Country Guide
Colombia

Prepared by

Brigard Urrutia

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Brigard Urrutia

DOING BUSINESS IN COLOMBIA

2022

Doing Business

This document is an annual guide that provides insight into Colombia's commercial, economic, and political trends.

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COLOMBIA AT A GLANCE

Colombia is the third most populated country in Latin America. According to the latest report from the National Statistics Department (DANE for its acronym in Spanish), by the end of 2022, Colombia will have an estimated population of 51.609.474 million (51,2% women, 48,8% men). It is estimated that by 2023, Colombia will reach a total population of 52.15 million inhabitants.

As a result of the strong urbanization process experienced by the country in the last decade, more than two thirds of the population live in the metropolitan areas of the main cities. The metropolitan area of Bogotá alone has a population of approximately 7,800,000 inhabitants.

There are three main age groups that consolidate Colombia´s population: children from 0 to 14 represent 22,9%; people from 15 to 65represent 68% and people older than 65, represent the remaining 9,1%of the population.

Location

The Republic of Colombia is located in the Northwest corner of South America, bordered by the Caribbean Sea, between Panama and Venezuela, and the Pacific Ocean between Ecuador and Panama.

With an extension of 1,141,748 square kilometers (440,831 sq. mi) Colombia is the largest country with a Caribbean coastline. Its land boundaries are with Venezuela 2,219 km (1,378 mi.); Brazil 1,645 km (1,022 mi); Peru 1,626 km (1,010 mi.); Ecuador 586 km (364 mi.); and Panama 266 km (165 mi.), for a total of 6,342 km (3,940 mi.). Colombia's coastline extends 3,208 km (1,994 mi.) (Caribbean Sea 1,760km (1,094 mi.) and Pacific Ocean 1,448km (900 mi.).

The Colombian territory also includes the San Andrés and Providencia islands located in the Caribbean Sea, and the Gorgona and Malpelo islands located in the Pacific Ocean.

Colombia is the only country in South America that has coastline in both the Atlantic and Pacific Oceans. Please refer to Appendix II for an official map of the Republic of Colombia.

Climate

Since Colombia is close to the equatorial line, there are no seasons; however, there are varying climates in different regions of

the Country depending on the altitude and location.

The average temperature in Colombia is 22° Celsius (72° F). Nevertheless, due to Colombia's unique geographic location, the climate varies considerably from one place to another. In the flat coastal lowlands, the temperature may reach 35° Celsius (95° F). In the central highlands the temperature may drop to 15° Celsius (59° F). In the central Andes Mountains, the temperature ranges between 14° and 18° Celsius (57° and 64° F), and in the eastern lowland plains the temperature can reach up to 32° Celsius (90° F).

Environment

Colombia is one of the world leaders in diversity of both fauna and flora. Due to its location as a land bridge between North and South America, nearly 14 % of the species of flora and fauna described by scientists worldwide have settled in Colombian territory over the ages. From its tropical rainforest, Amazon jungle, deserts and marshes to the snowfall in the Andes mountains, Colombia's wide-ranging ecosystems make it the second most diverse country in the world, containing within its borders between 10% to 14% of the world's species. The country is home to nearly 55,000 species of plants which equates to 15% of the existing species in the world.

The country ranks first in the world for the most species of birds with 1,958 species native to Colombia, which represents 20% of the world's total bird species. It is also ranked as the first nation in amphibian and bird diversity; second in plant and butterfly diversity, and third in reptile diversity.

Colombia's 55 national natural parks, wildlife sanctuaries and other reserves occupy an area measuring around 11,600,000 hectares (28,664,224 acres), equivalent to 10% of the country's landmass.

More than 1,494 species of freshwater fish coexist betweenthe warm and clear waters of the Caribbean Sea and and the cooler waters of the Pacific Ocean. The Country is also ranked fourth with 2.2% of the world's total water supply, that includes 1,200 rivers, 1,600 lagoons and lakes and 1,900 swamps, which enables

fishing and transportation activities within the territory.

Infrastructure

Colombia continues to transform itself through investment in infrastructure projects, transport and urban development. The so-called "*4th Generation Toll Road Program*" (herein "4G")" is currently under performance. Currently the 4G program is running at 65% of execution. To achieve this goal, during the past year several projects have been reactivated, such as: (i) Tercer Carril Bogotá – Girardot, (ii) Malla Vial del Meta, (iii) Corredor 3: Santana – Mocoa – Neiva, among others.

Furthermore, the National Government, through the National Infrastructure Agency (herein "ANI" for its acronym in Spanish) plans to invest COP $50,26 billion on infrastructure projects that are going to be known as the "5th Generation infrastructure concession Program" (herein "5G"), that will be divided into two waves.

The 5G program is the largest and most ambitious program characterized by multimodal projects including toll roads, airports, railways and waterway access. These projects will contribute to the development of a more sustainable infrastructure in the country.

The first wave of the 5G projects include, among others, the following: (i) Accesos Norte 2; (ii) Troncal del Magdalena; (iii) Access – Cali – Palmira; (iv) Buga – Loboguerrero - Buenaventura (v) Navegabilidad Río Magdalena; (vi) Canal del Dique; (vii) Aeropuerto de Cartagena; and (viii) La Dorada – Chiriguaná (railway project). The second wave of 5G projects will include, among others, the following projects: (i) Completion of Ruta del Sol 1, (ii) Sistema Aeroportuario de Bogotá - SAB 2050, (iii) IP Dragado de Buenaventura. Currently, three of the road projects from the 5G program have been approved: (i) Accesos Cali Palmira; (ii) Accesos Norte 2 and (iii) Alo Sur. There are four projects that are currently in the bidding stage: (i) Canal del Dique; (ii) Río Magdalena and (iii) Buga – Loboguerrero – Buenaventura; Troncal del Magdalena.

Additionally, the government achieved the approval of the public policy document known as CONPES 4060 that includes this new generation of 5G infrastructure. CONPES 4060 aims to promote the development of sustainable 5G infrastructure projects. This CONPES includes a program called "*Programa de Aporte Sostenible*" *(sustainable value program)* which promotes measures that

will help reduce the effect of greenhouse gases to achieve in the transition towards a low-carbon economy.

According to the preliminary studies of the 5G program, the interest of investors has increased compared with previous 4G projects. On average,4G projects had 2.5 investors interested. In comparison, the 5G project *Malla vial del Valle del Cauca* which had 8 bidders, the largest number in Colombia´s history. The increase of interest is due to the fact that 5G projects offer innovative investment structures and also financing sources that are more favorable for investors.

The development of the first metro line for the city of Bogotá is of special relevance, since it is the largest and most complex infrastructure project in the country to date. The project will have one of the most extensive lines of the continent with 23,9 kilometers. Over the past year the construction of the first line commenced and it is estimated to be completed at the beginning of 2028.

On regulatory matters, the National Government[1] implemented a program called *“Obras por impuestos” (Public Works for taxes)*. Under this program, corporations are allowed to choose to perform, instead of paying up to the 50% income tax, infrastructure or public utilities projects from a list included within a public registry managed by the Territory Renewal Agency (*Agencia de Renovación del Territorio*).

As a result of this program many children, especially those in vulnerable conditions have benefited. For example, over the course of 2021, in the Department of Antioquia more than a hundred thousand children were benefited from projects that were approved to upgrade the school’s infrastructure under the program *“Obras por impuestos”.*

On the other hand, Colombian Congress also enacted the National Development Plan[2] for the current Governmental period. This Plan introduces several amendments to the infrastructure sector, including the following:

- Multiple dispositions aim to facilitate the structuring and financing of real estate projects developed by the Virgilio Barco National Real Estate Agency (*Agencia Nacional Inmobiliaria Virgilio Barco*); that aims to improve the physical facilities of the premises of state entities.
- The former restriction for Industrial and Commercial State Companies

[1] Based on Law 1819 of 2016 and Decree 1915 of 2017.

[2] Law 1955 of 2019

(*Empresas Industriales y Comerciales del Estado*), Mixed Equity Companies (*Sociedades de Economía Mixta*) and Companies between Public Entities regarding PPP Contracts has now been eliminated, allowing these types of entities to enter into PPP Contracts.

- Contributions from the ANI for concession contracts that are terminated early mustbe destined to continue and finish the works, guaranteeing the trafficability and usability of the works performed.
- The evaluation period for Private Initiatives PPP may be reduced in half whenever the projects refer to public scenarios such as stadiums, coliseums, and convention centers, among others.
- Various adjustments are made regarding the amendments for port concessions, and to the possibility of including the development of the infrastructure needed for access ways and a finance model for a port concession.
- A trust fund is to be created by the Colombian Civil Aviation Authority (herein "AEROCIVIL" for its acronym in Spanish) in order to manage all the resources necessary for the structuring of the *Aeropuerto del Café*, an airport to be located in the center of the country.

Roads

As explained above, the Colombian Government has structured 4G, an ambitious toll road program and the 5G program that is characterized by itscompetitive and sustainable multimodal infrastructure.

On one hand, the 4G program, which is comprised of 29 projects aiming to build approximately 8,000 kilometers (4,970 miles)of roads, and according to the ANI in October of 2021 the average execution rate of the program reached 60.73%. The current Government has completed the construction of 3 projects within the last year including: (i) Honda-Puerto Salgar-Girardot, (ii) Puerta de Hierro–Palmar de Varela, and (iii) Pácifico 2, and is planning to complete 4 more projects this year including the Rumichaca-Pasto road in the south of the country.

On the other hand, according to information provided by the ANI, the 5G program is composed of7 toll road projects totaling approximately 1,000 kilometers (621 miles) only in its first wave. The following are the projects that comprise the *5G road program*, including

the first and second wave, that have been structured by the end of 2021[3].

	Name	Length
First Wave of 5G Contracts	IP ALO Sur: El Muña – Calle 13	23,5 Km (14 mi)
	Accesos Norte Fase II	17,96 KM (11 mi)
	Nueva Malla Vial del Valle del Cauca: Accesos Cali - Palmira	310 KM (192 mi)
	Buga - Buenaventura	126,5 KM (78 mi)
	Trocal del Magdalena I: Puerto Salgar- Barrancabermeja	259,1 KM (160 mi)
	Troncal del Magdalena II: Barrancabermeja – San Roque	272,1 KM (169 mi)
	IP Santuario – Caño Alegre: Ruta del Agua	135,5 KM (84 mi)
	Name	**CAPEX Investment**
Second Wave of 5G Contracts	Terminación Ruta del Sol 1	COP$ 1,30 Billion
	Calarca-La Paila	COP$ 0,99 Billion
	Popayán – Pasto	COP$ 4,50 Billion
	Zipaquirá - Barbosa	COP$ 3,20 Billion
	Barbosa – Bucaramanga	COP$ 2,90 Billion
	Ocaña – Cúcuta	COP$ 1,70 Billion
	Duitama - Pamplona	COP$ 1,10 Billion
	Sogamoso – Aguazul	COP$1,70 Billion
	San Roque – Cuestecitas	COP$ 0,40 Billion
	Aguazul – Puerto Gaitán	COP$ 0,70Billion
	Bogotá-Villeta-El korán y Guaduas –Pto Bogotá	To be defined

Railways

Colombia's railway system is composed of a total of 3,344 kilometers (2,053 mi) of which 3,154 kilometers (1,959 mi) are narrow gauge; and 150 kilometers (93 mi) are standard gauge (the railway that connects "*El Cerrejón*" coal mines to the maritime port *Puerto Bolívar*). Currently, only 2,611 kilometers (1,622 mi) are in use. Short sections of railroad, mainly the Bogota-Atlantic rim, are used to haul goods, mostly coal, to the Caribbean and Pacific ports. D

Moreover, local governments have been moving towards the structuring and developing of railway projects to provide public transport systems. There are several projects either awarded, in bidding processes, or under structuring that

3Source: https://www.ani.gov.co/sites/default/files/20210907_estructuraciones_ani_5g_cxc-_septiembre_de_2021.pdf

involve the provision of public transport systems through several types of railways. Bogota's most important project is its first Metro Line. The contract was awarded in October 2019, and its estimated approximate budget is $4,400 million USDThe project is comprised of a total length of 23.96 Km, and 16 stations among which 10 will be connected to *Transmilenio*, the city's rapid bus transit system, with a maximum capacity of 36,000 passengers per hour in one direction, an average commercial speed of 43 Km/h and a total rolling stock of 23 trains.

The *Regiotram de occidente* project comprises an electrical system, 39.9 Km of interventions on the main corridor, 17 stations, 2 rail yards and 1 workshop; all which are divided into an urban zone (14.7 Km, 9 stations and 1 garage) and a rural zone (24.9 Km, 8 stations and 1 rail yard and 1 garage).

The estimated investment for the project is close to $424,242,424 USD for CAPEX, plus approximately $215,151,515 USD for rolling stock and around $16,363.363 USD for OPEX.

Furthermore, the *Calle 80 de Medellín* Light Rail project is currently undertaking a biding process pending on being awarded. The project comprises in the construction of approximately 13.25 Km of ground-level railroads and 17 stations, plus the adequation of public spaces and the provision of rolling stock. The estimated investment for this project is approximately $748.785.752 USD for CAPEX. The project is expected to be awarded on July 6, 2022 and the contracting entity will be the *Empresa Metro de Medellín*.

Apart from the above, both the National and local governments are working on the structuring of several key railroad projects (both for cargo and passengers); most of these projects are seeking to obtain the National Government's co-financing.

Currently, the Departments of Cundinamarca alongside Bogota and some major municipalities of the regio are aiming to structure the second part of the Regiotram project, which seeks to extend the actual project to the northern municipalities.

Additionally, the *Empresa Metro de Bogotá*, alongside the *Financiera de Desarrollo Nacional* have already completed the pre-feasibility structuring of the second line of the Bogotá Metro, and are currently undertaking the feasibility structuring of the project, which is expected to be awarded in December, 2023.

Furthermore, *Financiera de Desarrollo Nacional* alongside several entities in the Department of Valle del Cauca are undertaking the feasibility structuring of the *Tren de Cercanías del Valle* project; a passenger light rail project seeking to connect the municipality of Jamundí with the central downtown station in the municipality of *Santiago de Cali*.

Finally, the National Government through ANI are currently undertaking the feasibility structuring of the Dorada – Chiriguana railroad for cargo transportation.

Most recently, the National Government enacted a modification to the PPP's regime aiming to enhance the structuring of railroad projects *via* PPP's and functional units. By means of Decree 1278 of 2021 the concept of *Railroad Functional Units* (*Unidad Funcional de Vías Férreas*) was introduced, and now railroad projects can be structured through functional units (each of which must accrue an investment value of 15,000 legal minimum wages) and must comply with, at least, partial availability.

Ports and Waterways

Since the issuance of Law 1 of 1991 (the "Ports Statute"), anyone willing to construct and/or operate a port in Colombia, whether if it is for public[4] or private service[5], must file a port concession request (herein "PCR") before the competent authority, which is the ANI, except for the ones regarding San Andres Island and the maritime area, or the Corporacióon Autonoma Regional del Río Grande de la Magdalena (CORMAGDALENA for its acronym in Spanish) for PCRs regarding Colombia's main waterway, the Magdalena River.

A PCR must include, the following documents[6]: (i) The technical identification and description of the lands in which the port is planned to be constructed along with its adjacent areas and the general description and designs of the project; (ii) The financial information for the port, including income, outcome and investment data; (iii) The Existence and Representation Certificate (*"Certificado de Existencia y Representación Legal")* of the company as a Port Company (*"Sociedad Portuaria"*) or the intention of incorporating

[4] Ports that provide its services to anyone willing to pay its tariffs.

[5] Ports that can only provide its services to companies related to the Port Company.

[6] According to Decree 1079 of 2015

a Port Company if the PCR is approved; (iv) Evidence thatcertain information fromthe PCR hasbeen published in two nationwide newspapers duly complying with the requirements of the Ports Statute.

Once the PCR is filed, there is a term in which citizens and certain authorities can oppose the PCR or propose alternatives to the development of such project. The competent authority must then have a public hearing after which they will decide if the request is granted or not. If the request is granted (or if there is no opposition), the competent authority will first issue a resolution with the conditions under which the concession will be granted and establishing further requirements for the concession. Once the abovementioned conditions are fulfilled, another resolution formally granting the concession will be issued, followed by the execution of the concession agreement.

It is important to note that, according to Ports Statute, the Government must issue a Document through its National Council for Economic and Social Policy ("CONPES" for its acronym in Spanish) with a Ports Expansion Plan (*"Plan de Expansión Portuaria"*) containing, among other things, the policy and convenience of new investments in port areas, public investments to be made and the method for calculating the concession fees.

Currently, the Ports Expansion Plan in force,is the one issued through CONPES Document 3744, which established the concession fee methodology that will be applicable to all new PCR or existing ports who substantially modify or amend its agreements.

Regarding this latter point of the concession fees, Law 856 of 2003 modified the original article that regulated concession fees in the Ports Statute establishing that 80% of the concession fee paid for use of public land will be paid to the National Roads Institute (herein "INVIAS" for its Spanish acronym) and 20% will be paid to the municipality where the port is located. Concession fees paid to INVIAS have a specific destination.

As a general rule, port concessions are granted for 20 to 30 years and can only be extended once pursuant to a ruling C-068 of the 2009 by the Constitutional Court.

Currently, Colombia's main operating ports and harbors are located in Barranquilla, Buenaventura, Cartagena, Barrancabermeja, Puerto Bolivar, San Andres, Santa Marta, and Tumaco. Likewise, there are ports under

construction in Cartagena, Turbo, Santa Marta, Urabá, Buenaventura and Tumaco. With the recent expansion of the Panama Canal, existing port concessions are seeking to modify and improve their ports in order to be able to operate with the newest cargo ships and containers, seeking global competitiveness for Colombian ports.

The issue of dredging to access canals and navigability has been top priority for the National Government as maintaining this may improve the country's ports competitiveness compared to other port zones in the region. Therefore, the National Government has opened the bidding process for 2 projects involvingdredging and navigability: (i) The PPP for the navigability of the Magdalena River, and (ii) The dredging of Dique Canal as the access gate to Cartagena's ports. Additionally, a private initiative PPP has been under structuring for the dredging of Buenaventura.

The PPP project for the Magdalena River has been long awaited as it is the country's main riverway. Hence, this Project aims to recover the navigability of this river from the section that comprises the municipalities of Puerto Salgar – La Dorada toBocas de Ceniza in Barranquilla, including the port zone of Barranquilla, a length of approximately 908 km in total.

The structuring phase determined a PPP contract that includes 2 functional units: (i) between the access channel to Barranquilla port and Puerto La Gloria (457 km in length), which includes maintenance dredging guaranteeing a minimum depth, and maintenance and reconstruction of cutwater; and (ii) between Puerto La Gloria to Boca de Cenizas sector (200 km in length) which includes dredging and other works.

Moreover, the Dique Canal dredging project comprises a 15-year concession agreement for interventions over 117 km, which include: (i) the implementation of locks; (ii) amplifying the canal; and (iii) 29 individual connection works in order to reduce the risk of flooding and improve the navigability of the Magdalena River.

Approximately 3 million tons of cargo and about 12 million oil barrels are moved through the Canal every year; however, this project aims to increase such figures. Additionally, the Project seeks to increase the region's tourism. The estimated investment for the development of the Project is set at approximately $696 million USD, whilst the structuring is

reaching Phase III and public bidding is expected to close in 2022.

Airports

Colombia has 14 international airports, with most traffic coming from Bogota, Cali, Barranquilla, Medellin and Cartagena. In addition, Bogota's El Dorado International Airport built a second runway in 1998 under a 17-year concession agreement. The government has been selling its stake in local airports in order to allow for their privatization. Due to the successful results shown by the privatization of the above-mentioned airports, in 2007, El Dorado was granted its concession to the Opain consortium, as the operator for the airport's renovation and expansion. The new international terminal was inaugurated on October 17th, 2012 and is currently the largest airport in Latin America in terms of cargo, and the third largest in passenger capacity.

Currently, the Colombian Civil Aviation Authority (herein "AEROCIVIL" for its acronym in Spanish) and the ANI are studying various private initiatives to work on the expansion project of the El Dorado International Airport. One of the private initiatives to expand the airport is estimated to be worth up to $1.4 billion COP. This project plans to expand the capacity of the airport and to upgrade its infrastructure.

Moreover, there are several airport projects included under the 5th Generation infrastructure concession Program (herein "5G"). These projects are structured under the public private partnership (PPP) and they are estimated to be worth up to $5 billion COP.

These projects include the following: (i) Aeropuerto de Suroccidente, (ii) Aeropuerto de Cartagena, (iii) Nuevo Aeropuerto de Cartagena, and (iv) Aeropuerto de San Andres.

The new airport in Cartagena, is going to be located in Bayunca, near Cartagena, this investment is expected to be worth up to $3 billion COP. Additionally, this project will create an estimated 72.495 new jobs for the region.

Public Transportation

Since the 1990's, the Colombian Government started to regulate integrated massive transportation systems (herein "SITM" for its acronym in Spanish), hence, the National Council for Economic and Social Policy issued several documents regarding public policy fo SITM[7].

Bogota was the first city to implement a SITM, called *Transmilenio*, which started operations on December 18th, 2000. The system has served as an example to other major cities in Colombia, such as Cali, Bucaramanga, Cartagena, Barranquilla and Pereira, that have also implemented SITM.

Recently, these cities and their transportation systems are focusing on obtaining new funds to guarantee their financial stability as well as reducing the impact of their operation on the environment. With the issuance of Law 1955 of 2019, the National Government enabled new sources of resources to sustain and increase the coverage of the SITM, as well as to promote the acquisition of new green-technologies that not only impact their cash-flow, but also their quality service standards.

Furthermore, Law 1964 of 2019 requires public authorities to guarantee that by the year 2035, 100% of the fleet acquired by the SITM must be zero emissions.

After the successful experience of Medellin implementing a network of cable car systems, the administration of Bogota is seeking to increase projects for the construction of cable cars in the neighborhoods located in the hills of the Capital. Currently, the City Administration is operating the *Transmicable* project in Ciudad Bolivar and plans to build another 3 cable cars connecting the neighborhoods of San Cristobal, Usaquen and Santa Fe with the Transmilenio System and with the first metro line of Bogotá. The deadline for the award of the construction contracts has been set for 2023.

[7] It is comprised of, among others: Document 2775 of 1995, Document 2928 of 1997, Document 3167 of 2002, Document 3260 of 2003 and Document 3368 of 2005.

Bogota's first Metro line contract was awarded on October 16th, 2019 to a plural structure integrated by the China Harbour Engineering Company and Xi´an Metro Company Limited. The concession agreement's purpose is to complete the studies, final designs, financing, construction, supplies, tests, operation and maintenance of Section 1 of Bogotá's first Metro line. The Metro line will have 16 stations throughout its 24.5 km length, and it will be integrated to 3 *Transmilenio* trunks. It will transport approximately 990,000 passengers per day. In October 2020, following the completion of the contract requirements, the Empresa Metro de Bogota, public entity in charge of the project, and the Concessionaire Metro Linea 1 S.A.S. executed the Commencement Minutes of the construction phase. The City Administration is currently performing the feasibility studies for the extension of the metro line to populated localities of Suba and Engativa, which will entail an expansion of the metro of approximately 12 kilometers.

Additionally, the integrated transportation system of the Bogota Region - Regiotram was awarded in 2019 to a Chinese Consortium. The project entails the construction, operation, and maintenance of a light rail system in the corridor between Bogota and Facatativa, in order to connect the municipalities of the Western Sabana with Bogota. It is expected to enter into operation in 2023. The City Administration and the Government of Cundinamarca are conducting the feasibility studies to expand the Regiotram to the rail corridor located in the north of the city connecting the capital with the residential towns of Chia, Cajica and Zipaquira.

On the other hand, on February 4th of 2022, Metro de Medellín opened a bid for the construction of the *Calle 80 Tramway - Medellin* Project. The project consists of the construction of a railway project along the Avenue 80 corridor in the city of Medellin. The system will be integrated with 15 stations, including 4 intermodal stations connected to Medellin's Metro System and Metrobus (BRT). The investment is calculated to be $930 million USD. In addition to the resources to be provided by the National Government for the financing of the project, on March of 2022, the granting entity (Metro de Medellín Ltda.) executed a contract with some local banks to secure the availability of resources for the financing of the project for a total of $ 2,172 trillion COP for a term of thirteen years.

The city of Medellin along with the regional government of Antioquia are pending the national government´s approval for the first section of the regional railway denominated the "*Tren del Rio*" connecting multiple localities in the metropolitan area of Medellin.

Finally, the extension of the *Caracas', Avenida 68* and *Avenida Ciudad de Cali* Transmilenio trunks, in Bogota are currently under construction. The new trunks will have a length of approximately 40 kilometers, and they will serve the first metro line, benefiting 3 million inhabitants in the area.

Telecommunications

In 2009, the Colombian Congress enacted Law 1341, the general framework applicable to information and communication technologies, particularly in connection with the establishment and operation of networks, the operation of communications services, and the use of the radio communications spectrum. Later, the Congress enacted Law 1978 of 2019 to modernize the ICT sector and achieve the following objectives: (i) reduce the digital divide, (ii) improve connectivity (iii) improve universal access to new technologies for the entire country, particularly in remote and rural areas and (iv) improve the institutional framework to establish a unique regulator for the ICT sector.

Law 1978 of 2019 aims to increase private investment, simplify the institutional framework and improve the payment of regulatory fees.

On the other hand, Law 1341 of 2009 enables companies to render communication services and operate communications networks, different from radio and television. The only requirement for Telecommunications Networks and Services Providers (herein "TNSP") is to submit before the Ministry of Information and Communication Technologies (herein "MinICT") the ICT Registry. This form contains the necessary corporate and technical information of each company.

Other applicable laws also require companies operating broadcast television services and companies utilizing radio spectrum frequencies to be registered in the ICT Registry. Unlike information and communications services, providing

television and radio broadcast services requires obtaining a concession through a public bidding process.

The MinICT is the authority in charge of establishing communications and information technologies policy; managing the radio spectrum allotted to Colombia, running the use of the .co domain name; fixing the fees to be charged to private entities for use of the spectrum; and supervising the provision of television services, among others.

On the other hand, the Communications Regulation Commission (herein "CRC"), the sole regulator of the ICT sector, is a separate independent and autonomous body responsible for regulating the market to promote competition, prevent any abuse by dominant players, and guarantee that the provision of services is efficient.

The use of the spectrum by any TNSP is excluded from the general ability to operate a telecommunications network or render telecommunications services. Instead, it requires an additional authorization issued by the MinICT which is preceded by a bidding process, whereby the MinICT awards the required spectrum to the best bidder in an auction. According to Law 1978, the authorization for the use of the spectrum has a duration of 20 years, renewable for an additional 20-year term. This period intends to give more time to companies to recover their investments. In turn, this becomes an incentive for them to enter remote rural areas where deploying infrastructure is not profitable. Furthermore, applicants shall not be denied permits for the use of spectrum based on the technology they propose if the technology: (i) does not cause interference with other services, (ii) is suitable under international market trends, and (iii) does not affect national security and contributes to sustainable development.

In accordance with Law 1978, the price offered by companies in public bids will not be the decisive factor for allocating spectrum. In their proposals, companies that include internet coverage projects for remote rural areas may be awarded higher scores when evaluating their bids. Holders of a permit for the use of spectrum can commercialize, assign or lease their authorizations, with the MinICT's prior approval. The National Spectrum Agency (herein "ANE" for its acronym in Spanish) and the MinICT will determine the assigned spectrum according to the National Frequency Band Allocation Chart.

The use of the spectrum also implies the payment of periodic fees to the MinICT depending on the amount of the spectrum granted, the number of potential users, the expansion plans of the bidder, and the availability (offer and demand of spectrum) in each case. These fees must be paid to the Fund for Information and Communications Technologies (herein the "Fund"). Decree 542 of 2014 sets forth a periodic regulatory fee to be paid by TNSPs. However, Law 1918 established that TNSPs must pay a Single Regulatory Fee. This Fee is also charged to television service providers. The basis for the calculation includes the gross income received from the provision of telecommunications networks and services including those from participations, acknowledgements, primes, or economic benefits originated in any kind of agreement for or based on the provision of telecommunications networks and services.

Instead of making monetary payments of regulatory fees to the Colombian Government for the authorization for the use of spectrum, companies can make payments in kind through internet coverage projects for remote rural areas. Such payments in kind can reach up to 60% of the value of regulatory fees. Decree 542 also regulates the calculation of fees to be paid to renew the permits to use the radio electric spectrum. Under exceptional circumstances, such as national defense or public concerns, the Colombian Government may impose additional obligations to TNSPs.

