaltered form, i.e., without the goods being subject to any alteration or modification, except for the normal deterioration/depreciation resulting from normal wear and tear.

[107] See Colombia Marco Legal 2001-2 (*Coinvertir — Corporacion Invertir en Colombia*).

[108] "Surplus inventory" is understood to mean new merchandise that was manufactured two or more years before the filing of the import license. See Decree 925/2013, art. 15.

[109] Andean Community Decision 571 of 2003 and Andean Community Resolution 1684 of 2014.

[110] Decree 2615 issued by the Ministry of the Treasury on Jan. 23, 1993 (now Decree 1165 of 2019).

[111] Decree 1165, issued by the Ministry of the Treasury on July 2, 2019, art. 327.

[112] Decree 1165, 2019, art. 323.

[113] Decree 1165, 2019.

[114] Andean Community Decision 571 of 2003 and Andean Community Resolution 1684 of 2014.

[115] Decree Law 444/1967, art. 172; Decree 631/1985, arts. 14–15 and Decree 285 of 2020.

[116] Decree Law 444/1967, art. 172; Decree 631/1985, art. 6 and Decree 285 of 2020.

[117] Decree 631/1985, art. 6.

ISBN 978-1-63359-276-6

If required, goods that entered Colombia under the temporary regime may be reclassified as ordinary imports.

Colombian law provides for two types of temporary importation: short-term temporary importations or temporary admission; and long-term temporary importations or importations with duties suspended (see II.G., below).[118] Under the short-term temporary importation regime, goods may be imported into Colombia for a specific purpose for a period of time not exceeding six months. The law allows an extension, which must be requested and approval of which must be obtained before the expiration of the initially authorized six-month term. Under the short-term temporary importation regime, goods imported into Colombia are not subject to import duties, but a guarantee equivalent to 100% of the corresponding import duties must be provided to obtain approval to make use of the regime.

Under the long-term temporary importation regime, equipment may be imported into Colombia for a period of up to five years. The long-term temporary importation regime permits the importation of machinery and equipment, as well as related accessories and spare parts,[119] provided such items are included in the same one-time-only shipment. Typically, the temporary long-term importation regime applies to equipment used in public works projects and other activities that are deemed to be important for national economic and social development. Long-term temporary importation is also allowed for machinery and equipment brought into the country under leasing contracts for a period of six months to five years.[120]

(3) International Trading Companies

An International Trading Company (*Sociedad de Comercialización Internacional* or C.I.) is a type of legal entity whose main line of business is the marketing and sale abroad of Colombian products that it acquires on the domestic market or that are manufactured by producers that are shareholders or members of the C.I.

Although C.I.s were created to benefit local exporters, foreign investors may also enjoy the benefits of this type of entity provided they export Colombian products abroad.

To operate as a C.I., it is necessary to create a commercial company or modify an existing company and to request classification as a C.I. by the Ministry of Commerce, Industry and Tourism, which will be granted provided the specific requirements set forth by the law are met.

A C.I. may be organized as any type of commercial company defined in the Code of Commerce, regardless of whether its share capital is domestic or foreign.

Purchases made in Colombia by a company qualifying as a C.I are exempted from VAT, provided the goods are actually exported by the C.I. within six months following the issuance of a supplier certificate.

e. Value-Added Tax

Generally, imports into Colombia are subject to VAT. VAT on imports is typically levied at a rate of 19%, assessed on the CIF value of the shipment plus import duties.[121]

f. Other Special Customs Regimes

(1) Special Customs Zones

Special customs zones offer incentives for new industrial development, trade and tourism in the Caribbean and Pacific coast regions.[122] The intent of the legislation creating these zones is to strengthen local economies and generate employment.

Colombia has a number of special customs zones: Urabá, Tumaco, Guapi, Leticia, San Andre's Island and Providence; additional special customs zones are also found in Maicao, Uribia, and Manaure in the province of Guajira.[123]

These special zones may provide various benefits, including the following:

(i) Imports into these areas are duty free; except into Maicao, Uribia, and Manaure, where duties are 4%;[124]

(ii) VAT is the only levy charged on imports;[125] and

(iii) Goods are allowed to circulate freely within these zones.[126]

(2) Free Trade Zones

Colombian law also contains a free trade zone regime.[127] Free Trade Zones are defined geographical areas within Colombia that offer special tax, customs, and foreign trade incentives with respect to industrial or commercial activities on goods and services carried out in them.

(a) Tax Incentives

The following tax incentives are offered:

(i) Free Trade Zone users are subject to a reduced corporate income tax rate of 20% on sales of goods and services abroad, except for commercial users and users that do not comply with the internationalization plan, which are taxed at the general rate;

(ii) The delivery of goods from abroad into Free Trade Zones is not considered to constitute an import, and is, therefore, exempt from VAT and customs duties, while the goods remain in the Free Trade Zone area. Taxes are triggered when the goods are subsequently introduced into Colombian territory;

(iii) Purchases of raw materials, inputs, and finished goods within the customs territory of Colombia are exempt from

[118] Temporary importation under Colombian law occurs most commonly in the form of international leasing transactions.

[119] As long as they are included in the list of capital goods in Article 233 of Resolution 46 of 2019 and Article 1 of Decree 676 of 2019.

[120] Decree 1165/2019, art. 211.

[121] Col. Tax C., arts. 420, 429, 437, 459, and 468.

[122] Decree 1165/2019.

[123] Decree 1165/2019, arts. 507, 531, 545, 557, and 568.

[124] Decree 1165/2019, arts. 507, 531, 545, 557, and 568.

[125] Decree 1165/2019, arts. 507, 531, 545, 557, and 568.

[126] Decree 1165/2019, arts. 507, 531, 545, 557, and 568.

[127] Law 1004/2005; Col. Tax C.; Decree 2147/2016; Decree 1165/2019.

ISBN 978-1-63359-276-6

VAT, provided such transactions fall within the purchaser's corporate purpose; and

(iv) Sales to other countries are exempt from VAT as such transactions are considered exports.

(b) Customs Incentives

The following customs incentives are offered:

(i) Exports from Free Trade Zones to foreign countries benefit from international trade agreements signed by Colombia;

(ii) Goods produced, manufactured, transformed, or resulting from any production process developed in a Free Trade Zone are recognized as being "of national origin;"

(iii) Partial processing outside the Free Trade Zone is allowed;

(iv) Goods may remain in the Free Trade Zone indefinitely;

(v) It is possible to sell goods or services produced in the Free Trade Zone within Colombia, subject to the payment of customs tariffs and VAT; and

(vi) Decree 2147 of 2016 allows the incorporation of Offshore Free Trade Zones in Colombia, in order to encourage the development of exploitation and exploration projects in the form of free trade zones, which will increase the competitiveness of the Colombian hydrocarbon sector. To obtain an Offshore Free Trade Zone recognition, an applicant oil company must: have concluded an agreement with the National Agency of Oil and Gas (ANH); have invested a minimum of US$40 million; and commit to the creation of at least 30 new direct jobs with the oil company and its contractors qualified as industrial users within the offshore area.

2. General Regulation of Business

a. Monopolies

Monopolies are regulated in Colombia by means of the National Constitution[128] and Law 155 of 1959. The administrative body vested with the power to police the Colombian economy and to combat any anti-competitive behavior in the marketplace, including the abuse of monopoly power, is the Superintendence of Industry and Commerce.[129]

b. Transfer of a Going Concern

Under Colombian corporate law, the purchase of a business as a going concern is generally deemed to be the purchase of a separate economic unit and is presumed to comprise all assets and liabilities used by the company concerned to carry on its commercial activity. The sale or transfer of a going concern of an entity requires the entity's balance sheet and list of liabilities to be certified by a public accountant.[130] Such transactions also require that the parties involved be jointly and severally liable for all obligations of the commercial activity of the going concern that arose before the transfer and that are registered in the accounting books.[131] Liability of the transferor ends two months after the operation has been registered with the relevant regional Chamber of Commerce of the domicile of the going concern, provided the following conditions are fulfilled:[132]

(i) The transfer was properly announced to the creditors by means of a written notice published in a newspaper with wide circulation both locally and in Bogotá;

(ii) The creditors did not oppose the transaction or the new owner becoming their debtor within two months following registration with the Chamber of Commerce; and

(iii) Creditors opposing the transaction had the right to demand proper guarantees for the payment of debts owed to them (in the event the guarantees are not presented on time, the creditors may also demand payment of future debts owed to them).

The debts or obligations not registered in the entity's accounting books or in the sales instrument will be the transferor's responsibility, unless the buyer did not act in good faith or was negligent, in which case both parties will be jointly and severally liable.[133]

c. Stock Acquisitions

As in most jurisdictions, the acquisition of the shares of a private corporation (a closely held corporation the shares of which are not traded on a public exchange) is conducted in Colombia via negotiations between the shareholder that is offering to sell or dispose of its shares and the potential acquirer.[134] A share transfer can be subject to preemptive rights if such rights are explicitly set forth in the company's by-laws or shareholders' agreements. The transaction and documents evidencing the sale or disposition of shares must be registered in the official company shareholders' register.[135]

d. Mergers

Under Colombian law, a merger occurs when one or more companies dissolve, without liquidating, into another existing company or a newly created company,[136] and, as a result, the surviving company or the newly-formed company acquires all the rights, assets and liabilities of the dissolved company.[137]

Prior to the execution of a merger, the partners or shareholders, as the case may be, are required to meet in general

[128] Col. Const., art. 333, INC. 4.
[129] Decree 2153 of 1992; Law 1340 of 2009; Decree 1074/2015, art. 1.2.1.2.
[130] Col. Com. C., art. 527.
[131] Col. Com. C., art. 528.
[132] Col. Com. C., art. 528.
[133] Col. Com. C., art. 529.
[134] Col. Com. C., art. 403. See Super. Com. Op. Jur. Bul. No. 7/May 1994 ("each share confers upon its owner the right to negotiate freely the transfer or disposition of shares, unless the respective share certificate indicates otherwise"). The disposition of limited liability participation quotas is rather more restricted, as the members of the company must meet formally prior to such a disposition. Further, for such a disposition to occur, the bylaws of the entity (or LLC Agreement) require restatement and amendment. Co. Com. C., arts. 362, 366–67. See Super Com. Of. Op. SL-43965/Dec. 14, 1988 (discussing the difference between the disposition of participation quotas on a transfer (sale) and their disposition by administrative adjudication).
[135] Col. Com. C., art. 406. See Super. Com. Of. Op. 220-1082/Jan. 17, 2001.
[136] Col. Com. C., art. 172.
[137] Col. Com. C., art. 172.

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meeting and, with the required quorum, to vote on the transaction and agree on the merger agreement.[138] In the case of stock corporations, the quorum for adopting decisions is more than 50% of the shares represented by the number (which must be more than one) of shareholders at the corresponding meeting, unless the bylaws call for a greater quorum.[139] In the case of limited liability companies, because a merger implies an amendment of the bylaws, approval must be given by a plurality of partners representing at least 70% of the corporate shares.[140]However, in simplified stock corporations, short-form mergers, which can occur when more than 90% of the shares are owned by a single shareholder and such shareholder plans to absorb said subsidiary, only require the approval of the legal representative or the boards of directors of the constituent companies.

Once this step is complete, the legal representatives of the interested parties are required to make the merger public with a "tombstone" type notice published in a Colombian newspaper with national coverage.[141] Creditors of the merging company must be provided 30 days within which to obtain guarantees for payment of any liabilities owed to them.[142]

Once the decision to execute the merger is adopted, the instrument evidencing the merger must contain the following information:[143]

(i) The reasons for the merger and the conditions for its execution;

(ii) The financial data of the companies involved in the merger, which will be used to determine the conditions of the merger operation;

(iii) The valuation of the assets and liabilities of all the companies that are to participate in the merger operation;

(iv) The valuation methods used, and the procedure for the exchange of quotas or shares; and

(v) Certified copies of the interested parties' financial statements.

On the regulatory side, after completion of the process, a merger must be approved by the Superintendence of Companies,[144] depending (among other factors) on certain income and equity thresholds, if the parties involved are regulated by this governmental agency, (or if the interested parties are supervised by a different entity that does not have power to authorize mergers), which is empowered to supervise most Colombian companies and to enforce most corporate and related legislation promulgated by Colombia's Congress.[145]

Notwithstanding the foregoing, there is a general authorization regime for companies under the supervision of the Superintendence of Companies that are undergoing a merger. Under this general authorization, supervised companies will not be required to submit a request for approval from the Superintendence, provided they meet certain transparency and publicity requirements. These include: being able to provide evidence that the shareholders were properly summoned to the meeting in which the merger agreement was approved; having evidence that the merger agreement or plan of spin-off and the respective supporting documentation (balance sheet, share exchange terms, asset valuations, etc.) were made available to the shareholders at least 5 to 15 business days ahead of the meeting (depending on the corporate form); having publicly notified the creditors and the general public of the transaction through a newspaper with widespread circulation as provided under applicable regulations; and having made available to the creditors a report in connection with the transaction, setting forth its terms, its purpose, the supporting financial statements, the valuation of assets and share exchange procedures, among other items.

The general authorization regime does not apply to transactions where certain conditions are fulfilled, for example: (i) one of the companies involved in the transaction has liabilities that are overdue for more than 90 days that represent 20% or more of external liabilities; (ii) one of the companies involved in the transaction has pension liabilities; or (iii) the combined capital of the merging companies is less than the sum of the capital of the merging and surviving entities, as a result of a reimbursement of contributions.

Companies seeking Superintendence of Companies approval of a merger are required to submit certain information and documentation, including the following:[146]

(i) Complete copies of the relevant corporate or company minutes evidencing the notice of the meeting, the approval of the appraisal of the assets to be received by the absorbing company or the new company, the approval of the proposed merger agreement, and the votes of the partners or shareholders that reject the merger, if applicable;

(ii) An attachment of the minutes containing the merger agreement;

(iii) Legal representative and statutory auditor certification of the company confirming that the merger agreement was available to the partners or shareholders of the companies for at least five to 15 business days ahead of the meeting, depending on the corporate form;

(iv) One copy of the nationwide newspaper in which the merger was announced;

(v) Financial statements forecasting the result of the merger;

(vi) The financial statements, with a date of issuance not more than one month earlier, presented to the other regulatory agencies within the Colombian Government that are responsible for approving the merger; and

(vii) A copy of the valuation studies used to appraise the assets and shares of the constituent companies.

[138] Col. Com. C., art. 173.
[139] Law 222/1995, art. 68.
[140] Col. Com. C., art. 360.
[141] Col. Com. C., art. 174.
[142] Col. Com. C., art. 175.
[143] Col. Com. C., art. 173.
[144] Super. Com. Chapter VI – External Legal Regulatory Letter (*Circular Básica Jurídica*).
[145] Law 222/1995, arts. 82–88.
[146] Super. Com. Chapter VI – External Legal Regulatory Letter (*Circular Básica Jurídica*).

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After the approval, a copy of the public deed or private instrument of merger and its registration with the Chamber of Commerce of the domicile of the absorbing company will need to be filed with the Superintendence of Companies.[147] The document must include the following documents:[148]

- The bylaws of the new company or the amendments to the bylaws of the surviving company;
- Copies of the minutes of the meetings in which the merger was approved by the partners or shareholders; and
- The balance sheets of the merged companies and the consolidated information of the surviving company.

e. Spin-offs and Split-offs

Law 222 of 1995 introduced spin-offs and split-offs into the Commercial Code.

Under a spin-off, the members, partners or shareholders of the splitting company participate in the capital of the beneficiary companies in the same proportion as each held in the capital of the splitting company (pro rata basis). If the splitting company does not distribute its shares or capital on a pro rata basis to its members, partners or shareholders, the transaction will take the form of a split-off.[149]

In general terms, the law provides for the following two types of spin-off or split-offs:

(i) A company dissolves without liquidating and transfers part of its assets to one or more existing companies or to one or more newly incorporated companies;[150] and

(ii) A company dissolves without liquidating and divides its net assets into two or more parts that will be transferred to other existing companies or newly incorporated companies.[151]

The procedures and documentation required to conduct a spin-off or split-off transaction are substantially similar to those discussed in II.C.2.d., above, in relation to mergers.[152]

f. Restrictive Trade Practices

To guarantee the constitutional right to responsible but free competition, the State is required to prevent any person from engaging in anti-competitive behavior in the Colombian marketplace.[153] The Colombian Government supervises and regulates free competition in the market through the Superintendence of Industry and Commerce.[154] This regulatory agency's duties are to ensure free market competition by preventing any restrictive agreement or practice, and to impose sanctions and penalties on persons, including legal entities, that violate the regulations protecting free and fair competition.

g. Unfair Competition

Unfair competition acts and conduct are regulated under Law 256 of 1996. This law establishes a general prohibition against any act or practice carried out in the course of industrial or commercial activities that is inconsistent with the principle of commercial good faith and honest practices in commercial and industrial matters, or when such act or practice affects or is intended to affect the freedom of decision of the buyer or consumer, or the competitive operation of the market.[155] Additionally, Law 256 lists certain explicitly forbidden unfair business practices, including tortious interference, clientele deviation, internal disruption of business activities, and misappropriation of trade secrets.

h. Antitrust Merger Control

Any "economic concentration" that meets certain specific requirements is subject to mandatory antitrust merger control by the competition authority (Superintendence of Industry and Commerce). Under Colombian law, the concept of "economic concentration" covers mergers, acquisitions of control, consolidations or any other type of integration, notwithstanding the form of the projected transaction.[156]

In general terms, the filing thresholds are as follows: (i) the parties to the transaction must be engaged in the same economic activities (horizontal overlap) or be part of the same value chain in a relevant market (vertical relationship); and (ii) the operational revenue or the total assets of the parties to the transaction, jointly or independently, must have exceeded 1,641,044.99 Tax Value Units (approximately US$ 18 million) during the previous fiscal (calendar) year. If the concentration meets the requirements set out above, the applicable merger control procedure and subsequent filing is determined by the combined market shares of the parties in the relevant markets for the transaction. The general rule is that when the combined shares of the parties in at least one of the relevant markets is 20% or more, the transaction is subject to a prior authorization procedure. However, if the parties' combined shares in each of the relevant markets are less than 20%, the transaction is subject to a simple notification procedure.

i. Price Controls

Colombia has price control legislation for specific products in Colombia, such as medicines, regulated by the National Commission for Prices of Medicines and Medical Devices, as well as milk products[157] and agrochemicals, regulated by the Ministry of Agriculture and Rural Development.[158]

j. Securities Regulation

Colombian corporations may issue public shares or debt instruments on Colombia's public stock exchanges with the prior authorization of the Superintendence of Finance. The public stock and debt market is regulated by the Colombian Min-

[147] Col. Com. C., art. 177.
[148] Col. Com. C., art. 177.
[149] Law 222/1995, art. 3.
[150] Law 222/1995, arts. 4–10; Super. Com. Ext. Cir. 7/2001 and 7/2004.
[151] Law 222/1995, art. 3.
[152] Law 222/1995, arts. 4–10; Super. Com. Ext. Cir. 7/2001 and 7/2004.
[153] Col. Const., art. 333; Law 155/1959; Decree 2153/1992; Law 1340/2009; and Decree 1074/2015.
[154] Decree 2153/1992; Law 1340/2009; and Decree 1074/2015.
[155] Law 256/1996, art. 7.
[156] Law 1340/2009; Law 155/1959; Super. Industry & Commerce Ext. Cir. 10/2001; Super. Ind. Resolution 2751/2021; Super. Ind. Resolution 82882/2023.
[157] Resolution 17 of 2012; Resolution 77 of 2015; Resolution 468/2015.
[158] Decree 1988 of 2013.

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istry of Finance and supervised by the Colombian Superintendence of Finance. Noncompliance with the law and regulations regulating the securities market is punishable with civil penalties and sanctions. In addition, the issuance of shares or debt instruments on Colombia's public stock exchanges without the authorization of the Superintendence of Finance may also lead to criminal sanctions. Security issuers in Colombia are subject to Law 964 of 2005 and supervised by the Superintendence of Finance with which financial statements and certain relevant information related mainly to their legal, financial, and operative soundness, must be filed. In addition, mergers, acquisitions, and spin-offs or split-offs conducted by such entities are subject to the prior authorization of the Superintendence of Finance.[159]

k. Privatization Rules

Compliance with Colombian privatization and related law is essential when a privatization or a capitalization transaction is being crafted. Privatization in Colombia is governed by Law 226/1995.[160] The Law provides a procedural map for privatization and capitalization transactions, while setting out to "democratize" the ownership and operation of state-run entities.[161] Law 226 requires that once a public entity's stock ownership is transferred, necessary steps must be taken to guarantee that the service provided is continued throughout the life of the newly privatized or capitalized entity.[162]

Democratization of ownership under Law 226 takes the form of the (initial) offering of public utility shares to the public utility's employees (*El Sector Solidario*).[163] The Colombian Constitutional Court interprets this language to apply to the sale of state-owned assets, as well as to shares of stock.[164] The Court's interpretation is based on article 60 of the Colombian Constitution. Article 60 provides that, if the State sells or transfers its participation in a public entity, it must first (in the spirit of democratic process) offer its stake in the entity in the form of stock to the entity's employees.[165] This position, although highly debatable given the exact language of the law, which talks of state-owned shares of stock, has not been challenged successfully to date[166] because of its constitutional underpinnings.

Democratization under Law 226 is achieved once the labor sector has been offered a chance to participate in the ownership of the state-owned assets.

Comment: Typically, as was the case with the capitalization process carried out at the Bogotá Electric Company in September 1997, labor will be allocated only a 1% or nominal participation in the new entity.[167] Consequently, foreign investors should not be discouraged by the spirit of the law.

In substantive terms, Law 226 covers total and partial sales to individuals of stocks or BOCEAS[168] belonging to the State, and any level of participation in the capital of any State entity.[169] Total or partial sales of State-owned stock or BOCEAS are conducted under the utmost scrutiny, for public policy reasons.[170] This is because such assets are owned with public funds.[171]

In procedural terms, Law 226 transactions are structured in the following manner: first, the national government decrees that it will privatize or capitalize a State-owned asset;[172] second, the appropriate ministries design a program for the privatization or capitalization process, based on technical studies, directed by the Finance Ministry;[173] third, the process is approved by the government and public notice is effected (this notice may be given via "tombstone" advertisements), initially directed toward the labor force;[174] and fourth, steps are taken to guarantee that the process is democratic, by limiting the negotiability of shares by those persons entitled to special conditions under the Law, and imposing correlative sanctions for transactions effected within set time frames.[175]

l. Personal Data Protection

In an era of information and business globalization, personal data is a highly valued asset. Given the importance of personal information and the potential risks to human dignity and to organizations' information systems that may result from misuse, the Constitution of Colombia shelters personal data by promoting respect, liberty, and the supremacy of human dignity as essential principles to be protected in the processing and circulation of personal data.[176]

Data protection regulations in Colombia have established the constitutional right of all individuals to know, update and rectify information gathered about them in databases and files, and govern the collection, storage, use, controller-to-controller and controller-to-processor data transfer, circulation and/or deletion of such information. General provisions on personal

[159] Decree-Law 663 of 1993 - Estatuto Orgánico del Sistema Financiero, arts. 55 to 88, and Decree 2555 of 2010, art. 11.2.1.4.2.

[160] See *Energía*! Poder & Dinero, Oct. 1997, at 220, 225–226.

[161] In some cases, Law 226 takes precedence over other Colombian administrative contract law principles. Law 226, art. 2.

[162] Law 226, art. 5.

[163] Law 226, art. 3.

[164] *In re* Unconstitutionality of Law 226/95, Arts. 15 and 24, Col. Const. Ct., Op. C-343/96 (Aug. 5, 1996); *In re* Unconstitutionality of Law 226/95, Art. 20, Col. Const. Ct., Op. C-392/96 (Aug. 22, 1996).

[165] Col. Const., art. 60.

[166] Under the Colombian legal system, unlike under the U.S. system, a party may bring an action challenging the constitutionality of a portion of a law without a specific case and controversy giving rise to judicial redress or relief. *Thompson v. Zurich Ins. Co.*, 309 F. Supp. 1178, 1181 (D. Minn. 1970). See, generally, Raymond Guillien & Jean Vincent, 239 *Diccionario Jurídico* (1995) (law in a civil jurisdiction is understood to be legislation, related administrative regulations and the constitution). However, in the area of privatization and administrative law, Constitutional Court holdings are binding on agencies and entities managing and organizing privatization projects.

[167] Jonathan Arnold & Stephen Edkins, "Emerging Markets Equity Research: Colombia–Electric Utilities, Colombia Electricity Primer — Get Connected" 24 (Santander Investment Securities Inc. 1997).

[168] Bonds convertible into shares (BOCEAS) are debt/equity instruments that may only be used by a joint stock corporation (*Sociedad Anónima* or *Sociedad en Comandita por Acciones*). The use and issuance of this instrument is regulated by the Superintendence of Securities (the national agency regulating the securities markets) under Superintendence of Securities Res. 400/1995.

[169] Law 226, art. 1.

[170] Transparency issues are a concern, given the unfortunate trend of corruption associated with many governmental processes in Latin America. See John Otis & Jeb Blount, Law & Order, *Latin Trade*, June 1997, at 48–57 (survey of Latin American corruption and governmental efforts to curb it).

[171] Law 226, art. 1.

[172] Law 226, art. 6.

[173] Law 226, art. 7. The technical studies will include a valuation and appraisal of the shares of stock to be transacted (this phase factors in the market value of assets and liabilities, and asset profitability). Law 226, art. 7.

[174] Law 226, arts. 8–9.

[175] Law 226, art. 14.

[176] Col. Const., arts. 15 and 20.

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data protection are contained in Law 1581 of 2012 and Decree 1074 of 2015. The processing of financial, credit, and commercial personal data is governed by Law 1266 of 2008 (the "Habeas Data Law").

Under the provisions of Law 1581, the Habeas Data Law, and Decree 1074, the owner of personal data has the right to know, update, and rectify the data; give and revoke authorization to use the data and to request the deletion of the personal data provided; request proof of the authorization granted; be informed about the uses for which the data will be provided; file complaints with the Superintendence of Industry and Commerce where such rights are infringed; and access free of charge the personal data subject to processing.

The essential principles that guide personal data protection are legality, purpose, freedom, accuracy, transparency, safety, confidentiality, access and restricted circulation.[177] In accordance with these principles and the rights of data subjects, data controllers, and data processors that process personal data are subject to a number of obligations.

Under Colombian privacy laws, any individual or entity that, by itself or in association with others, collects and processes personal data in Colombia for its own purposes is considered to be a data controller and must, therefore, comply with the corresponding obligations and duties. A data processor is any individual or legal entity that, by itself or in association with others, performs the processing of personal data on behalf of a data controller.[178] The main obligations and duties of a data controller are: to request and maintain a copy of the authorization granted by the owner to process its personal data; to inform the owner of the purpose of the data collection and the rights that protect the owner by virtue of the authorization granted; to keep the information securely to prevent its adulteration, loss, consultation or use, or unauthorized or fraudulent access to it; to process queries and claims regarding personal data in accordance with the terms set forth by law; and to adopt an internal manual of policies and procedures to ensure compliance with the provisions of the data protection laws.[179]

Data processing authorizations are not required in the following circumstances:[180]

(i) When the information is requested by a public entity in accordance with its legal functions;

(ii) When the information requested is publicly available data;

(iii) In medical or sanitary emergency situations;

(iv) When the information requested is for historical, statistical or scientific purposes; and

(v) When data is related to individuals´ birth certificates.

Comment: Under Colombian privacy laws, there are two types of international personal data transfers: controller-to-controller and controller-to-processor. Controller-to-controller data transfers involve sending personal data from a data controller located in Colombia to a data controller located in another jurisdiction, who will perform data processing for its own purposes. Controller-to-controller personal data transfers to any country that does not provide adequate levels of data protection is prohibited, with certain exceptions (e.g., prior consent from the data subject, bank transfers, among others.)[181] Under Colombian regulation, a country offers adequate levels of data protection when it complies with the standards set by the Superintendence of Industry and Commerce.[182] Controller-to-processor transfers involve sending personal data from a data controller located in Colombia to a data processor located in another jurisdiction, who will perform data processing on behalf of the controller. Generally, controller-to-processor transfers require prior consent. However, Colombian privacy laws provide that controller-to-processor transfers do not have to be informed or previously consented by individuals if the parties sign a valid controller-to-processor agreement.[183]

Moreover, as of January 2016, data controllers must register their databases with the Superintendence of Industry and Commerce.