Breach of the telecommunications legal regime may entail: (i) fines of up to 15,000 minimum legal monthly wages (i.e., $15,000,000,000 COP approximately $3,846,153 USD) for legal entities and 2,000 minimum legal monthly wages (i.e. $2,000,000,000 COP approx. $512,820 USD) for individuals; (ii) the order for temporary or permanent suspension of the provision of the services and networks; and (iii) civil and criminal liability under certain specific circumstances.

The MinICT is the entity in charge of managing the use of the radio spectrum and the rendering of television services.

Furthermore, until February 2022, the satellite regime in Colombia was mainly framed by Resolution 106 of 2013 and by Resolution 290 of 2010.

Resolution 106 established the general framework for the provision of satellite capacity in the country, including the conditions and requirements for the satellite

capacity registry, required to offer, provide and/or use said capacity for oneself or for third parties in Colombia, in accordance with the procedures of the International Telecommunications Union.

Resolution 290 established the rules applicable to the regulatory fees for the provision of satellite capacity, including the fees for the use of the spectrum associated with the satellite segment, and the formula to calculate the amount to be paid for the use of the spectrum associated with the satellite segment based on the bandwidth used.

Resolution 376 of 2022 replaced Resolution 106 and modified certain provisions of Resolution 290, by establishing new requirements and the procedure for obtaining the permit of the radioelectric spectrum through earth stations associated with satellite radiocommunication services, in the segments attributed to the fixed-satellite, mobile - satellite, and broadcasting - satellite radio services, and setting a new framework for the regulatory fees for such use. Thus, it applies to those who require the use of the radio spectrum through earth stations that communicate with both geostationary and non-geostationary satellites.

Water and Sanitation

In the last decade the Government has given top priority to improving water and sewage coverage and quality, which has required an estimated investment of more than $2 billion USD for the 1998-2007 period. Inefficient management and obsolete technology have given private investors the opportunity to assist the local and regional governments with the construction, operation and maintenance of water treatment plants. From 2007 to 2017 the Public Utilities Superintendence (herein "SSPD" for its acronym in Spanish) has foreseen investments of $2,200 million USD for water and sanitation in small low income municipalities. Reflecting these efforts, the number of subscribers to the sewage service increased from 8.35 million in 2014 to 9.40 million in 2017.

Colombia has prioritized the accomplishment of the Sustainable Development Goals promoted by the United Nations in regards to the full coverage of water and sewage services to the whole Colombian population. Thus, since 2012 the Government has implemented the "*Water for prosperity*" program (*"Aguas para la Prosperidad"*). An ambitious program comprising over $775,000 million COP (approximately $

237 million USD) in more than 648 projects, in which the Ministry of Environment and Sustainable Development (herein "MADS" for its acronym in Spanish) alongside the Territorial Development Financier (herein "FINDETER" for its acronym in Spanish) have had an important role. The program has reached over 27 Departments (Colombia's administrative territorial division) such as Choco, Magdalena, Bolivar, Sucre, Antioquia and Valle del Cauca.

Additionally, according to the Colombian Ministry of Housing, in recent years, investments of $8.1 trillion COP(approximately $ 2.476.306.940 USD) have been made for the implementation of 2,115 projects in the drinking water and basic sanitation sector (construction, expansion, optimization and rehabilitation). In addition, more than 1,690 works have been delivered, which required an expense of $4,2 trillion COP(approximately $ 1,284,011,006 USD), excluding the $3.9 trillion COP (approximately $1.192.295.934 USD) assigned to 424 projects in progress.

Furthermore, the National Planning Department (herein "DNP" for its acronym in Spanish) issued Decree 063 of 2015 by means of which it intended to facilitate and implement the use of Public Private Partnership (PPP) schemes for developing water and sewage projects (compiled by Decree 1082 of 2015 - Unified Regulatory Decree of the National Planning Administrative Sector). This Decree sets forth the conditions for a private investor to participate in a PPP scheme for such types of projects, but only in the case of initiatives carried out by public entities.

Therefore, there are two ways of structuring water infrastructure projects in Colombia (i) PPP projects (public initiative) and (ii) public works. This leads to more interest from private investors and also opens up opportunities for lenders at the time of the financial structuring of these infrastructure projects.

With the foregoing, these also set out strategies and actions to solve sectoral challenges and achieve the goals set by the sustainable development goals for 2030. Thus, in the Master Plan for Water and Sanitation 2018-2030 ("*Plan Director de Agua y Saneamiento 2018-2030*"), issued by the Ministry of Housing (2018), it establishes actions on different axes such as institutional strengthening, planning articulated between different levels of government, sustainable infrastructure, articulation of investments

with different sectors (energy and agriculture) and the promotion of Public Private Partnerships,
particularly in wastewater treatment.

The national government has generated strategies that seek to increase investments in water and sanitation, as well as their efficiency, by articulating different mechanisms and resources, both public and private (i.e. tariffs). In this sense, it is also necessary for resources to be noted to guarantee the sustainability of the infrastructure. This is achieved by guaranteeing the incorporation of the real costs of service provision in the tariffs, which are the source of financing the costs associated with the operation and maintenance of the infrastructure.

Finally, these government programs and plans seek to promote water and sanitation projects, for which the development of public policies for the structuring and execution of this type of projects are being planned.

Electricity

In Colombia there is an installed electricity capacity of close to 17,300 MW. Colombia's electric energy market is experiencing an unprecedent transformation: from producing around 70% of its energy through hydroelectric power, and approximately 29% through thermoelectric sources, to a diversified electric energy matrix which would include at least 12% from renewable sources by 2022.

Colombia's electric energy industry has undergone a constant internal restructuring process over the last century, promoting private investment and hence free market competition. As in other public fields, the electric field has grown significantly as a result of several privatization processes conducted during the past years.

Along with its internal restructuring, Colombia, as part of the Andean Community has propelled itself into the international cross-border sale of electricity. The Colombian electric energy industry has opened an important regional market due to its cost-effective generation of electrical energy. The market is primarily based in three countries: Venezuela, Ecuador, and Panama.

On May 13th, 2014, Colombia's National Congress enacted Law 1715 of 2014 (herein "Law 1715") which aims to encourage the development and use of non-conventional energy sources for

generating power. Non-conventional energy sources include the following:

- Energy recovery from non-recyclable waste materials
- Energy recovery from biomass waste
- Solar energy
- Wind energy
- Geothermic energy
- Small-scale hydroelectric energy (PCHs)
- Use of waves, tides and ocean thermal differences.
- Blue hydrogen
- Green hydrogen

Law 1715 and its implementing decrees have set forth several incentives for the development and use of non-conventional energy sources and the authorization to small and large-scale self-generation companies to sell their electric power surpluses to the grid, and tax benefits.

In addition, the Energy and Gas Regulatory Commission (herein "CREG" for its acronym in Spanish) established the schedule and rules for several auctions on the reliability charge ("*Cargo por confiabilidad*") that took place in February 2019, in order to guarantee the supply of energy that will be demanded until 2023.oThis, as a response to the fact that *Hidroituango*, one of the biggest power generation projects in the country (representing almost 17% of the future demand of electricity), will not be operating on the expected date. The auction allocated close to 250.55 GWh of daily firm energy obligations to 70 generation plants, of which 23 have yet to be built, and 7 of which will come from renewable sources. The rest of the allocated projects produce electric energy through hydroelectric power or through thermic plants (which produce power from oil, gas, or coal).

Additionally, Law 1955 of 2019 obliges commercialization agents to purchase between 8% and 10% of its electricity from non-conventional renewable energy sources. This rule was developed by Resolution MME 40060 of 2021, which obliges commercialization companies to purchase at least 10% of their power from non-conventional renewable energy sources by January 1st, 2034.

On the other hand, as a development of Decree 570 of 2018, which sets forth the public policy guidelines to define a mechanism that promotes long-term contracting, the Ministry of Mines and Energy (herein "MME") issued Resolution 40590 of 2019 which defines and implements a mechanism to promote the long-term contracting of power generation projects complementary to the existing

mechanisms in the Wholesale Energy Market.

The mechanism for the long-term electricity contracting has the following features:

- Is applicable to the agents of the Wholesale Energy Market (herein "MEM"), as well as to individuals and legal entities that own or that commercially represent generation projects.
- The mechanism will only be applied to non-conventional renewable's sources.
- Is applicable to new projects (namely pending to commence construction or under construction at the time of awarding
- The generators participating in the auction must have a capacity greater than or equal to 5MW.
- The auction will be conducted under the closed envelope scheme and will have 2 branches, which means that the contracts will be awarded to both power buyers (MEM traders or non-regulated users) and power sellers (MEM generation agents or owners or commercial representatives of generation projects).
- The MME orders the announcement of the auction, defining the date of the process, objective demand, qualification criteria, minimum qualification score, period of validity of the contracts to be auctioned, start date of the obligations of the generation projects. However, the Mining-Energy Planning Unit (herein "UPME" for its acronym in Spanish) will manage and conduct the auction.

UPME performed a renewables auction CLPE 02 of 2019 in which the national government awarded 15-year power purchase agreements between generation and commercialization companies to 7 generation projects (based on solar and wind sources). The awarded projects sum up a total capacity of 1,298 MW.

In 2021, XM Compañía de Expertos en Mercados S.A. E.S.P ("**XM**") conducted another renewables auction (CLPE 03-2019), awarding 15-year power purchase agreements between generation and commercialization companies in connection with 11 solar projects. The awarded projects sum up a total capacity of 796 MW of installed capacity.

Taking into consideration the renewable auctions already awarded, the last

reliability charge auction and self-generation projects, the renewable energies installed capacity will increase to 3.500 MW.

The transformation of the electric energy sector in Colombia will be determined in the following years by the roadmap set by the Energy Transformation Mission (*Misión de Transformación Energética)*, which promotes deep evolution in the following issues:

- Competition, participation, and market structure.
- The role of natural gas in the energetic transformation.
- Decentralization and digitalization of the industry, and efficient demand management.
- Closing social gaps, quality and design improvement, and efficient subsidy formulation.
- Institutional and regulatory issues.

In July2021, the Colombian Congress enacted Law 2099 of 2021, which seeks mainly to strengthen investment in renewables and promote investment in hydrogen. The following are the main aspects of this Law:

- It includes within the declaration of public and social interest the activity of storage of non-conventional energy sources. This gives these projects primacy in all matters relating to land use planning, urban planning, environmental planning, economic development, positive assessment in administrative procedures of competition and selection, and compulsory expropriation.
- It includes green hydrogen and blue hydrogen within the tax and tariff benefits of Law 1715 of 2014.
- The Ministry of Mines and Energy, or whoever it designates, shall take steps for the research and development of geothermal projects.
- The National Government will develop the necessary regulations for the promotion and development of carbon capture, utilization and storage (CCUS) technologies.
- It includes schemes to strengthen the development in the provision of the electric energy public utility in Non-Interconnected Zones.

Finally, in September, 2021, the MME published the Hydrogen Roadmap, which contains the following 4 axes for the development of the hydrogen industry:

- Legal and regulatory enablers: measures aimed at establishing a

clear, consistent and fair regulatory framework.

- Market development instruments: mechanisms and tools aimed at encouraging the transition from conventional fossil-based solutions to clean hydrogen technologies.
- Development of infrastructure: actions aimed at the effective and coordinated deployment of hydrogen transport and distribution infrastructures, thus solving what is considered one of the main barriers to the use of hydrogen at the present moment.
- Promoting the technological development of the industry: measures aimed at guaranteeing the development of the industry in a sustainable manner and fostering economic growth.

Oil and Gas

Modern history of hydrocarbons in Colombia started with the hydrocarbons reform in 2003 and the issuance of Decree 1760 of 2003, whereby Colombia's national oil company, Empresa Colombiana de Petróleos (herein "Ecopetrol"), was restructured. Additionally, the National Hydrocarbons Agency (herein "ANH" for its acronym in Spanish) was created as an independent regulatory body with the power and authority to control, monitor and supervise hydrocarbon activities and to manage the country's hydrocarbon resources. With this reform, Colombia opened the doors of the hydrocarbons sector to private foreign and national investments.

Until 2003, Ecopetrol was responsible for Colombia's hydrocarbon resources and had the authority to undertake exploration and exploitation activities directly or through associations with private oil companies.

The authority to manage and dispose of hydrocarbon resources was transferred in 2003 to the ANH. The ANH assumed the management, control, and regulatory responsibilities over the hydrocarbons sector. Consequently, the authority in charge of administering all land and hydrocarbon resources that did not remain within the control of Ecopetrol was transferred to and vested in this government body. Ecopetrol maintained title to any oil and gas fields which, at the time, operated directly or through associations with private oil and gas companies.

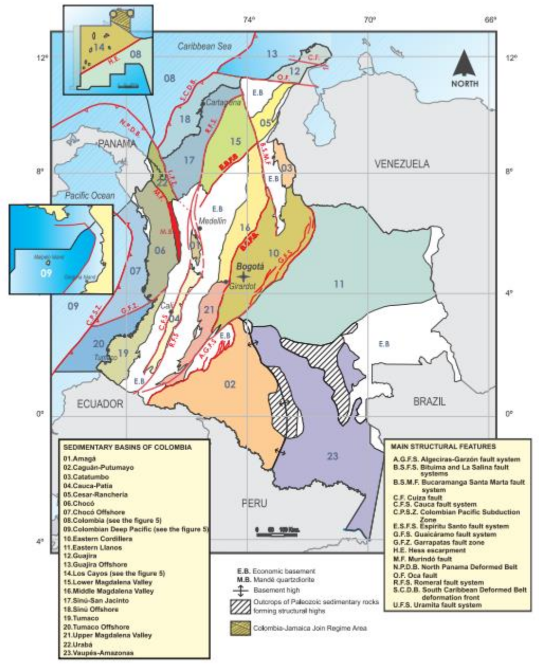
These measures helped modernize Colombia's hydrocarbons sector and increase Ecopetrol's competitiveness,

which continues to play a major role in the oil and gas industry as it is the largest producer of oil and gas and holds an important network of pipelines.

With respect to the contractual regime applicable to the oil and gas sector in Colombia, 3 main phases of contractual hydrocarbons regimes may be identified: (i) from 1905 to 1969, the exploration and production of hydrocarbons was carried out through concession agreements; (ii) from 1970 to 2003, activities related with oil and gas exploration and exploitation were controlled by Ecopetrol, either directly or through association agreements entered into with private oil and gas companies; and (iii) since 2003, investors must enter into exploration and production agreements (herein "E&P Contracts") with the ANH or technical evaluation agreements (herein "TEAs").

An E&P Contract comprises 3 phases: exploration, evaluation, and production. The exploration stage lasts 6-years (9 years for unconventional and offshore fields) and it is typically divided into yearly exploration stages. Following the exploration period, and assuming a discovery is made, the block enters a evaluation phase in order to determine its commercial potential. Once the evaluation is completed and commerciality is declared, the production period starts, which will last up to 24 years (30 years for unconventional and offshore reservoirs).

On the other hand, the TEA is a short-term contract intended to evaluate areas and improve knowledge of areas with hydrocarbon potential, in order to identify prospective interest zones. A portion of the area covered by a TEA may be converted into an E&P Contract subject to the titleholder complying with certain requirements and to the approval by ANH.



Oil and gas activities are mainly regulated by the Colombian Petroleum Code (set forth in Decree 1056 of 1953), Decree

1073 of 2015 and regulations issued by the ANH known as "Agreements" (Acuerdos in Spanish). The Petroleum Code declares the petroleum industry and its activities of exploration, exploitation, refinement, transportation as of public interest. In addition, the Petroleum Code provides that: (i) contracts for exploration and production of hydrocarbons are governed by Colombian law and any controversies arising under such contracts are subject to the jurisdiction of Colombian courts; and (ii) foreign companies that wish to engage in hydrocarbons activities in Colombia must establish a Colombian branch with an office in Bogota in order to enter into contracts within the hydrocarbons sector.

In 2017, the ANH issued Agreement No. 2 which regulates the awarding of E&P Contracts and TEAs, which provides that contracts will be awarded through open or closed competitive bidding procedures known as rounds (*rondas)* or through direct adjudication under exceptional conditions.

Agreement No. 2 also created a Stakeholders Registry (*Registro de Interesados*) as a prequalification tool for companies interested in engaging in oil & gas exploration and production in Colombia. Companies will have to accredit their technical, financial, corporate social responsibility, environmental and legal capacity based on the terms of Agreement No. 2 in order to be registered in the Stakeholders Registry and participate in bidding processes. The registry must be updated annually.

On February 5th, 2019, the ANH opened a permanent competitive bidding procedure (herein "PPAA"), which aims to select, among previously qualified proponents on equal terms, the most favorable offers to allocate the areas previously determined, delimited and classified by the ANH.

Based on the aforementioned rules, the ANH issued terms of references for the PPAA and as of December 2020, it has carried out 4 cycles, divided in the following 4 stages: (i) submission of proposals and selection of the initial proponent; (ii) submission of counterproposals and selection of the most favorable counterproposal; (iii) exercise option of improvement by the initial proponent; and (iv) allocation of areas and execution of contracts. As a result of these three cycles, the ANH has awarded 30 E&P Contracts.

Agreement 09 of October 12, 2021, issued by the ANH, provided the compilation of

every modification of the Agreement 02 of 2017 establishing the updated rules to allocate and entitle areas to develop exploration and production of hydrocarbons in Colombia and the procedures to perform the contractual obligations agreed according to these rules.

ANH issued Agreement 06 of July 14, 2021, that opened the fourth cycle of the PPAA, in which until December 1, 2021 interested parties presented proposals to enter into new agreements with ANH.

As a result of this fourth cycle, ANH awarded 30 additional E&P Contracts. The execution of the 30 contracts generates commitments to drill 28 exploratory wells that represent an investment of more than $148 billion USD in the next years from oil & gas companies in Colombia.

ANH announced in 2022 that a new cycle to allocate areas and contracts will be prepared before the ending of President's Duque term in August 2022.

Moreover, during the first semester of 2019, the Independent Interdisciplinary Expert Commission commissioned by the National Government concluded that in Colombia it is possible to conduct Comprehensive Research Pilot Projects (herein "PPII" from its acronyms in Spanish) with fracking, provided that some requirements are met. The Expert Commission published a full report, which contains the main conclusions and recommendations that the National Government must consider when implementing PPII related to unconventional deposits.

Thus, on September 14, 2020 and after the publication of Agreement No. 6 of 2020, the ANH ordered the opening of the Bidding Process for the development of Research Projects on the use of the Multi-Stage Hydraulic Fracturing technique with Horizontal Drilling in Non-Conventional Oilfields - FHPH (herein "CEPI Bidding Process").

The CEPI Bidding Process is intended to award Special Agreements for Investigations Projects that will aim to develop the PPII. Interested parties must comply with the award parameters set forth in the terms of reference of this process. Currently Ecopetrol and Exxon have entered into two CEPI Agreements, called "Kalé" and "Platero" and are developing environmental activities to comply with Colombian regulations to start performing the oil and gas activities.

For 2021, considering the remaining impact caused by the COVID-19 pandemic, the ANH issued Agreement 05 of July 14, 2021, and established additional temporary measures to aid hydrocarbon companies in Colombia, including: (i) the acceptance of transfer of activities or investment allowed by Agreement 01 of 2020 to areas that were included in the fourth cycle of the PPAA process developed in 2021; and (ii) extension of contractual terms to comply with obligations included in agreements entered into with the ANH.

Colombia's estimated oil reserves went from a total of 1,960 million barrels in 2020 to a total of 2,036 million barrels for the year 2021. Therefore, the average useful life of Colombia's reserves will probably increase for 2021 after a 6.3 years reported for 2020. Furthermore, Colombia's production average in 2020 was 781,300 daily barrels of oil and 736,356 daily barrels of oil in 2021.
Commercial marketing of oil and gas in Colombia is partly regulated. Crude oil is commercialized without any intervention from authorities or specific regulation. Natural gas is considered a public utility in Colombia. Therefore, Ministry of Mines and Energy and Colombia Energy and Gas Regulation Commission ("CREG") establish the legal and regulatory framework to develop natural gas marketing and provide basic terms of the agreements to be entered into by parties that acquire and sell natural gas.

Fuels such as diesel and gasoline prices are regulated by Colombian Ministry of Mines and Energy and CREG. Companies that are interested in participating in the fuels market, must be authorized by Colombian authorities, complying with specific technical and legal regulation to participate in these activities.

Public Utilities

Law 142 of 1994 established a new regime for public utilities. It establishes that the state's main functions regarding public utilities are the definition of specific regulation, and the exercise of monitoring and control. To that exteno, this Law authorized private companies to provide public utilities. As a result, users have benefited with better quality and lower prices of public utilities. The government continues to act as the direct provider of public utilities in regions where private companies do not.

Tourism

The Colombian Ministry of Trade, Industry and Tourism reported that approximately 172.094 foreign arrivals were registered in 2020, coming mainly from the United States (42.6%), Venezuela (20%) and México (17%).

It has experienced a boom in the past years due to its several recognitions in organizations such as World Travel Awards, Lonely Planet, The New York Times, the World Economic Forum, CNN Travel, the World Tourism Organization, Trip Advisor among others, which position Colombia as one of the best destinations on the continent.

Given Colombia's high potential in ecotourism and its advantage as one of the 17 megadiverse countries on the planet, The Colombian Ministry of Trade, Industry and Tourism is working on a specialized offer around ecotourism in protected areas, as well as in the strengthening of adventure tourism and agritourism. It also has opportunities for the development of tourism on two wheels, as well as equestrian, nautical, diving activities, sport fishing, hiking and the observation of flora and fauna.

Law 2068 of 2020 (“Law 2068”) seeks to implement mechanisms to promote tourist destinations in Colombia, in order to strengthen the formalization process of the tourism sector and promote the recovery of the tourism industry.

Law 2068 includes some temporary tax benefits for tourism services providers such as (i) the reduction of VAT on flight tickets from 19% to 5% until December 31, 2022; and (ii) the temporary suspension of the payment of the extra energy rate for tourism service providers.

Law 2068 defines some relevant concepts such as the capacity of a tourist attraction, understood as the limit of tourist visits in certain time periods and the limit of the volume of tourists. Additionally, it defines tourist service providers as the persons based in Colombia or abroad, that directly or indirectly provide, contract, purchase or offer tourist services. An electronic or

digital platform of tourist services, in accordance with the provisions of Law 2068 is the platform used by tourists to buy tourist services.

Furthermore, Law 2068 states that digital platforms providing tourist services must be registered with the National Tourism Registry (RNT) and the people who advertise their tourist services through digital platforms must also be registered with the RNT.

Law 2068 also regulates the possibility that local governments mark some areas as tourist attractions, which means those assets are assigned to be used as tourist attractions. Local authorities, in any case, may assign private parties the administration and exploitation of public assets declared as tourist attractions.

Finally, Law 2068 pointed out the infractions for tourism services providers in the case of noncompliance with regulations or cases of reporting false information, using misleading advertising, providing services without prior registration, allowing the promotion, offer, or provision of tourist services in places that are prohibited or that do not have the required permits. When tourist services providers do not comply with local regulations, authorities may impose administrative sanctions or economic fines.

The Ministry of Commerce, Industry and Tourism issued Decree No. 1338 of October 25, 2021, by means of which it is regulated the parafiscal fee that must be paid to the National Tourism Fund by the individuals or entities that render tourism services or benefit from the tourism sector.

This fee is charged every three months, this is, (i) from January 1 to March 31, (ii) from April 1 to June 30, (iii) from July 1 to September 30 and (iv) from October 1 to December 31, of each year. It must be paid within the next 20 business days of each of the aforementioned periods, pursuant to the income generated from tourism matters during the corresponding period.

Also, the Ministry of Commerce, Industry and Tourism issued Decree No. 1836 of December 24, 2021, by means of which it regulated the RNT. The purpose of the RNT is to (i) make available the activities of the providers of tourism services, (ii) make public the acts of inscription, update, renewal, cancellation, suspension

or reactivation, and (iii) establish an information system of tourism sector.

The RNT (i) is managed by the Chambers of Commerce, (ii) it contains the principal information of the provider of the tourism services, (iii) it must be obtained previous to rendering any tourism service, (iv) located in a visible place where it can be easily seen and (v) it must be renewed within the first three months of each year, or it will be cancelled.

Finally, the Ministry of Commerce, Industry and Tourism issued Decree No. 2454 of February 23, 2022, by means of which it (i) regulated the right to withdrawal from tourism time share systems, (ii) established the minimum information that must be provided to the consumers by the promoters and marketers of timeshare projects and (iii) established certain obligations to the promoters and marketers of timeshare projects.

In contracts where tourism timeshare programs are marketed, the right to withdrawal will be understood to have been agreed to, and the consumer will have five (5) business days from the date of execution of the contract to exercise it, as long as he/she has not enjoyed the service.

General Considerations

Brigard Urrutia

GENERAL CONSIDERATIONS

Political System

From a political standpoint, Colombia is a presidential democratic Republic, with a unitary system of government, but with decentralized territories and entities that have financial and administrative autonomy.

According to the Colombian Constitution, the essential purpose of the State isto serve the community, to encourage general prosperity, to secure the effectiveness of the principles, rights, and duties established in the Constitution, to allow the people's participation in the decisions that affect them and in the matters regarding politics, economy, administration, and culture, to defend the national independence, to maintain territorial integrity, and to assure a pacific coexistence and a fair legal order.

Based on a system of checks and balances (*pesos y contrapesos*), the structure of the Republic of Colombia is tripartite and, therefore, it has 3 main branches: (i) the legislative branch (headed by the 2 chambers of the Congress, the Senate and the House of Representatives); (ii) the executive branch (led by the President of Colombia) and (iii) the judicial branch (independent from the executive and the legislature). Additionally, there are other authorities and control agencies, such as the General Attorney's Office (*Procuraduría General de la Nación*), the General Controller's Office (*Contraloría General de la República*), and the Central Bank (*Banco de la República*), among others. These agencies oversee and maintain the balance within the 3 main branches of public power. In accordance with the principle of the rule of law, no authority can perform an activity other than those expressly defined in law.

Judicial System

Pursuant to article 116 of the Colombian Constitution, the administration of justice is exercised by the following 5 courts and entities:

(i) The Constitutional Court (*Corte Constitutional*) guards the integrity and supremacy of the Constitution, and rules on the constitutionality of laws and international treaties. The 9 magistrates of the Constitutional Court are selected by the Senate, from the list of 3 candidates sent by the President, the Supreme Court,

and the Council of State respectively, and serve for one 8year term.

(ii) The Supreme Court of Justice (*Corte Suprema de Justicia)* is the highest court for criminal, labor, civil and commercial law. The 23 magistrates of the Supreme Court are selected through a cooptation method from the nominees of the Higher Council of the Judiciary and serve for one 8year term.

(iii) The Council of State (*Consejo de Estado*) is the highest court of administrative law. The 31 magistrates of the Council of State are selected through a cooptation method from the nominees of the Higher Council of the Judiciary and serve for one 8 year term.

(iv) The Higher Council of the Judiciary Power (*Consejo Superior de la Judicatura*) manages and asserts competence in disciplinary proceedings against attorneys, and resolves jurisdictional conflicts arising between other courts. The 7 members of the Disciplinary Chamber of the Higher Council of the Judiciary are elected by Congress for an 8year term and the 6 members of the Administrative Chamber are elected by the Supreme Court of Justice (2), the Constitutional Court (1) and the Council of State (3). The Higher Council of the Judiciary Power was eliminated by the Legislative Act 02 of 2015 (which introduced a constitutional reform), and its functions were divided and assigned to 2 different new entities i.e. the National Discipline Commission (*Comisión Nacional de Disciplina Judicial*) and the National Council of Judicial Government (*Consejo Nacional de Gobierno Judicial*). However, the Higher Council of the Judiciary Power will continue to exercise its powers until the members of these two new entities are appointed.

(v) The General Prosecutor's Office (*Fiscalía General de la Nación*) which is the highest criminal and prosecution office. The General Prosecutor is elected by the Supreme Court of Justice for a 4year term.

The structure of the judicial branch is organized as follows:

Type of Jurisdiction		Type of Courts	Other parties involved		
Constitutional Jurisdiction		Constitutional Court			
Ordinary Jurisdiction		Supreme Court of Justice	Court of Appeals	Circuit Courts	Municipal Courts
Administrative Jurisdiction		Council of State	Administrative Tribunals	Administrative Courts	
Disciplinary Jurisdiction		Higher Council of the Judiciary	Sectional Council of the Judiciary		
Other Jurisdiction		General Prosecutor's Office	Sectional prosecutors	Local prosecutors	
Specials Jurisdictions	Peace Jurisdiction	Peace Courts			
	Indigenous Jurisdiction	Authorities of the Indigenous Territories			

Financial System

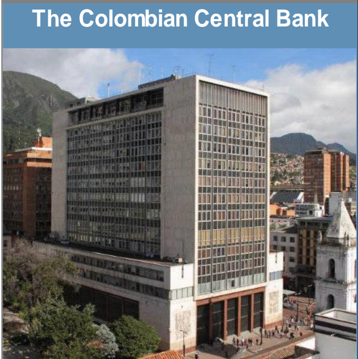
Legal Framework

The Organic Statute of the Financial System or Decree 663 of 1993 (herein the "OSFS",) provides the basic regulations applicable to the financial, securities and insurance industries. In accordance with the OSFS, the Superintendence of Finance (*Superintendencia Financiera de Colombia*) is the Colombian government agency that supervises and regulates the activities of insurance companies, financial institutions and securities firms (including broker dealers, fund managers, private equity funds and other investment managers). The role of the Superintendence of Finance is to ensure that the mentioned entities abide by applicable regulations, maintain adequate liquidity and solvency, with the view of protecting investors and depositors, and undertake their business activities in a safe, transparent and efficient manner. To increase the independence and stability of the Superintendence of Finance, Decree 1817 of 2015 established a fixed period of 4 years for the Superintendent of Finance. Law 1870 of 2017 granted the Superintendence of Finance consolidated supervision over all entities part of financial conglomerates. All companies integrating financial conglomerates are subject to a strict supervision regime in line with the Core Principles for Effective Banking Supervision as issued and revised by the Basel Committee on

Banking Supervision. The law requires all conglomerates or financial groups to maintain enough levels of capital to support the risks of their activities. Additionally, it empowers the regulatory entity to monitor these conglomerates, reorganize them, authorize their investments and even revoke their operating licenses.

Financial Entities

Under Colombian law, entities subject to the supervision of the Superintendence of Finance (herein "Financial Entities") may only undertake the activities that are expressly permitted to them by applicable regulations. Therefore, they are subject to an exclusive and regulated corporate purpose. The Colombian financial system is comprised of the following entities:

Entities	Description
The Colombian Central Bank 	The Colombian Central Bank (*Banco de la República)* is a fully independent agency. Its Board of Directors is responsible for monetary policy, which entitles the Central Bank to regulate, manage and invest international reserves, act as "lender of last resort", set interest rates for credit to financial institutions, establish credit policies and regulate the foreign exchange regime. In the context of monetary policy, the basic mandate of the Central Bank is to control inflationary forces. The main mandates of the Central Bank are to implement sound macro-economic policy that guarantees stable environment that fosters growth and employment, and to keep inflation under control. In recent years, Colombia's inflation has been fallen from double digit rates that prevailed for over 30 years, until the late 90's, to below 5% per annum (3.73% for 2011; 2.44% for 2012; 1.94% for 2013; 3.66% for 2014; 6.77% for 2015; 5.75% for 2016; 4.09% for 2017; 3.18% for 2018; 3.80% for 2019; 1.61% for 2020 and 5.62% for 2021).
Banks	The principal business of banks is to take deposits from the public, by means of time deposits, checking accounts, among others. Banks are not allowed to make equity investments in other companies, except for investments in companies devoted to providing specialized financial services, such as trust companies, securities broker dealers and financial corporations.
Financial Corporations	The purpose of financial corporations is to foster the creation and development of new companies, as well as their reorganization, merger, transformation, conversion or expansion of any type. Accordingly, financial corporations are entitled to make investments in companies.

Entities	Description
Finance Companies	Finance companies take deposits from the public through various instruments, including savings accounts, in order to finance leasing operations and the purchase and sale of goods and services through credit cards.
Fiduciary (Trust) Companies	Fiduciary companies act as trustees and managers under fiduciary contracts engaged in a variety of financial, commercial and other activities, including funds management (fiduciary contract for administration and payments), managers of collateral (guarantee fiduciary contracts), construction projects (real-estate fiduciary contracts) and investments. As is customary under a fiduciary scheme (or with a fiduciary company), the settlor conveys certain assets to the trustee (the fiduciary company) which manages the assets pursuant to the instructions provided by the settlor.
Pension and Severance Funds Management Companies	The pension and severance fund management companies have an exclusive purpose that consists in managing pension funds and severance funds. The investment regime applicable to said funds is strictly regulated and was modified by Decree 1385 of 2015 and Decree 765 of 2016 As part of the recent modifications, nowadays authorized investments for pension funds include investment in projects developed in priority rural areas in accordance with Law 1776 of 2016.
General Warehouses	General Warehouses are engaged in acting as depositors of goods for the maintenance, custody, management and distribution, purchase and sale of goods and commodities on behalf of their clients.
Capitalization Companies	Capitalization Companies are engaged in the promotion of savings through the issuance of special monetary instruments.

Deposit taking restrictions

The main activity that is restricted to certain Financial Entities under Colombian law is the prohibition to receive deposits from the public. This activity may not be undertaken in a general and professional manner without a governmental license from the Superintendence of Finance. Only duly organized and licensed entities specialized in deposits and electronic payments and credit establishments (i.e. banks, financial corporations, finance companies and finance cooperatives) are authorized to receive deposits from the public. Failure to comply with regulatory requirements related to such deposit taking activities may lead to severe sanctions, including criminal penalties and fines.

Colombian law sets forth strict limits in order to engage in financial activities. The notion of financial activities is directly associated with the concept of financial intermediation (i.e. accepting deposits from the public to grant credit and undertake other financial activities). Along these lines, the Superintendence has held that financial intermediation involves the activity of raising funds from the public and subsequently transferring such funds to persons or entities that require financing and/or capital. Pursuant to Colombian law, only duly organized and licensed credit establishments (i.e. banks, financial corporations, finance companies and finance cooperatives) are authorized to act as financial intermediaries (herein "Credit Entities").

Since the enactment of Law 1793 of 2016, customers of financial institutions may use all funds deposited in their savings accounts or electronic deposits, without any minimum limit to the amounts deposited in the account. Moreover, customers receive revenues in accordance with a minimum interest rate regardless of the level of deposit in all savings accounts.

Additionally, pursuant to Law 1777 of 2016, savings or checking accounts will be deemed abandoned if no withdrawals, transfers, debit or credit transactions are made from or to the account during a 3 year period. Existing deposits in accounts deemed abandoned will be transferred to the education fund "*Fondo Especial*" created by the Colombian institute for education abroad (*Instituto Colombiano de Crédito Educativo y Estudios Técnicos en el Exterior - ICETEX*) in accordance with Decree 953 of 2016.
Under Article 316 of the Colombian Criminal Code, unauthorized deposit taking activities are deemed to be a crime.

Moreover, the failure to return funds that have been illegally raised is likewise considered a crime. Although, in principle, criminal liability applies only to individuals, members of management (including officers, directors and employees) of an entity that incurs in any fraudulent or unauthorized deposit taking activity that falls within the definitions of the Colombian Criminal Code are liable for such acts.

Aside from the authority and legal charter of the Superintendence of Finance, another governmental agency, the Superintendence of Companies (*Superintendencia de Sociedades*), is in charge of supervising large companies (as defined by their level of assets and liabilities) engaged in industrial, commercial and service activities, and empowered to impose administrative sanctions on any person who engages in "unauthorized deposit taking activities". This term refers to taking funds or deposits without being licensed, as is the case, for example, of so-called pyramids and Ponzi schemes, including arrangements whereby the business of selling goods or services lack a "reasonable financial explanation or justification".

Interest Restrictions

The current interest rate (*interés bancario corriente*) is defined as the average interest rate charged to the public by Credit Entities. The stated rate is generally taken as a reference rate for credit transactions in the market. The Superintendence of Finance certifies and publishes on a monthly basis the applicable "current banking interest" rates for each month. In addition, they certify 3 types of banking interest rates, as follows: (a) the interest rate limits that apply to microcredit transactions; (b) interest rate limits for consumer and ordinary credit; and (c) low-rate consumption interest regulated pursuant to Decree 2654 of 2014. Currently, the banking interest rate for consumer and ordinary credit is set at 19.05 % and this percentage will be applicable until April 30th, 2022.

Article 305 of the Colombian Criminal Code defines as a crime the act of charging usury interests, namely the action of receiving or assisting, directly or indirectly, in exchange for granting a loan or providing credit for goods or services on credit, a profit or advantage which exceeds one half of the "current banking interest" rate charged by banks during the relevant period, as certified by the Superintendence of Finance. Currently, the usury rate is set at 28.58% and this

percentage is applicable until April 30th, 2022 (this limit is updated from time to time by the Superintendence of Finance).

In addition to applicable criminal penalties, there is a civil sanction as well. According to Article 72 of Law 45 of 1990, whenever a person or entity charges interest in excess of the limits set by law, the creditor loses all the overcharged interests, plus an amount equal to the excess, by way of punishment. The usury rate will depend on the type of credit extended by the entity, such as consumption, mortgage, microcredit or low-rate consumption.

Foreign indebtedness transactions are also subject to certain interest rate limits. Pursuant to External Resolution 1 of 2018 and External Circular DODM145 issued by the Board of Directors of the Central Bank (*Banco de la República*), interest rates payable on external loans to Colombian public entities are subject to maximum limits. Failure to observe such limits may affect the enforcement of any credit agreement entered into with Colombian public entities as borrowers (under Colombian Law).

Special Regulatory Provisions for Credit Entities

Incorporation of Credit Entities in Colombia

Credit Entities are financial intermediaries which may raise funds and accept deposits from the general public in order to channel them through lending activities. Like the rest of Financial Entities, Credit Entities are subject to strict regulations in Colombia, in order to incorporate Credit Entities, previous authorization from the Superintendence of Finance is required, which implies a process that takes between 6 and 18 months. After incorporation, an additional licensing proceeding before the Superintendence of Finance is necessary to start operating as Credit Entities.

Credit Entities are subject to defined minimum capital requirements at the moment of their incorporation. For your reference, the following chart provides current applicable capital requirements :

Type of Credit Entity	Minimum capital requirement (Amount expressed in COP)	Amount expressed in US (Exchange rate: US$1 - COP$3.786,4)
Bank	$107.849.000.000	$28.483.255
Financial Corporation	$39.230.000.000	$10.360.764
Financing Company	$27.789.000.000	$7.339.161

Special Regulations Applicable to the Acquisition of Financial Entities

Pursuant to the OSFS, any transaction that purports to acquire ten percent (10%) or more of the subscribed shares of a Financial Entity requires the approval of the Superintendence of Finance. Any failure to do so deems the transaction as ineffective (*ineficaz*), or having no legal effects whatsoever). The Superintendence of Finance had taken the view in past transactions that the referred provision is to be construed as referring to any change of beneficial ownership of ten percent (10%) or more of the shares of a Financial Entity and not only to direct purchases in Colombia.

Special Regulations Applicable to the Acquisition of Banks in Colombia

Under Colombian law, as a general rule, banks cannot hold equity interests in other banks. Therefore, if a bank intends to acquire another, it must either (i) acquire 100% of the equity interest of such bank and thereafter absorb it, or (ii) merge with the acquired bank. In other words, a direct parent-subsidiary construction is not admissible under Colombian Law. As a result, both scenarios lead to the same result that implies the disappearance of the acquired bank as a separate entity. Consistent with this, applicable regulations contemplate that, as exceptions to the general rule and, only for an interim, a bank can hold equity interests in another bank (a) where it has received the equity interest as a means of payment of an outstanding loan due by a customer, or (b) as a preliminary step to perfect an acquisition, as indicated above. This process is subject to special rules and regulations.

Financial accounting standards on corporate finance

Colombian financial entities must apply specific accounting rules and standards set forth by the Superintendence of Finance. Colombia has begun to apply mandatorily the International Financial Reporting Standards (IFRS), which became effective as of January 1, 2015 (*Normas Internacionales de Información Financiera, NIIF*).

Organizations and Treaties

In the last decades, Colombia has played a major role in the international community projecting itself as an attractive country for business and as a global partner for cooperation, trade and investment, significantly expanding its international engagement, both bilaterally and multilaterally.

ORGANIZATIONS AND TREATIES

International organizations

Colombia is an active member of the International Community. It is a member of the following international organizations, among others:

Additionally, the following are some international treaties, conventions and agreements related to international trade and investment that Colombia has ratified and is a party to:

- Marrakesh Agreement establishing the WTO, with its corresponding annexes.
- Trade Policy Review Mechanism.
- CISG (Convention on the International Sale of Goods).
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention of 1958).
- Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.
- Convention on International Civil Aviation (Chicago Convention of 1944).
- Convention for the Unification of Certain Rules Relating to International Carriage by Air (Montreal, 1999).
- International Centre for Settlement of Investment Disputes (ICSID) Convention (1966).
- Hague Convention Abolishing the Requirement of Legalization on Foreign Public Documents (Apostille Convention).
- Kyoto Protocol.

Regional and Free Trade Agreements

On the regional side, Colombia is a member to, and has ratified, the following agreements

The CAN (Andean Community of Nations), which is a sub-regional Customs Union that follows the European Union's structure and operation, and includes the following countries: Ecuador, Peru and Bolivia.

The Partial Scope Agreement with Venezuela after the latter's withdrawal from CAN.

Montevideo Treaty (1980) establishing the Latin American Association of Integration (ALADI).

The Free Trade Agreements with Mexico (The former Group of Three or G-3, currently G-2).

The Free Trade Agreement with Chile.

The Trade Promotion Agreement with the United States of America.

The Free Trade Agreement with the European Union.

The Free Trade Agreement with El Salvador, Guatemala and Honduras (Northern Triangle).

The Free Trade Agreement with Switzerland, Norway, Iceland and Liechtenstein (European Free Trade Association EFTA).

The Free Trade Agreement with Canada.

The Economic Complementation Agreements, as a member of the CAN, with MERCOSUR members.

The Partial Scope Agreements with Costa Rica, Cuba, Nicaragua and Panama.

The Economic Complementation Agreement No. 49 with Cuba.

The Preferential Arrangement with CARICOM (Caribbean Community).

The Free Trade Agreement with South Korea.

The Free Trade Agreement with Costa Rica.

The Framework Agreement of the Pacific Alliance.

The Free Trade Agreement with Israel

Additionally, Colombia has signed the following treaties which are pending ratification by the Congress (not yet in force):

- The Free Trade Agreement with Panama.
- The Trade Continuity Agreement with the United Kingdom.
- The Free Trade Agreement with Singapore (through the Pacific Alliance).

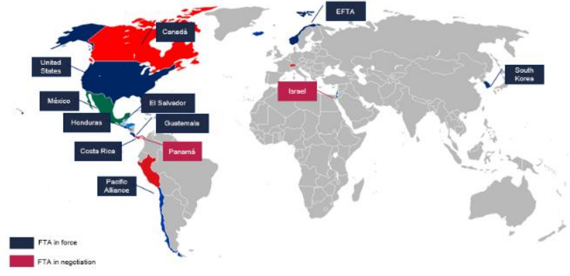
Furthermore, Colombia is currently negotiating the Economic Partnership Agreement with Japan, the Free Trade Agreement with Turkey, the Framework Agreement of the Pacific Alliance in order to grant Australia, Canada and New Zealand the status of Associate States, and the Multilateral Trade in Services Agreement (TiSA), which provides a predictable environment for service suppliers addressing discriminatory barriers to cross-border trade in services. Most recently, Colombia and the United Arab Emirates concluded the first round of negotiations to sign a Free Trade Agreement.

Bilateral Investment Treaties

Currently, Colombia has the following BITs:

In force	Signed/ Not in force
France	United Arab Emirates
Japan	Brazil
United Kingdom	Turkey
China	Singapore
Peru	
Switzerland	BLEU (Belgium-Luxembourg Economic Union)
Spain (2007)	
India	
	Spain (2021)

In addition, several Free Trade Agreements contain a chapter dedicated to investment. Some of these agreements are already in force, others are pending ratification by the Colombian Congress and others are in a negotiation state, as shown in the following map:



Mutual Recognition Agreements

In the framework of the World Customs Organization's (WCO) Standards to

Secure and Facilitate Global Trade (SAFE Framework), Colombia has signed and ratified several Mutual Recognition Agreements (MRA) in order to recognize the compatibility of supply chain programs among Customs Administrations. Those agreements aim at providing standardized security requirements of Authorized Economic Operator (AEO) programs and at coordinating border management.

The MRA can be negotiated as independent agreements or can be included as a chapter in the Free Trade Agreements. Currently, Colombia has the following MRA in force:

- Costa Rica MRA
- Pacific Alliance MRA
- CAN MRA
- Brazil MRA
- Uruguay MRA

Additionally, Colombia is negotiating an MRA with Ecuador, regarding the mutual recognition of compliance certifications.

Double Taxation Treaties

Regarding International Taxation, Colombia has executed several treaties to avoid double taxation of income tax and for maritime and air transportation companies. Currently, treaties with Chile, Spain, Switzerland, Brazil, Argentina, Panama, Italy, Venezuela, Canada, Korea, India, Mexico, Portugal, Czech Republic, France, United Kingdom and Germany are in force. In addition, Colombia has signed (pending formalization process) treaties to avoid double taxation with Uruguay, Japan, and the United Arab Emirates..

Brigard Urrutia

Structures for a Business in Colombia

STRUCTURES FOR A BUSINESS IN COLOMBIA

Government participation and restrictions

Colombia's government owns and participates in different types of companies at the national, regional and city levels, as is allowed by the Colombian Constitution. The companies in which the government holds equity participation are usually the ones that develop activities related to public utilities such as electricity and telecommunications. Nevertheless, the government may also participate in any other sectors of the economy, as it is a consequence of dated policies devised for a centralized and protectionist government style.

Since the 1990's there has been a trend to privatize the government owned shares in companies as well as reducing participation in others. As a result, an important number of government owned companies have been privatized.

There are still a few areas where government is overzealous of its monopoly and allows absolutely no private participation, such is the case of activities related to defense, the armed forces and the production of distilled liquors.

Nonetheless, it is safe to say that the way in which the State participates in most of the economy is through public procurement; consequently, Colombia has a wide range of public procurement regulation (herein the "PPS")[8].

Public Procurement

Public procurement in Colombia is understood as an important tool for the public sector to seek the accomplishment of the State goals, following certain principles and regulated specific proceedings. Thus, regulation related to public procurement is structured pursuant to the State principles and objectives set out in the Constitution, such as the principles of free market and competition, transparency, and the procurement of economic and social welfare of the Nation.

Any governmental entity that has a government share of more than 50% is subject to the PPS. However, there are several exceptions to this general rule

[8] Law 80 of 1993, Law 1150 of 2007, Law 1508 of 2012 ("PPP's Law), Law 1682 of 2016 ("Infrastructure Law") and Law 1882 of 2018, all together are considered the Public Procurement Statute .

Brigard Urrutia

established by law. For example, contracts entered into by financial entities (even when the have more than 50% of public share) are not regulated by PPS (article 15 of Law 1150 of 2007); or industrial and commercial state entities and mixed economy companies that although they have more than 50% of public shares, develop their activities in a regulated sector or in competition with the private sector.

Other specific exceptions to the PPS include Public Universities (Law 30 of 1993), the Central Bank (*Banco de la República*) (Law 31 of 1993) as well as Public Utilities Companies (article 31 of Law 142 of 1993 as amended by article 3 of Law 689 of 1994).

Governmental entities excepted from the PPS will be subject to private law in their procurement regime, although according to article 13 of Law 1150 of 2007, they still will have to comply with the principles of public function (article 209 of the Constitution), the principles of fiscal management (article 267 of the Constitution), as well as with the debarment's regime.

The PPS establishes a list of main principles that must be followed by public entities in the procedures to award Public Procurement Contracts. Broadly, these principles are transparency, economy, planning, responsibility, preservation of the financial equilibrium of the contract, objective selection of the bidders and respect of legal due process. In addition, the PPS sets a reciprocity principle that allows foreign bidders to participate in public procurement procedures to execute contracts with state entities in Colombia, under the same conditions as a Colombian bidder may participate in procurement procedures in the foreign bidder's country of origin.

In accordance with said public procurement principles, the PPS established several procedures for the selection of bidders, which are classified depending on the purpose of the contract, its amount, or the special circumstances that motivate the contractual need of a public entity. Such proceedings are public tender, abbreviated selection, merits-based selection, direct selection, and minimum amount selection.

It is important to note that public entities are obliged to select the contractor, as a general rule, through a public tender procedure with the exception of those cases specifically determined by law where they can follow other procedures. In general terms, one of the main differences

between the public tender and the other special procurement procedures is that it takes longer to award a contract in the public tender according to the mandatory stages that are incorporated in the PPS that makes public tender a more complex procedure.

The public tender procedure is the most complete and is the basis for the rest of public procurement procedures. In most procurement procedures, bidders are required to submit guarantees for purposes of risk mitigation.

As of the issuance of Law 1882 of 2018, every public entity must now use standard documents as terms of reference, regardless on the type of entity developing the public procurement procedure. This provision applies to any public procurement procedure of public construction, audits for public constructions, consultancy of studies and designs, and consulting engineering for constructions.

Bidders may submit with the proposal presented in a procurement procedure a bid bond, and once awarded the contract, a guarantee that mitigates the risks related to the contract performance, for instance: (i) good management and right investment of the advanced payments, (ii) performance bond, (iii) payment of wages, and legal social benefits to the personal linked in the performance of the agreement, (iv) stability of the work, (v) good operation of the equipment installed or provided by the contractor and (vi) tort liability.

Once the contract has been awarded and executed the government can exercise the so-called exceptional powers or exorbitant clauses ("*Poderes Excepcionales*" or *"Clausulas Exorbitantes").* In such cases, the government agency that acts as a Contracting Party is allowed to terminate the contract unilaterally, interpret the contract, amend the contract, and declare its termination with debarment. The State can also unilaterally liquidate the contract under certain circumstances, impose sanctions and unilaterally calculate the damages in case of breach or default from the contractor. However, the State must always respect due process when using these powers and special clauses.

Moreover, there are other powers that can be exercised by government agencies to (i) impose fines, (ii) declare the breach of the contract aiming to collect the amount agreed as a penalty clause and (iii) unilaterally liquidate the contract. Regarding the imposition of fines and the

declaration of the breach of the contract, there is a specific procedure that shall be followed by public agencies in order to protect the due process rights of the respective contractor. Thus, these measures cannot be imposed without the proper fulfillment of the legal procedure regulated by the PPS.

By contrast, public agencies whose contracting regime is Private Law Procurement are not entitled to include "exorbitant clauses" nor "exceptional powers" in their contracts. Otherwise, the acts issued to exercise such clauses or power can be declared null and void.

Regarding foreign bidders, they may participate in Colombian procurement procedures by means of the following models of association:

a. Direct participation

Foreign companies or individuals can participate directly in the public entities' procurement procedures, by submitting the documentation required by the terms of reference. In this case, if the foreign bidder is awarded with the contract, and its contractual obligations imply the development of permanent activities in Colombia, the bidder must open a branch before beginning to perform its obligations under the awarded contract.

b. Through a branch

Foreign bidders can also participate in Colombia's procurement procedures through a branch. For this reason, the branch has the possibility to credit the experience, financial capacity, technical capacity and organizational capacity of the parent company.

c. Through a subsidiary

Foreign bidders may already have a Colombian subsidiary of their companies, which also allows them to participate in bids. However, by adopting this method, and depending on the terms of reference of each particular procurement procedure, they may or may not be allowed to credit their experience, technical capacity and/or organizational capacity with the experience of their parent companies, given that a subsidiary is a different legal person from its parent company.

Furthermore, whether there is a national or a foreign bidder, the PPS has provided different ways for bidders to associate for participation in procurement procedures, by means of the following associative forms: (a) Consortiums, (b) Temporary

Unions and (c) promises of incorporating future companies.

A consortium[9] exists when 2 or more persons jointly submit a proposal for the granting, execution, and performance of a contract, being jointly and severable liable for each of the obligations derived from the proposal submission and the contract performance. On the other hand, temporary union is defined as a consortium in which the bidders that submit the proposal are individually liable for any sanctions that may be imposed based upon their participation in the project. For instance, bidders are able to associate by a promise of incorporating a company pursuant to which the parties submit a memorandum of intention to incorporate a new company once the contract is awarded to them.

The purpose of the public registry-RUP is to facilitate the documentary review process made by contracting agencies, so that it is the respective Chamber of Commerce the party undertaking an initial review of the corresponding documents before they are formally received by a contracting agency in the context of a procurement procedure. Accordingly, the corresponding interested bidder will be required to file certain documentation before the Chamber of Commerce of its/ domicile in Colombia, including those that allow verifying its financial capacity (i.e. full set of financial statements), organizational capacity and experience (i.e. certifications of experience or copy of the respective contracts and their liquidation minutes). The rules of procedure in order to complete this process are set in Decree 1082 of 2015 and in certain resolutions issued by the Superintendence of Industry and Commerce (herein "SIC" for its acronym in Spanish). This public registry collects the bidder's information about its contractual experience, technical capacity, legal capacity, organizational capacity, financial capacity and its classification in order to assign a score for each item according to specific rules established within the regulations. Those scores are published by the local Chamber of Commerce through a public certificate that is required by the contracting entities in those cases where the submission of the bidder's public registry-RUP is mandatory

Other information includes, the classifications in which the interested bidder certifies that it provides goods and services to government owned entities

[9] Article 7 of Law 80 of1993.

(using the United Nations Standard Products and Services Code), other corporations that are a part of the economic group (i.e. parent company if applicable), and the name and powers granted to the companies' legal representative.

According to the rule established in Decree 1082 of 2015, any company, will be able to accredit in RUP the experience of its shareholders or partners during the first 3 years of its incorporation . Therefore, for example, in the case of a subsidiary of another company, such subsidiary will be allowed to accredit in RUP the experience of its shareholder(s) for the first 3 years of incorporation. Nevertheless, this rule is not applicable for purposes of accrediting the financial capacity and, therefore, said subsidiary will only be able to accredit in RUP its own financial capacity and not the financial capacity of its shareholders.

It is worth mentioning that RUP is not required/mandatory for all publicly procured processes (i.e. direct contracting, health provision services and sale of state´s assets among others). Accordingly, in such procurement procedures in which RUP is not required, contracting agencies will be bound to request, in the corresponding request for proposals, all the documents that allows them to verify the information (experience, financial capacity and organizational capacity) that is usually accredited through RUP.

Public Private Partnerships ("PPP")

To address the country's shortcomings in the infrastructure realm, on January 10th, 2012, and after a fast track legislative procedure, the law on Public Private Partnerships (herein "PPP Law") was enacted. This Law has greatly incentivized the development of new infrastructure projects in Colombia and attract new foreign companies to invest in the sector. The PPP Law creates opportunities to build and operate public infrastructure projects, provides additional comfort to lenders and substantially improve the country's previous private finance initiatives regime.

The main objective of the PPP Law is to use private capital for the provision of public goods and related services. Under the previous legal framework applicable to private-public initiatives, these types of initiatives were strictly limited to certain public works projects and did not encompass under their scope projects related to public housing, courthouses, schools and prisons. The PPP Law

significantly broadens the types of permitted projects to include a wide variety of construction and infrastructure projects and the operation thereof.

In addition, under such regime payments to contractors will only be made once the respective project has reached commercial operation, and payment will be dependent on meeting certain service levels and quality standards[10]. In essence, contractors will not be paid for work performed until the project is completed in accordance with the original project plan.

Generally, PPP Law provides for a maximum term of 30 years for public private initiative projects. However, upon a favorable ruling by National Council for Economic and Social Policy such maximum terms may be extended under special circumstances.

The PPP Law also includes elements typical in traditional project financing arrangements. For example, the new law requires that the project's resources must be administered through a trust fund, to which all assets and liabilities of the project must be transferred. This requirement provides greater assurances to lenders with respect to outstanding payments and enforceability of any security interests. Likewise, the PPP Law expressly confers on project lenders step-in-rights in the event of a default under the applicable loan agreement. Finally, the PPP Law requires all PPP contracts to include an early termination formula, which serves as additional security for the lenders.