Data controllers that are non-public legal entities or nonprofit companies, and that have total assets in Colombia of more than 100,000 UVT (i.e., for 2024, total assets of more than COP 4,706,500,000) are required to register their databases in the National Database Registry (RNBD).

Public legal entities are required to register their databases in the RNBD irrespective of their asset value.

Data controllers that are obliged to register their databases in the RNBD must also update the information registered in the RNBD, as follows:

(i) Within the first 10 business days of each month, when substantial changes[184] are made to the information registered;

(ii) Annually, with respect to information registered between January 2 and March 31 (as of 2024);

(iii) Within the first 15 business days of February and August of each year, with respect to information on claims submitted by Data Subjects; and

(iv) For new databases, within two months from the moment of their creation.

To date, specific instructions for database registration by foreign legal entities have not been issued.

As regards the application of local personal data regulations to foreign entities, in recent decisions, the Colombian data protection authority has taken the view that certain events in internet-based processing may constitute the processing of data within the jurisdiction of Colombia, even if the entity processing the data is not domiciled in Colombia. For instance, when the data controller has the means to collect personal data

[177] Law 1581/2012, art. 4.
[178] Law 1581/2012, art. 3, par. d) and e).
[179] Law 1581/2012, art. 17.
[180] Law 1581/2012, art. 10.

[181] Law 1581/2012, Art. 26.
[182] Such standards can be found in Title V, Chapter 3 of the Circular Letter from the Superintendence of Industry and Commerce (SIC), which compiles all previously issued data protection circular letters issued by the SIC.
[183] Decree 1074/2015, Art. 2.2.2.25.5.1.
[184] Substantial changes are those related to the purpose of the database, the Data Processor, the channels for customer attention, the classification or types of personal data stored in each database, the security measures implemented, the Privacy Policy and the International Data Transfers and Commissioned Processing of Personal Data.

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in Colombia even if the processing is performed abroad or on a global scale (for example, when the data controller has servers, an agency, a representative office or affiliates in Colombia), the Colombian data protection authority has found that there is processing of data in Colombia and, therefore, Colombian data protection regulations may apply. Additionally, the Colombian data protection authority has established that certain foreign entities are subject to Colombian data protection regulations by virtue of processing personal data within the jurisdiction of Colombia through cookies or pixel tags stored on the computer devices of individuals resident in or domiciled in Colombia.

In addition, although the Colombian authorities can only enforce the sanctions they impose within Colombian territory, the legislation allows them to cooperate with other international data protection authorities and agencies to protect Colombian citizens' privacy rights and to make those sanctions effective.

Failure to comply with personal data processing obligations may lead to the imposition of various sanctions by the Superintendence of Industry and Commerce, such as fines of up to 2,000 times the minimum legal monthly wage, and the provisional suspension or temporary closing of operations related to personal data processing.[185]

3. Intellectual Property Rights

Intellectual property (IP) rights in Colombia include:

(i) Industrial property;

(ii) Author rights (copyrights).

Industrial property includes trademarks, commercial names, slogans, patents, industrial designs, and utility models, among other items.

The main regulations on IP rights consist of Andean Community Decision 486 of 2000, Andean Community Decision 351 of 1993, Law 23 of 1982, Law 1648 of 2013, Decree 2264 of 2014, and the Colombian Commercial Code (*Codigo de Comercio*)[186] governing the transfer of technology or licensing of technology in Colombia. The characteristic trait of the regulations is their regional scope within the Andean Community (i.e., Bolivia, Colombia, Ecuador, and Peru).

a. Patents

Under Colombian IP law, a patent protects new inventions from any industry, such as compositions, compounds, substances, devices, machines, mechanisms, tools, procedures, and methods.

To be patentable, an invention must:

(i) Be novel;

(ii) Have an inventive step; and

(iii) Be capable of industrial application.

An invention is considered novel when it has not been disclosed to the public by any means before the application filing date or the priority date, so that the information entailed in the invention is not part of the state of the art. The state of the art comprises all information available to the public regarding an invention, such as articles, videos, products, and procedures. However, for purposes of determining patentability, Colombian law grants a grace period of 12 months within which the disclosure made by the inventor or patent owner prior to the filing date of the application will not bar the invention from being patented.

An invention has an inventive step if, for a person having ordinary skill in the art, the invention could not have been obtained in an evident or an obvious way from the state of the art.

An invention is capable of industrial application if the matter protected can be produced or used in a productive activity.

A patent is enforceable for 20 years as from the filing date of the patent application. A patent grants the owner the right to prevent non-authorized third parties from exploiting the invention and the right to exploit, license, or assign the invention.

Notwithstanding the above, the following are not considered patentable inventions:

(i) Discoveries, scientific theories, and mathematical methods;

(ii) The entirety or part of living beings as they exist in nature, natural biological processes, and biological material existing in nature or that may be isolated, including the genome or germ plasm of any natural living being;

(iii) Literary and artistic works or any other work protected by copyright;

(iv) Plans, rules, and methods for the pursuit of intellectual activities, the playing of games, or the conduct of economic and business activities;

(v) Computer programs or software as such; and

(vi) Methods of presenting information.

Furthermore, the following inventions are not patentable:

(i) The commercial exploitation of an invention that has been prohibited in order to comply with the law, order, or morality;

(ii) The commercial exploitation of an invention that has been prohibited in order to protect human or animal health or life, or to preserve plants and the environment;

(iii) Plants, animals, or biological processes for the production of plants or animals; and

(iv) Therapeutic, surgical, and diagnosis methods for the treatment of humans and animals.

Under Colombian law, protection begins with the filing of the patent application. Immediately after that, the application will be subject to a formal examination to verify that the documents and information required are complete; if they are not, the Patent Office will issue an office action. Once the Patent Office determines that the application meets the formal legal requirements, the patent will be published in the Industrial Property Gazette for third parties to file oppositions. As from the date of publication, the applicant has six months within which to request the patentability examination. During the examination stage, the Patent Office may issue one or more office actions asking the applicant to amend the set of claims or sub-

[185] Law 1581/2012, art. 23.

[186] Col. Com. C., arts. 534–602 (adopting the provisions of Andean Community Decision 486/2000).

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mit technical evidence of the registration of the invention. As a result of the examination, the Patent Office will grant or deny the patent; if the patent is denied, the applicant may file a reconsideration petition before the Patent Office. If the patent is granted, the applicant will have to make annual payments to keep the patent in force.

Additionally, in Colombia, patents can be filed under the Paris Convention for the Protection of Industrial Property or under the Patent Cooperation Treaty (PCT), as described below.

Paris Convention for the Protection of Industrial Property: One of the main benefits of the Paris Convention is the right of priority. This means that on the basis of a first application filed in one of the Contracting States, the applicant is granted a specific term to file new applications for the same patent/utility model/industrial design in other Contracting States. Moreover, any subsequent filings will be deemed filed on the same date as the first application.

The specific term is 12 months for patents and six months for industrial designs, and it is counted as from the date of the first application.

In that sense, the right of priority entails a privilege for the applicant over any other applications filed by third parties within the above-mentioned timeframes in regard to the same patent, industrial design or utility model.

Patent Cooperation Treaty: Under the Patent Cooperation Treaty, the applicant may seek protection for an invention simultaneously in several Contracting States by filing a single international patent application, instead of filing separate national patent applications. However, such international filing must enter a National Phase and the granting of such application remains under the control of the Local Patent Offices.

It is important to bear in mind that the applicant has a limited period of time to file the National Phase of their International PCT Application which, depending on the country, may vary between 30 to 31 months from the original (local) application.

b. Utility Models

Utility models protect any new shape, configuration, or arrangement of components of any device, tool, implement, mechanism or other object, or any part thereof, that improves it or provides a new operation, use or manufacture of the object incorporating it, or endows it with any usefulness, advantage, or technical effect that it did not previously have.

For a utility model to be protected under Colombian law, it must be:

(i) Novel; and

(ii) Capable of industrial application, as explained in II.C.3.a., above.

Additionally, for purposes of determining patentability, disclosures occurring during the year prior to the application filing date will not bar the patentability of the invention.

A utility model is enforceable for 10 years from the application filing date. A utility model grants its owner the right to prevent non-authorized third parties from exploiting the machine or device and the right to exploit, license or assign it.

In addition to the exceptions to, and exclusions from, patentability, a machine or device will not be deemed to be a utility model if it is an architectural work, a plastic artwork or an object that has only aesthetic features.

The protection procedure for a utility model is the same as for a patent. However, the procedural terms are reduced by half.

c. Industrial Designs

Industrial designs protect the external aesthetic features of a product. To obtain such protection, the invention must be novel, as explained in a., above. Industrial designs may be 2D or 3D. Additionally, for purposes of determining patentability, disclosures occurring during the year prior to the filing date of the application do not bar the patentability of the invention.

Under Colombian law, an industrial design is enforceable for 10 years from the application filing date. An industrial design grants the owner the right to prevent non-authorized third parties from exploiting the design and the right to exploit, license or assign the invention.

A design will not be protected:

(i) For moral or public order reasons;

(ii) When its appearance is due to technical functions; and

(iii) When its reproduction is mandatory to allow the product to be compatible with other devices or machines.

Under Colombian law, the protection process starts with the filing of the industrial design application. Immediately after that, the application will be subject to a formal examination to verify that the documents and information required are complete. If they are not, the Patent Office will issue an office action. Once the Patent Office determines that the application meets the formal legal requirements, the industrial design will be published in the Industrial Property Gazette for third parties to file oppositions. If no oppositions are filed, the Patent Office refrains from performing a substantial analysis of the application and grants the industrial design. However, if an opposition is filed, the Patent Office will analyze the novelty of the application and decide whether to grant the industrial design. If the Patent Office denies the registration, the applicant may file a request for reconsideration and a subsidiary appeal.

d. Trade Secrets

A trade secret refers to any information that is not known or easily obtained, has economic value for being secret, and has been subject to reasonable measures to keep it secret. Some reasonable measures could be fragmenting information, installing technological and physical barriers to accessing the information, and keeping an organized register of the information as well as the people who accessed it, among other measures.

A trade secret protects procedures or products that cannot be subject to reverse engineering in any industrial field. A trade secret will remain enforceable as long as the information is kept secret.

e. Trademarks

A trademark is a visible sign used to identify one person's goods and/or services from those manufactured or sold by other persons, and to indicate the source or origin of goods. A trademark can assume any shape, provided it is susceptible of graph-

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ical representation. A trademark may, therefore, consist of words, figures, smells, sounds, letters, numbers, colors, shapes, or any combination of these.

To obtain IP rights over a trademark it is mandatory to register it with the Colombian trademark office (CTO), i.e., the Superintendence of Industry and Commerce. The registration protection process takes approximately six to eight months if no oppositions or objections are made.

Before filing a trademark registration application, it is advisable to perform a trademark availability search with the CTO, to determine the viability and registrability of the expressions of interest. As a result of this search, the applicant is able to select and adjust the specifications of the trademarks that will distinguish its products and/or services in accordance with the current regulations on the matter and the previously registered trademarks.

The trademark registration may be requested claiming specific colors, in which case the trademark will be used only in the specified colors, or without claiming specific colors, in which case the brand is registered in black and white but can be used in any color. Applicants usually choose not to claim trademark colors when they are building up their image or prefer not to limit the trademark to the use of a specific color or set of colors. On the other hand, trademark owners often claim colors when the image has been defined and they wish to position a particular color combination.

The Colombian trademark system is currently governed by the Eleventh Edition of the International Classification of Goods and Services for the Purposes of the Registration of Marks under the Nice Agreement. Consequently, it is necessary to determine accurately the products and services that will be identified with a trademark, and then classify them according to the above classification.

A trademark application may be mono-class, which means the application pursues coverage for only one International Class, or multi-class in which the applicant seeks to obtain a record with coverage for two or more International Classes. For purposes of mono-class trademark registration, an individual trademark application must therefore be filed for each International Class of interest; for multi-class trademark registrations, only one application is needed for trademark registration in as many classes as the applicant might be interested in.

Registration gives the trademark owner the exclusive right to use the trademark identifying its goods and/or services and the right to exclude third parties from using its sign or any other similar sign that distinguishes competitively linked goods or services. In this way, the Trademark Law aims to avoid consumer confusion in the Colombian market.

A trademark registration is valid for a term of 10 years and can be indefinitely renewed for periods of the same length. The owner of a registered trademark or any party with a legitimate interest may apply for its renewal within six months before the expiration of its registration, or during the six months after the expiration date, within a grace period.

There are other types of trademarks in Colombia, such as collective trademarks and certification trademarks. Collective trademarks are requested by producers, associations, manufacturers, providers of services, organizations, and other legally established groups to distinguish the products or services of their members in the marketplace from those of others that are not part of such associations. Certification trademarks are trademarks used to guarantee the quality or specific characteristics of a product or service.

It should be borne in mind that, in Colombia, trademark rights can only be acquired by obtaining a registration with the Trademark Office. Use alone does not grant any rights over a trademark. However, once registration is obtained, titleholders have the obligation to use their trademark in the Colombian and/or Andean market. In fact, a trademark may be subject to a non-use cancellation action by third parties after three years from the date of its registration.

Additionally, Colombia is a Contracting Country of the Madrid Protocol (Madrid System). By filing applications under the Madrid System, the applicant may file a single international application through its Local Trademark Office, which will certify and forward the application to WIPO (World Intellectual Property Organization). After the formal examination, publication and conferring of the International Registration, WIPO will submit the application to the countries of interest and the Local Trademark Office will issue a decision (granting or denying the application) in accordance with each country's legislation.

The decision issued by each Local Trademark Office is independent from the decision issued by any other Offices.

f. Franchising

A franchise exists when, by means of the licensing of a trademark, technical knowledge is transmitted or technical assistance is provided to allow a person or legal entity to produce or sell quality products or services in a uniform manner.