Another important change introduced by the PPP Law is the enactment of a special procedure for contractor proposals of new projects and the awarding in connection with such private initiative projects, in

[10] Please note that on May 16, 2019, the Colombian Constitutional Court issued the Ruling C-2017 of 2019, by means of which article 20 of Law 1882 of 2018 was amended in order to allow compensations in favor of third parties acting in good faith, and the concessionaire, its members, shareholders, unless it is evidenced that: (1) they willfully committed a crime or violated Colombian administrative regulations, or (2) they had knowledge of the wrongful conducts that gave rise to the grounds for the annulment. Also, in connection with break-up fees (which were previously recognized), the Constitutional Court held this provision unconstitutional because in its opinion the Colombian Government must not be held liable for violations incurred by the concessionaire or its sponsors because this type of provisions do not protect the public interest.
Also, it is important to note that on August 6, 2019, an Arbitral Court determined that a Colombian concession contract was entered into with an illicit motivation and with deviation and abuse of power due to the contractor´s commission of multiple illicit activities, including bribery of Colombian government officials. Consequently, the Arbitral Court declared that a concession agreement, its amendments and other related documents were null and void, arguing (i) its illegal purpose and (ii) that they were entered by using abuse and deviation of power.

which some incentives were created that did not exist in the previous regime. This means that, under the current PPP regulation, private parties may present their private initiative proposals to public entities, which was a possibility that did not exist before.

The PPP law then establishes two different bidding procedures for such proposals, depending on whether the private initiative project requires any public resources. For projects that do not require public resources, once accepted by the public entities, there will be a period from 1 to 6 months during which the project is publicly disclosed in order for interested third parties to express their intention to develop it. If there is no other interested party, the public entity will generally award the contract to the original proponent, subject to certain minimum participation requirements that must be met. If other parties express an interest in bidding for the project, they must post the required bonds, at which point the government will open a simplified tendering process in which the original proponent of the project has the right to match a better offer submitted by a third party.

On the other hand, those private initiative projects requiring government funding , with a maximum of 20% of the project price in roads and 30% in other types of projects,[11] will be awarded through an ordinary tender process in which the original proponent the project will receive additional bonus points (ranging from 3% to 10%) for its submitted bid. By way of background, public entities generally assess bids received and assign points to the bidder and the bidder receiving the highest number of points will generally be selected for the particular bid.

Regardless of whether a private initiative project requires any public resources, the private initiative project must comply with certain technical, socio-environmental, financial, and legal requirements. For any PPP, the proposing contractor must pay for any expenses incurred in connection with the structuring process. However, if the proposing contractor fails in winning the project bid, the winning contractor must reimburse expenses incurred to structure the proposed project.

Another important change introduced by Law 1753 of 2015 (National Development Plan) to the PPP Law was the possibility to include, as a means of retribution, rights

[11] As modified by Law 1753 of 2015

over land that is not affected by the project. This has another important advantage, due to the fact that the value of that property does not count in the percentage limit of public expenditure (20% or 30%) explained before.

Actually, after the "wave" of public private partnerships on roads, which are still in execution, all these new regulations intend to incentivize the structuration of PPP projects in social infrastructure and, therefore, it is expected to have a considerable number of these projects in the near future.

Regulatory bodies and respective powers common to energy and gas markets

The Energy and Gas Regulatory Commission (herein "CREG" for its acronym in Spanish), is the technical entity created by the National Government in 1994 to regulate the domestic utilities of electricity , fuel and gas in a technical, independent and transparent way, promoting the sustained development of these sectors, regulating monopolies, encouraging competition wherever possible and timely responding to the users and companies of needs according to the criteria established by the Law.

As a regulatory commission, the CREG has the task of regulating monopolies in the provision of utilities, when competition is not actually possible, and in other cases, to promote competition between utilities providers, for the operations of the monopolists or competitors to be economically efficient, not involving abuse of dominant position, and producing quality services.

In addition to the regulatory activity, the following governmental authorities are in charge of the energy policy definition and the control and supervision activities:

(i) The Ministry of Mines and Energy (herein the "MME"), is responsible for policymaking and overseeing of the electricity sector. MME oversees, among others, the generation, distribution, transmission, and commercialization of electricity in Colombia, and approves generation and transmission programs. Various agencies under the MME's control, including CREG and the Mining-Energy Planning Unit (herein "UPME" for its acronym in Spanish), directly supervise the electricity sector.

(ii) UPME is a special administrative unit affiliated to the MME and is responsible for developing and

updating the national electricity plan and the national reference expansion plans. UPME is also responsible for forecasting Colombia's electricity needs, as well as developing and implementing strategies to meet Colombia's electricity requirements.

(iii) Finally, the Public Utilities Superintendence (herein "SSPD" for its acronym in Spanish) is responsible for overseeing all public utility companies. The SSPD monitors the efficiency of all public utility companies and the quality of services rendered by them. The SSPD has the competence to sanction public utilities providers whenever they fail to comply with the mandates and duties established by law and regulation and may also take control over public utility companies when the continued rendering of public utility services is at risk.

Implications of having Permanent Business in Colombia

During the past years, Colombia has reduced the requirements to formalize the incorporation of companies and doing business in the country. If a company, however, wishes to engage in permanent businesses in Colombia it must observe certain rules.

Colombian law provides a regulation regarding "permanent businesses", for cases when foreign entities undertake business directly in Colombia. Given the broadness of the reference "permanent businesses", the Colombian Commercial Code opted to list some of the most common activities that are considered and qualify as permanent. This list is not exhaustive and, therefore, other activities may be considered permanent as well, meaning that a case-by-case analysis is required. The Colombian Commercial Code considers as permanent activities, among others, the following:

- The opening of a local establishment or a business office in the territory of the Republic of Colombia. The law specifically mentions these include technical or consultancy businesses / offices.
- To intervene as contractor in the performance of constructions or in the rendering of services.
- To participate in any way in activities that have as a corporate purpose the use, exploitation or investment of funds that originate from private savings. These activities include banking, brokerage and life insurance.
- To engage in any of the branches or services of the mining extraction

industry.

- To obtain from the Republic of Colombia a governmental concession or its assignment thereto, or to participate in any way in its exploitation.
- If the operations of the corporate bodies of the company take place in the Colombian territory.

If the activities developed by a foreign legal entity or individual in Colombia are deemed as a permanent activity, the establishment of a branch or the incorporation of a company will be required.

Investment Methods

General Comments

Commercial law provides 2 main alternatives to doing business in Colombia: (a) the establishment of a branch of a foreign company (an ongoing concern) or (b) the incorporation of a subsidiary. The main types of legal entities provided for in Colombian law are: corporations, simplified stock companies, limited liability companies, limited partnerships, unlimited liability companies, agricultural and transformational companies, and the branch or representative office.

Generally, the documents for the incorporation or establishment of legal entities, including the by-laws of a Colombian company, must include the following: (i) the name under which the legal entity will run its business, (ii) the corporate purpose of the legal entity, which in some cases shall be exhaustive, (iii) the capital to be contributed and (iv) the term of duration of the legal entity. If such elements are not established, the company can be declared non-existent. The only exception to the above-mentioned rule is the simplified stock company, in which the by-laws can state as corporate purpose "the performance of any legal activity" and the term of duration can be indefinite.

Corporation

The capital of a Corporation is divided into shares, which are freely negotiable by endorsement, unless the by-laws provide for a right of first refusal in favor of the company and/or its shareholders. The Corporation requires at least 5 shareholders, none of whom can own directly 95% or more of the outstanding shares of the Corporation. There is no limit to the number of shareholders of the Corporation. Additionally, as a rule, the shareholders are only liable for the amounts contributed, except for fraud and

other narrow cases that may lead to pierce the corporate veil.

The Corporation requires a Board of Directors formed of at least three principal members and their respective alternates. The powers of the Board of Directors typically include (i) the appointment of general managers and officers of the Corporation, (ii) the authority to issue shares subject to preemptive rights in favor of the remaining shareholders, (iii) the incorporation of branches or agencies out of the main domicile and (iv) the power to approve certain acts of the general managers as provided for in the by-laws of the Corporation.

Nevertheless, the most important decisions such as (i) distribution of profits, (ii) capitalization, and (iii) waiver of preemptive rights, should always remain in the hands of the Shareholders Assembly. Such powers cannot be assigned to the Board of Directors.

The Corporation requires an external auditor (Colombian accountant), who must be appointed in the deed of incorporation and may be replaced prior decision of the Shareholders Assembly.

Limited Liability Company (LLC)

The Limited Liability Company (herein "LLC") requires at least 2 partners and cannot have more than 25 partners. The capital of an LLC is divided into quotas of capital. The incorporation of the LLC must be formalized by means of a public deed as well as any subsequent amendment to the by-laws, including any transfer of quotas of capital, among the partners or to an external party, which must comply with this formality as well.

The LLC does not require a Board of Directors and although it is deemed to be managed directly by the partners, they are entitled to delegate their authority to the appointed general managers or to a Board of Directors if the partners have decided on the creation of this corporate body.

Furthermore, an LLC does not require an auditor except when (i) the gross income exceeds 3,000 minimum monthly wages, or (ii) gross assets exceed 5,000 minimum monthly wages, for the past fiscal year.

In an LLC the partners are, as a general rule, only liable to the extent of their equity contributions to the company, with the exception of taxes, where the partners are jointly and severally liable with the company for non-paid taxes, and moneys owed to employees and not paid by the company (i.e. salaries, fringe benefits, vacations, indemnities, etc.).

Simplified Stock Companies

A simplified stock company (herein “SAS” for its acronym in Spanish) can be formed by 1 or more shareholders. There is no limit as to the number of shareholders. The capital of a SAS is divided into shares which are freely negotiable by endorsement, unless the bylaws provide for rights of first refusal in favor of the remaining shareholder(s) or any other limitation or restriction for the transfer of shares.

The capital of the company may be formed of different types of shares including the fixed dividend share, payment shares and the preferential shares. As a rule, the shareholders are only liable for the amounts contributed, except for fraud and other cases of piercing of the corporate veil.

The SAS do not require a board of directors. However, the shareholder(s) may create this corporate body in the bylaws of the company. The Board of Directors may be formed by any number of individuals with or without alternates, appointed by the shareholders assembly or by the sole shareholder. The powers of the Board of Directors should be provided by the shareholder(s) in the bylaws.

The SAS does not require an auditor except when (i) the gross income exceeds 3,000 minimum monthly wages or (ii) gross assets exceed 5,000 minimum monthly wages, for the past fiscal year.

There are restrictions regarding the activities that a SAS can carry out. For example, financial companies cannot be SAS, and SAS cannot be listed in a stock exchange.

SAS are the most common type of legal entities incorporated in Colombia considering the advantages offered for its management and operation.

Other types of legal entities which are less common but can be equally incorporated under Colombian law, include the following:

Limited Partnerships

The Limited Partnerships (*Sociedades en Comandita*) are formed by 2 types of partners: (i) the managing or general partners, who are joint and severally liable, and (ii) the limited partners, whose liability is limited to the amount of their contributions.

There are 2 types of limited liability partnerships:

(i) The Simple Partnership, which name is formed by the complete name, or by the surname of one or more general partners followed by the expression "& *Compañía"* and then by the abbreviation "S. en C." Its capital is divided into quotas of equal value. In the board of partners, the partners have as many votes as do the quotas they own. As a general rule, the limited partners will only be liable to the extent of their equity contributions to the company, with the exception of taxes, and amounts owed to employees and not paid by the company (i.e. salaries, fringe benefits, vacations, social security contributions, etc.), where they will be jointly and severally liable with the company while the managing or general partners would be jointly and severally liable with the company.

(ii) The Stock Partnership, which name is formed by the complete name, or by the surname of one or more general partners followed by the expression "& Compañía" and then by the abbreviation "S. en C.A.". Its capital is divided into shares of equal value. The limited partners will be liable to the extent of their equity contributions to the company, while the managing or general partners would be jointly and severally liable with the company.

Although the regulation continues to be in force, this type of entity is not commonly used nowadays.

General Partnership (GP)

The General Partnership (herein "GP") is a company administered by all its partners, or by a manager elected unanimously by the partners. Under Colombian law, the partners of a GP are jointly and severally liable for the transactions of the partnership. The GP requires at least 2 partners. Colombian law does not provide for a maximum limit on the number of partners of the GP.

The company's business name shall be made up of the full name or surname of one or more partners followed by the words "and company", "brothers" and "sons", or similar expressions.

Any company may become a partner of a GP provided that the decision is approved unanimously by the partners or shareholders.

Benefit and Public Interest Companies (BIC)

The Public Benefit and Interest Companies (herein “BIC”) are not a special form of company. A corporation, LLC, SAS, LP or GP can adopt the BIC status. To do so, their corporate purpose must include the ability to act on behalf of the collectivity and the environment. In other words, these companies have internal policies that are focused on developing responsible environmental and social practices.

BICs must comply with the following obligations: (i) establishing reasonable remuneration, subsidies and capacitation for their workers, (ii) providing employment opportunities for the unemployed, (iii) boosting volunteering opportunities, (iv) conducting environmental audits and supervising greenhouse gas emissions, (v) disclosing the financial statements of the company to their workers, and (vi) promoting fair trade practices.

Directors and officers of BICs are allowed to consider the environmental impact and other public interests at the moment of taking any decision.

It is important to highlight that acting on behalf of the collectivity and the environment does not imply that the aim of acting on behalf of the shareholders is left behind, these activities are not exclusive. Accordingly, Law 1901 of 2018 states that BICs besides the benefit of their shareholders, will pursue the general interest of the collectivity and the environment.

Agricultural Transformational Companies (SAT)

Agricultural Transformational Companies (herein “SATs”) are characterized by their corporate purpose: to develop activities related with the postharvest process and the commercialization of perishable products of agricultural origin and to provide all the services related with their purpose. This type of company is subject to a special legal and economic regime, and it is a legal entity considered seperate from its partners.
Additionally, to incorporate a SAT it is important to consider the following:

- Itshall be constituted by public deed, duly registered before the Chamber of Commerce.
- Only individuals entitled to conduct activities related with agricultural

exploitation processes, individuals who demonstrate to be agricultural workers, and private legal entities dedicated to the commercialization of perishable products can be partners of a SAT.

- The SAT must have at least 3 partners. In all cases, the majority, must be comprised of individuals.

The SATs were created and are principally governed by Law 811 of 2003, but in the issues not regulated by such statute Commercial Code and Law 222 of 1995 are applicable.

Utility Company (ESP)

Utility Companies (herein "ESP" by its acronym in Spanish) are companies whose capital is divided into shares, whose purpose is the provision of one or many public services as mentioned in Law 142 of 1994, or the development of one or several complementary activities. ESP are not a special form of company. A corporation or a SAS can adopt the ESP status as long as they comply with certain requirements provided by law.

Regarding this, the Superintendence of Companies (*Superintendencia de Sociedades*) points out that the term Utility Company is a term reserved by Law 142 of 1994 to companies whose capital is divided into shares, whatever these are public, private or mixed, that provides domiciliary public services, and are subject of the rules set by said law, and in the matters not regulated, by the rules of the Corporations as set forth in the Commercial Code.

Law 142 of 1994 expressly allows that the contribution of capital to these companies may be done by foreign investors.

Branches and Representative Offices

Branches

Under Colombian law, a branch of a foreign company shares the legal personality of its parent company and hence, does not have partners or shareholders, but: (a) an assigned capital, (b) a defined corporate purpose and (c) its own managers and fiscal auditors. As they share the legal personality, the parent company is liable for all of the operations and transactions of its Colombian branch.

Representative Offices

Colombian Commercial Code does not foresee the possibility of establishing representative offices by foreign companies interested in undertaking

activities in Colombia.

Notwithstanding the above, the OSFS provides for foreign financial entities and broker-dealers the possibility to offer their products to Colombian residents by means of a representative office established in Colombia. Establishment of such representative office does not constitute a legal entity in Colombia; therefore, any agreement entered by a Colombian resident through a representative office shall be deemed to be entered by the foreign financial entity or broker-dealer directly, in accordance with the rules of its country.

The opening of the office, as well as the appointment of the person that is to act as representative, is subject to the prior approval of the Superintendence of Finance. Among other requirements, the Superintendence of Finance seeks to ascertain whether the relevant entity or broker-dealer is in good standing, by contacting the relevant agency that regulates and supervises such financial entity or broker-dealer.

Joint Ventures

Joint ventures are a valid type of association / agreement under Colombian law and are governed by contractual principles in Colombia. Private joint ventures do not have detailed regulation as it is mostly limited to certain economic fields such as petroleum and communications. Thus, joint ventures other than those concluded within the context of such economic sectors are commonly ruled by the clauses agreed upon in the joint venture agreement.

Some general private law rules apply to the joint venture agreements. In particular, article 825 of the Colombian Commercial Code is applicable to both private and public law joint ventures. According to said article, joint liability is assumed in the event that there is more than one debtor in a contract. Thus, the members of the joint venture are joint and severally liable before the contracting party, unless these contracts are not executed by the joint venture but only by one of its members individually and exclusively, in which case said member would become entirely responsible for contract compliance.

Regime of incorporation

Branch of foreign company

Under Colombian law, a branch is created through the execution of a public deed before a local notary public of the domicile where the branch will undertake its activities. The deed must include copies of

the following documents:

- The parent company's founding charter;
- The parent company's bylaws;
- A resolution of the parent company approving the incorporation of the branch in the Colombian territory;
- A certificate of incorporation of the parent company; and
- A standing certificate of the parent company.

Subsequently, the local notary public will issue copies of the public deed containing these documents. One copy of the deed must be registered with the local Chamber of Commerce, which acts as the registrar of companies in Colombia. At the request of any individual or entity, the local Chamber of Commerce will issue certificates evidencing the organization and good standing of the branch, including reference to its name, corporate purpose, domicile and assigned capital, and the names of its officers and fiscal auditors.

All documents to be filed with the local public notary must be either original counterparts or certified copies. The signatures appearing on each document must be authenticated by a public notary or another competent authority in the country of the parent company. Further, the signature of such authority must be endorsed by apostille if the country of the parent company is a party to The Hague Convention 1961[12].

In case the parent Company is not a part of The Hague Convention, the signature of the competent authority must be certified by the Colombian consulate with jurisdiction in the domicile of the parent company. Upon making its legalization, the consulate must issue a certificate evidencing that the company exists and that it is in good standing in accordance with the laws of its jurisdiction. The certificate must further evidence that the individuals who executed the documents have sufficient power and authority to act on behalf of the company.

Finally, the branch of a foreign company must register before the Colombian Tax and Customs Authority (herein “DIAN” for its acronym in Spanish) using a Unique Tax Registration (herein “RUT” for its acronym in Spanish) and will be assigned

[12] The Hague Convention is an international convention executed in 1961, whereby the parties agreed to expedite the legalization of documents issued in the signing parties and intended to be used in a counter party. In said Convention the parties established that a document issued in a country party to the Convention may be certified by means of the Apostille Seal. The documents issued in a country party that has been legalized with the apostille seal shall be recognized in the other country party without any additional legalization requirement.

a tax identification number. Upon complying the steps mentioned above, the branch may commence operations in the country.

Incorporation of a Subsidiary in Colombia

Once the future shareholders or partners of a company, as the case may be, have decided on the type of company they want to incorporate, they must appear before a local public notary in order to execute the founding charter.

Nonetheless, the simplified stock companies may be incorporated by means of a private document, in which the signature of the shareholder(s) must be recognized before a public notary.

The incorporation document must contain the bylaws of the company and include at least the following information:

- The names and domicile of the founding shareholders or partners, as the case may be;
- The type of company being incorporated and the name;
- The corporate domicile;
- The corporate purpose (the operations or business that the company will carry out). This clause must clearly indicate the main activities that the company will carry out and binds the legal capacity of the company. Corporations and branches cannot have an undetermined purpose under Colombian law. Nonetheless, the simplified stock companies are authorized to include the provision whereby the company may undertake any lawful activity.
- The company's capital and the portion subscribed and paid in by each partner or shareholder at the time of incorporation. In stock companies, the bylaws must also indicate the class and nominal value of representative stock, and the form and terms of payment of outstanding installments to the capital, which may not exceed 1 year for the corporations and the stock-issuing limited partnerships and 2 years for the simplified stock companies;
- Limitations to the managers' powers and authority (if any);
- The dates and procedure for convening both ordinary and extraordinary assemblies or partners' meetings, as well as the decision-making system and the procedure for the adoption of relevant motions;
- The dates on which inventories and general balance sheets must be drawn up;

- The procedure for distribution of profits or income in each fiscal term, with an indication of reserves to be made;
- The exact duration of the company (corporations and branches) and the grounds for early dissolution. Nonetheless, the simplified stock companies may be incorporated with an indefinite term of duration;
- The applicable dispute resolution mechanisms in the event of disagreements between the partners or shareholders, or with the association. Where the shareholders or partners decide to submit their disputes to arbitration's decision, the bylaws must indicate how the arbitrators shall be appointed and the rules for the functioning of the tribunal;
- The name and domicile of the person or persons who legally represent the company, where this does not correspond by law or by contract to all or some of the partners or shareholders. The bylaws must clearly indicate the powers and duties of the legal representatives; and
- The powers and duties of the fiscal auditors, where their appointment is required by law or the bylaws.

The founding partners or shareholders must concur before the notary public either in person or through an attorney duly empowered by means of a power of attorney which, in the case of foreign individuals or companies, has been properly certified by a public notary in the country of origin and further legalized in accordance with the formalities of The Hague Convention. If the country where the power of attorney is executed is not a party to The Hague Convention, the signature of the notary public should be legalized before the nearest Colombian consulate.

If the company is incorporated by means of a power of attorney, it should grant sufficient authority for the attorney to:

- Incorporate the new company;
- Execute the founding deed or private document for the simplified stock companies;
- Register the investment before the Central Bank, if necessary.

A copy of the founding document (public deed or private document) must subsequently be registered at the Chamber of Commerce of the main domicile of the company. The company must file with the Chamber of Commerce the following documentation along with a copy of the incorporation document: (i) forms established by the Chamber of Commerce, (ii) copy of the identification document of the individual executing the

relevant forms, (iii) registration form (pre-RUT) with the DIAN, (iv) acceptance letters signed by the individuals designated in the incorporation document, (v) copy of the identification document of the appointed managers and directors of the company, and (vi) evidence of payment of taxes and applicable fees.

Once the company has been incorporated, the appointed managers, either Colombian citizens or foreigners, are required to RUT before the DIAN. The obtention of the RUT does not trigger any tax obligation. However, it is necessary for the managers to be able to sign tax statements on behalf of the Colombian company.

Establishing a Business in Colombia

ESTABLISHING A BUSINESS IN COLOMBIA

Antitrust Law

As per Colombian Law[13], companies that undertake the same economic activity or participate in the same value chain and meet the thresholds set forth by the Superintendence of Industry and Commerce are required to inform the SIC about any proposed transactions to merge, consolidate, acquire control or integrate, regardless of the legal structure of the proposed transaction.

The relevant thresholds established by the SIC are as indicated below[14]:

(i) Individual or combined annual operating income as of December 31st of the year immediately preceding the transaction equal to or exceeding 60,000 minimum monthly wages ("MMLW" –$60,000,000,000 COP i.e. approximately $15 million USD for 2022)[15]; or

(ii) Individual or combined assets as of December 31st of the year immediately preceding the transaction equal to or exceeding 60,000 MMLW ($60,000,000,000 COP i.e. approximately $15 million USD for 2021).

The assets and operating income taken into account are the total values registered in the previous fiscal year's financial statements of the companies involved in the transaction, including the assets and operating income of all related entities, either in Colombia or abroad, depending on whether the companies have corporate presence in Colombia.

Whenever the parties to the transaction have corporate presence in Colombia in the form of subsidiaries or affiliates, the assets and operating income considered for threshold calculations will be those of the parties and their related group entities in Colombia[16]. Otherwise if the parties in the transaction do not have corporate presence in Colombia and participate in the market through distributors or resellers, the assets and operating income taken into account for threshold calculations will be those of the parties

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[13] Articles 9 through 13 of Law 1340 of2009 and Resolution 2751 of2021 of the SIC.

[14]At the average exchange rate for 2021 as reported by the Colombian Central Bank: 1US$ = COP$3.693

[16] Related entities, is understood as a group of entities that participate either in the same economic activity or in the same value chain.

and the worldwide group entities that participate in the same economic activity or value chain.

However, if the parties meet one or both aforementioned conditions and hold a combined market share below 20% in the relevant market, they must present a short-form notification to the SIC describing the intended transaction. The transaction will be deemed to be authorized once the notification has been filed, and no waiting period for clearance applies.

Once the decision for a long-form filing is taken, the following procedure needs to be followed:

(i) The parties must submit a long-form filing with information regarding the product market, geographic market, market share, competitors, distributors and retail sellers, raw materials and inputs, barriers to entry, and imports by the parties.

(ii) Within 3 days following the filing, the SIC will publish a notice on its website and, may order the parties to publish a notice in a national newspaper. Third parties will have 10 business days to intervene.

(iii) The SIC has a 30-business day term, to determine whether a deeper analysis of the transaction is required. If the SIC remains silent the transaction will be deemed to be authorized.

(iv) The SIC may request additional information from the parties, which will have 15-day term to submit it.

(v) The SIC will then have a 3-month period to make its final decision that can be to (i) clear the transaction, (ii) impose remedies, or (iii) challenge the transaction. If the SIC fails to reach a decision, the transaction will be deemed to be authorized.

(vi) However, the SIC may reset the 3-month period once by issuing a request for information to the parties. Any additional requests for information do not stop nor reset the clock. In practice, a full filing procedure may take anywhere between 4 and 8 months.

The analysis conducted by the SIC aims to determine whether the transaction has any adverse effect on the relevant market or on the consumers, or if it infringes competition. If the SIC finds the operation

restricts competition, this authority will challenge the economic integration.

The SIC can impose remedies in order to neutralize any negative impact that the transaction may have on the relevant market. Remedies are not listed in the law, and thus any effective measure may be proposed. Failure to comply with the remedies is a violation of the antitrust law, punishable with the fines set forth below.

However, the SIC will not challenge a transaction if (i) the parties demonstrate that the positive effects it will have for the consumers exceeds the possible negative, or (ii) the SIC considers that post- transaction, the overall conditions of the market guarantee free competition[17].

Obtaining clearance, when required, is a prerequisite for closing, and therefore any closing before clearance will be deemed to be a violation of Colombian antitrust law with the possibility to impose greater amounts for the following possible fines[18]:

(i) Up to 20% of the operating income of the offender for the year immediately preceding the fine.

(ii) Up to 20% of the shareholder equity of the offender for the year immediately preceding the fine.

(iii) Up to 100,000 monthly minimum legal wages (“MMLW”) (currently $100,000,000,000 COP i.e. approximately $25 million USD for 2022)

(iv) In cases of bid rigging in public procurement, up to 30% of the value of contract.

(v) to the facilitator of the conduct, regardless of being a company or an individual may receive a fine up to 2,000 MMLW (currently $2,000,000,000 COP i.e. approximately $500,000 USD for 2022)[19].

(vi) If, in addition to the above, if the SIC deems the transaction to be restrictive of competition, the authority can order its “reversion”, including the divestiture of the acquired assets.

[17] Article 12 of Law 1340/09
[18] Law 2195/2022

[19] At the average exchange rate for 2022 as reported by the Colombian Central Bank: 1US$ = COP$3.785

Environmental Law

Regulation

Colombian environmental legislation embodies a vast, complex and technically driven set of regulations addressing multiple environmental-related elements such as water, air, forest, waste, protected areas, climate change, and environmental justice, among others.

Aside from permitting and licensing issues, any person interested in undertaking activities that can potentially affect the environment in Colombia must comply with a vast set of general environmental obligations dealing with the protection of the environment and human health.

Pursuant to the Constitution, Law 23 of 1973 and Decree 2811 of 2974 (Colombian Code of Natural Renewable Resources) environmental elements (air, water, soil, forests) are the sole property of the Colombian State, which acts as a manager of said resources (herein "Natural Renewable Resources", as defined by the current Colombian environmental law). The Colombian Constitution also recognizes the right to a healthy environment and incorporates the sustainable development criteria as a constitutional command.

Based on such principles, any project, work and/or activity that involves the use of natural renewable resources and/or that may affect the environment, will require the interested individual/company (herein "Beneficiary") to apply for and obtain from the competent environmental authorities (either national, regional or local) the environmental licenses, concessions, permits and/or authorizations (herein "Control Instruments"), prior to breaking ground or commencing the corresponding project.