Franchising agreements, including the licensing of trademarks and trade names, and the supply of technical assistance, know-how and technology contracts as such, must be registered with the CTO.

g. Copyrights and Authors' Rights

Copyrights, in Colombia called "authors' rights," protect creative original works such as music, movies, software, books, drawings, architectural works, photographs, designs and original databases, among other items, fixed in a tangible medium of expression now known or later developed, through which they can be perceived or otherwise communicated.

Copyright protection grants its owner two kinds of rights:

(i) Economic rights to authorize or forbid the reproduction, publication, public performance or display, importation, production of derivative works, or sale of his or her copyrighted works; and

(ii) Moral rights granted to the author, which include the recognition of authorship, and preclude the deformation, mutilation or modification of the work without prior authorization.

Economic rights are protected for the life of the author plus 80 years after his/her death and are transferable and waivable. On the other hand, moral rights are perpetual and non-transferable, and may not be waived.

With regard to author rights for legal entities, with the enactment of Law No. 1915 of 2018, the term of protection was extended from 50 to 70 years. Moreover, legal entities are ac-

ISBN 978-1-63359-276-6

knowledged and recognized as capable of being owners of creative original work (i.e., software, etc.).

The National Copyright Office (DNDA) has indicated that works created using artificial intelligence are not eligible for copyright protection as they do not meet the requirement of being an intellectual creation—i.e., a creation of the human intellect. Under local rules, a work must be original and an intellectual creation to be protected by copyright. The Office has rejected a number of applications to copyright works that were developed using artificial intelligence.[187]

h. Intellectual Property Violations and Infringements

Author's rights and IP violations in Colombia may lead to civil and criminal actions.

In the case of IP, the main civil actions contemplated by Andean Community Decision 486 of 2000 are:

(i) An IP infringement action seeking to defend any protected IP right; and

(ii) A vindicating action for claiming ownership over a mark, a patent or an industrial design registration that has been applied for or obtained by a person that does not have the right to it.

By means of an infringement action the owner of the IP rights that are the subject of violation may bring an action with the competent national authority against any person that infringes its rights or any person that engages in acts that indicate the imminence of an infringement.[188]

Under an IP infringement action, the plaintiff may seek compensation for damages as well as other protective measures, such as the cessation of the acts that constitute the infringement, the withdrawal from commercial channels of the goods resulting from the infringement or the award of ownership of the same, the adoption of the measures necessary to ensure that the infringement does not continue or recur, and the publication of the sentence handed down against the infringer.[189]

Additionally, Decree No. 2264 of 2014 established a regime of pre-defined compensation for damages for trademark infringements alone, which relieves the plaintiff from having to prove the amount of the compensation it seeks.

Along with the institution of the proceedings, immediate precautionary measures may be requested with the aim of preventing the infringement from being committed or avoiding its consequences, securing or preserving evidence, or ensuring the effectiveness of the action or compensation for damages.

Besides being a basis for civil actions, IP violations also constitute a crime under the Colombian Criminal Code, Law 599 of 2000. Usurpation or fraudulent use of a trademark, commercial name, slogan, industrial design or patent is punishable by imprisonment for between four to eight years and fines ranging from 26.6 to 1,500 times the minimum legal monthly wage. Moreover, violations (use, revelation, or disclosure) of information subject to industrial or commercial reserve are punishable by imprisonment for between two to five years and fines ranging from 20 to 2,000 times the minimum legal monthly wage.

Potential violations of author's rights are regulated by 1915 of 2018 on Copyright and under the Colombian Criminal Code, which provides punishment for the infringement of a copyright owner's economic and moral rights. The owner of an infringed copyright may pursue the infringer either in a civil proceeding, based on the conduct set forth in article 51 of Law 44 of 1993, or a criminal proceeding, based on articles 270, 271, and 272 of the Colombian Criminal Code. Author's rights violations are punishable by imprisonment for between two to eight years and fines ranging from 20 to 1,000 times the minimum legal monthly wage.

The Andean Court of Justice issued the prejudicial interpretation n° 391-IP-2022,[190] establishing that, from March 2023, it will no longer be mandatory for judicial courts to request the issuance of prejudicial interpretations before ruling on the merits of a case, provided the relevant intellectual property provisions cited by the plaintiff or the defendant have been previously subject to a prejudicial interpretation that has been published in the official gazette (*Gacetas Oficiales del Acuerdo de Cartagena*).

4. Sanitary Regime

Sanitary provisions aim to protect human health from any activities, conditions, services and products that may pose any kind of risk.

The Colombian sanitary authority in charge of enforcing these provisions is INVIMA.

a. Food and Beverages

Per sanitary regulations, the concept of food refers to any natural or artificial product, processed or not. This definition includes non-alcoholic beverages and spices.

Resolution 719 of 2015 provides that food is classified based on the level of risk—high, medium or low—it poses to public health.

Although each food product might be specifically regulated under technical provisions, the main regulations governing food are:

- Law 9 of 1979;
- Resolution 2674 of 2013;
- Resolution 5109 of 2005;
- Resolution 810 of 2021 (that repealed Resolution 333 of 2011); and
- Resolution 2492 of 2022 that regulates the labeling requirements to be met by packaged foods and raw materials.

b. Alcoholic Beverages

An alcoholic beverage is a product for human consumption that contains a concentration of not less than 2.5 alcoholometric degrees and has no therapeutic indications. All alcoholic

[187] Resolution 137 of May 2, 2023, Resolution 147 of May 18, 2023, and Resolution 185 of June 14, 2023.

[188] Andean Community Decision 486 of 2000, art. 238.

[189] Andean Community Decision 486 of 2000, art. 240.

[190] See:https://www.comunidadandina.org/DocOficialesFiles/Procesos/391_IP_2022.pdf.

ISBN 978-1-63359-276-6

beverages manufactured, processed, hydrated, bottled, stored, distributed, transported, marketed or sold in, exported from, or imported into Colombia must have a sanitary registration. The labels and advertising must carry specific language, the most important examples of which are: "Excess alcohol is harmful to health" and "Selling intoxicating beverages to underage individuals is forbidden."

The main regulations governing alcoholic beverages are the following:

- Law 9 of 1979;
- Law 30 of 1986;
- Law 124 of 1994;
- Decree 1686 of 2012;
- Decree 219 of 2019; and
- Decree 162 of 2021.

c. Dietary Supplements

A dietary supplement is a product that adds other substances with a physiological or nutritional effect to the normal diet. Dietary supplements may contain vitamins, minerals, proteins, amino acids, other nutrients or nutrients derived from plants.

The main regulations governing dietary supplement are Decree 3249 of 2006, Resolution 3096 of 2007 and Decree 335 of 2022.

d. Medicines

Medicines are classified, based on marketing conditions, as free sale medicines, prescribed medicines, specially regulated medicines, and hospital use solely medicines.

Medicines may further be classified into:

(i) Biological: medicines made from living organisms or cells. They can be obtained from sources such as tissues or cells, components of human or animal blood (such as antitoxins and other antibodies, cytokines, hormones, etc), viruses, and microorganisms, among others;

(ii) Homeopathic: pharmaceutical preparations obtained by homeopathic techniques;

(iii) Phytotherapeutics: medicines containing an active substance which comes from medicinal plants or associations of these or extracts, tinctures or oils, presented in a raw state or in pharmaceutical form that is used for therapeutic purposes.

Although a large number of specific technical regulations apply for each product and activity, the generally applicable regulations for medicines are:

- Decree 677 of 1995;
- Decree 2266 of 2004;
- Decree 3554 of 2004;
- Resolution 4320 of 2004; and
- Decree 335 of 2022.

e. Medical Devices

Within this category are all tools, instruments, machines, software, biomedical equipment or other similar or related devices, used for any of the following purposes:

(i) Diagnosis, prevention, supervision, treatment or relief of a disease;

(ii) Diagnosis, prevention, supervision, treatment, relief from injuries or deficiencies;

(iii) Research, substitution, modification or support of anatomical structures or physiological processes;

(iv) Diagnosis of pregnancy; or

(v) Products for disinfection and/or sterilization of medical devices.

The following classification of medical devices is based on potential risks related to use:

- Class I, low risk: subject to general controls, not intended to protect or maintain life, or for any use of special importance in the prevention of deterioration of human health and which do not pose an unreasonable potential risk of illness or injury;
- Class IIA, moderate risk: subject to special controls in the manufacturing phase to demonstrate its safety and effectiveness;
- Class IIB, high risk: subject to special controls in design and manufacture to demonstrate safety and effectiveness; and
- Class III, very high risk: subject to special controls, intended to protect or maintain life or for substantial use in the prevention of deterioration of human health.

The main regulations governing this type of products are: Decree 4725 of 2005 and Resolution 4002 of 2007, Resolution 4816 of 2008 and Decree 322 of 2023.

f. Cosmetics

A cosmetic product is a substance or formulation used in any external surface of the human body such as: epidermis, hairy and capillary system, nails, external lips and genital organs or in teeth and mucous membranes, to clean, perfume, modify its appearance and protect or keep those in good condition and prevent or correct body odors.

The main regulations governing cosmetic products are:

- Decree 219 of 1998;
- Decision 516 of 2002;
- Resolution 1333 of 2012;
- Decision 833 of 2018;
- Decision 857 (amending Decisions 516 and 833);
- Resolution 2108 of 2019;
- Resolution 2214 of 2021; and
- Resolution 2206 of 2021.

Resolutions 2206 of 2021 and 2214 of 2021 set out the good manufacturing practices (*Buenas Practicas de Manufac-*

ISBN 978-1-63359-276-6

tura – BPM) that companies must comply with in order to manufacture or package cosmetic products.

A new development in this area concerns the labeling of cosmetics. The Andean Community of Nations published Resolution No. 2310, through which it approved the Andean Technical Regulation for the Labeling of Cosmetic Products (the ATR). This regulation establishes new labeling requirements that cosmetic products marketed in the territories of the Member Countries (Peru, Ecuador, Colombia, and Bolivia) must comply with, in order to prevent practices that may mislead consumers about the characteristics of these products and to protect human health or safety. This regulation is scheduled to take effect December 17, 2024. In accordance with the provisions, it is now possible to incorporate a supplementary label or sticker on the packaging (a means by which additional information is included on the main label of the product, which must be firmly attached to the label, packaging, or container and must have indelible and legible characters). This supplementary label must comply with the requirements outlined in paragraphs three, four, five, six, seven, and ten of section 5.1 of the same regulation.

g. Hygienics

These are products whose main function is to clean up, disinfect, aromatize the environment and promote care of objects, clothing or areas that will subsequently be in contact with humans.

This category does not include those products whose main purpose is the formulation for cleaning up, disinfecting and promoting the care of industrial and commercial machinery and industrial and public health facilities.

The main regulations governing hygiene products are Decree 1545 of 1998 and Decision 706 of 2008, Decision 908 of 2022 and Decision 784 of 2013 (amend articles from Decision 706).

h. Inspection, Surveillance and Control Visits and Sanitary Measures

INVIMA follows a risk-based sanitary surveillance model, called IVC SOA. Its name results from the assessment prepared over the products falling under its scope, in the following three factors: severity (S), probability of occurrence (O) and affectation (A).

INVIMA conducts surveillance through inspection visits and monitoring of health records, among others. Once INVIMA schedules an inspection, surveillance and control visit to an establishment that performs activities under its competence (without prior notice), it has the power to verify and request the information it deems appropriate to gather. As a result of the visit and if the appointed officer finds any flaw in the fulfilment or compliance with the legal provisions, INVIMA can apply the most appropriate sanitary measure. The purpose of these measures is to prevent, mitigate, control or eliminate any circumstance likely to pose any risk or harm the health of the population.

INVIMA can impose any of the following sanitary measures:

(i) Temporary closure of the establishment;

(ii) Total or partial suspension of services rendering;

(iii) Seizure of objects and products; and

(iv) Destruction of items or products, if applicable.

i. Penalties

The outcome of an administrative sanitary procedure, can lead INVIMA to impose some or all of the following penalties:

(i) Warning notices to the infringer;

(ii) Successive fines up to the amount of 10,000 current legal minimum monthly wages;

(iii) Definitive seizure of products;

(iv) Suspension or cancellation of health registrations; and

(v) Temporary or definitive closure of the respective establishment and/or facility.

j. Advertising and Product Labelling Requirements

In general, to comply with the requirements for advertisements and labeling of products, it is necessary to take into account the particular nature and conditions of a product. However, when designing labels or advertisements for any of the above indicated products, the following criteria must be observed:

(i) Compliance with current sanitary standards;

(ii) Compliance with conditions under which the health registration was granted;

(iii) Ensure that information does not mislead consumers by affirmation or omissions;

(iv) Avoid making medical, preventive, curative, nutritious or special property claims that are not proven and authorized by INVIMA, which may raise false assessments about their true nature, origin, composition or quality; and

(v) Observe free competition.

D. Immigration Regulation

1. In General

The Colombian Government, through the Ministry of Foreign Affairs, has authority over all Colombian immigration policy.[191]

All foreign individuals entering and staying in Colombia are required to file for a temporary visa or permit.

2. Visas Categories

a. In General

Visa applications may be filed with a Colombian Consulate abroad, with the Office of Visas and Immigration Coordination in Bogotá, or via the internet. Foreigners wishing to enter and/or stay in Colombia must have the following:

(i) A valid passport or similar document;[192] and

[191] Decree 1067/2015.
[192] Decree 1067/2015, art. 2.2.1.11.2.1.

ISBN 978-1-63359-276-6

(ii) The corresponding visa, or an entry permit issued by the Colombian Ministry of Foreign Affairs or Immigration Agency (*Migración Colombia*) when a visa is not required.[193]

In Colombia, the following types of visas are available:[194]

• Visitor (Type "V");

• Migrant (Type "M"); and

• Resident (Type "R").

All these visas allow a foreign holder multiple entries, exits or transits. In addition, beneficiary visas may be granted to the family members of the primary visa holder (depending on his or her type of visa) if they are economically dependent.[195]

b. Visitor Visa (Type "V")

The Ministry may grant a Type V visa to foreigners who wish to visit Colombia once or several times or temporarily remain there, without establishing themselves in Colombia, to carry out any of the activities described below.

The Type V visa is residual in nature. In the event a foreigner requests a visa to carry out an activity or exercise an occupation that is not regulated under Resolution 5477 of 2022, the Ministry of Foreign Affairs may grant a Type V visa. The Ministry will then determine the conditions attached to said visa.

The Type V visa provides its holder the possibility of carrying out:

(i) Activities inherent to his/her presence and daily life in Colombia; and

(ii) Business management, market studies, plans or procedures for direct investment and creation of companies.

[193] Decree 1067/2015, art. 2.2.1.11.2.1.
[194] Resolution 5477/2022, art. 22.
[195] Resolution 5477/2022, art 93.

Visitor Visa (Type V)			
Type	**Validity**	**Authorized Stay**	**Permission to Work**
Airport transit	For foreigners of specified nationalities listed in Resolution 5488 of 2022, who are transiting directly through any Colombian airport when traveling to a third country	Up to 24 hours in the relevant Colombian airport.	No.
Tourism	For foreigners of specified nationalities listed in Resolution 5488 of 2022, who are traveling to Colombia for tourism.	Up to 90 days, extendable for another 90 days per calendar year. After 180 days in one calendar year the permission is not extendable.	No.
Business	Carrying out business management, market studies, direct investment plans or procedures, and incorporation of a commercial company, as well as the negotiation and closing of contracts or commercial representation	Up to 180 continuous or discontinuous days in each year that the visa is used. The 180-day period is not extendable.	No.
Student	For foreign students who intend to study in Colombia. Passport holders from visa-exempt countries or territories listed in Resolution 5488 of 2022, will be exempt from processing this type of visa if their stay in Colombia does not exceed 180 calendar days. Leaving the country for more than 90 calendar days will result in the automatic termination of the visa.	Up to two years.	This visa allows university students to work up to 20 hours per week.

ISBN 978-1-63359-276-6

Medical treatment	Undergoing medical treatment in Colombia	Up to one year. The permission is not extendable.	No.
Administrative and/or judicial procedures	Carrying out procedures of an administrative or judicial nature before entities or authorities in Colombia	Up to one year.	No.
Crew member	Entering and working in Colombian jurisdictional waters as a boat crew member or on an offshore platform	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Seasonal agricultural employee	Undertaking seasonal agricultural work under programs established by the Ministry of Agriculture and Rural Development, in consultation with the agricultural sector, the Ministry of Labor and the Ministry of Health and Social Protection	Up to 180 days.	Yes, exclusively for the activity for which the visa was granted.
Special event	Attending conventions, business, cultural or academic activities as a speaker, exhibitor, participant, artist, athlete, jury, contestant, organizer, or as logistics personnel. Passport holders from the visa-exempt countries or territories listed in Resolution 5588 of 2022, will be exempt from processing this type of visa if their stay in Colombia does not exceed 180 calendar days and they do not receive a salary or payment in Colombia.	Up to 180 calendar days, continuous or discontinuous for every 365 calendar days from the issuance of the visa, not extendable.	Yes, exclusively for the activity for which the visa was granted.
Religious	Undertaking religious ministry or working as a missionary for a religious entity duly recognized by the Colombian State.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Students or volunteers of religious entities.	Entering and remaining in the country as a volunteer or student in religious organization or carrying out theological studies in an institute or organization of a religious denomination duly recognized by the Colombian State	Up to one year.	No.

ISBN 978-1-63359-276-6

Volunteer or cooperation	Limited exclusively to activities and organizations authorized by the government. Once the volunteer activity is finished, the foreigner must return to his or her country of origin or residence. A second expedition will only be allowed exceptionally	Up to two years. Leaving the country for more than 90 calendar days will lead to the early termination of the visa.	No.
Cinematographic or audiovisual production	Participating in large-format films or documentary productions	Up to one year.	Yes, exclusively for the activity for which the visa was granted.
Digital nomads	Providing remote work or teleworking services from Colombia, through digital media and the internet, exclusively for foreign companies, as an independent contractor or employee of a foreign entity. It also covers starting a digital content or information technology venture of interest to the country.	Up to two years.	No.
Journalistic coverage	Carrying out short-term journalism assignments in the country.	Up to one year.	Yes, exclusively for the activity for which the visa was granted.
Permanent correspondent	Working in Colombia as a permanent press correspondent for foreign media.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Technical assistance	Providing technical assistance to a legal entity in Colombia.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Work or vacation	Visiting Colombia under a diplomatic or consular vacation or work agreement.	Up to one year.	Yes, it grants an open work permit.
Promotion of globalization	Undertaking research or innovative activities aimed at adapting technologies, products, or services to innovate in Colombia.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Annuitant	For foreigners who have a periodic source of income	Up to two years.	No.
Internship	Carrying out an internship.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.

ISBN 978-1-63359-276-6

Service provider or agreements for the duration of projects	Providing temporary services for a natural or legal person in Colombia.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.
Entrepreneurs free trade agreements (FTA)	Occupying a position in the Colombian office of a company with presence abroad, by virtue of an internal transfer of personnel, provided the entry or temporary presence of business persons is covered under valid international instruments.	Up to two years.	Yes, exclusively for the activity for which the visa was granted.

Regarding condition 5., above, in accordance with numeral 14 and paragraph 1 of articles 10 and 40 of Resolution 6045 of 2017, an "internal transfer" must meet four conditions:

(i) The foreigner must enter Colombia to occupy a position in the Colombian headquarters of the company abroad;

(ii) The foreign company, the Colombian company, or both, must sponsor the entry of the foreigner into Colombia;

(iii) The sponsor(s) must declare that they will assume economic responsibility for the expenses of the foreigner; and

(iv) Existing international instruments contemplate specific commitments regarding entry or temporary presence of businesspersons.

c. Migrant Visa (Type "M")

A foreigner who wishes to enter or remain in Colombia with the intention of establishing himself or herself there, but who does not meet the conditions to apply for a Resident (Type "R") visa, may apply for a Migrant visa if he or she falls within one of these categories:

Migrant Visa (Type M)			
Visa Type	**Validity**	**Authorized Stay**	**Permission to Work**
Spouse or permanent companion of a Colombian national	Is a spouse or permanent companion of a Colombian national.	Up to three years.	Yes, it grants an open work permit.
Mercosur	Is a national of one of the State parties to the *Agreement on Residence for Nationals of the State Parties of Mercosur* (Argentina, Brazil, Paraguay, and Uruguay)*, Bolivia and Chile*	Up to three years.	Yes.
Employment	Has permanent employment in Colombia or long-term employment, by virtue of an employment relationship or contracting agreement to provide services to a natural or legal person domiciled in Colombia.	Up to three years or less, in accordance with the terms of the contract.	Yes, exclusively for the position, entity or profession for which the visa was granted.
Partner or owner	Has constituted or acquired participation in the share capital of a commercial company of at least 100 minimum monthly salaries (MMS).	Up to three years.	Yes, exclusively in the company that he/she is a partner or shareholder in.
Independent professional	Has the qualifications or expertise to independently practice a profession and has an average income of at least 10 MMS.	Up to three years.	Exclusively for the position, entity or profession for which the visa was granted.

ISBN 978-1-63359-276-6

Parents or children of a Colombian citizen	Parents or children of a Colombian citizen.	Up to two years. Allows applying for a resident visa after two years.	Yes, it grants an open work permit.
Andean migrant	Nationals of one of the State parties to the *Andean Immigration Statute* (Bolivia, Colombia, Ecuador and Peru).	Up to two years. Allows applying for a resident visa after two years.	Yes, it grants an open work permit.
Refugees	For foreigners who have been recognized by the Colombian Government as refugees.	Up to three years. Allows applying for a resident visa after five years.	Yes, it grants an open work permit.
Pensioner	For a foreigner who has a constant monthly income derived from a pension granted by a State or by a private pension fund.	Up to three years. Allows applying for a resident visa after five years.	No.
Promotion of globalization	For research or innovation activities aimed at adapting technologies, products, or services to innovate in Colombia.	Up to three years.	Yes, exclusively for the activity for which the visa was granted.
Investment	Has registered direct foreign investment for real estate in Colombia of at least 350 MMLS.	Up to three years.	No.

d. Resident Visa (Type "R")

A foreigner who wishes to enter and/or remain in Colombia to establish his/her domicile or to permanently settle in Colombia, may request a Resident visa, if he/she meets any of the conditions mentioned below.

Holders of a Type R visa demonstrate their resident status in Colombia by means of an immigration card or a visa, or by means of a visa label stamped on their passport or travel document if under the age of seven.

The validity period of the Type R visa label will be five years. A foreign holder of a Type R visa may request that the visa be renewed for equal periods, through the visa transfer procedure.

Resident Visa (Type R)			
Conditions	**Validity**	**Permission to Work**	**Renewal**
By residence time in Colombia	Uninterrupted residency in Colombia with a type M visa.	Yes, it grants an open work permit.	This visa may be renewed after five years as of the issuance date.
Resignation of Colombian nationality	For Colombian nationals by birth or by adoption, who decided to resign their Colombian nationality.	Yes, it grants an open work permit.	This visa may be renewed after five years as of the issuance date.
Venezuelans under Temporary Protection Statute for Venezuelan Migrants (ETPV)	For Venezuelan citizens sheltered under the ET-PV. When they have been holders of a Special Stay Permit (PEP) for five years.	Yes, it grants an open work permit.	This visa may be renewed when the Special Stay Permit (PEP) expires.
Special Peace Resident	For foreigners who used to be members of FARC-EP, who were part of the peace process.	Yes, it grants an open work permit.	This visa is issued for an indefinite term.[196]

e. Beneficiary Visa

The following family members of the main visa applicant may obtain a beneficiary visa:

(i) Spouse;

(ii) Permanent partner; and

(iii) Children under 25 years of age who are economically dependent on the main visa holder, or who, being older than 25 years, have some type of qualifying disability that prevents them from having economic independence.

[196] Law Decree 831 of 2017, art. 1.

ISBN 978-1-63359-276-6

Only certain type V visas allow family members to apply for beneficiary visas.

A beneficiary visa has the same validity as that of the principal holder's visa. The beneficiary visa does not grant permission to work.

3. Application Requirements

The authority that is responsible for the issuance of visas may request additional documents in addition to those required under Resolution 5477 of 2022. Likewise, the authority may conduct interviews in cases where it deems appropriate.

The approval of the visa will depend on the discretionary decision of the visa authority.

Documents, other than identity documents, passports or travel documents, that are presented as supporting documentation and as requirements for the visa application, must have been issued no more than three months prior to the registration of the application.

Any document created or issued abroad must be apostilled or legalized as appropriate and must be translated into Spanish if it was issued in a foreign language. Bank statements may be presented without apostille or legalization and without translation, provided that their content is clear.

If the visa application is made under the Agreement on Residency for Nationals of the State Parties of Mercosur, Bolivia and Chile, and is presented before a Colombian Consular Office in the applicant's country of origin, the certification will be in accordance with the procedures established in that country.

4. Regulated Professions

Foreigners who will pursue a regulated profession in Colombia (e.g., in the fields of engineering, law, health sciences, or business administration), must apply for a work permit before the corresponding professional council or they must homologate their title before the Ministry of Education, as the case may be, in addition to obtaining a visa.

5. Procedural Aspects

a. Visa Applications

To apply for any type of visa, an application must be filed online. Any inaccuracy in the data provided in the electronic visa application form will be grounds for inadmissibility. A fee must be paid for the review of the visa application within 30 calendar days following the registration of the application. Failure to pay results in the tacit withdrawal of the application.

The visa authority has up to 30 days after payment of the fee to issue a decision on the visa application.

The Ministry of Foreign Affairs may:

(i) Grant the visa;

(ii) Reject the visa application; or

(iii) Deny the visa.

When the visa authority requires additional information from the applicant, the Ministry has the discretionary power to extend the term for issuing a decision.

A request for additional information may be made in relation to:

(i) Incomplete or illegible documents;

(ii) A non-conforming photo;

(iii) Ambiguous information; or

(iv) Request for an interview or additional documents.

There are no appeals on final decisions of the visa authority in visa applications. If the visa application is rejected, the applicant may submit a new application. Nonetheless, if the visa application is denied, the foreigner cannot register a new application for six months following the rejection.

However, the Internal Working Group for Visas and Immigration has discretionary power to receive a new application and issue a visa before the term of denial has expired.

b. Visa Duration

Once the visa is authorized, the holder will have up to 30 calendar days to pay the issuance fee. Failure to pay the fee results in tacit withdrawal of the application.

Once the issuance fee has been paid, the visa authority will issue and send the electronic visa to the applicant's e-mail account within three days. If the visa has typographical errors, the visa holder may request a correction within 30 days following its issuance. Upon expiration of this period, the foreigner must request the reprinting of the visa with the typographical corrections.

Visas granted for a term of less than three months allow the holders to enter, remain and leave Colombia without having to have a label attached to their passport.

6. Obligations of Migrants and Foreigners

Foreigners holding Type V, M and R visas described above, except for visas granted for conducting business, must register their visa in the Foreigner Registration Information System (SIRE) of the Special Administrative Unit of Migration Colombia. Additionally, employers must report and register their foreign employees on the Ministry of Labor's Unique Registration for Foreign Employees (RUTEC).

Foreigners holding a Type R visa and holders of Type V or M visas that are granted an open work permit, must report any change of activity, profession or trade to Migration Colombia, within 15 calendar days following the occurrence of a change event.

7. Identification Card

Foreigners who obtained approval of a visa that is valid for more than three months, must personally appear at the offices of Migration Colombia within 15 calendar days following the issuance of the visa, so that they may: (i) register their visa; and (ii) apply for their foreigner identification card.

Upon carrying out the relevant procedures, Migration Colombia will ask the foreigner for biographical information and will take fingerprints.