The Constitution further defines Colombia as a multicultural state where several ethnicities coexist. In particular, the Constitution acknowledges the importance of indigenous and afro-descendant groups, for whom it affords special protection. To ensure compliance of this constitutional mandate, the National Government introduced, by means of Law 21 of 1991, ILO Convention 169 on Indigenous and Tribal Peoples and, therefore, assumed obligations to obtain the previous and informed consent of ethnically differentiated groups whenever a project or a legislative measure has a direct impact over their territories or their interests.

Colombian Environmental Authorities and Supporting Entities

Colombia has environmental authorities at the national, regional and local levels. In addition, other entities are entitled to exercise certain supervisory, control and/or support activities as follows:

National Level:

a. Ministry of Environment and Sustainable Development

According to Law 99 of 1993, the Ministry of Environment and Sustainable Development (herein "MADS" for its acronym in Spanish) is considered the maximum environmental authority of Colombia. The MADS is responsible for the management of the environment and renewable natural resources. One of its main functions is to define the general public policies regarding the recovery, conservation, protection, management, use and exploitation of renewable natural resources.

b. The National Environmental Licensing Authority

In accordance with Decree 3573 of 2011, the National Environmental Licensing Authority (herein "ANLA" for its acronym in Spanish) is a dependency of the MADS in charge of granting environmental licenses for projects which are considered of national importance, or which may cause severe environmental impacts due to its magnitude. ANLA is entitled to exercise surveillance of the projects, works, or activities subject to environmental licenses, to ensure that said projects comply with the environmental regulation currently in force. In this respect, ANLA has the power to impose preventive measures and/or sanctions to environmental offenders.

c. The Special Administrative Unit of National Natural Parks of Colombia

The Special Administrative Unit of National Natural Parks of Colombia (herein "UAESPNN" for its acronym in Spanish) was created as a Special Administrative Unit at the national level. Its responsibility is mainly the management of the System of National Natural Parks and the coordination of the System of National Protected Areas. Additionally, in accordance with Law 1333 of 2009, the UAESPNN has power to impose preventive measures and/or sanctions to environmental offenders for breaches of the environmental law within the areas of the System of National Protected Areas.

Regional level:

a. The Regional Autonomous Corporations ("CARs") and Corporations for Sustainable Development ("CDS")

According to Law 99 of 1993 the Regional Autonomous Corporations (herein "CARs" for its acronym in Spanish) and the Corporations for Sustainable Development (herein "CDS" for its acronym in Spanish) are government environmental authorities of the regional level and the highest environmental authority within the limits of their jurisdiction.

Their competence is limited to areas of the same ecosystem or the same biogeographic or hydro geographic units (ecosystem criterion).

The CARs/CDS have the responsibility of controlling and managing the environment and natural resources within their jurisdiction and promoting sustainable development. In addition, they have the power to issue environmental licenses for small and medium projects and to grant environmental permits.

Finally, the CARs/CDS have power to impose preventive measures and/or sanctions to environmental offenders for breaches of the environmental law within their jurisdiction.

b. The Departments

According to Law 99 of 1993, the Departments (political-administrative entity at the regional level similar to provinces or states) have residual powers on the management of environmental issues. The Departments, however, lack competences to impose sanctions of any kind.

Urban/Municipal levels:

a. The Urban Environmental Authorities ("UEAs")

The Urban Environmental Authorities (herein "UEAs" for its acronym in Spanish) operate like the CARs/CDS. The UEA's perform the same functions that CARs/CDS do, with the difference that UAE's activities are conducted within the urban perimeter of the municipalities, districts or metropolitan areas with a population of at least 1,000,000 inhabitants.

b. The Municipalities

According to Law 99 of 1993, the Municipalities have residual powers over

the management of environmental issues. The Municipalities do not have any competences with respect to imposing sanctions.

Other entities:

a. Delegated Attorney for Environmental and Agricultural Issues

The Delegated Attorney for Environmental and Agricultural Issues is a dependency of the Attorney General's Office responsible for preventing, controlling and intervening, if necessary, before the administrative, disciplinary and/or judicial authorities, in any conflicts or issues related to the protection and preservation of the environment, natural renewable resources, and rights and conflicts related with land extensions.

b. Delegated Comptroller for the Environment

The Delegated Comptroller for the Environment is a dependency of the General National Comptrollers Office, responsible for directing and coordinating the surveillance of the environmental management in charge of the public servers in relation to all megaprojects of the State.

c. Specialized Unit in Environmental Crimes of the General National Prosecutor Office

The Specialized Unit in Environmental Crimes is subordinate to the General National Prosecutors Office. It is responsible for investigating environmental contamination, invasion of environmentally protected areas, illicit exploration and exploitation of natural reservoirs, among other crimes.

d. Scientific Authorities

Per Law 99 of 1993, there are several scientific institutes in Colombia that make up the National Environmental System (herein "SINA" for its acronym in Spanish). Said institutes are in charge of producing technical support information useful to decision makers and environmental authorities.

e. Colombian Police

According to Law 99 of 1993, the Colombian police has power to exercise police actions for protecting the environment. The Special Corps of Environmental Police shall serve as a

support entity for environmental authorities.

f. Colombian Navy

Pursuant to Law 1333 of 2009, the Colombian Navy has power to impose preventive measures in order to prevent thedamaging the environment. In exercising its powers, the Colombian Navy shall notify the competent environmental authority and send all the documentation for the environmental authority to investigate and, if applicable, to impose any sanctions established under Colombian law.

Colombian environmental authorizations

As indicated above, under Colombia law, it is necessary to request and obtain environmental authorization (either by a license or a permit) before undertaking projects or activities which may adversely affect the environment, or which will require use of Natural Renewable Resources. The Colombian environmental authorizations currently in force, include the following:

Environmental License

The key administrative instrument for the preservation of the environment and for controlling the use and exploitation of natural resources is the Environmental License[20].

The obligation to obtain an Environmental License applies exclusively to projects or activities that may entail severe deterioration of Natural Renewable Resources, or that have the potential to make considerable changes to the landscape (i.e. mining exploitation, oil transportation and storage, projects on natural park areas, hydrocarbonexploration and exploitation, and infrastructure projects, among others). In Colombia, said activities are defined in Decree 1076 of 2015, which means that the requirement to obtain an Environmental License only applies to those activities abovementioned and included in Decree 1076 of 2015.

The Environmental License is granted by the competent environmental authority

[20] This instrument is regulated essentially by Law 99 of 1993, Law 1450 of 2011, Law 1753 of 2015 and Decree 1076 of 2015.

(either the ANLA, or the CARs) according to geographic location, territorial jurisdictional distribution and the project's magnitudes or scales.

The Environmental License encompasses all necessary permits to undertake the project or activity and provides for specific conditions under which the Beneficiary of the license is required to conduct the project or activity.

Environmental permits

The following environmental permits are granted by the competent environmental authority (namely the CARs or UEAs) according to the geographic location, territorial jurisdictions distribution, and the relevant project's magnitudes or scales:

(i) Atmospheric Emissions

The prevention and control of atmospheric contamination and air quality regulation[21] requires the registration of some sources of air emission before the competent environmental authority. Once the source of air emission is registered, the interested party must obtain the relevant permit or authorization pursuant to the maximum allowable emission standards established by law. The term of the permit and/or authorization is generally 5 years and must specify the authorized emission and its quantity and quality characteristics.

(ii) Water

Colombian use of water regulation[22] provides 4 types of permits that may be granted for any project or activity implying the use of water, namely:

- Water Concessions;
- Discharge Water Permit;
- Permit to Occupy a Riverbed;
- Permit for the Exploration of Wells and Underground Water.

Water concessions grant the right to use and take water from rivers and wells. The term for which it is granted is 10 years, but in some cases can extend for up to 50 years. Discharge waste permits grant the right to discharge waste into the water; their term may be of up to 5 years. Permits to occupy a riverbed apply in the

[21] Is regulated mainly by: Decree 1076 of 2015 (Articles 2.2.5.1.2.8, 2.2.5.1.9.1, 2.2.5.1.9.2, 2.2.5.1.10.4 and 2.2.5.1.1.1. to 2.2.5.1.10.11), Resolution 2154 of 2010, Resolution 909 of 2008, Resolution 2153 of 2010, Resolution 1309 of 2010, Resolution 2254 of 2017 Law 9 of 1979 and Decree 2811 of 1974.

[22] Decree 1076 of 2015

construction and in the operation of hydraulic works for the protection and conservation of lands, riverbeds riverbanks, and streams or of any other body of water, or whenever infrastructure projects require crossing a watercourse. Finally, permits for the exploration of wells and Underground Water apply whenever the Beneficiary seeks to drill the subsoil in search of water.

In general terms, said permits must include the obligations of the Beneficiary, their duration, and causes for an eventual revocation or termination. The residue permit must also specify the type of residue, the applicable quantity and quality, and the treatment system.

In addition, there are 2 special permits with respect to water use for the following specific cases:

(iii) Hazardous and Special Waste

The development of an integral management of residues or wastes and/or hazardous wastes gave rise to the issuance of Decree 1076 of 2015 (Articles 2.2.6.1.1.1 to 2.2.6.2.3.6), the purpose of which is to prevent the generation of residues or wastes and/or hazardous wastes, and to regulate the management of such residues and wastes in order to protect the environment and human health.

Pursuant to the abovementioned regulation[23], all generators of residues or wastes and/or hazardous wastes are required to be registered in the Generators Registry of the competent environmental authority, according to Resolution 1362 of 2007 and Decree 1076 of 2015.

One of the most important mechanisms to comply with the said purpose is the Management Plan for the Devolution of Post Consumption Products (special waste), defined as a management instrument containing a set of rules, actions, proceedings, and alternatives to make the collection and return of wastes easier.

[23] The rules to handle, manage and finally dispose of residues or wastes and/or hazardous wastes in Colombia are established by: Law 430 of 1998, Decree 1079 of 215, Decree 1076 of 2015 (Articles 2.2.6.1.1.1 to 2.2.6.2.3.6), Resolution 1362 of 2007, Resolution 372 of 2009, Resolution 371 of 2009 Resolution 503 of 2009, Resolution 1738 of 2010, Resolution 361 of 2011and Law 1252 of 2008. Additionally, it is important to mention that these laws, decrees, and resolutions regulate the Basel Convention related with hazardous wastes that have been adopted by Colombia.

The Management Plans for the Devolution of Post Consumption Products (Take-back systems) are regulated, among others, in Resolution 371 of 2009 (expired medications), Resolution 372 of 2009 (lead-acid batteries) Resolution 1675 of 2007 (pesticides), Resolution 1512 of 2010 and Resolution 1739 of 2010 (computers). Additionally, Congress issued Law 1672 of 2013 whereby all wastes of electronic and electric equipment must be part of a take-back system. The Government is in the process of regulating this Law.

(iv) Noise

The levels of noise emissions are regulated in Colombia. There are several maximum levels of noise that have been established, among other regulations, by Decree 1076 of 2015 and Resolution 627 of 2006. Any activity must comply with the maximum noise levels established in said regulations. However, the applicable regulations have provided special cases where a person or company may exceed the maximum applicable levels.

(v) Offensive odors

Applicable regulation[24] in Colombia establishes the limits admissible to the emission of substances or mixtures of substances that cause offensive odors, particularly hydrogen sulphide, sulfur and ammonia. Whenever an activity involves the emission of said substances, the aforesaid regulations apply, and the competent environmental authorities have the power to enforce the provisions included in such regulations.

(vi) Wildlife and protected areas and environmental strategic ecosystems

Decree 2811 of 1974 (the Natural Resources Code) created a system of protected areas known as the National Natural Parks System (herein the "System") composed of certain areas that represent remarkable values for its natural, cultural and historic characteristics, and therefore are worthy of a special protection. As this System refers to protected areas, there are certain projects and activities that cannot be developed on those specific areas, such as mining and hydrocarbon projects.

[24] Resolution 1541 of 2013, Resolution 2087 of 2014, Resolution 1490 of 2014 and Resolution 672 of 2014

The following are some of the areas that have been recognized as protected by the System, specifically on Decree 2811 of 1974:

- National Natural Parks
- Nature Reserves
- Unique Natural Areas
- Fauna Sanctuaries
- Flora Sanctuaries
- Park Ways.

In addition, the activities allowed in those areas are limited to the preservation, investigation, education, recreation, cultural, recovery and control related activities.

Subsequently, Decree 1076 of 2015 developed and regulated the National System of Protected Areas,(herein "SINAP" for its acronym in Spanish), defined as a group of protected areas, private actors, institutions, management instruments and strategies that articulate those protected areas and contribute to the compliance of general purposes of conservation of the national territory. Decree 1076 of 2015 established two types of protected areas:

- Public Protected Areas which comprise areas of the National Natural Parks System, Protective Forestry Reserves, Regional Natural Parks, Districts of Integrated Management, Soil Conservation Districts, and Recreation Areas; and
- Private Protected Areas, which include the Natural Reserves of Civil Society.

Additionally, areas of moorland and sub moorland ecosystems, water source areas, and underground aquifer areas were also considered as strategic ecosystems of special ecological importance with singular protection, a categorization that demanded from environmental authorities the implementation of actions focused on conservational management. In 2018 the Congress enacted the law on moorlands in the country. Due to the enactment of said law, certain activities were expressly prohibited within said areas, such as mining and hydrocarbons activities.

On the other hand, Law 2 of 1959 on Forestry Economy established the so called Forestry Reserves, which encompasses the following reserves:

- Forestry Reserve of the Pacific
- Central Forestry Reserve
- Forestry Reserve of the Magdalena River
- Forestry Reserve of the Sierra Nevada of Santa Marta

- Forestry Reserve Serranía de los Motilones
- Forestry Reserve of Cocuy
- Forestry Reserve of the Amazon.

Other forestry reserves were also recognized as such by means of Decree 111 of 1959, Law 52 of 1959, Decree 2278 of 1953 and Decree 0111 of 1959 According to Decree 877 of 1976, all the aforesaid reserves are deemed to be National Forestry Reserves.

Finally, certain forestry regional reserves have also been declared as forestry reserves by the competent Regional Environmental Authorities. It is worth mentioning that in order to undertake activities within such areas, special environmental rules require the deployment of specific activities which are deemed to produce a low environmental impact.

Fauna and flora regulations are mainly contained in the Natural Resources Code and in the Agreement about Biological Diversity in the Rio Convention. Additionally, other significant regulations are the following:

- The Cartagena Protocol on Biotechnology Security to the Montreal Convention on Biological dated January 29th, 2000
- The Convention on International Trade of Threatened Wild Fauna and Flora Species (herein "CITES").

Endangered species are protected by Colombian environmental laws as well as by criminal law, including the performance of any activities related to the trading, transportation, exploitation and other activities involving endangered species without complying with applicable legal requirements. Persons engaging in said activities may be subject to the imposition of fines or imprisonment.

(vii) Forestry

Forestry related matters are regulated by Decree 1076 of 2015.

In this regard, Colombian law imposes as a requirement to cut-down natural forests/trees or to exploit products from the wild flora, the obtention of a Forestry Use Permit.

Said permit must include the specific obligations according to which the interested party must cut down trees or use the forestry-related products, the term within which such activities can be performed, and the reasons for an eventual revocation or termination.

Depending on the types of activities, there are 3 typologies of Forestry Use Permits:

- Forestry Permit for Domestic Use of the Wild Flora: They are intended to allow cutting down natural forests for domestic purposes limited to an annual amount of 20 cubic meters of wood.
- Forestry Permit for Single Use of Wild Flora: In order to cut down natural forests for a one time only.
- Forestry Permit for Economic Purposes: In order to cut down natural forests as an economic activity (i.e. on a permanent basis).

In addition to the above, if the forestry species are considered protected species, an additional procedure to lift the closed season to use the species applies as a requirement to cut said forestry.

(viii) Outdoor Advertising

Every local authority is empowered to regulate Outdoor Advertising within its respective jurisdiction. In that sense, depending on the location of the signage, the conditions will vary. Under the applicable regulation,[25] Outdoor Advertising is subject to a prior registration before the office of the competent local authority. The applicant must pay a fee for purposes of undertaking said Outdoor Advertisement.

Prior consultation of ethnic groups

The Colombian Constitution has acknowledged the existence of a multicultural state in which several ethnicities coexist. Particularly important are indigenous and afro-descendant groups, for whom special protection has been afforded under current legislation.

By means of Law 21 of 1991, the National Government subscribed to ILO Convention 169 on Indigenous and Tribal Peoples which recognized special rights to the Colombian ethnicities. It entailed the assumption of certain obligations to obtain the prior and informed consent of ethnically differentiated groups whenever a project or a legislative measure has a direct impact over their territories or their interests.

The Prior Consultation Protocol is considered a fundamental right of the indigenous and tribal peoples of Colombia, and therefore, a mandatory action for any company/individual that intends to undertake a project that might

[25] Law 140 of 1994

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affect the interests of such communities/ and or which is to be deployed within their ancestral territories.

Presidential Directive 10 of 2013 (modified by Presidential Directive 8 of 2020), Decree 1066 of 2015 and the case law of the Constitutional Court, have established the following 5 phases applicable to the Prior Consultation Protocol:

- Confirmation on the applicability of previous consultation
- Coordination phase
- Pre-consulting phase
- Consultation phase
- Follow-up phase

The process to consult the communities must be undertaken under the supervision of delegates appointed by the Ministry of Internal Affairs and of the Attorney General's Office. Once the process has finished, the agreements reached with the community must be formalized in minutes that serve as evidence that the Protocol was applied. Finally, as a formal pre-requisite to obtain an Environmental License, a Prior Consultation Protocol must be conducted, when applicable.

To determine whether there is presence of ethnic communities in the area of the project, or whether the area of the project is overlapped with indigenous or afro-descendant territories, the project developer must raise the respective petitions before the Directorate of Ethnicities of the Colombian Ministry of Internal Affairs. The Directorate must provide an answer based on the available information.

In the event there is no presence of either ethnic communities or of indigenous or afro descendant territories, the project developer may move forward with the development of the project in the terms referred to above. However, if there is otherwise presence of ethnic communities in the area of the project, or if the area of the project is overlapped with indigenous or afro-descendant territories, the project developer must conduct a Prior Consultation Protocol, prior to commencing any kind of activity, even exploration.

As explained above, as a result of the prior consultation with the community, the project developer may enter into agreements with the ethnic communities concerning the development of the project. If no agreement is reached, this will not prevent the development of the project, which might begin once the consultation has taken place.

Environmental Liability Regime – Administrative, Civil and Criminal Environmental Offenses.

Administrative Liability

In case of violation of the environmental regulations or damage to the environment, the victims affected by such violations and/or damages, or the competent environmental authority, may initiate judicial or administrative proceedings against the alleged infringer.

The competent authorities have available to them several measures established to guarantee compliance of environmental laws. Failure to comply with environmental regulations, including the violation of the conditions set up in the Environmental License or any other violation of permits, or authorizations, may imply the imposition of sanctions, penalties or fines. Moreover, said measures may also be imposed in cases were projects, works and/or activities may have commenced without the relevant environmental license, permit or authorization.

At the outset of the administrative environmental context, the competent environmental authority may initiate an environmental sanction proceeding which implies, specifically, exposure to one or several preventive measures and/or sanctions provided by Law 1333 of 2009. In the event the environmental authority considers that a company or an individual has committed an environmental violation, the relevant person/company will be sanctioned, and the sanction will be registered in the National Environmental Infringers Registry, which can potentially harm the reputation of the relevant company or individual.

Generally failure to comply with the environmental regulation can imply other types of consequences, such as:

- Contractual liability
- Tort liability
- Environmental liability
- Class actions
- Group actions
- Injunction actions ("*acciones de tutela*"),
- Criminal environmental liability
- Police actions, among others.

As mentioned above, certain violations to environmental laws are considered criminal offenses, such as illicit holding or handling of hazardous substances, illicit use of biological natural resources, illicit exploration and/or exploitation of mines, among others.

Furthermore, criminal offenses provide for both deprivation of liberty and fines, and some of the crimes are considered as culpable criminal offenses, such as the one associated with pollution in the exploitation of oil. However, it is important to clarify that companies cannot be held liable for criminal offenses, but their offices may be so charged.

Real Estate

Any investor interested in investing in real estate in Colombia must consider that Colombia guarantees the protection of private property. However, private property may be subject to certain limitations. Property has a sense of public interest, which entails that property must benefit the common good and, in general, the welfare of the country's citizens. Therefore, for reasons of public utility or of social interest, the State may initiate expropriation proceedings by means of which the State acquires privately owned property even against the owner's consent, for the benefit of the general public, such as the case of public interest projects. However, expropriation must be executed either by a court ruling or a government act, and prior compensation given to the owners.

Colombian nationals and foreigners have equal rights regarding the purchase of real estate, except for the acquisition of vacant lands (*baldíos*) located on national coasts or bordering regions. Real estate transactions do not involve additional tax, legal or financial burdens for foreign investors with respect to those applicable to Colombian nationals.

The activities to be carried out in real estate property must comply with land use and applicable zoning regulations.

Real Estate Acquisition

Before acquiring real estate investors are advised to perform a due diligence over the property, to which end the following documents are reviewed:

- A recently issued certificate of conveyance and good standing (*certificado de tradición y libertad*) of the property;
- The latest acquisition deed; and
- Any other acts relevant to the property and the intended use (*e.g.* tax payment certificates, cadastral certificates, land use certificates and/or urban or construction licenses).

Furthermore, it is advisable for investors to perform a title search and a land use analysis over the property. The results of a title search defines whether the current owner of a property has a free and clear title or if there are any liens, encumbrances or any other circumstance that may limit title to the property and its transfer. Land use analysis verifies the permitted uses, activities and construction capacity pursuant to the zoning regulations applicable to the property.
Colombian law establishes certain limitations on the purchase of rural land, particularly of vacant land. For example, article 72 of Law 160 of 1994 forbids the acquisition of current or former vacant land exceeding the maximum area known as an Agricultural Family Unit, which varies depending on the location of the property.

Real Estate Agreements

a. Purchase

In Colombia, it is common for the purchase of real estate properties to begin with the execution of a promise of sale and purchase agreement, which must be done in writing. The purpose of a promise to purchase and sale agreement is for the future purchaser and the future seller to agree to execute a purchase agreement. Therefore, this agreement must include all essential elements of the purchase agreement, as well as the execution date, place, time and public notary in which the agreement would be executed. Promise to purchase and sale agreements are usually entered into when there are condition precedents for the purchase and sale of the property.

Purchase agreements of real estate property must be executed by means of a public deed before a public notary, which must be registered in the Public Registry Office where the property is located. With the execution of public deed and its registration there are several transfer costs triggered: notary and registry fees and taxes. These costs vary depending on the price and location of the property, but generally accrue to approximately 2,1% of the purchase price. Customarily, seller pays 50% of notary fees (0,15% of the transfer costs) and the purchaser pays 50% of notary fees and 100% of registry fees and taxes (1,95% of the transfer costs). However, these costs can be paid by either party.

b. Lease

Lease agreements in Colombia can be executed verbally or in writing by agreeing upon the leased property and the rent. Nevertheless, it is recommended that the

lease agreement be executed in writing and include, at least, rent payment conditions, handover date and conditions, duration and renewals, terms of the improvements made on the leased property and early termination conditions.

Rent is usually paid monthly and in Colombian pesos. However, there are no restrictions to agree upon a different period to pay the rent or have the rent be established in foreign currency. Even if rent is agreed in foreign currency, it must be paid in Colombian pesos, at the exchange rate established by the parties or at the market exchange rate certified by the Central Bank at the payment date.
The lease of real estate in which commercial establishments operate are regulated by the Colombian Code of Commerce. Among other things, this code grants the tenant the right to automatically extend the term of the lease if such merchant tenant has operated the same commercial establishment for over 2 years. Nevertheless, the landlord may oppose such an extension in case of breach of contract by the tenant, when the landlord requires the property for his own housing or for its own commercial establishment (substantially different business from tenant's) or if the property requires demolition, to be rebuilt or for substantial repairs.

Lease agreements over urban housing properties and their brokerage are regulated by Law 820 of 2003, which regulates maximum amounts of rent increases, duties of landlords and tenants, and termination requirements, among others. Any stipulation against this law is deemed as not applicable, particularly those related to termination of the lease agreement and procedures mentioned therein.

Urban regulations

In Colombia, local authorities are legally obliged to issue a territorial zoning plan (*Plan de Ordenamiento Territorial*, herein "POT" for its acronym in Spanish) in order to regulate all aspects related to developments and land uses for each municipality and district. The POT is an instrument that sets the objectives, guidelines, policies, strategies, goals, programs, actions and regulations adopted by each territorial jurisdiction to manage the development of the land and its use.

The POT and its corresponding regulation determine the uses, activities, construction capacity and means to

develop and construct properties depending on their location.

Taxes levied on real estate

a. Property tax

Property tax is a levy at municipal level, which must be paid by the owners of real estate property. Property tax is paid each year and the amount due is calculated considering the cadastral appraisal and the zone where each property is located.

b. Capital gain (*Plusvalía*)[26]

This tax is triggered by acts that involve transfer of real estate property, change of the use of the land and the issuance of construction permits. Capital gains are generated by means of a government act that authorizes the increase of buildable surface area or the allocation of the property into a more profitable use, in accordance with the zoning regulations. Added value ranges between 30% and 50% of the higher value per square meter of the property.

c. Betterment levy (*contribución de valorización*)

The betterment levy is a lien on real estate, which is imposed on the owners or possessors of real estate properties that benefit from Government projects and works. This lien is registered in the record book of each property and prevents any type of transfer until such lien has been paid and cancelled.

Agribusiness

Colombia has the potential to become a global leader in food and bio-fuels production, since there is still a considerable portion of territory without any type of exploitation.

The Colombian Government has stimulated the development of the agribusiness sector by granting numerous incentives to investors. Among these incentives,worth highlighting is the Agricultural & Livestock Guarantee Fund, which is designed to finance agribusiness projects with financial, technical and environmental viability to borrowers unable to provide enough collateral required by financial entities. Also, in relation to tax matters, there are other

[26] Regulated by Law 388 of 1997.

incentives which make the investment in this sector highly attractive for investors.

Insurance and Reinsurance

Regulatory overview

The Insurance and reinsurance business are activities deemed of public interest and, therefore, may only be carried out with prior authorization of the State. Accordingly, it must be noted that the insurance and reinsurance business is heavily regulated with respect to the operation of insurers and reinsurers.

Regulation

The Colombian Commercial Code and the OSFS provide the basic regulations applicable to the insurance sector: insurance contracts and insurance industry regulation. The Colombian Congress issued Laws 510 of 1999, 795 of 2003 and 1328 of 2009, which amended certain provisions of the OSFS. Additionally, Decree 2555 of 2010 provides larger and more particular legislation with regards to insurance industry regulation.

Based upon the authority to implement the provisions of the OSFS, the Superintendence of Finance has issued various regulations. The most important regulations being Circular 100 of 1995 and Circular 029 of 2014. Circular 100 provides the accounting guidelines for financial institutions and Circular 029 provides the legal framework for persons involved in the Colombian financial market.

Persons entitled to carry out insurance business in Colombia

The only entities authorized to engage in the insurance business in Colombia are: (i) insurance companies, (ii) cooperatives, and (iii) branches of foreign insurance companies. All 3, subsidiaries, cooperatives and branches, must be duly incorporated in Colombia, with the prior authorization of the Superintendence of Finance. Particularly, branches are subject to supervision by the Superintendence of Finance and the corresponding foreign insurance company will be, at all times, liable for the obligations assumed by the branch in Colombia.

An insurer can be settled as non-life or as Life Insurance Company. Only Life Insurance companies can offer individual life insurance lines and professional risks insurances (a line originated from the Social Security System).

Insurers must fulfill capital, solvency, net worth and investment requirements, in order to develop their operation, the fulfillment of these requirements is monitored by the Superintendence of Finance.

It is important to note that pursuant to Law 1328 of 2009, foreign insurers are able, without incorporating a Colombian insurer, to underwrite and offer in Colombia insurances related to international maritime transport, international civil aviation and space launching (including satellites). These insurances may cover risks associated with goods being transported, the vehicles and liability arising from the transportation. In order to offer this kind of insurance, the foreign insurer and its intermediaries must be registered in a special registry maintained by the Superintendence called RAIMAT, for its acronym in Spanish.

In addition, in accordance with Law 1450 of 2011, foreign insurers are able, without incorporating a Colombian insurer, to underwrite and offer agricultural risks insurance in the Colombian market. Only those insurers and insurance intermediaries from abroad who are registered in the Registry of Foreign Insurance Entities and Foreign Insurance Intermediaries of Agricultural Insurance (“RAISAX” for its acronym in Spanish) are authorized to operate in the Colombian market to offer agricultural insurance.

Persons entitled to carry out reinsurance business.

Reinsurance activity may only be carried out by Colombian insurance companies, Colombian reinsurance companies and foreign reinsurers.

Colombian law allows foreign reinsurance companies and foreign reinsurance brokers to operate in the Colombian market by registering at the Registry of Foreign Reinsurers and Reinsurance Brokers (herein “REACOEX” for its acronym in Spanish) held by the Superintendence of Finance. Additionally, foreign reinsurance companies registered in the REACOEX have the option of establishing a representative office in Colombia in order to undertake reinsurance activities in Colombia on a permanent basis.

Finally, foreign reinsurance companies registered in the REACOEX may collocate business through underwriting agencies (coverholders) which must be reported in advance to the Superintendence of Finance by the relevant reinsurer.

Insurance intermediation

Insurance intermediation is an activity regulated by the Superintendence of Finance and may only be carried out by Insurance brokers, duly authorized insurance agencies and insurance agents.

Likewise, Colombian law establishes that intermediaries may only undertake intermediation in the insurance business and activities related thereto.

Consumption abroad

Any natural or legal entity residing in the country, may acquire abroad any type of insurance, except for the following:

- Insurance related to the social security system, such as death and disability insurance, lifetime annuities and workers compensation insurance;
- Compulsory insurance;
- Insurance in which the policyholder, insured or beneficiary must provide evidence, prior to purchasing the respective insurance, that it has compulsory insurance or that it is currently in compliance with its obligations to the social security system, and
- Insurance in which the policyholder, insured or beneficiary is a state-owned entity.

The Superintendence of Finance has stated that the Colombian resident must be located abroad at the moment of the conclusion of the relevant insurance policy.

Prevention Programs (AML/ABC)

As part of the UN and the Financial Action Task Force (FATF), Colombia must comply with the standards on prevention and sanctions for money laundering, financing of terrorism, and financing the proliferation of weapons of mass destruction (AML/FT/FPWMD). This country's commitment is reflected in different regulations that impose obligations to companies aiming to prevent those risks.

For instance, for companies[27] of a real sector and those that are not supervised by any other entity, the Superintendence of Companies issued Circular Letter 100-000016 of 2020, partially modified by Circular Letter 100-000004 of 2021 that imposes the obligation to implement a Self-Control and Integral Risk Management System for Asset Laundering, Financing of Terrorism and Financing of Weapons of Mass Destruction Proliferation (SAGRILAFT for its acronym in Spanish).
As for the health sector, the National Superintendency of Health issued External Circular 2021-1700000005-5 of September the 9th, 2021 where Health Service Providers (IPS) and Health Promotion Organizations (EPS) shall update and implement an AML/FT system called SARLAFT.

On the other hand, the Colombian Financial Superintendence (SFC), entity in charge of the surveillance of institutions related to the financial system:banks, insurance companies, trust companies,and the stock exchange, among others, issued External Circular 027 of 2020, where entities under its surveillance shall implement an AML/FT system, called "SARLAFT 4.0"[28] which will foresee new procedures for customers when dealing with legal entities, where the study of the legal representative´s data is not enough, but also rigor will be made in the mechanisms of identification and study of the members of the board of directors or the maximum organ of the counterparty.

As of April 28, 2020, Colombia officially joined the OECD which, together with the advantages that this brings,it implied a

[27] The term companies refers to legal entities constituted in Colombia or a foreign company branches domiciled in Colombia.

[28] Please note that entities related to the financial sector may be required to comply with other AML/FT systems or minimum elements of the Organic Statute of the Financial System (EOSF) aimed to prevent ML/FT risks, depending on the activity that the company will carry out in Colombia.

greater commitment to the fight against corruption.

In this sense, companies in Colombia must bear in mind whether or not they are obliged to have bribery and corruption prevention programs (ABC), such as the Business and Ethics Program of the Superintendence of Companies.

Finally, it is important to mention that on January 18, 2022, the Law on Transparency, Prevention, and the Fight against Corruption (Law 2195 of 2022) was sanctioned by the President of Colombia. This law brings new responsibilities for companies, such as the implementation of controls aimed at preventing crimes that affect public patrimony, due diligence procedures to identify beneficial owners (individuals with participation equal to or greater than 5%), and the obligation to provide the information required by those obliged to implement the AML/FT/FPDWM programs.

Civil and Administrative Liability Regarding Legal Entities

The main regulations which establish corporate liability for legal entities in Colombia are article 91 of the Criminal Procedure Code, Law 80 of 1993 of the Anti-Corruption Statute, Law 1778 of 2016 which prohibits transnational bribery, Law 2014 of 2019 and Law 2195 of 2022.

Although Companies in Colombia do not attract criminal liability, there are some measures, in the criminal procedure, which affect the legal entity.

When corrupt practices are performed by the representative or manager of a legal entity, whether they perform said practice directly or indirectly, the legal entity's may be subject to fines up to 200,000 Colombian Legal Minimum Wages (about 40,000,000 USD for 2022), the license may be suspended or cancelled, they will be prohibited from receiving subsidies from the State for up to 10 years, and it may be debarred from engaging in contracts with the Colombian State.

Moreover, Law 2195 of 2022, establishes that when the legal entity or branch of a foreign company domiciled in Colombia has benefited or sought to benefit, directly or indirectly, from the commission of the punishable conduct committed by its administrators or officers, and consented or tolerated the commission of the corrupt practice, the company may be sanctioned without prejudice of the criminal liability that may apply to the legal representatives.

In addition, article 35 of Law 1778 of 2016, establishes that if a manager or representative of a legal entity is found criminally liable of offering or giving a bribe, the legal entity may be subject to fines of up to 200,000 Colombian Legal Minimum Wages (about 40,000,000 USD for 2022).

Moreover, Article 91 of the Criminal Procedure Code provides the possibility for a judge to either suspend the legal personality of a legal entity or order the temporary closure of its premises or commercial establishments open to the public, whenever there's reasonable belief that the latter has been used in pursuance of criminal activities. Such measures may be declared permanent during sentencing. According to Article 34 of the Anti-Corruption Statute, these same measures can be imposed on legal entities that have sought to benefit from crimes against the public administration or any other crimes against public assets.

As previously mentioned, the Superintendence of Companies has been given the power to impose fines on legal entities involved in acts of transnational bribery (or when representatives or managers have been declared criminally liable for offering or giving bribes) of up to 200,000 Colombian Legal Minimum Wages (approximately 52,351,126 USD for 2020).

Finally, Article 8 of Act No. 80 of 1993 establishes debarment from state contracting for companies, their parent companies, and subsidiaries (except for public corporations) when any of their partners have been declared legally responsible for committing crimes against the public administration.

Criminal liability

If a crime is committed throughout a company, the criminal liability held on those who act as a legal representative of said company.

Foreign Exchange Regime

The Colombian Foreign Exchange Regime and the International Investment regime are strictly regulated. The Foreign Exchange Regime is issued by the Board of Directors of the Colombian Central Bank (*Banco de la República*) and the International Investment Regime is issued by the Colombian Government. Compliance is jointly supervised by the Superintendence of Companies (international investments and loans), the Superintendence of Finance (the activity of the intermediaries of the exchange control market), and the Colombian Tax and Customs Authority ("DIAN") (import and exports of goods and residual competence).

Pursuant to foreign exchange regulations, there are two types of currencies markets, due to the fact that the foreign exchange regime is based on the criteria that some transactions are under control and others are not subject to any control. As a consequence, (i) the Foreign Exchange Market and (ii) the Free Market coexists in Colombia.

Foreign Exchange Market

This type of market is regulated and comprises foreign exchange transactions qualified as "controlled" that must be paid through authorized intermediaries of the foreign exchange market (i.e. local banks or local financial entities that are authorized for these purposes) or bank accounts opened abroad and registered as compensation accounts.[29]

The following foreign exchange transactions must be paid through the Foreign Exchange Market:

- Import and export of goods
- International indebtedness
- Foreign Investment in Colombia
- Investment of Colombian capital abroad
- Financial investments and/or in assets located abroad and their returns (excepting those made with resources currently in the free market)
- Guarantees and collateral structures in foreign currency

[29] Compensation accounts are offshore bank accounts held by Colombian residents in foreign banks, which must be registered before the Central Bank and are subject to ongoing reporting obligations to the Central Bank and the Colombian Tax and Customs Authority ("DIAN").

- Derivative transactions

Currencies derived from transactions of the free market transferred voluntary through the Exchange Market are also considered part of the Foreign Exchange Market.

Free Market

Free Market is comprised of foreign exchange transactions that do not need to be completed mandatorily though the Foreign Exchange Market and the bank accounts opened by residents abroad and not registered as compensation accounts before the Central Bank. For example, payment of services, commissions, and franchises, among others.

Bank accounts authorized to non-residents in local currency

As per section 10.4.2 of Circular DCIN 83, the Central Bank authorized but subjected limits on the deposits of non-Colombian residents in local bank accounts to Colombian Pesos. The following accounts opened by non-Colombian residents do not require any authorization from the Central Bank:
(i) accounts for general use, which are checking or savings accounts in Colombian legal currency on behalf of individuals, legal persons or assimilated non-residents (only authorized to manage expenses, free market transaction and imports and exports of goods payable un-COP and derivatives); and
(ii) accounts for exclusive use, referring to checking or savings accounts in Colombian legal currency on behalf of individuals, legal persons or assimilated non-resident, which are intended for specific activities authorized therein.

The following are the exclusive use accounts foreseen in the Central Bank's regulations:

- Accounts for direct foreign investment operations that are used to receive resources from local credit operations with local banks, or the redemption of other foreign investment, to perform any direct investment in Colombia.
- Deposits of foreign portfolio investments (individual and omnibus accounts), which may only be used for foreign capital portfolio investments and related operations.
- Centralized foreign securities deposit accounts held by centralized foreign securities depositories that participate in integration agreements among stock exchanges and are used for

transnational operations of foreign portfolio investments and related operations.

- Accounts of non-Colombian residents to disburse and receive payments for foreign indebtedness operations in local currency, which may only be debited or credited in the terms authorized in the Colombian Central Bank's regulations.

International Investments

Pursuant to foreign exchange regulations, foreign investors in Colombia and Colombian residents that invest abroad must properly complete their operations through the foreign exchange market and register their investments with the Central Bank. This obligation allows the Central Bank to supervise, for statistical purposes, investment flows and to protect foreign exchange rights [reinvestment and repatriation].

The Foreign Exchange Regime classifies foreign investment in foreign direct investment (hereinafter "FDI") and portfolio investment.

Foreign Direct Investment in Colombia

The most important principle guiding foreign investment in Colombia is that they must receive equal treatment *vis-a-vis* in reference to that of Colombian investors (commonly referred to as the national treatment principle). Foreign investment is freely allowed in all sectors of the economy except for the following activities:

- Defense and national security
- Processing and disposal of hazardous or radioactive products not produced in Colombia.

Investment in financial entities may be subject to prior authorization by the Superintendence of Finance [when it exceeds 10%].

The following are examples of FDI:

- In domestic corporations: A company's capital contribution by means of the acquisition of shares, quotas in limited liability companies, or convertible bonds.
- In shares registered in the National Registry of Securities Issuer (herein "RNVE" for its acronym in Spanish) declared with the permanence aim by the foreign investor.
- In Trust: The acquisition of rights in trust agreements with trust companies

under surveillance of the Superintendence of Finance.

- Real State: The acquisition of real estate, directly or by means of a trust agreement, or securities issued in connection with a real state securitization or REITs.
- Investment agreements: The contributions by investors in joint ventures and concessions, among others, when they do not represent company's capital contributions and the income obtained is related to the businesses' properties.
- Local Branches: Contributions to the assigned capital or the supplementary investment to the assigned capital of branches.
- Private Equity Funds: Participation of non-residents in local private equity funds.
- Intangibles: Acquisition or contribution in intangible investment.

Portfolio investments

The following are examples of portfolio investment:

- Values listed in the National Registry of Securities Issuer.
- Listed assets in foreign valuation systems.
- Any type of issued assets by foreign companies duly registered before the RNVE.
- Investment in collective funds.

Foreign exchange rights and protection

Foreign investment duly registered with the Central Bank confers on the investor the following rights:

- To transfer abroad the dividends resulting from the investment.
- To reinvest or capitalize dividends and income derived from the disposal of such investment.
- To transfer abroad any income derived from the sale of the investment, the liquidation of the company or portfolio or the reduction of the company's capital.

Formalization proceedings

Foreign investment can be carried out in foreign currency or by any lawful agreement

In case of investment in foreign currency, the investor must complete any transfer of funds through the foreign exchange market by means of filing an International Investment Foreign Exchange Form

(formerly known as *Form number 4*) in order to perform the automatic registration with the Central Bank.

Foreign investment can also be performed in kind and as per any lawful agreement, in which case it is mandatory to file a Registration of Foreign Investments Form (Form 11) directly with the Central Bank (*Banco de la República*), at any time (currently without a deadline).

Finally, foreign investors shall comply with the following obligations:

- Registration, update and materialized the foreign investment in Colombia with the Central Bank.
- Appoint a proxy in Colombia for foreign investment purposes, who shall submit, through foreign exchange intermediaries or directly to the Central Bank, the corresponding foreign exchange declarations, and reports, in order to comply with the legal obligations of the foreign investor.
- Maintain documents and records regarding foreign investments in case they are required by foreign exchange control authorities, given that Colombian foreign exchange control authorities (e.g., Superintendence of Companies and the Colombian Tax and Customs Authority ("DIAN")) might request the documents that support foreign exchange operations.

Investment by Colombian residents abroad

In accordance with local regulation, Colombian investment abroad can be made in 2 different ways:

- Investment of Colombian capital abroad: Acquisition of corporations and agencies abroad , including shares, quotas, rights and other participation in a company abroads equity, branches or any other type of company, acquired in foreign currency or by a lawful act, contract or operation.
- Financial investments and investments in any kind of assets abroad: Purchase of securities issued abroad or assets located abroad, external debt and bonds or external public debt securities and foreign money transfers arising from the placement of securities issued by foreign companies or governments by the issuer or its agent in Colombia. Provided that the respective placement was duly authorized by the Superintendence of Finance. This kind of investment can be performed

through the exchange control market or through the free market (in this case without registration with the Central Bank).

By registering the investments made abroad in the Central Bank Colombian investors shall repatriate, through the Foreign Exchange Market, dividends and any gain generated by the foreign investment as well as any other income derived from the sale or disposal of the investment.

Colombian investment abroad made in currency must be registered by means of submitting an International Investment Foreign Exchange Form (formerly known as Form number 4) to an intermediary of the foreign exchange market or directly before the Central Bank in case of use of ca compensation account. Investment of Colombian capital abroad can also be done in kind or as per any lawful agreement, in which case is needed to file a Registration of Foreign Investments Form (Form 11) directly with the Colombian Central Bank, at any time (currently without deadline).

Special Foreign Exchange Regime

Colombian regulation provides for a special foreign exchange regime that may be applicable to branches of foreign companies that:

- Execute activities of exploration and production of petroleum, natural gas, coal, ferronickel, and uranium.
- Provide services that are inherent to the hydrocarbon sector and exclusively devoted to this kind of services as set forth by Law 9th of 1991 Art. 16 and Decree 1073 of 2015. These branches must be duly authorized and recognized by the Ministry of Mining.

Branches that choose to be subject to the special regime do not have access to the Colombian foreign exchange market. This means that these branches, in general, may not freely buy foreign currency through the exchange control market nor complete any operation that is deemed as mandatorily completed through such market, but only for authorized transactions. Additionally, these branches are not allowed to open or hold compensation accounts.

These Branches are only authorized to transfer money abroad though the

intermediaries of the exchange control market, in the following cases[30]:

- Funds obtained as a result of internal sales of petroleum, natural gas, coal, ferronickel, and uranium or services rendered to other residents, payables in Colombian pesos.
- The remaining funds in the case of liquidation of the branch.
- The sums received in Colombian pesos related with their operation.

Branches under the special foreign exchange regime may register payments made abroad by the head office on behalf of the branch (i.e. payment of imports made by the branch or services rendered in favor of the branch and many other transactions) as an increase of the supplementary investment to the assigned capital of the branch.

Notwithstanding, any payments made or received by the head office on behalf or in favor of the branch may be reflected as an increase or decrease of the supplementary investment to the assigned capital.

- Any income resulting from contracts executed with foreign residents may be received and kept abroad.
- Payments derived from contracts with Colombian residents may be made in foreign currency to the extent that the Colombian resident is also an entity that performs activities as part of the hydrocarbon and mining sector [in case of services duly authorized by the Ministry of Mining], and the foreign currency used for these payments is derived from the performance of relevant local entities' business activities.

Transfers from the head office in favor of the local branch are only permitted for paying local liabilities and expenses and are reported as a part of the assigned capital or an increase of the supplementary investment to the assigned capital of the branch.

Foreign Indebtedness

The Foreign indebtedness regime applicable in Colombia is divided into two types of international loans: (i) Passive Foreign Indebtedness, in which a Colombian resident is the debtor of the loan and a non-resident, or a Foreign

[30] A certificate of the fiscal auditor of the Branch is required.

Exchange Intermediary are the creditors and (ii) Active Foreign Indebtedness, where a Colombian resident (individual or corporation) is the creditor of the loan and the non-resident is the debtor.

Currently, foreign indebtedness can be settled in foreign currency or Colombian pesos and can be disbursed or paid also in foreign currency or Colombian pesos (in this case, using an account of non-Colombian residents to undertake foreign indebtedness operations in local currency).

Foreign loans must be registered by filing a Passive foreign indebtedness registration (“Form No. 6”) and an Active foreign indebtedness registration (“Form No. 7”) with a Foreign Exchange Intermediary.

It is necessary to obtain an identification code for the creditor of foreign loans to be able to grant loans in foreign currency to Colombian residents. Foreign creditor codes will be issued directly by the foreign exchange intermediary (i.e., a local bank), upon filing of the foreign indebtedness registration (“Form No. 6”), streamlining the process. It is important to bear in mind that, in some cases, the filing of corporate or financial information of the creditor will be required.

Likewise, according to External Circular DCIN-83, registration of foreign loans granted by Colombian residents require a code for the purposes of identifying the foreign debtor. Accordingly, the Colombian creditor, his agent or a proxy may request the code, by way of completing and filing a “Form No. 7” with a Foreign Exchange Intermediary.

The granting of the loan, as well as the inflow and outflow of foreign currency to and from Colombia, performed as a consequence of the disbursement and repayment of the loan, must be completed through the Foreign Exchange Market and must be registered by means of filing specific foreign exchange declarations for these purposes.

Amendments made to foreign indebtedness operations (such as the assignment of the loan either by the creditor or the debtor) are subject to registration of said operations and must be reviewed carefully on a case-by-case basis in order to avoid sanctions.

Imports of Goods

The payment for imports of goods is a transaction that must be paid through the Foreign Exchange Market and using an authorized payment method (bank

transfer, credit card, letter of credit) or the type of import (short-term import, long-term import, ordinary import, etc.) through the filing of an Import of Goods Foreign Exchange Form (formerly Form No. 1) for the imports of goods, as established by the Central Bank. There is no legal term to pay imports of goods. The import financing does not qualify as a foreign indebtedness [exempt in case of leasing].

Exports of Goods

The export of goods is a foreign exchange transaction for which payments must be completed through the Foreign Exchange Market, by means of filing an Export of Goods Foreign exchange form (formerly Form No. 2).

Reimbursement of exports can be done through the Foreign Exchange Market using an authorized payment method (bank transfer, credit card, letter of credit and also in cash transferred through the exchange control market within the following 6 months upon reception).

Compensation Accounts

Compensation accounts are bank accounts that Colombian residents may hold abroad in foreign banks. This type of account is used to pay and receive foreign currency for transactions that are under foreign exchange control and to mandatorily be traded through the Foreign Exchange Market. As per a special authorization, Compensation Accounts can be used to perform payments in foreign currency between residents in Colombia.

Compensation Accounts are subject to the following special registration and report obligations:

- Compensation accounts must be registered with the Central Bank through the filing of an Exchange Form No. 10 “Registration of Compensation Accounts”.
- Compensation accounts must be registered no later than one month following the first foreign exchange transaction that has to be completed through the Foreign Exchange Market and which is conducted through the account.
- Monthly, the titleholder of the compensation account must submit to the Central Bank an Exchange Form No. 10 “Compensation Account Transactions Balance” summarizing all of the transactions and investments conducted through the account during the earlier month.
- On a quarterly basis, detailed information must be presented to the Colombian Tax and Customs Authority

("DIAN") related to exchange control transactions under the Authority.

To submit the exchange information related to the compensation account, the account holder must enter into an online agreement available on the website of the Central Bank. Afterwards, the account holder receives an ID and password that allows the filing of the electronic Form No. 10 "Registration of Compensation Accounts" and the other Forms that may apply regarding the reports of the compensation account.

Reporting obligations and electronic transmission must be observed from the registration of the compensation account until its cancellation before the Colombian Central Bank.

Customs Regulations

Colombia's strategic geographic location, together with the great number of investment and commercial agreements entered with worldwide actors provide an ideal scenario for the country to be an export platform and for accessing international markets in competitive conditions. In addition, Colombia has developed customs systems and procedures, which allow a swift and efficient trade of goods and services.

Foreign Trade Procedures

One of the most relevant mechanisms implemented by Colombian Government to ease international trade operations is the Single Window for Foreign Trade (herein "VUCE" for its acronym in Spanish), managed by the Ministry of Trade, Industry and Tourism. Such mechanism was established in 2005, and is an electronic platform that aims to centralize all government procedures related to foreign trade operations in one simple electronic interface. To this purpose, VUCE has 3 separate sections: Imports, Exports and Single Foreign Trade Form (herein "FUCE"), that allows on-line transactions such as electronic payments to speed up procedures, as

well as a more precise and rigorous control by the authorities. More information on VUCE may be obtained online (www.vuce.gov.co).

Nowadays, the Importer of Record ("IOR") is allowed to carry out import operations directly before the DIAN, without a customs broker. Nonetheless, in order to carry out said operations, it will be necessary to file and submit the Import Return ("IR"), that must be accompanied by the supporting documents of the import operation, such as: commercial invoice, transport document, authorization or license, packing list, certificate of origin, and Value Return.

Importation Procedure

Pursuant to Colombian Customs Regulation, importations are defined as the entry of goods into the "National Customs Territory"[31] from the rest of the world, or from a Free Trade Zone, permanently or temporarily, for a specific task or purpose. The customs tariff code of 10 digits are listed in the Colombian Tariff Schedule set forth by Decree 1881 of 2021, that was recently updated to incorporate the seventh edition of the Harmonized Commodity Description and Coding System generally referred to as the "Harmonized System" developed by the World Customs Organization. This Schedule lists the applicable tariffs for each tariff code (tariff subheading).

a. Importation for Consumption

Importation for consumption is the most common type of importation in Colombia. Under this regime, in order for the importer to receive the goods on free disposal, it must first pay all customs taxes (tariff and VAT) arising from the importation of the goods.

Pursuant to Colombian Customs Regulation, the importation of certain goods is subject to a prior authorization or license from the corresponding government authority (i.e. importation of fuels, used or refurbished machinery, among others). Such authorization is requested electronically to the corresponding authority through the VUCE and it must be presented before the

[31] Article 3, Decree 1165, 2019. "National Customs Territory: Limit within which customs laws apply, covers the entire national territory, including the subsoil, the territorial sea, contiguous zone, continental shelf, exclusive economic zone, airspace, the segment geostationary orbit, the electromagnetic spectrum and the space where the Colombian state acts in accordance with international law or the laws of Colombia in the absence of international standards".

DIAN as part of the supporting documentation of the IR.

b. Temporary Importations for Subsequent Re-exportation in the Same Conditions

This regime of temporary importation is defined as the importation of certain goods that must be exported in the same conditions in which they entered the National Customs Territory within a specific period. Under this type of importation the applicable customs taxes (tariffs and VAT) are suspended or payable in installments.

This type of temporary importation may be of 2 subtypes:

(i) Short-term

Under this type of temporary importation, the maximum importation term will be 6 months, extendable for up to 3 additional months, and in exceptional situations for up to another 3 months with prior authorization from DIAN. The customs taxes on this type of temporary imports are suspended (no payments).

Additionally, under this type of temporary importation, the importer must grant a bond equivalent to 100% of the suspended import taxes.

(ii) Long-term

It applies to the importation of capital goods and any accessory or spare parts, provided that they constitute one single shipment. The maximum term for these imports is 5 years. Customs taxes are deferred in semiannual installments, which must be paid while the goods are within the National Customs Territory. Additionally, under this type of temporary importation, the importer must grant a guarantee equivalent to 150% of the customs taxes.

International Leasing

International leasing is used for financing long-term temporary importation of capital goods, which may remain in the National Customs Territory for more than 5 years. In addition, DIAN may allow the long-term temporary importation of accessories, parts and spares that do not arrive as part of the same shipment if they are imported within the mentioned 5-year term.

Payment of customs taxes (tariffs and VAT) is carried out in semiannual payments. The maximum term for deferral is 5 years, regardless of whether the goods remain for a longer period in Colombia. When the term of the

agreement exceeds 5 years, all outstanding customs taxes must be paid with the last payment corresponding to such period.

Other Types of Importation

In Colombia there are other different types of importation, some with considerable benefits, such as: imports with franchise, imports for transformation and assembly, temporary importation for inward processing, re-importation for outward processing, re-importation in the same condition, importation for warranty compliance, importation of samples with no commercial value, importation through postal traffic and urgent deliveries, and travelers' regime.

Exportation

According to Colombian law, exportation is a foreign trade operation consisting on the exit of goods and/or services from the National Customs Territory to other countries or to a Free Trade Zone.

Any entity willing to export must obtain the Unique Tax Registration before DIAN. Such registry does not entail any costs as it is also done automatically when the entity is registered before the local Chamber of Commerce.

The exportation procedure begins with the filing of the request for boarding authorization ("SAE" for its acronym in Spanish) issued by DIAN through the customs electronic system known as *MUISCA*.

Once the goods have been authorized for exportation and their load has been certified by the carrier, the exporter must file and deliver the corresponding Export Return. In addition, according to Colombian Customs Regulation, in order to export certain goods (i.e. live cattle, gold, among others), a prior authorization issued by the relevant authority is needed. Furthermore, there are not any applicable taxes or duties for exportation. It is worth mentioning that chemical, biological, and nuclear weapons, as well as nuclear waste and toxic waste cannot be exported.

Alternatives to optimize foreign trade operations

a. International Trading Companies (general regime)

International Trading Companies are legal entities which main corporate purpose is the marketing and sale of Colombian products (purchased or manufactured) in the foreign market. Nonetheless,

International Trading Companies may conduct other activities, provided that such activities are related to the company's main corporate purpose.
Under the Customs Regulation, International Trading Companies benefit from:

- Purchasing domestic goods exempt from VAT under the terms of the Colombian Tax Code, as long as they are exported within the 6 months following the date of issuance of the relevant certificate to the supplier.
- Obtaining the Certificate of Tax Refund (herein "CERT") for export. Said Certificate must be agreed with the producer. CERT levels are currently at 0%; thus, this benefit is not applicable in practice. Still, in the future the National Government might activate this mechanism (i.e. for specific industries), as has happened in previous years.
- Not withholding tax on the International Trading Companies' purchase of goods aimed at being exported.

b. International Trading Companies (Small & Medium-sized Companies)

As in the case of the general regime, the main corporate purpose of these companies consists of the marketing and sale of Colombian products abroad. However, in the specific case of International Trading Companies regulated by Decree 1451 of 2017, these products must be purchased in the internal market from small and medium-sized companies or must be manufactured by producers who are members of these companies.
Under current Customs Regulation, these International Trading Companies enjoy the same benefits, which were explained under the general regime, and they also benefit from:

- No minimum net wealth required.
- Customs bonds reduced to 1% of the FOB value of exports made during the 12 months immediately prior to the presentation of the request for authorization.
- Access to services and support programs for companies, implemented by the Ministry of Trade, Industry and Tourism.
- Support from PROCOLOMBIA (the entity that promotes international tourism, foreign investment, and non-traditional exports in Colombia) in the development of work plans for international markets.
- Support from the Regional Productive Transformation Program (commonly

known as "*Colombia Productiva*") in the identification of small and medium-sized enterprises that can offer their goods, especially when they are part of the value chains prioritized in the Productive Development Policy.

c. International Logistics Distribution Centers

International Logistics Distribution Centers (herein "ILDC") are public deposits authorized by DIAN, located in ports, airports and Specialized Logistics Infrastructures[32], in which it is possible to store foreign and national goods, as well as merchandise in the process of finalizing a temporary importation or of transformation and/or assembly. Such goods will be distributed through re-shipment[33], import or export, and may remain in the ILDC for up to 1 year from the date of arrival to the National Customs Territory. This period may be extended for an additional term of 1 year.