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8. Compliance

Non-compliance with the immigration law of Colombia is punishable with pecuniary fines, deportation, expulsion, or imprisonment.[197]

E. Labor Relations

1. Labor Law

a. In General

Colombia's labor law classifies labor relations into two regimes: the labor regime, which governs relations between employers and employees;[198] and the labor union (organized labor) regime, which governs organized labor relations with management.[199]

The rules set forth in the Colombian Labor Law are mandatory.[200] The Labor Law sets forth the minimum rights and guarantees granted to employees in Colombia. Consequently, any agreement between an employer and an employee that affects, constrains, or denies such rights is void.[201]

In addition, an employee cannot waive or assign the rights and guarantees provided under the Law.[202] Consequently, any agreement between an employer and an employee in which the employee waives or relinquishes such rights, is void.

Under the Labor Law, when facts are in conflict with the provisions of an employment contract, the facts prevail over the terms of the contract (see II.E.1.b., below).

b. Employment Agreements

The Labor Law governs any agreement, regardless of the type of contract entered into by the parties, where:

(i) The individual renders a personal service;

(ii) The individual is remunerated; and

(iii) The individual is subordinated to the employer.

"Subordinated" refers to the power of the employer to give orders, directions, and instructions to the employee related to his/her work, where the employee is under an obligation to follow those instructions. The name given to an agreement does not determine the rights and duties under the contract where the facts conflict with the terms of the contract.

c. Employer Obligations

If there is an employment contract, in addition to salary, the employer must make the following payments and/or comply with the following general obligations:

(i) Annual severance payment (*cesantía*). This is a statutory benefit calculated on a yearly basis and is equivalent to a monthly salary per year of services or the corresponding portion for a shorter period. During the term of the agreement, the employer must deposit the corresponding amount in the employee's annual severance payment account before February 15 of the year following the year that gave rise to it. On termination, the employer must pay the employee the accrued amount for the current year. The employee may also access these funds for educational or certain housing purposes;

(ii) Interest on the annual severance payment. This amounts to 12% of the annual severance payment. It must be paid directly to the employee in the month of January following the relevant year;

(iii) Service bonus (*prima de servicios*). This is calculated on a semester basis, from January to June and from July to December every year over the term of the employment. The employer must pay half a monthly salary, or the semester's monthly average if the employee has a variable salary, if the employee rendered his/her services during the entire semester, or the corresponding proportion if he/she worked for a shorter time. The employer must pay the service bonus for the first semester in June and for the second semester during the first 20 days of December;

(iv) Registering the employees with the Social Security System (pensions, health and occupational hazards) and with the family compensation fund (*caja de compensación familiar*);

(v) Pay the monthly contributions to the Social Security System for pension, health, and occupational hazards;

(vi) Payroll fees (*aportes parafiscales*);

(vii) Paid vacation;

(viii) Endowment. Working clothes for employees who earn no more than twice the minimum monthly salary (MMLS), as defined in II.E.1.d., below;

(ix) Transportation allowance for employees who earn no more than twice the MMLS;

(x) Implementing the internal work rules (*reglamento interno de trabajo*);

(xi) Implementing the health and safety system (*sistema de gestión de seguridad y salud en el trabajo*);

(xii) Creating the health and safety committee (*comité de salud y seguridad en el trabajo*) and carrying out timely meetings, at least monthly;

(xiii) Creating the coexistence committee (*comité de convivencia*) and carrying out timely meetings, at least every three months;

(xiv) Granting a family day per semester to all employees,

(xv) Registering job openings with the public employment service;

(xvi) Requesting an apprentice's quota and hiring the apprentices selected;

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[197] Decree 1067/May 2015, arts. 2.2.1.13.1 to 2.2.1.13.2.

[198] Colombia Labor Law (*Código Sustantivo del Trabajo* or C.S.T. — Col. Labor L.), art. 22.

[199] Col. Labor L., arts. 353–467.

[200] A labor reform bill was filed before the Congress on March 16, 2023. The Government expects the reform to be approved during the second legislature half of 2023 for its presidential sanction in the same year. If approved, the reform would change part of the legal framework.

[201] Col. Labor L., art. 13.

[202] Col. Labor L. art. 14.

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(xvii) Conducting an annual self-assessment of health and safety standards and annually registering the assessment with the Ministry of Labor;

(xviii) Implementing the disconnection policy; and

(xix) Comply with prevention obligations regarding labor and sexual harassment in the workplace explained in section No. 7.

For purposes of the discussion that follows, "statutory benefits" refers jointly to the annual severance payment, the interest on the annual severance payment and the services bonus.

d. Salary and Wages

The labor regime in Colombia provides that parties to an employer-employee relationship may freely negotiate employees' remuneration, which may, however, never be lower than the MMLS, as dictated by the national government.[203]

The MMLS in Colombia for the year 2025 is COP 1,423,500 (US$ 343).[204] Also, the Colombian government set the value of the transportation allowance at an amount equivalent to COP $200,000 (US$48), which applies employees who earn up to 2 MMLS.

Salary includes all of an employee's remuneration received as direct compensation for services rendered to an employer. An employee's salary may be paid in cash or in-kind. However, the in-kind component of an employee's salary may not exceed 50% of the employee's total salary, or 30% of the total salary paid when the employee earns the MMLS.

Under articles 127 and 128 of the Labor Law, the general rule is that every payment made by the employer to an employee is included in salary, except when expressly excluded from salary by both the employer and the employee (collectively, "the parties"). Payments that are calculated based exclusively on the employee's performance (i.e., commissions) may not be excluded from salary.

The monthly salary, as well as any surcharges paid by the employer for overtime and work during holidays or nighttime, are taken into account for purposes of calculating statutory benefits, vacations and contributions to the social security system, and the family welfare system.

If the employee's salary is equivalent to 13 MMLS or more, equivalent to COP $18,505,500 (USD 4,453) for 2025, the parties may agree on an integral salary (*salario integral* — or IS), which includes remuneration for overtime, surcharges, bonuses, statutory benefits, etc.,[205] so that an employer does not have to pay statutory benefits, surcharges, etc. to an employee earning an IS. In the case of an IS, contributions to the social security system (pensions, health care, and occupational hazards) are calculated based on 70% of the IS. By contrast, such contributions are calculated based on 100% of ordinary salary. An IS must be agreed in writing.

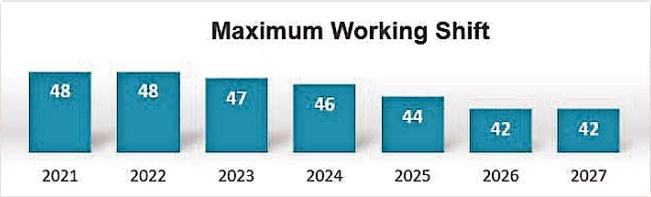
e. Withholding Tax

The employer must deduct from the employee's salary the corresponding withholding tax, according to the employee's monthly salary and the applicable percentage rate. The percentage rate to be withheld varies from 0% to 39%.

f. Working Hours and Surcharges

Under Colombian Labor Law, every month has 30 working days, and each year has 360 working days. In addition, until July 15, 2025, employees can work a maximum of 46 hours per week from Monday to Saturday. However, as of July 16, 2025, employees are allowed to work a maximum of 44 hours per week from Monday to Sunday.

Additionally, based on Law 2101 of 2021, the maximum working schedule will be reduced gradually to 42 hours per week from Monday to Sunday as of July 16, 2026.



Furthermore, an employer may agree with its employees that the current 47 hours per week may be distributed from Monday to Friday by increasing the working schedule by a maximum of two hours per day (to nine hours per day and 42 hours per week, respectively, once the gradual reduction set forth in Law 2101 is completed). Where such an agreement is in place, the employees are entitled to paid rest on Saturday. Also, the parties may agree to a variable working schedule and a mandatory day of rest other than Sunday.

An employer must pay surcharges for overtime, night work, or work during mandatory days of rest (i.e., Sundays, national holidays, and Saturdays if the maximum working schedule is from Monday to Friday). Overtime is limited to two hours per day and 12 hours per week.

In addition to Sundays, there are 18 public holidays that are included in the minimum holiday entitlement. This is in addition to the 15 working days of vacation per year that are granted to all employees.

g. Vacation Leave

Under the Labor Law, employees who have rendered their services for a year have the right to 15 working days of paid rest. Vacation days accrue as of the first day of work. If the employment agreement is terminated before the employee has taken the accrued days, the employer must pay them on termination.[206]

From every vacation period accrued, employees must enjoy at least six continuous business days per year. Employees in an ordinary job position may accumulate up to two periods of vacation and management employees may accumulate up to four periods of vacation.

[203] Col. Labor L, arts. 23, 127, 167.
[204] Calculation was made with the TRM for April 03, 2025.
[205] Col. Labor L., art. 132.
[206] Col. Labor L., art. 186.

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h. Leaves of Absence

(i) Maternity leave: every pregnant or adoptive mother is entitled to 18 weeks of paid maternity leave which may begin two weeks prior to the date of birth. Of the 18 weeks of paid leave, the week prior to the date of birth is mandatory if the circumstances allow it. For multiple pregnancies, the paid leave increases to 20 weeks. Maternity leave is paid by the social security system (EPS), provided the employee is enrolled during the time of the pregnancy;

(ii) Paternity leave: an employee, who is a new father, is entitled to two weeks of paid paternity leave starting from the day of the birth or adoption of the new child, provided the employer contributed to the EPS. Pursuant to applicable law and based on the official unemployment rate issued by the National Government, the paternity leave may increase annually by one week for each percentage point decreased of the unemployment rate with a maximum of five weeks;

(iii) Flexible part-time parental leave: mothers or fathers may exchange a given period of their respective parental leave for a period of part-time work. The part-time leave will be equivalent to twice the time of the leave period that they have chosen. The flexible part-time parental leave must be agreed between the employer and employee in writing;

(iv) Shared parental leave: if agreed between the parents, the last six weeks of maternity leave can be transferred to the father or distributed between the two of them;

(v) Bereavement leave: employees are entitled to five working days of paid bereavement leave due to the death of a spouse, partner, a relative to the second degree of kinship, first degree of affinity or first degree of civil relationship;

(vi) Voting leave: employees who vote in national, congressional, or local elections may, within the following month, request a half day paid leave, upon the agreement between the employee and the employer. In order to request it, the employee must provide the employer with their electoral certificate;

(vii) Voting jurors leave: employees who have been appointed as voting jurors and duly comply with said mandate, will have the right to a paid leave day within the 45 days from the date in which they rendered their services as election jurors, upon agreement between the employee and the employer;

(viii) Domestic calamity leave: employees may be subject to unforeseen events that affect them or their families and require them to be absent. Domestic calamity means "*any family event whose seriousness affects the normal development of the employee's activities, in which eventually fundamental rights of significant importance in the personal or family life of the employee may be threatened, or their emotional stability affected by serious moral pain*", as per Colombian Constitutional Court's Ruling C-390 of 2009;

(ix) Leave to attend the burial of co-employees: in the event of the death of a co-employee, the employer must grant employees leave to attend the burial. This leave shall be granted to up to 10% of the employees and must be notified up to one day in advance; and

(x) Childcare leave: employees who are parents or who hold the custody of a child with a terminal illness or condition, are entitled to 10 working days of paid leave.

i. Foreign Employees

Foreign employees are entitled to the same employment rights as Colombian citizens. However, all foreigners who are to render their services in Colombia on a permanent basis must have a Work Visa or any other visa that allows them to render services in Colombia.

j. Employment Agreements

Employment contracts fall into one of four categories, depending on their duration, as follows:

(i) Indefinite term agreements, i.e., agreements with no expiration or specific termination date;

(ii) Fixed-term agreements, under which the parties agree to a specific term of employment. The term must be agreed to in writing; if there is no such written agreement, the agreement will be deemed to be for an indefinite term. Fixed-term contracts may not exceed three years.

Fixed-term contracts are renewed automatically unless either the employer or the employee informs the other of his/her/its intention not to continue with the contract once the term expires. Notice of such a decision must be given 30 days before the expiration date. The date of the notice letter and the date of termination are not counted as part of the 30-day notice. Employment agreements with a term shorter than one year may be renewed up to three times, for equal or shorter terms; as of the fourth renewal, the term may not be shorter than one year;

(iii) Agreements for the duration of the work or project concerned, i.e., agreements limited to the period required for carrying out particular work or a particular project. The work or project must be specifically defined in the employment contract;

(iv) Occasional, accidental, or transitory work agreements are agreements entered into for purposes of carrying out activities other than an employer's regular activities/outside a company's purpose and have a term shorter than a month.

It should be noted that a written agreement or statement is only required if:

(i) The employment contract is for a definite term;

(ii) The employment contract is subject to a limited trial term and the agreement is for the duration of the work or project concerned;

(iii) The employee will receive an Integral Salary (as explained below);

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(iv) The employee will receive extra-legal benefits excluded from the salary on a regular basis;

(v) The employee will have a specific working schedule;

(vi) The employer will make salary discounts, subject to the specific authorization of the employee;

(vii) The employee will render services by means of telework or under a remote work scheme; or

(viii) The employee's labor conditions will be downgraded.

Employees must grant specific authorization with regard to the treatment of their personal data.

k. Termination

Colombia does not adhere to the at-will work doctrine. Consequently, situations that constitute cause for termination are established by law, as well as the indemnification for unilateral termination of an employment agreement by an employer without cause (severance).

The events that constitute cause for dismissal are related to an employee's performance and behavior in the workplace or with one's boss, subordinates, and co-workers.

An employer that unilaterally terminates an employment agreement must pay severance, which varies depending on the type of contract, as follows:

(i) Indefinite term contract entered into before December 29, 1992: the indemnification will be the equivalent of 45 days' salary for the first year of service, plus 40 additional days' salary for each subsequent year or the corresponding fraction.

(ii) Indefinite term contract entered into on or after December 29, 1992: the indemnification varies according to the employee's salary, as follows:[207]

• If the employee earns from 1 to 10 minimum monthly salaries (MMS): the equivalent of 30 days' salary for the first year of service, plus 20 additional days' salary for each subsequent year or the corresponding fraction; or

• If the employee earns more than 10 MMS: the equivalent of 20 days' salary for the first year of service plus 15 additional days' salary for each subsequent year or the corresponding fraction.

(iii) Fixed-term contract or contract for the duration of the work or project: the equivalent of the salary for the remaining term.

In certain circumstances, an employer may not unilaterally terminate an employment agreement with an employee who is in any of the following situations, as such an employee enjoys special protection under the law:

• Disabled or handicapped employee: an employer who terminates unilaterally and without grounded cause a disabled or handicapped employee (i.e., one whose ability to perform his or her job is substantially limited as a result of a special health condition, including mental health diagnose according to Ruling T — 076 OF 2024) unilaterally without the previous authorization of the Ministry of Labor may be ordered to reinstate the employee in the same or an equivalent position and pay a special compensation equivalent to 180 days' salary.

Although previous rulings of the Supreme Court of Justice establish that it is possible to legally terminate an employment contract by mutual agreement, even if the employee is disabled, recently the Constitutional Court, in Ruling SU-111 of 2025, restricted this possibility in cases involving disabled or handicapped employees.

• Pre-pensioner employee: an employee who is less than three years from retirement may sue for reinstatement if the employer unilaterally and without cause terminates his or her employment agreement. Under the public pension regime (*régimen de prima media con prestación definida*), employees are eligible to retire on: (a) reaching the age of 57 in the case of women and 62 in the case of men; and (b) accumulating at least 1,300 weeks (approximately 25 years) of contributions, which will be gradually reduced to 1,000 weeks for women in 2026 and who may reduce 50 weeks of contributions for each children, up to a maximum of three.

• Pregnant or breastfeeding employee: the employer may only terminate the employment contract unilaterally during an employee's pregnancy or breastfeeding period where there is a cause and previous authorization has been obtained from the Ministry of Labor. Colombian labor law presumes that termination is the result of pregnancy or breastfeeding if it occurs during the term of pregnancy or within 18 weeks after the date of birth. However, Law 2357 of 2024, which ratified ILO Convention 183, establishes that it is the employer's burden to prove that the dismissal was not due to discriminatory reasons. The burden of proof covers the entire period of pregnancy and breastfeeding, which is two years after the date of birth, according to Law 2306 of 2023.

If the employer terminates the employment contract without cause and/or without the prior authorization of the Ministry of Labor during the protection period: (a) the termination will be considered null and void; (b) the employer will be ordered to reinstate the employee; and (c) the employer will be ordered to pay a penalty equivalent to 60 days' salary. This protection also applies to an employee whose partner is pregnant or breastfeeding. For the protection to be available, the employee must have registered his or her partner as a beneficiary with the Social Security System. Additionally, Law 2141 of 2021 extends maternity protection to an employee whose spouse or permanent partner is pregnant or breastfeeding and does not have a formal job.

• Spouse or permanent partner whose partner is pregnant or breastfeeding: Ruling C-517 of 2024: The Con-

[207] Employment contracts may be subject to a trial term. During the trial term, the employer will confirm the qualifications of the employee and the latter will verify whether the employment conditions are acceptable. During this period, the employer may terminate the contract without paying the legal indemnification. For fixed term agreements, the trial term may be a maximum of one-fifth of the term of the employment contract without exceeding two months. For indefinite term contracts, the trial period may be up to two months.

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stitutional Court of Colombia introduced a significant change in the perspective of job protection regarding paternity. Previously, job protection regarding paternity (*fuero de paternidad*) was limited to cases where the pregnant or breastfeeding woman did not have formal employment. The judgment declared these limitations unconstitutional, thereby extending paternity protection to all male employees, regardless of the employment status of their partner.

• Employee who has filed a labor harassment complaint: Law 1010 of 2006 establishes a legal limitation that applies to an employer that terminates an employment contract, unilaterally and for no legally-grounded cause, with an employee who has been the victim of labor harassment for six months after the employee filed the complaint. However, this limitation only applies after the labor harassment has been judicially declared.

• Employee who has filed a sexual harassment complaint: Law 2365 of 2024 defines a legal limitation on unilateral termination of the employment contract of the victim who has filed a complaint or denunciation for sexual harassment. In this sense, any dismissal made within six months following the complaint will have no legal effect, except in cases authorized by the Ministry of Labor or when the disciplinary sanction derives from a process initiated prior to the complaint. On this point, Law 2365 of 2024 materializes the guidelines established in ILO Convention 190, with the objective of adopting measures for prevention, protection, and attention to victims in situations that occur during work, or as a result of work.

• Unionized employee: a union member or officer has special protections under which neither can he or she be dismissed or transferred, nor can his or her working conditions be worsened without cause. If there is cause to dismiss or transfer the employee concerned, or to worsen his or her working conditions, a Labor Court is required to conduct a prior judicial review of that cause under the terms set out below:

(a) Union founder: protection is granted to a founder of a union for two months from the date of the union's creation, and for a maximum of six months from the date on which the union was registered with the Ministry of Labor.

(b) Union member who joins the union between its creation and its registration with the Ministry of Labor: the protection is for the same period as is granted to a founder of a union.

(c) Union officer: protection is granted to five members of a union's board of directors and five alternates, and to one member of the sectional committee and one alternate. The protection is granted for the entire period of appointment and for the six subsequent months.

(d) Employee negotiating a collective agreement: protection is granted from the date on which the employee files a labor grievance (*pliego de peticiones*) with the employer until the collective conflicts described in the grievance are resolved.

(e) Claims' committee member: protection is granted to two members of the claims' committee. Its duration is equivalent to the protection granted to a union officer and the six subsequent months.

In addition, recently the Constitutional Court issued ruling T-073/25, which established a new reinstatement order due to a discriminatory termination, pointing out that employees can object conscientiously in companies if the employer's orders are affecting their religious convictions and conscience. For this reason, reinstatement orders would be extended to these types of cases as well, and not be limited exclusively to the matters listed above.

2. Organized Labor

a. Labor Unions

(1) In General

Colombian law protects an employee's right of association.[208] Workers are afforded the right to associate and organize in defense of their rights, and to form labor unions.[209]

Under Colombian law, a union must have a minimum of 25 members. Its creation process is as follows:

(i) Employee's assembly for the incorporation of the union: the founders must draft the minutes of the employee's assembly, including the names of all the founders, their identification numbers and the profession, craft, or trade that unites them; the name of the union, and the union's purpose.

(ii) Union's by-laws: all unions may freely determine their by-laws.

(iii) Notice of incorporation: the union must give notice of its incorporation in writing to the relevant employer or employers; and the Ministry of Labor (*Ministerio del Trabajo*). This notice must include the names and identification numbers of all the union's founders. The Ministry of Labor will also notify the employer of the union's incorporation.

(iv) Registration with the Ministry of Labor: the union obtains its legal recognition at the incorporation assembly. The by-laws become enforceable against the employer on registration of the union with the Ministry of Labor; no union may exercise its rights unless the union's minutes of incorporation have been registered with the Ministry of Labor.

(v) Publication of the Ministry of Labor's resolution: Ministry's resolution, whereby the union is registered, must be published once in a national newspaper with wide circulation within 10 days of registration.

(vi) Registration of amendments to the by-laws and appointments to the board of directors: all amendments to the union's by-laws and all appointments to the board of di-

[208] Col. Labor L., arts. 353–354.
[209] Col. Labor L., art. 354.

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rectors must be registered with the Ministry of Labor for them to be enforceable.

(2) Types of Labor Unions

Under Colombian employment law, unions are classified as follows:

(i) Company or base union (*Sindicato de Base o de Empresa*): when all members of the union work in the same company, regardless of their profession or trade;

(ii) Industry union (*Sindicato de Industria*): when all members of the union work for different companies in the same industry or economic field, regardless of their profession or trade (for example, the Oil Industry Union);

(iii) Guild union (*Sindicato de Gremio*): when all members of the union have the same profession, craft, trade or specialty; and

(iv) Various trades or crafts union (*Sindicato de Oficios Varios*): when the union's members have different professions or trades and do not work for the same company. This type of union can only be created where the total number of employees is not enough to create a guild union.

(3) Negotiations

To improve their labor conditions, unionized employees may declare the existence of a so-called "collective labor conflict" and commence the remedies prescribed by law to resolve it, by filing a labor grievance before their employer. Such grievances must be approved by the union's general assembly and must be furnished to the employer within two months after their approval.

b. Collective Agreements

There are two types of collective agreements:[210] collective bargaining agreements entered into with unionized employees;[211] and collective agreements with non-unionized employees. Not all employees have to be covered by one or the other type of collective agreement. Affiliation with a union or a collective agreement is strictly voluntary. If an employee is a union member, a collective bargaining agreement negotiated by his/her union automatically applies to him/her. If he/she does not want to be covered by the collective bargaining agreement, he/she must quit the union and waive his/her rights.[212]

c. Measures to Protect the Right to Create a Union

(1) Labor Measures

Any person that undermines the right to unionize may be subject to administrative fines of up to 100 MMLS imposed by the Ministry of Labor.[213]

Under Colombian labor laws the following kinds of conduct are considered to undermine the right to organize:

(i) Impeding or discouraging union membership by making gifts or promises to employees, or conditioning continued employment or the improvement of working conditions on employees not organizing;

(ii) Dismissing or suspending employees, or changing working conditions because of activities related to the creation of a union;

(iii) Refusing to negotiate with unions that have filed labor grievances;

(iv) Dismissing or suspending unionized employees or changing their working conditions for the purpose of impeding the exercise of the right to organize; and

(v) Adopting any repressive measure against employees who have made accusations, made depositions, or otherwise intervened in investigations initiated to prove a violation of the right to organize.

(2) Criminal Measures

Under section 200 of the Colombian Criminal Code:

> Any person who impedes or obstructs a lawful meeting or the exercise of the rights granted under labor laws, or takes reprisals for lawful strikes, meetings or union organization, shall be punished by between one- and two-years' imprisonment and a fine of between 100 and 300 current monthly minimum wages.
>
> Any person who enters into collective agreements in which, in the aggregate, better working conditions are afforded to non-unionized workers than those conditions contemplated in collective agreements with unionized workers of the same company, shall be punished in the same way.
>
> The punishment shall be between three- and five-years' imprisonment and a fine of between 300 and 500 MMLS if the conduct described in the first paragraph is carried out:
>
> (i) Making the employee defenseless in such a way that his or her physical integrity is compromised;
>
> (ii) In connection with a person who is disabled, suffers from a serious illness or in the case of pregnant women;
>
> (iii) Through threats to the worker, his ancestors, descendants, spouse, common law spouse, siblings, adopting parent or adopted child, or next of kin up to the second degree of affinity, to cause death, injury or damage to property; and
>
> (iv) By deceiving workers.

3. Social Security System

Employers must register their employees for purposes of the pension and healthcare systems discussed below and must pay over the relevant monthly contributions. An employer who fails to do so or who fails to comply with the procedures set out below will have to cover all the corresponding costs and services, such as health expenses or the disability pension. In certain cases, the employer will also have to pay interest on the amount of the contributions.

[210] Col. Labor L., arts. 467, 481.
[211] Col. Labor L., art. 467.
[212] Col. Labor L., art. 481.
[213] Col. Labor L., art. 354.

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The Ministry of Labor may also levy a fine on an employer for not complying with the Labor Law and the *Unidad de Gestión Pensional y Parafiscales* (UGPP) may also impose penalties for failing to pay social security contributions in an accurate and timely fashion.

Fringe benefits excluded from salary are not taken into account for the purposes of the contributions, provided they do not exceed 40% of an employee's total remuneration.

a. Pension System

The contribution to the pension system is equivalent to 16% of an employee's' monthly salary. The employer must pay 12% and deduct the remaining 4% from the employee's' salary.

According to Law 2381 of 2024, an employee who earns more than four times the MMLS was required to pay an additional percentage until July 1, 2025, as follows:

Employee Salary	Additional Percentage
From 4 to 16 MMLS	1.0%
From 16 to 17 MMLS	1.2%
From 17 to 18 MMLS	1.4%
From 18 to 19 MMLS	1.6%
From 19 to 20 MMLS	1.8%

After July 1, 2025, the salary brackets and additional percentage to be paid are changed as follows:

Employee Salary	Additional Percentage
From 4 to 7 MMLS	1.5%
From 7 to 11 MMLS	1.8%
From 11 to 19 MMLS	2.5%
From 19 to 20 MMLS	2.8%
More than 20 MMLS	3.0%

Foreign employees are not obliged to be enrolled in a pension entity, nor make contributions to this system as long as they are enrolled and contributing abroad.

b. Healthcare System

The contribution to the healthcare system is equivalent to 12.5% of an employee's salary. The employer must pay 8.5% and deduct the remaining 4% from the employee's salary. However, if the employer is subject to income tax, it is relieved from paying the 8.5% in the case of an employee who earns less than 10 times the MMLS.

c. Occupational Hazards

The employer must pay the entire contribution for occupational hazards. The percentage rate ranges from 0.348% to 8.7% of the employee's monthly salary, depending on the type of activity to be performed and the risks inherent in the activity.

Risk Category	Contribution Range
I	0.348% – 0.696%
II	0.435% – 1.653%
III	0.783% – 4.089%
IV	1.740% – 6.690%
V	3.219% – 8.700%

d. Payroll Fees

The employer must pay the entire contribution for payroll fees depending on the employee's salary. For employees who receive 10 MMLS or less, the contribution is 4% of the employee's monthly salary. For employees who receive more than 10 MMLS, the contribution is 9% of the employee's monthly salary.[214]

e. Contributions to the General Pension System

Law 2381 of July 2024 reformed the ways in which contributions to the general pension system are made, essentially creating a new pension system which removes the competition between the public and private systems. Pursuant to Law 2381, all Colombian workers (employees, independent contractors, and the self-employed) whose contribution base was greater than 2.3 MMLS, and who were not part of the transitional regime,[215] had until January 16, 2025 to choose a private pension fund (ACCAI) to manage excess funds above the first 2.3 MMLS, whereas the funds up to this threshold are to be managed by Colpensiones (the public pension system). Since July 1, 2025, employers must pay contributions to Colpensiones and the ACCAI on behalf of employees not part of the transition regime and whose salary is higher than 2.3 MMLS. In other words, all workers who contribute to the pension system are part of the public pension system.

Accordingly, those workers who are part of the transitional regime will be able to continue contributing to the pension system according to previous Law 100 of 1993, since they are not obliged to contribute to both pension systems. In this sense, if a person falls into the transitional regime and is affiliated with a private pension fund, he or she is not obliged to make contributions to the public fund.