ILDC can only perform the following activities: storage, handling, packaging, repackaging, sorting, cleaning, laboratory analysis, surveillance, labeling, marking, placement of commercial information, legends, package separation, preparation for distribution and improvement or conditioning of the presentation, provided that the operation does not alter or modify the nature of the merchandise or does not affect the taxable base for the settlement of customs duties.

Revenues that result from disposal of foreign goods owned by foreign companies or by persons without residence in the country, that have been introduced from abroad into an ILDC, located in international airports, seaports and river ports located in the departments of Guainía, Vaupés, Putumayo and Amazonas authorized by DIAN, are not subject to income tax. However, in cases in which foreign companies or persons without residence in the country, that own the merchandise have any economic link in Colombia, such tax relief will only operate if their economic affiliates in the country do not obtain any benefit from the disposal of the goods.

32 Specialized Logistics Infrastructures (SLI) are delimited areas where activities related to logistics, transport, handling and distribution of merchandise, basic technical functions and value-added activities for national and international trade of goods are carried out by one or several operators.

33 It is the export modality that regulates effective exit from the National Customs Territory of goods coming from abroad, that are in place of arrival, in storage in an authorized warehouse, in a free warehouse or in ILDC, which have not have been subjected to an import modality, nor have they been abandoned.

d. Special Import and Export Programs (herein "Vallejo Plan")

In order to promote foreign trade operations, Colombia has included in its customs regulation special import-export programs. Through these programs, goods such as capital goods, raw materials, inputs, and parts may be imported with certain tax and customs benefits. These special import-export programs include the following:

(i) *Vallejo Plan* for raw materials and inputs: This plan allows importing, with total or partial suspension of customs taxes, specific goods, essentially raw materials, for total or partial export within a certain period of time, after having undergone transformation, manufacture or repair (materials required for these types of operations are entitled to equal treatment as the specific goods). Under this modality of *Vallejo Plan*, the IOR is obliged to export 70% of the goods that incorporate the imported raw materials and inputs.

(ii) *Vallejo Plan* for capital goods: This plan grants suspension of tariffs and deferral of VAT payments for the importation of capital goods, spare parts and intermediate goods.

(iii) *Vallejo Plan* for services' exports: It allows the temporary importation (without customs taxes payment) of goods for the purpose of being used in a project for the exportation of services.

Those having access to this program must export services, for an amount equivalent to 150% of the FOB value of the imported capital goods and spare parts. In addition, users of this *Vallejo Plan* must give proper use to the capital goods and spare parts temporarily imported and may not sell them or give them a use different from the one that was authorized, while the goods are under the program restrictions. Usually, this type of *Vallejo Plan* is applicable to the export of services provided by companies whose main activity consists of one of the following:

- Services of transmission, distribution and commercialization of electric energy.
- Special design services, value-added telecommunication and software exports.
- Lodging services.
- Human health.
- Air transportation of passengers.
- Research and development.
- Consulting and management.

- Architecture and design.
- Engineering.

(iv) _Junior Vallejo Plan_: This Plan grants the exporter of goods the right to replace, through a new import exempted from additional customs duties, the raw materials or inputs that have been used in the production of such goods, when all customs duties were originally paid upon the initial importation. This reposition right must be requested within the 12 months following the shipment of exported products.

(v) _Vallejo Plan_ for spare parts: This Plan allows the approval of a global number of imports, in US dollars, to be used for the temporary import of spare parts to be integrated into capital goods, with suspension of tariffs and deferral of VAT payments.

With the importation of spare parts, and export undertaking equivalent to 70% of the increases in the production is acquired, which is generated by the incorporation of the spare parts into the capital goods.

(vi) _Express Vallejo Plan:_ This plan is more expeditious since the term for the evaluation and approval of the application is 15 days, as opposed to the standard Vallejo Plan in which this term equals to 1 month. This plan offers modalities for raw materials and inputs, capital goods and exports of services. Additionally, it reduces the export commitments established under the traditional *Vallejo Plan*. Still, its period of validity is limited since the application to access to this plan can only be submitted until March31st, 2023.

e. Free Trade Zones

Free Trade Zones (herein “FTZ”) are geographical areas within the Colombian Territory intended to develop highly productive and competitive industrial processes. Said areas are used by companies to develop projects to produce goods or services, or to perform commercial activities under special tax, customs and international trade regulations.

The main purposes of FTZs are:

- To Create employment and receive capital investments
- To Enhance the competitiveness of the regions where they are established
- To Encourage the development of new technologies and of value-added

processes in the production of goods and services
- To Stimulate economies of scale
- To Simplify procedures for trade in goods and services.

Users of an FTZ are entitled to perform any type of economic activity, except for those expressly prohibited by law, namely:

- The FTZ status cannot be granted in geographical areas suitable for the exploitation or exploration of non-renewable resources[34].
- Financial services.
- Public utilities services, except in case of power generation companies or companies providing international long-distance telephone services.
- Activities to be performed under a state public concession contract.

Tax Benefits

- 20% income tax rate.
- VAT exemption for raw materials, inputs and finished goods sold from the National Customs Territory to or among Industrial Users to be used in the development of activities within their corporate purposes.
- Exports from the FTZ to the rest of the world are VAT exempted.

Customs Benefits

- Introduction of goods to an FTZ, does not trigger Customs Taxes.
- Goods manufactured or produced in FTZs can be imported to the National Customs Territory by only paying Customs Duties on the value of the foreign goods incorporated in their production.
- Simplified procedures for the introduction and exit of goods.
- Storage activities as a complement to the industrial activity.
- Possibility of importing goods within the FTZ.
- Possibility of temporary removal of raw materials to process them outside the FTZ for 6 months, extended maximum for an additional 3 month period.
- Exports made from the FTZ to third countries benefit from Free Trade Agreements ratified by Colombia.
- Possibility of carrying out partial processing activities outside the Free Trade Zone.

[34] Bearing in mind Off-Shore Free Trade Zones, as mentioned in Section c. Types of Free Trade Zones.

Types of Free Trade Zones

Any investor intending to carry out activities in Colombia within an FTZ can choose among Single Company FTZ, Permanent FTZ and Transitory FTZ to perform its operations,

- The Permanent FTZs are limited to geographical areas where multiple companies are established to undertake industrial processes, render services or perform commercial activities.
- The single company FTZs are authorized areas for one industrial user exclusively to undertake industrial activities. Contrary to the permanent FTZ, it allows one company to benefit from the FTZ regime and develop investment projects with high economic and social impact. In particular, the single company FTZ can be developed in the following sectors: dairy, services, ports, goods, agribusiness, and health services.
- The transitory FTZ are exclusively intended for fairs and commercial events and are managed by a single user.

Additionally, Decree 2147 of 2016, seeking to attract investment from the hydrocarbon sector and to obtain economic benefits, created an exception to the prohibition of Permanent Free Trade Zones for the exploration, exploitation and extraction of non-renewable natural resources, called off-shore Free Trade Zones. This regime applies to all coastal areas dedicated exclusively to the "*Technical Evaluation, exploration and production of oil and gas offshore; and (…) Logistics, compression, transformation, gas liquefaction and all other activities related to the offshore oil and gas sector .*"

Among others, this regime allows for the importation of equipment for the exploration and exploitation of oil and gas on the Colombian continental shelf, without payment of applicable customs' taxes.

Colombian Tax Regime

Colombian national taxes are administrated and collected by the DIAN which is the national tax authority and local taxes are administrated and collected by the local tax authorities of the Colombian Departments (similar to provinces or states) and municipalities.
The main national taxes are income tax, VAT, , and debit tax. The most relevant local taxes are turnover tax, real estate tax, and registration tax.

Income Tax

National legal entities and branches of foreign entities are subject to this tax on their worldwide ordinary and extraordinary income. Conversely, foreign legal entities are taxed solely on their Colombian-sourced, ordinary and extraordinary income.

The tax basis is a net value, after non-taxable items, costs and allowable deductions have been subtracted.

Income tax is levied on net profits perceived by a taxpayer during a certain fiscal year (whether individuals or legal entities) and is assessed in connection with 2 specific components: income tax, which is determined upon the taxpayer's ordinary income, and capital gains tax, which is determined upon occasional income.

Both components must be included in an annual income tax return. As provided in the latest tax reform[35], ordinary income is subject to a 35% as from 2022. 2 onwards, for both resident and non-resident legal entities.

As a complementary tax, capital gains tax accrues generally at 10% on profits derived from gifts, donations and the sale of fixed assets owned for at least 2 years, among others. Capital gains cannot be offset with ordinary deductions or losses. In addition, capital losses cannot be considered when calculating ordinary taxable income.

There are 2 ways to determine a taxpayer's income tax. The first one is the taxpayer's ordinary system (gross revenues of the company, minus deductible costs and expenses). The second is the taxpayer's presumptive income, which is currently not operational,

[35] Law 2155 of 2021

since the tax rate is 0% over the taxpayer's net assets.

When computing the income tax liability under the ordinary system, costs and expenses incurred that are related to the income-generating activity are deductible, provided that they are also necessary and proportional to such activity and that they are accrued or paid in the tax year in which they are claimed as deductions[36]. Any expense that meets the foregoing requirements may be claimed as a deduction unless special further requirements are provided for under the applicable rules and regulations.

Once a Permanent Establishment (herein "PE") is formed in Colombia, it will be liable to income tax on any worldwide income that is attributable to the PE, under specific rules and procedures. Broadly, the PE definition in Colombia follows the principles of the PE rule included in the OECD Model Convention for the avoidance of double taxation. These rules define a PE as a fixed place of business through which a person (including a company) undertakes wholly or partially its business activities. For such purposes, the term "permanent establishment" includes branches, offices, factories, workshops, companies, among others.

Additionally, the Colombian rule (as well as the OECD MC) provides for the possibility of a dependent agent PE, according to which, a foreign entity may have a Colombian PE if a person (including a Colombian legal entity), other than an agent of an independent status, acts on behalf of an enterprise and habitually exercises in Colombia an authority to execute contracts in name of the legal enterprise.

Dividends Tax

Dividend's tax is imposed on profits distributed by Colombian entities. Dividends distributed by a Colombian entity to another Colombian entity, out of profits that were taxed at the corporate level, will be subject to a 7.5% withholding dividend tax (transferrable to individual or foreign entities subject to dividend tax). Dividends distributed out of profits that were not taxed at the corporate level will be subject to tax at the income tax rate applicable to the year of the distribution (35 as from 2022). The remaining amount of the dividend is subject to tax at 7.5%.

[36] Section 107, Colombian Tax Code

Dividends paid by a Colombian entity to a foreign shareholder from profits that were taxed at the corporate level will be taxed at the level of shareholders (foreign entities or individuals) at a rate of 10%. Conversely, dividends paid by a Colombian entity to a foreign shareholder from profits that were not taxed at the corporate level will be taxed at the shareholder´s level (foreign entities or individuals) at the applicable income tax rate and an additional 10%, after subtracting the income tax amount, absent of any applicable tax treaty.

To determine if profits to be distributed (i.e., profits based on IFRS) have or have not paid taxes at the corporate level, rules contained in the Colombian Tax Code will apply. Based on those rules, in general, it will be deemed that commercial profits were taxed at corporate level when such amount (commercial profit) is lower than the result of subtracting the tax due (plus tax credits) from the taxpayer's net taxable income. In other words, a taxable income will accrue for the shareholder if the commercial profit of the distributing entity is higher than the income tax profit.

Capital Gains Tax

Capital gains tax is imposed on earnings that are obtained from certain operations expressly defined by law.

Capital gains cannot be offset with ordinary deductions. In addition, capital losses cannot be considered when calculating the ordinary taxable income.

Among the most significant operations subject to the capital gains tax are the following:

- Gains obtained from the sale of fixed assets owned for a period of at least 2 years.
- Gains derived from the liquidation of any type of company on the excess of the invested capital, when the gains or earnings do not correspond to income, reserves or earnings distributable as non-taxable dividends, as long as the company has completed at the moment of its liquidation 2 or more years of existence.
- Gains resulting from inheritances, legacies, donations, as well as those received in the manner of spousal forced shares.
- Gains derived from lotteries, raffles, and others similar activities.

For entities, whether national or foreign, the capital gains tax rate is 10%.

Transfer Pricing Regime

Taxpayers who undertake operations or activities with non-resident related parties, or related parties in free trade zones, will be subject to the Colombian transfer pricing regime. In this sense, taxpayers subject to this regime must perform their transactions with related parties abiding the arm's length principle.

Taxpayers who carry out operations exceeding the amounts established by law[37] are required to file an annual *Informative Return*. Additionally, they must prepare and submit a *Transfer Pricing Study,* if the operations exceed certain amounts[38], and provide supporting documentation in order to prove the correct application of the transfer pricing regime. Furthermore, if the taxpayer is comprised within a multinational group and is subject to the *Transfer Pricing Study*, they are also obliged to file the Master File. Moreover, a Country-by-Country Report must be filed by multinational groups whose parent company is located in Colombia, among other requirements. When the controlled operations do not reach the amounts set by the law, the draft and filing of the supporting documentation of such operations is not required; however, this information should be included in the annual Informative Report.

Turnover Tax

Turnover tax is a municipal tax that is levied on taxpayers rendering services and/or undertaking industrial and commercial activities within the jurisdiction of a Colombian municipality. Rates vary from 0.2% to 2.0% over the taxpayer's monthly average of the gross revenues derived from taxable activities. There is a complementary tax that amounts to 15% of the payable turnover tax provided the taxpayer has advertisements or announcements in public spaces of the municipality.

A 100% of the turnover tax paid in a given fiscal year is deductible for income tax purposes. On the other hand, 50% of

[37] A taxpayer must comply with the formal rules of transfer pricing if: (i) Theyhave or holdgross assets worth at least 100,000 Tax Units (herein "UVT" for its acronym in Spanish) ($3.800.400.000 COP for 2022 approx. $ 1,000,000 USD) or have obtained gross income during the previous year in excess of 61,000 UVT ($2.318.244.000 COP approx. $615,000 USD).

[38] A taxpayer must comply with the Transfer Pricing Study for the operations that surpass 45,000 UVT ($1,710,180,000 COP approx. $ 450,000 USD).

turnover tax may be taken as a tax credit from income tax, as long as (i) it is effectively paid on the taxable year in which the tax credit is claimed and, (ii) it has relation with the economic activity of the taxpayer. Additionally, the turnover tax used as a tax credit for in income tax purposes, may not be taken as a deduction.

Withholding Taxes

Colombian tax system provides for withholding taxes as a method of advanced tax collection. This mechanism authorizes a private or public entity, under certain special conditions, to collect certain taxes, due to its special attributes, determined by law. Withholding agents are appointed by the DIAN.

The main obligations of withholding agents are to: (i) withhold the corresponding amounts in accordance with the tax law; (ii) deposit the withheld amounts in the places and on the dates established by the government; (iii) file, on a monthly basis, the withholding tax returns; and (iv) issue tax withholdings certificates.

There are several withholding tax rates. Therefore, it is necessary to consider the precise nature of the payment in order to determine the applicable rate; withholding tax is determined on a case-by-case basis.

Domestic-sourced income derived by non-residents in Colombia is generally subject to a final withholding tax. Withholding tax rates are:

- Interest over loans exceeding a 1-year term, or interest or financial costs of leasing agreements with non-resident companies is subject to a final withholding tax at a 15% rate.
- Consulting services, technical services or technical assistance supplied in Colombia or from abroad are subject to a final withholding tax at a 20% rate.
- Royalties derived from the exploitation of software are subject to tax at a 20% rate.
- Management and administrative services rendered by a related party are subject to a 33% withholding tax rate.

Value Added Tax (VAT)

VAT is levied on the sale or transfer, at any title, of tangible movable and immovable goods, sale or assignment of intangible assets associated to intellectual property rights, the provision of services

within Colombia or from abroad to Colombian users, and the importation of tangible movable goods, unless it is expressly excluded from such tax.

The VAT rate is generally 19% of the total value of the transaction, but different rates may apply to specific goods and services.

Certain goods or services are taxed at 0% (exempt) and others are not subject to tax (excluded).

Input VAT is creditable against output VAT, provided that the former was levied on goods and services used in the production or manufacture of taxable or exempt (not excluded) goods and services. Excess input VAT generates a positive balance that can be claimed in refund if the taxpayer's activities are exports or the production of exempted goods. Otherwise, positive balance can only be carried forward to offset tax liabilities in subsequent periods.

Financial Transaction Tax (GMF)

This tax is payable instantaneously at the time of any financial transaction through a savings or checking bank account, cashier's checs, or deposit account in the Central Bank (*Banco de la República*) or through any accounting entries that involve or imply the payment of obligations.

The tax is payable on the amount of the financial transaction and the applicable rate is the 0.4% of the total transaction value.

Currently, 50% of the total amount paid due to financial transaction tax is deductible for income tax purposes. It should be noted that regulation identifies a series of financial operations and transactions that are exempted from this tax.

National Consumption Tax

The National Consumption tax levies the provision or sale to consumers of a set of services and goods. This tax is levied on: (i) provision of mobile phone services (ii) sale of certain goods such as yachts, boats and motorcycles of domestic production or imported; (iii) cannabis and (iv) restaurant services. The national consumption tax is deductible from income tax as a higher value of the good or service purchased, and it is not deductible from sales tax (VAT).

The taxable base is generally determined by the total value of the relevant transaction. The general National

Consumption Tax rate is 8% for the sale of most of the domestic or imported goods. There is a special rate of 4% applicable for the provision of mobile phone services. Additionally, there is a special 16% rate for cars and plains.

Real Estate or Property Tax

Real estate or property tax is a municipal tax directly applied to the ownership or possession of real estate. Tax rates range between 0.5% and 1.6% of the valuation of the real estate made by the real estate office, which issue a document stating the assessed valuation. The valuation reflects particularities of the real estate such as the urbanistic stratum, the use of the location of the real estate, and the antiquity of the property.

Registration Tax

Registration tax is levied on the registration of documents before a Chamber of Commerce or Public Registry Office (*Oficina de Registro de Instrumentos Públicos*).

Registry tax applies to acts, agreements, or contracts with a stated value, subject to registration before the following entities, and at specific rates:

- Between 0.5 percent and 1 percent for documents to be registered before the Public Registry Office.
- Between 0.3 percent and 0.7 percent for documents to be registered before the Chambers of Commerce.
- Between 0.1 percent and 0.3 percent for documents, different from incorporation or capital increases, to be registered before the Chambers of Commerce.

Acts, agreements, or contracts without a stated value that are subject to registration before either the Public Registry Office or Chambers of Commerce are subject to a tax priced between 2 and 4 minimum daily wages (approximately $17-34 USD).

If the document must be registered before the Chamber of Commerce and the Public Registry Office, registration tax will only apply for the latter.

Colombian Holding Regime

Colombian corporations that fulfill the following conditions can apply the rules of the Colombian Holding Regime (herein “CHC”):

- Holds direct or indirect participation higher than 10% of the equity, in two 2

national or foreign corporations or entities.

- One of its main commercial purposes must be investment or holding activities, or the possessing of shares or any other kind of participation rights in Colombian and/or foreign entities, or the management of the mentioned investment.
- The Colombian corporation must have the required material and human resources, to develop its commercial activity. The law presumes that having at least 3 employees and proving that the strategic decisions are taken at the CHC level is enough to demonstrate that the CHC fulfills such requirement. Establishing the board of directors' assembly in Colombia is not sufficient to comply with this condition.

The Colombian Holding Regime establishes that dividends obtained by the Holding Company in Colombia from foreign entities are exempt of the income tax. Likewise, the distribution of those dividends by the Holding Company to its foreign shareholders will be deemed non-taxed dividends for the foreign investors.

Mergers and Acquisitions

As a result of a sustained general improvement of the national economy and investment conditions during the past years, and despite the risks of the economic and fiscal effects of the Covid-19 pandemic, the Colombian market continues to consolidate itself as a leading M&A market in Latin America. According to the information provided by the Central Bank (Banco de la República), Colombia's foreign direct investment (herein "FDI"), during the fourth quarter of 2021, Colombia received $ 2,158 million USD in FDI, equivalent to 2.5% of quarterly GDP. The cumulative 2021 FDI flows totaled $ 9,402 million USD (3% of GDP), $ 1,944 million USD higher than that recorded in 2020 ($ 7,744 million USD).

Reports from the fourth quarter of 2021 evidence that Colombia remains as one of the top five M&A markets in Latin America. According to TTR, Colombia came in fourth indeal volume regionally, with 232 transactions registered in 2021, up 40% over 2020. Aggregate deal value grew 166% to $13bn USD, meanwhile, based on 112 transactions of disclosed consideration. A total of 194 deals, or 84% of those announced in Colombia, closed by years-end. Argentina ranked fifth regionally in deal volume in 2021, with 200 transactions registered, up 36% over 2020 . The most attractive subsectors in

Colombia's M&A market during 2020 have been (i) fintech, (ii) health, and (iii) energy.

Some years ago, most of the M&A activity was driven by strategic players making growth-oriented acquisitions in the country and by opportunistic transactions. Currently, while this continues to be true, the M&A activity is mainly fostered by a more robust domestic market, private equity funds and cross-border strategic investments. We are beginning to identify new trends such as distressed M&A, venture capital transactions and efforts on opening spaces for private participation in areas previously reserved for the public sector and the sale of state-owned assets or shares. Unique transactions like sale of Productos Familia, Acerías Paz del Río and Alpha Capital y Vive Créditos Kusida´s portfolio, are an example of this. Furthermore, Colombian peso devaluation, which has increased with the presidential elections that will take place during the first semester of 2022, has made investment opportunities in Colombia more attractive to foreign investors, which may likely be another factor driving recent M&A activity in Colombia, particularly inbound transactions. However, this may also be a barrier to some transactions as some investors are willing to wait out the results of the elections.

The number of transactions in 2021 showed an increase with respect to 2020. In general, the Colombian M&A market has shown growth in numbers but, even more so, has become more sophisticated in terms of transaction structures, aided by the receptiveness of the country's legal framework. The size and complexity of today's transactions in Colombia are substantial and involve significant players in the Latin-American market.

Transactions have been structured during the last few years as, but not limited to, public tender offers, share acquisitions, asset acquisitions, share swaps and synthetic share structures; and many tender offers have been advised by the most experienced and advanced investment banks in the field.

Transactions have also become more complex as tender offers have increased among the M&A Colombian market.

In the last years, Colombian companies have continuously acquired foreign companies, placing them as acute investors in Latin America and making outbound M&A a crucial element of the local and regional markets. Colombia has

several "multi-latinas" that are very active across the region, including Grupo Sura, ISA, EPM, Bancolombia, Mineros, Ecopetrol, Grupo Aval, Nutresa, among others.

General framework

Corporate acquisitions in Colombia are mainly governed by contract and corporate law. As a matter of practice, it is not unusual for the relevant agreements to be drafted following the Anglo-American model, thus including provisions containing representations and warranties, closing conditions, indemnification obligations, and choice of law provisions, often following closely New York law and standards.

Despite of the foregoing, Colombian companies —particularly Colombian targets— will normally be subject, albeit to variable extents, to Colombian Law. Colombia's main M&A legal framework is set forth in the following statutes:

a. The Colombian Commercial Code

The Colombian Commercial Code will govern most M&A transactions, which are often structured as share or asset deals and, to a lesser extent, as mergers.

The Colombian Commercial Code sets forth that, as a general rule, shares in the capital stock of a corporation are freely transferable. This default rule will apply to most share deals unless preferential rights (i.e., rights of first refusal or rights of first offer) apply pursuant to the respective charter documents, private agreements among the shareholders, or, in certain particular instances, pursuant to the applicable law (e.g., transfers of shares owned by Government Entities).

Asset deals, pursuant to the dominant interpretation of the provisions of the Colombian Commercial Code, can be structured either as straight-forward asset sales, or as sales of what the Colombian Commercial Code denominates a "Commercial Establishment". In the first case, the purchaser receives title to the assets while the seller remains solely liable for the liabilities associated to the business developed through such assets. In the second case, both the assets and the liabilities are transferred to the purchaser, which implies that, in fact, the business of the seller is transferred as a going concern. Considering this, (i) certain notice provisions aimed at protecting the sellers' creditors will apply,

and (ii) the purchaser is entitled to certain special protections with respect to the accuracy of the balance sheet of the sold business.

With respect to mergers, the regulation focuses on:

- The shareholders' approval of the merger project, including the application of certain formalities to allow the shareholders to review the conditions of the transaction.
- Notice to, and rights of, the public and the creditors of the companies involved in the merger.
- Appraisal rights.
- The clearance proceedings before the relevant authorities (usually the Superintendence of Companies), when required.

Colombian Commercial Code also sets forth the rules generally applicable to corporations, thereby setting forth the legal framework for several actions which normally accompany an M&A transaction (e.g. distribution of dividends, capital increases, amendments to the governing documents, board approvals, etc.).

Finally, the Colombian Commercial Code contains detailed regulations applicable to sales agreements, including the rights and obligations of the parties, implied warranties and other default terms. These regulations will govern M&A agreements (both for asset and share deals) subject to Colombian Law in the absence of specific provisions agreed upon by the parties.

b. The Colombian Civil Code

Unless otherwise provided by the Colombian Commercial Code, the Colombian Civil Code will govern the requirements for the validity and enforceability of contracts and the general rules that govern obligations and performance thereof. The Colombian Civil Code, inspired by its French counterpart, also rules the provisions regarding the legal capacity of individuals.

Colombian Civil Code also contains specific provisions applicable to sales agreements. Such provisions will govern both share and asset deals in the absence of specific provisions in the respective agreement and an applicable default rule in the Colombian Commercial Code.

c. Law 222 of 1995

Law 222 of 1995 amends several articles of the Colombian Commercial Code and sets forth the regulation for spin-offs. With

respect to the latter, it sets forth the regulations applicable to:

- The shareholders' approval of the spin-off project, including the application of certain formalities to allow the shareholders to review the conditions of the transaction.
- Notice to, and rights of, the public and the creditors of the companies involved in the spin-off.
- Appraisal and withdrawal rights.
- Call-options.
- The proceedings before the relevant authority (usually the Superintendence of Companies), when required.

Law 222 of 1995 also amended the provisions of the Colombian Commercial Code regarding the fiduciary duties of directors and officers, and their liability for breach thereof. The recently created specialized "Corporate Court," administered by the Colombian Superintendence of Companies (which is hereinafter referred as the "Superintendence of Companies"), has issued some rulings dealing with the fiduciary duties of directors in the context of M&A transactions. While these rulings have not developed special or "intermediate" review standards applicable to decisions taken in the context of an arm's-length acquisition, it has applied general fiduciary principles in the context of related-party transactions, creating standards akin to the entire fairness standard applied in certain common law jurisdictions.

d. Law 1258 of 2008

Law 1258 of 2008 created the simplified stock company (herein "SAS", for its acronym in Spanish), offering useful tools for M&A practitioners due to, inter alia, and the following characteristics:

- Increased recognition and enforcement of shareholder agreements, as compared to other types of companies, embodied in the legal mandate that the management of a SAS must disregard any decisions that may conflict with a validly registered shareholders' agreement.
- Squeeze-out provisions, which were not previously allowed under Colombian law, are applicable to the shareholders of a SAS.
- Share transfer restrictions for up to 10 years (which may be successively renewed), which are unenforceable in other types of corporations, are allowed with respect to a SAS.
- The shareholders of a SAS may agree to force disclosure of any change of control with respect to the shareholders,

and the squeeze-out of such shareholders.

- Cash-out mergers and spin-offs are allowed with respect to SAS.
- Short-form mergers are allowed when the acquirer owns more than 90% of the equity of the target entity.

The main setback of the SAS, however, is that it may not be listed on a Colombian stock exchange, nor may it be registered as an issuer of securities.

e. Law 1340 of 2009

Law 1340 of 2009 sets forth the rules regarding antitrust clearance procedures in the context of M&A transactions. The Colombian antitrust authority is the Superintendence of Industry and Commerce.

Whenever a transaction might result in a market player controlling (1) a competitor (horizontal integration), or (2) a significant customer or supplier (vertical integration); either (a) a notification must be filed before the SIC, or (b) an authorization to undertake the transaction must be obtained from the SIC.