The reforms brought by Law 2381 also introduced new obligations for independent contractors who employ workers. First, independent contractors must assume the responsibility of paying social security contributions for their workers under service contracts. Furthermore, independent contractors also must deduct the percentage corresponding to health and mandatory pension contributions from the fees paid to their workers.

Comment: It is important to point out that, due to the procedural errors that took place in Congress to approve the leg-

[214] For employees who earn an integral salary, contributions are calculated over 70% of the employee's salary.

[215] The transitional regime of Law 2381 of 2024 applies to individuals who have accumulated 750 weeks of contributions (women) or 900 weeks (men) as of July 1, 2025. This regime allows them to keep the conditions of Law 100 of 1993.

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islation, several constitutional claims were filed against Law 2381 of 2024. As such, the Constitutional Court has since delayed the implementation of the pension reform. On June 28, 2025, however, the Congress rectified the procedural error and overwhelmingly voted to approve the legislation, but until the matter is officially approved by the Constitutional Court, Law 2381 cannot be enacted the Colombian President. For this reason, it continues to be uncertain whether the effects of this law will apply exactly as described above.

4. Collective Dismissal

According to Colombian Labor Law there is a collective dismissal whenever, within a period of six months, a given percentage of the employees are dismissed without cause. The percentage varies as described in this chart:

Number of Company Employees	**Percent of Terminations Without Cause Considered as Collective Dismissal**
Between 10 and 50	30%
Between 50 and 99	20%
Between 100 and 199	15%
Between 200 and less than 499	9%
Between 500 and less than 999	7%
More than 1,000	5%

In order to undertake a collective dismissal, the employer requires previous authorization from the Ministry of Labor. However, the authorization from the Ministry of Labor does not exempt the employer from paying legal indemnification to the dismissed employees.

5. Remote and Virtual Work

a. Telework

Telework is a remote/virtual scheme through which employees render services outside the employer's premises, but within Colombian territory, for two or more days a week as a result of an agreement between the parties. There are three types of teleworkers:

(i) Autonomous: refers to employees who work from their residence or chosen place, but they may attend the employer's premises sporadically;

(ii) Mobile: refers to employees who do not have an established workplace, and they render their services through technological means; and

(iii) Supplementary: refers to employees who work two or three days per week from their homes, and the rest of the days from the employer's premises.

Under this labor scheme the employer has to comply with certain labor obligations, such as:

(i) Implement a teleworking policy, which must include a minimum content as regulated by the applicable law;

(ii) File a notification to the Occupational Hazards Entity and the Ministry of Labor listing the employees who will work under this modality;

(iii) The employment contract needs to establish a minimum set of rules that should regulate this modality; and

(iv) The employer has to pay a telework allowance to the employees working under this modality.

b. Home Office

Work from home is a labor modality that allows the employee to temporarily provide remote services outside the employer's premises. This scheme is used whenever an occasional, exceptional or special situation occurs that prevents the employee from rendering services at the workplace. Law 2088 of 2020 specifies that this working scheme is only applicable for three months, renewable for an equal term for just a single time. However, if the occasional/exceptional situations persist, work from home may be extended until such conditions disappear.

Under this scheme the employer must:

(i) Notify the employees in writing, indicating the period of time that they will be working under this modality;

(ii) Notify the Occupational Hazards Entity of the information and address of the employees who will be working from home;

(iii) Guarantee the proper use of information and communication technologies through trainings; and

(iv) Pay a digital connectivity allowance to those employees earning up to two MMLS.

c. Remote Work

It is a labor scheme where employees provide 100% of their services remotely by means of information technology and telecommunications. The employer and the employee do not meet in person throughout the contractual relationship, except in the following situations: (a) the verification of their work tools; (b) technological updates to their equipment; and (c) disciplinary proceedings. If the employer eventually requires the remote employee to attend the work premises, it must enable, if applicable, the legal transportation allowance.

Under remote work, the employer must:

(i) Provide the employee with the technological tools, instruments, equipment, connections, programs, energy, internet and/or telephone costs, and further cover transportation ordered by the Company;

(ii) Notify the Occupational Hazards Entity of the activities carried out by the employee, the place and schedule where these will be performed and the risk level of the activities corresponding to the company; and

(iii) The employer and employee must agree in writing a minimum of conditions and set of rules that will apply under this modality.

6. Right to Disconnect

The employment disconnection right is the right to not be contacted by any means, including technological tools for work-related matters, outside regular working hours, during

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rest time, licenses, vacations, holidays and/or leaves of absence. This is in order to grant employees proper space to balance their personal, family and work life, and it includes any information and communication, such as, among others, e-mail, data messages, or phone calls. Therefore, if an employee receives any communication outside of working hours, he/she will not be compelled to respond until the beginning of the next working shift, unless an excepted situation occurs.

Under Law 2191 of 2022, the disconnection right does not apply:

(i) To an employee who must be permanently available because of the nature of his or her duties; or

(ii) In *force majeure* situations or unforeseen circumstances that require an employee's services, for example, to resolve urgent issues arising in the context of a company's operations.

Under ruling C-331 of 2023 issued by the Constitutional Court, employees who hold a position of directorship, trust or management enjoy the disconnection right. However, unlike in the case of ordinary employees, the right in the case of such trust employees is not tied to a working schedule. Employers must guarantee the right of these employees to rest taking into account their duties and responsibilities.

7. Sexual Harassment

According to Article 11 of Law 2365 of 2024, employers are required to prevent, investigate, and sanction acts of sexual harassment in the workplace. These duties consist of the following obligations:

(i) Establish an internal prevention policy that is reflected in the internal labor regulations, labor contracts, protocols, and care paths against sexual harassment in the workplace, which should be widely disseminated;

(ii) Guarantee the rights of victims and establish mechanisms to address, prevent and provide guarantees of non-repetition of sexual harassment within its scope of competence;

(iii) Implement immediate protection guarantees to avoid irreparable harm within its scope of competence;

(iv) Inform the victim of his/her faculty to resort to the Attorney General's Office (*Fiscalía General de la Nación*);

(v) Immediately transmit the complaint to the competent authority, at the request of the victim, respecting his or her right to privacy;

(vi) Refrain from conducting acts of censorship that disregard the victims' guarantee of not being revictimized;

(vii) Publish every six months the number of complaints processed and sanctions imposed on the available physical and/or electronic channels.

Compliance with these obligations should be aligned with the Transversal Plan that should be issued by the National Government before June 2025. However, the absence of such a plan does not exempt employers from complying with these obligations. In case of non-compliance, the Ministry of Labor may subject employers to general fines ranging from COP $1,423,500 to COP $7,117,500,000.

F. Financing the Business

The method most commonly used by foreign investors to inject capital into Colombia is direct foreign investment. This method of injecting capital is subject to Colombian foreign exchange and investment controls, consisting of informing the Colombian Central Bank via registration requirements as to when an investment is effected, modified, or repatriated. An investor that does not comply with Central Bank registration requirements will not be permitted to bring in capital or remit it abroad when desired. See discussion at II.A., above.

Under Colombian law, direct foreign investment is understood to encompass the importation of capital assets into Colombia, the transfer into Colombia of foreign exchange that is freely convertible into Colombian pesos, the making of in-kind contributions in the form of technology or other intangibles, the provision of resources in Colombian pesos, the reinvestment of earnings and the transfer into Colombia of foreign currency destined for the purchase of real property assets.

Another acceptable method of introducing capital into Colombia is through the use of debt. Injecting finance into an infrastructure project via debt vehicles is sometimes preferred. Financing may be affected by means of back-to-back loans, foreign collateral for local loans, and direct loans via syndication structures, sole lenders or multilateral organizations, or a combination of all these vehicles.

Foreign indebtedness operations are subject to Central Bank registration requirements similar to those required for direct foreign investment. Debt operations in Colombia are effectively registered with the Central Bank by way of a deposit (currently 0%) that must be placed with the Central Bank. Should the deposit requirement be raised above the current 0% rate, the deposit will have to be made on the initial loan drawdown and placed by the borrower for a fixed term to be defined by the Central Bank. The deposit is interest-free. The deposit may be returned to the borrower on petition to the Central Bank before the end of the deposit period, subject to a penalty charge. The penalty charge varies depending on the number of months remaining in that period.

Upstream intercompany charges are another effective method of introducing capital into a newly privatized entity. Under this method, the Colombian entity charges an offshore affiliate for services rendered on the latter's behalf. To compensate for the transactions, the Colombian entity invoices the offshore affiliate. However, such transactions have a negative aspect in that upstream intercompany charges may result in the Colombian entity having to assume VAT liability (unless the services can qualify as exported services for VAT purposes). Additionally, payments made to the Colombian entity will constitute taxable income for Colombian tax purposes.

Since 2013, Colombia has had a thin capitalization regime (see V.B.6.j., below). Under the regime, for income tax purposes, a taxpayer can only deduct interest payments corresponding to debts the average of which for the taxable year concerned does not exceed in total the result of multiplying by two the net worth of the taxpayer on the last day of the previous fiscal year (i.e., 2:1 ratio, reduced from a 3:1 ratio applicable prior to Janu-

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ary 1, 2019). Interest attributable to debt that exceeds that limit is not deductible.[216]

It should be noted that, as from 2019, the thin capitalization rules apply only when debt involves an economic (national or foreign) related party in the following cases:[217]

(i) To entities subject to the inspection and supervision of the Superintendence of Finance, which are not subject to the thin capitalization rules;

(ii) With respect to project finance utility infrastructure made through special purpose vehicles, which are also not subject to the restrictions; and

(iii) In the case of special purpose vehicles for the construction of public housing, which are subject to a limit of four times the net worth of the debtor;

(iv) Taxpayers liable to income tax that are under the supervision of the Superintendence of Finance;

(v) Taxpayers liable to income tax that carry out factoring activities, as provided under Decree 2669 of 2012, provided that the activities of the factoring company are not more than 50% lent to economically related companies;[218] and

(vi) Taxpayers in an unproductive period.

G. Leasing Operations

1. In General

International leasing operations are an attractive mechanism in privatization and project finance operations. They are effective methods of importing vital equipment into target countries, such as Colombia, and serve as a means of profit repatriation. Under Colombian tax law, financial leasing operations fall into two categories: (i) pure finance leases; and (ii) finance operating leases. Each category is subject to specific tax law rules. An analysis of the two forms of Colombian finance leases follows in 2. to 3., below.

2. Pure Finance Leases

For accounting and tax purposes, a finance lease agreement or a lease agreement with an option to purchase entered into after January 1, 2017, must meet with the following requirements once the contract is established:[219]

(i) At the beginning of the contract, the lessee must register an asset and a liability reflecting the present value of the lease payments, the value of the purchase option, and the residual value of the guarantee, if applicable, calculated as of the date of the contract start date and at the agreed interest rate. The amount registered by the lessee as a liability must coincide with the amount registered by the lessor as an asset.

(ii) The value registered as an asset by the lessee, except for the amount corresponding to VAT that will be creditable or deductible, could be depreciable or amortizable, as the case may be. If the leased asset is not depreciable or amortizable, the lessee will not be allowed to depreciate it or amortize it.[220]

Under article 134 of the Tax Code, depreciation may be taken applying the methods accepted by the accounting rules,[221] however, article 137 of the Tax Code establishes certain maximum rates of depreciation for tax purposes, according to the type of asset.

Under article 140 of the Tax Code, it is possible to increase the rates of depreciation on assets depreciated using the straight-line method that are used for at least 16 hours, and proportionally for higher fractions, as long as that situation can be proven. In such circumstances, the taxpayer may accelerate depreciation by 25%.

Minimum useful asset lives are as follows: real property, 20 years; machinery and equipment, 10 years; and vehicles and computers, five years.[222]

(iii) Lease payments made by the lessee must be split into a capital advance portion and a portion comprising interest or financing costs.[223] The part corresponding to a capital advance will be charged directly against, and reduce the value of, the liability registered by the lessee.[224] The portion of the lease payments corresponding to interest or financial costs is a deductible expense for the lessee.[225] The VAT will be creditable or deductible, depending on the type of asset under the agreement, under rules set forth in the Tax Code.[226]

(iv) When the purchase option is exercised, the amount agreed will be charged against the liability of the lessee, so as to reduce the account balance to zero. Any difference will be treated as income or expenses, as the case may be.[227] A lessee that does not exercise its option to purchase the asset will have to adjust its assets and liabilities for tax purposes. Any difference will not have income tax effects, if such difference has not generated a deductible cost or expense. In such case, it will be treated as a deduction recapture, taxed under the income tax at the general rate.[228]

3. Operating Leases

According to the Tax Code, an operating lease is any lease that is not a pure finance leasing (as discussed under II.G.2., above).

The lessor of the asset must treat the operating lease according to the nature of the asset and must recognize as income the lease payments. On the other hand, the lessee will recognize as a deductible expense the lease fees paid, without having to recognize as an asset or liability any amount linked to the asset under the agreement.

[216] Col. Tax C., art. 118-1.
[217] Col. Tax C., art. 118-1.
[218] Decree 2669 of 2012 regulates factoring activities.
[219] Col. Tax C., art. 127-1.
[220] Decree 1625/2016, art. 1.2.1.18.4.
[221] Col. Tax C., art. 134.
[222] Col. Tax C., art. 140. Decree 1625/2016, art. 1.2.1.18.4.
[223] Col. Tax C., art. 127-1(2)(b)(v).
[224] Col. Tax C., art. 127-1(2)(b)(v).
[225] Col. Tax C., art. 127-1(2)(b)(v).
[226] Col. Tax C., art. 127-1(2)(b)(iii).
[227] Col. Tax C., art. 127-1(2)(b)(vi).
[228] Col. Tax C., art. 127-1(2)(b)(vii).

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Leasing agreements (including pure finance and operating leases) executed before January 1, 2017, remain subject to the tax treatment in force at the time of their execution. Those executed as from January 1, 2017, are subject to the tax treatment established by article 127-1 of the Tax Code,[229] discussed above.

[229] Law 223/95. Art. 89. Leasing agreements with a duration of 12 or more years intended to facilitate the development of infrastructure projects in the transportation, energy, telecommunications, drinking water, or basic sanitation sectors qualify for operating lease treatment.

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