Whether a simple notification or a full-fledged authorization is required depends on the combined market share of the parties as set forth in Law 1340 of 2009. As it is also customary in other jurisdictions, the major challenge for M&A practitioners comes down to the definition of the relevant market. Relevant case law can be consulted on the webpage of the SIC: www.sic.gov.co.

f. Decree 2555 of 2010

Decree 2555 of 2010 governs, among other securities-related issues, the tender offer process to acquire a substantial stake in a listed company. Under the Decree, a substantial stake is defined as 25% or more of the voting capital of a corporation.

Said Decree 2555 sets forth a mandatory offer process whereby the acquiror is required to make the offer to all the shareholders of the corporation. This Decree also governs “subsequent” tender offers. These are required in specific instances set forth by the Decree. Subsequent tender offers include those required as a result of an indirect change of control and a delisting decision.

For more detail, see section “Specific Regulation applicable to operations of the financial sector” below.

g. Decree 1074 of 2015

Decree 1074 of 2015 sets forth the criteria to determine which companies are subject

to surveillance by the Superintendence of Companies. In general terms, the criteria to determine the surveillance situation depends on the amount of assets or income of the company, if the company has pensioners, if the company is subject to a bankruptcy or reorganization process, if it is part of an economic group, if there are some irregular situations related with the company, and if the company is subject to especial surveillance according to the mentioned Decree. Such companies, pursuant to External Memorandum 001 of 2007 require clearance from the Superintendence of Companies in order to consummate a merger or a spin-off.

The Decree also contains rules governing conflicts of interest of directors and officers. The Decree sets forth, among other things, the process required to clear the conflict—which involves shareholder approval in all instances—, the disclosure duties of directors and officers in conflict-of-interest scenarios, remedies applicable when the duty of loyalty is breached and certain procedural rules. These rules are particularly relevant in the context of related party transactions—including M&A deals—, which are always subject to conflict-of-interest procedures and rules.

h. Law 1564 of 2012: The Colombian General Procedural Code

The enactment of the Colombian General Procedural Code (Law 1564 of 2012) represents an important improvement of the legal framework for M&A activity. Mainly because it strengthens the enforceability of Shareholders Agreements (herein "SHA's"), and the allocation of judicial power to the Superintendence of Companies in connection with controversies related to compliance with SHAs and the performance of the covenants and obligations included in such agreements (Article 24).

The aforementioned circumstance is enforced by the fact that administrative and judicial authorities have become increasingly aware of the importance of Shareholders Agreements in M&A and corporate activity. In a judgment issued in April 17th, 2013, the Superintendence of Companies stated that a SHA is enforceable against the company if they comply with all requirements provided under Article 70 of Law 222 of 1995, making it possible to challenge set aside, and eventually declare null and void, votes

issued in and decisions of the shareholders' assembly that have been completed or taken in breach of such a SHA. In the same decision, the authority endorsed that those shareholders can be forced by the Superintendence of Companies to issue its vote in a specific direction in the shareholders' assembly and change their vote in the shareholders' assembly. The Superintendence of Companies may even order the performance of a new meeting of the shareholders' assembly and revoke all decisions issued in breach of the SHA, in order to guarantee performance of the covenants and obligations provided in such an agreement. This is only part of a series of decisions issued by the Superintendence of Companies, pointing towards the enforceability of this type of SHA´s.

However, the general rule is that SHA's (made in connection with companies other than simplified stock companies) are enforceable amongst the parties but not against the company nor third parties if they do not comply with all requirements provided under Article 70 of Law 222 of 1995.

Likewise, the Superintendence of Companies has acknowledged that only SHA's that consist of voting agreements are required by law to be deposited in respect of an issuer. This interpretation makes other agreements valid among the parties, but unenforceable against the company. Moreover, the enforceability of SHA's executed in respect of a simplified stock company (nowadays the most common type in Colombia) against the company and all its shareholders has been widely acknowledged.

Specific Regulation applicable to operations of the financial sector

Transactions that involve Financial Entities are submitted to rules of the OSFS. This law governs the most relevant issues related to transactions that involve entities supervised by the Superintendence of Finance.

The OSFS governs the following transactions:

a. Assignment of Assets, Liabilities and Contracts

The assignment of 25% or more of the assets, liabilities and contracts from of a Financial Entity requires prior approval from the Superintendence of Finance. After giving effect to the transfer, both the seller and the buyer must comply with applicable solvency rules. The OSFS also

contains rules to facilitate the assignment of agreements and liabilities, though a constructive consent process.

b. Acquisitions

A Financial Entity cannot be the parent company of another Financial Entity, except in specific instances contemplated by the applicable regulation. Thus, if a financial institution (e.g., a bank) wishes to acquire another financial institution (e.g., another bank), it must, subsequent to the acquisition of shares, merge with the target company. The OSFS sets forth the procedures and time periods applicable to the mandatory merger process.

c. Mergers

The merger of companies supervised by the Superintendence of Finance is subject to special rules, which preempt the generally applicable merger rules explained above. This is a heavily regulated process that requires prior approval from Superintendence of Finance and a notice procedure to all creditors that avoids the objection procedure that applies to non-financial institutions.

d. Negotiation of Shares of a Supervised Company

The acquisition of 10% or more of the shares of a Financial Entity requires prior approval from the Superintendence of Finance. The transaction can be done in a single operation or via successive operations.

Listed Companies

Acquisitions of listed companies must comply, in addition to general commercial and civil law, with the relevant rules set forth in the securities market regulations. The main rule relevant to the market of corporate control is that if a person or group of persons that constitute the same beneficial owner wishes to acquire or become the beneficial owner of 25% or more of the voting securities of a listed company, such person or group of persons must launch a public tender offer in connection with the securities exceeding the indicated threshold. A public tender offer is also required if the purchaser is already the beneficial owner of 25% or more of the voting securities of a listed company and wishes to increase their interest by more than 5%. A person

or group of persons is deemed to be the beneficial owner of a share to the extent it can (i) vote on such share and (ii) transfer such share.

Tender offers (ofertas públicas de adquisición) are heavily regulated. In addition, the Colombian securities regulations permit that, upon the launching of a tender offer, third parties launch competitive offers, as a result of which interloper risk is always on the table in public M&A transactions. This is one of the biggest challenges in this type of transactions and has led on several occasions to the delisting of the stock in order to prevent such risk.

In addition to the above, transactions related to listed companies, involving acquisitions, mergers, transformations, spin-offs, etc., need to be approved by the Superintendence of Finance.

Privatizations

The privatization framework has become increasingly important in the Colombian M&A market, as government-owned companies have become important targets through privatization processes. Every sale of the shares (or any other form of equity interest) and convertible securities owned by government entities is governed by Law 226 of 1995 (Law of Privatizations) as long as the buyer is not another governmental entity.

This legal framework rests on 2 rules that make M&A transactions involving state owned companies notably challenging.

Firstly, legislation gives theright to first offer to employees, unions and pension funds, among others (the ‘solidarity sector’), to acquire securities under special conditions, including a fixed price set by decree, access to loans in specific conditions and grace periods. Securities, thus, have to be offered to the solidarity sector before offering the balance to other investors. Accordingly, privatizations are conducted in 2 stages, where the first one directed to the solidarity sector and the last one to the general public.

Secondly, Colombian Constitution requires the government to foster for the democratization of property, so every person that fulfills the objective qualification requirements should have the right to participate in the second phase of the sale. Consequently, this type of sale must be conducted through a public

auction process which allows the participation of the general public.

Applicable Tax Regime

Colombian tax regulation varies depending on the transaction structure. Mergers and spin-offs are tax neutral provided that the shareholders, partners or participants who own (overall) at least 75% of the shares or quotas in each of the merged entities or entities participating in the spin-off (or 85% in the case of a transaction between related parties), receive an economically equivalent participation in the resulting entity as a result of the merger or spin-off.

On the other hand, share and asset sales are subject to income tax that accrues on the difference between the sale price and the tax basis of the shares or the assets. Rates vary depending on whether the seller is a national entity, a non-Colombian entity, a foreign non-resident individual or a Colombian individual, among others. For example, the applicable rate for non-Colombian entities and permanent establishments is 31% (in 2021), and for foreign non-resident individuals its 35% and for Colombian-resident individuals rates vary according to the taxable income from 0% to 39%, provided the item of income is not attributable to a permanent establishment in Colombia. Notwithstanding, the sale of shares, participations or assets have been held for 2 years or more produces capital gain (as opposed to ordinary income) and is taxable at 10% regardless of the condition of the seller. Note that transactional taxes may also apply depending on the type of deal and asset, such as VAT, registration tax and turnover tax. For example, the sale of inventory may be subject to VAT at a general rate of 19% whereas the sale of fixed assets and intangibles (e.g. shares) does not trigger VAT.

Bank account transfers are generally subject to debit tax (GMF) at a rate of 0.4%.

Capital Markets and Securities Regulation

Introduction

Colombia's securities market is a highly regulated and supervised market which provides for the free movement of capital and free for investors' participation. The Colombian Constitution sets forth rights of equality, freedom of association and the protection of enterprise, promoting domestic and foreign investment through capital markets. Regulatory changes in the Colombian markets' realm, and the credit risk upgrade to investment grade, reflects Colombia's newfound economic prominence and increased level of financial sophistication.

In October 2018 a commission of experts was formed to review the landscape of Colombian capital markets and propose measures to boost the market as an instrument for economic growth and general welfare. The commission gathered information from the market through workshops and one-to-one meetings with market participants, and after a 9-month analysis process presented its recommendations on August 9, 2019, in an 80-page document that includes more than 60 initiatives that aim to improve market regulation and conditions.

The recommendations are grouped in 7 different areas each of them related to fundamental aspects of the Colombian capital markets that would require some change. The document includes proposals related to the structure of the market, the role of government institutions, the regulation applicable to different market participants, taxes, financial education, international participation and, of course, the role and impact of innovation. Each of the recommendations would require analysis and discussions within the industry and may be subject to different steps for its implementation (ranging from a change in the law, to amendments to decrees issued by the Ministry of Finance or to circulars issued by the Superintendence of Finance).

For 2022, in accordance with the "legislative agenda" of the Unidad de Regulación Financiera (herein "URF" for its acronym in Spanish) – a technical entity ascribed to the Ministry of Finance, the following regulation regarding capital market matters is planned to be enacted:

- Promotion of Capital Markets.

- Regulation of the law project that seeks to reform the Capital Markets.
- Implementation of new technologies in the Capital Markets.
- Regulation of Law 2112 of 2021, which imposes on the AFPs the obligation to invest at least 3% of their resources in Private Equity Funds, Debt Funds and Funds that invest in other Funds.
- Elaboration of a regulatory framework applicable to financial entities and operations with related parties.
- Inclusive Portfolio.

On the other hand,congress issued Law 2069 of 2020, which establishes the conditions and requirements that define sustainable investment.

a. Regulation and Supervision of the Securities Market

The following 3 entities regulate and supervise the securities markets in Colombia:

(i) The Congress of the Republic: Congress, in the exercise of its constitutional powers, set forth the legal framework for the efficient functioning of the securities markets through the issuance of Law 964 of 2005.

(ii) The Ministry of Finance: Decree 2555 of 2010, which updated and centralized prior decrees with respect to securities and other matters, is the most extensive set of securities regulations issued by this entity.

(iii) The Superintendence of Finance issues instructions to ensure compliance with the rules issued by the Ministry of Finance, being responsible for the inspection, surveillance and control of various participants in the securities markets.

Other entities with regulatory capacities are (i) the Self-Regulatory Organization of the Securities Market (herein “AMV” for its acronym in Spanish), which also exerts a disciplinary and surveillance function, and (ii) the Colombian Stock Exchange (herein “BVC” for its acronym in Spanish)

b. Securities Market Structure

The Colombian securities market is mainly composed of securities’ issuers, investors and facilitators or intermediaries. Issuers that are not under the supervision and surveillance of the Superintendence of Finance, are only subject to the

supervision by the aforementioned authority as issuers of local securities. These agents may offer and trade their securities through the stock exchange, and other transactional platforms, which are also under the surveillance of the Superintendence of Finance. However, and even though the securities are not traded on the stock exchange, as long as they are registered as issuers with the National Registry of Securities and Issuers ("RNVE"), the issuers must comply with the issuer's obligations in accordance with the Colombian regulations and will be subject to the surveillance of the Superintendence of Finance.

In Colombia, a broad range of securities activities may be performed through local capital markets, which are divided into "primary" and "secondary" markets; and a main market (*Mercado Principal*), open for all investors, and the so-called "second market" or alternate market (*Segundo Mercado*), which is only accessible to qualified investors. These markets are mainly comprised of issuers, investors and facilitators or intermediaries between the issuers and investors.

c. Issuance and Negotiation: Primary Market and Secondary Market

Transactions involving securities that are purchased directly from the issuer are conducted on the so-called primary market. The issuance may take place through the stock market or in the over-the-counter market, and intermediaries, such as placement agents, must be involved in these transactions.

On the secondary market, investors purchase securities that have been previously issued, from other investors, rather than purchasing securities directly from the issuer.

Also, the Superintendence of Finance has recently issued instructions related to the follow on offering of green and social bonds. Additionally, a draft regulation for SLBs was issued

General Public and Qualified Investors: Main Market and "Second" or Alternate Market

On the main market, the general investing public may purchase or sell securities.

On the second or alternate market, only qualified or professional investors may purchase or sell securities. Decree 2555 of 2010 (recently modified by Decree 1291 of 2020) establishes the following

requirements to be a qualified or professional investor: having at least a net worth equal to or greater than 6,000 current monthly legal minimum wages (cfr. $1,606,357.68)[39] and comply with other requirements. General public may participate in certain second market securities transactions under determined and very specific exemptions.

The Alternate Market Reform

The second or alternate market was amended by Decree 1019 of 2014 with the purpose of enabling small and medium-size enterprises to access this market.

Due to the strict requirements that need to be fulfilled for the main market (e.g., minimum amounts for issuance, risk rating, net worth, information standards), which are addressed to and may only be met by big companies, the Government saw an opportunity to create a special market so small and medium-sized enterprises could access the capital markets. Decree 1019 of 2014 widened the capital raising alternatives for small and medium-size enterprises by easing up the process of authorization for offering securities in the second market and waiving certain requisites and establishing the following:

- Risk rating is not mandatory.
- Issuers do not require a corporate governance code to implement.
- There is nominimum amount required for public offerings, contrary to what is required on the main market.
- The information and documentation requirements are simpler than the ones applicable to the main market.
- The securities intended to be offered on the second or alternate market are deemed to be automatically registered with the RNVE, once the information and documentation requirements are verified by the Superintendence of Finance.
- The approval of the public offering is simpler and considerably quicker than on the main market. The Superintendence of Finance has a 10 working day deadline in order to verify whether the information and documentation requirements are met, time after which the public offering will be deemed authorized.

Trading Systems: Stock and Over the-Counter Market

[39] Exchange rate of US$1=COP 3,735.16

Stock market transactions are conducted on a stock exchange (for which a broker is necessary) or through securities trading systems. A stock exchange functions as a platform on which its members trade securities, and which provides its own set of regulations (i.e. listing requirements). The main securities trading systems in Colombia include:

- *Colombian Electronic Market* (*Mercado Electrónico Colombiano* – MEC), through which securities other than shares and convertible bonds are traded, and which is managed and regulated by the BVC.

- *Electronic Trading System* (*Sistema Electrónico de Negociación* – SEN), through which mainly public external or internal debt securities are traded, and which is managed by the Central Bank. Banks, trust entities, brokers, pension fund administrators, the National Treasury Department of the Ministry of Finance (*Dirección del Tesoro Nacional del Ministerio de Hacienda y Crédito Público*) and the Central Bank, have access to the SEN system. SEN's users (agents) may access the system directly or through securities intermediaries.

- *Foreign Securities Quoting System* (*Sistemas de Cotización de Valores Extranjeros*), through which foreign securities listed on the Foreign Securities Quoting System are traded. Only stock exchanges and administrators of securities trading systems that are under the Superintendence of Finance's surveillance may administer the Foreign Securities Quoting System. Since September of 2012, all investors, including the general investing public, are able to conduct transactions through this system.

- The Over-the-Counter Market, different from the foregoing, covers securities transactions that are not conducted on a stock market or through a securities trading system.

a. Bogotá, Lima, Santiago and Mexican Stock Exchange Integration

The Integrated Latin American Market (*Mercado Integrado Latinoamericano* – herein "MILA" for its acronym in Spanish) is the result of an agreement entered into by and between Santiago's Stock Exchange, the Colombian Stock Exchange, Lima's Stock Exchange and

the Mexican Stock Exchange, as well as the security depositories *Depósito Centralizado de Valores de Colombia - Deceval*, *Depósito Central de Valores del Banco de la República - DCV*, the *Registro Central de Valores y Liquidaciones - Cavali* and *Indeval*, which form a regional market for ETFs and equity securities trading in the four countries, making MILA the Pacific Stock Market Alliance. MILA initiated operations in 2011 and involves the execution of a series of cooperation agreements to allow investors to trade equity securities and ETFs participation units listed on any of the 4 exchanges through a broker in any member country. The Mexican Stock Exchange (*Bolsa de Valores de México*) officially entered in the MILA in December 2014. Current regulatory reforms are taking place in all the involved jurisdictions to incorporate fixed income trading to the MILA.

b. Dual Listing

Colombian regulation allows for a foreign issuer to list its securities on the BVC either (i) through a dual listing procedure both abroad and in Colombia which provides a company liquidity for its securities and allows it to expand its shareholder base to foreign institutional and retail investor, or (ii) by registering them with the Foreign Securities Quoting System securities trading system.

As of 2015, the securities listed in foreign stock exchanges and foreign trading systems that have entered into agreements with the BVC, will be deemed to be automatically registered and therefore will not require an additional procedure with the BVC to be negotiated in the Foreign Securities Quoting System securities trading system.

c. Foreign Funds Distribution (‘Pasaporte de Fondos’)

Decree 1756 of 2017 introduced rules recognizing certain foreign funds that have been approved for distribution by the home state regulator of the fund. This new regulation allows the fund’s participation units to be distributed in Colombia by local specialized collective fund distributors such as brokerage firms, fiduciary companies and investment management companies, without a referral agreement or a representative office in Colombia. Notwithstanding the above, for foreign funds to be benefited by this regulation, they must comply with certain requirements, such as the fact that the assets of the foreign fund must constitute a separate bankruptcy remote entity from

the assets belonging to the asset manager of the fund.

Rules Applicable to Foreign Investment and the Offering of Cross-Border Financial and Securities Services in Colombia

a. Foreign Investment Controls

Aside from the investment registration, Colombian regulation does not state any restriction regarding foreign investment; instead, it promotes the free movement of capitals under the compliance of certain registering requirements before the Central Bank (*Banco de la República*). Pursuant to Decree 1068 of 2015, foreign investment in (i) securities listed in the RNVE, (ii) pooled funds, and (iii) dual-listing schemes are considered portfolio investments.

Moreover, Regulation DCIN-83 of the Central Bank ("Regulation DCIN-83"), in accordance with the amendments made by Decree 1068 of 2015, establishes that foreign portfolio investments may be short-term in nature. On the other hand, foreign exchange regulations establish that direct foreign investments are long term in nature and where the investor wishes to attain control, especially in case of registration as direct investment of the acquisition of shares registered in the RNVE with the aim of permanence.

Despite of this criteria, in Colombia portfolio or direct foreign investment is not currently referred to within a timeframe or minimum years to be maintained and it is not restricted in the foreign rights and remittance of funds abroad.

b. Marketing Rules on the Offering of Cross-Border Financial and Securities Services in Colombia

Pursuant to Decree 2555 of 2010, if a foreign entity (herein "Foreign Entity") intends to offer or advertise their financial, reinsurance and securities-related products and/or services in Colombia or to Colombian residents it must either establish a representative office in Colombia (herein "Rep Office") or enter into a referral agreement with a local broker-dealer (*sociedad comisionista de valores*) or a regulated investment bank (*corporación financiera*). Multilateral agencies and foreign governmental entities, when arranging government-to-government financings; and subsidiaries of Foreign Entities whose parent or affiliated company has a Rep Office in Colombia are exempted from this requirement. Notwithstanding the above, for those subsidiaries to use their affiliated company's Rep Office, they will have to

receive an authorization from the Superintendence of Finance.

The most relevant exception to the aforementioned regime is the one known as *reverse solicitation*. Under reverse solicitation, a Foreign Entity may provide its products and/or services in Colombia or to a Colombian resident without having a Rep Office or the need to enter into a referral agreement when the relationship results from the client's own initiative and there was no solicitation or initial marketing undertaken by the Foreign Entity in Colombia or with respect to such Colombian investors.

Public Offerings and Private Placements

a. Public Offerings

In general, a security offering in Colombia is deemed as a public offering if addressed to 100 or more known potential investors or to an undetermined number of persons. The aforementioned 100-investor threshold includes the number of investors addressed by the offering, regardless of the number of investors with whom the offering is actually placed. Securities that are to be offered publicly must be registered with the RNVE and are subject to prior approval by the Superintendence of Finance.

b. Public Offerings of Securities by Foreign Issuers in Colombia

According to Decree 2555 of 2010, the Superintendence of Finance may authorize the public offering of securities issued by foreign entities as long as they comply with certain requirements which include, among others, the following:

- In the case of credit securities, they must be made payable to order or nominative and an institution domiciled in Colombia must be designated in Colombia to acta as administrator of the follow-on offer.
- The securities to be offered in Colombia must be able to be offered publicly in the country where the issuer's principal domicile is located.
- The securities to be offered in Colombia must be graded by one or more internationally recognized risk or securities rating agencies or by a rating agency subject to the inspection and surveillance of the Superintendence of Finance.
- When shares are to be registered, the corporate rights that investors residing in Colombia will have, as well as those that investors of the issuer´s country

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will have, must be informed, also proving, to the satisfaction of the Superintendence of Finance, the way in which shareholders residing in Colombia may exercise.

- Prior to the offering, the issuer must have registered securities in one or more internationally recognized stock market or met different requirements, such as:
  - The foreign issuer's domicile of incorporation must be localized in an acceptable jurisdiction, considered as such, by the Superintendence of Finance; and
  - The parent company or subsidiary of the foreign issuer is required to be domiciled in Colombia, develop economic activities in Colombia and have securities registered in the RNVE.

In addition, securities must be registered either in the RNVE or in the Foreign Securities Quoting System, by filing certain documents required by these entities. Notwithstanding the above, branches of foreign issuers incorporated in Colombia must comply with the additional requirements to conduct public offerings of their securities in Colombia. Furthermore, there are additional disclosures that the prospectus for such offerings by foreign issuers is required to contain, as set for in Decree 2555 of 2010.

In order to promote the issuances of securities and deepening of the Colombian capital market, the Superintendence of Finance issued External Circular 019 of 2018, which adopts standards that homogenize the content and presentation of public offers' information prospectus. The Superintendence of Finance created an application that may be used at the discretion of any issuer or potential issuer of securities by accessing to it through the web page: www.superfinanciera.gov.co.

The application contains the templates of the standardized prospectus needed to carry out a public offering of securities in the primary market, as well as their respective annexes. The application cannot be used in the case of syndicated issuances, foreign issuances, temporary registrations, democratization offers, offers of securities that have a special regulation regarding the information required in the information prospectuses, takeover bids or securitizations.

c. Issuance of Securities by Multilateral Credit Entities

According to Decree 2555 of 2010, the Superintendence of Finance may authorize the public offering of securities issued by multilateral credit agencies, subject to meeting requirements such as the securities' listing in the BVC and the elaboration of the prospectus. Nevertheless, the procedure for multilateral credit agencies to issue securities is faster and contains fewer requirements compared to other entities. For example, the registration of the securities issued by a multilateral credit agency with the RNVE will permit the agency to make its public offering without payment for registration rights, public offer or support fees.

d. Issuance and registration of securities in the RNVE by simplified stock companies

By means of Legislative Decree 817 of 2020 and Decree 1235 of 2021, simplified stock companies (*"Sociedades por Acciones Simplificadas – SAS."*) were authorized to issue and register its debt securities in the RNVE and to offer them in the secondary market. This authorization is only valid for 2 years and the debt securities can only be issued for up to 5 years.

In accordance with such decrees, and due to the global pandemic situation, the National Government, as part of the initiatives to mitigate the economic effects on individuals and companies, has structured, through the National Guarantees Fund (Fondo Nacional de Garantías), a special program called United for Colombia (Unidos por Colombia) under which this fund guarantees up to 70% of the outstanding capital of ordinary bonds to be issued in the secondary market.

e. Public Offerings Recognized Abroad

Decree 2241 of 2015 introduced regulations on public offerings authorized abroad, which are exempted from:

- Public offering requirements (i.e. registration with the RNVE and obtaining the approval for public offering with the Superintendence of Finance).
- The requirement to either establish a Rep Office or enter into a referral agreement with a local broker-dealer or investment bank for the purposes of

marketing such securities in Colombia or to Colombian residents.

- An offering is recognized as a "Public Offering Authorized Abroad" when it meets the following requirements:

    - There was prior and explicit authorization of the public offering by the relevant oversight authority with the capacity to regulate the offering in the jurisdiction where such offering would take place (the "Foreign Authority").
    - The public offering involves securities being issued in the jurisdiction where the authorization for the public offering was granted. For the purposes of the aforementioned recognition, the following are deemed as "foreign securities":

        - Securities issued abroad by international financial or multilateral institutions or organizations.

        - Securities issued abroad by other nations or their central banks.

        - Securities issued abroad currently registered with a public securities registry or listed on a stock exchange or a securities trading system that is internationally recognized under the criteria of the Superintendence of Finance.

- The registration of such foreign securities in the relevant public securities registry is in force at the moment of the offering in Colombia or to Colombian residents.

It is important to highlight that for an offering to be recognized as a Public Offering Authorized Abroad applicable regulations require that the relevant Foreign Authority and the Superintendence of Finance have entered into an exchange of information agreement (*convenio de intercambio de Información*) or oversight protocol (*protocol de supervision*) (herein the "Supervision Agreements"). As of July 2018, the only countries whose Foreign Authorities had established an information exchange and supervision protocol with the Superintendence of Finance are those belonging to the Pacific Alliance (México, Perú and Chile). The Superintendence of Finance is required to publish the list of

Foreign Authorities with which it has executed Supervision Agreements.

Foreign securities that are part of a recognized Public Offering Authorized Abroad may solely be offered (i) directly by the issuer or (ii) through a local brokerage firm.

Recognition as a Public Offerings Authorized Abroad neither implies registration with the RNVE nor the exercise of oversight functions by the Superintendence of Finance regarding issuers and securities.

4. Private Placements

A private offering is one that meets one of the following conditions:

- The offering is addressed to less than 100 specifically identified investors.
- The offering is addressed to the shareholders of the issuing company, so long as there are less than 500 shareholders.
- The offering results from a capitalization order issued by a competent state authority, directed exclusively to the company's shareholders, as long as they are recognized within a bankruptcy proceeding in which such decision has been taken, in both cases regardless of the number of persons to whom it is addressed.
- The offering is part of a stock option plan, under the requirements and conditions described below.

4.1 Stock Option Plans

Decree 1351 of 2019 amended Decree 2555 of 2010 and introduced changes to the stock option plan´s legal regime. Under this new regulation, Colombian corporations, their parent company, their affiliates, or their subsidiaries domiciled in Colombia or abroad, may offer their stocks to its employees (under a valid and existing labor agreement) and/or its directors.

The aforementioned offering must be part of a benefit or compensation plan, and, regarding employees, it must be included by writing in their labor agreements.

5. Offers by Colombian Issuers in Foreign Markets

Colombian issuers may currently engage in 3 types of public securities offerings in foreign markets: (i) the exclusive public offer abroad (ii) the simultaneous public offer undertaken both locally and abroad and (iii) the successive public offer

undertaken first abroad, then in Colombia, or vice versa.

Domestic issuers may offer securities registered with the RNVE and listed on the BVC, simultaneously locally and internationally, requesting authorization from the Superintendence of Finance in connection with the local offer, or register securities in foreign trading systems without making an offer. In simultaneous public offerings, Colombian issuers may, with prior authorization of the Superintendence of Finance with respect to the local offering, offer their securities both in Colombia and abroad. For purposes of a simultaneous offering in Colombia and abroad, the issuer must have its shares listed on the BVC.

Even though in offerings exclusively undertaken abroad the domestic issuers will be subject to the regulations ruling the international offering, they must comply with the Colombian tax, foreign exchange and foreign capital investment regulation.

As an attractive alternative to public offerings in foreign markets, Colombian issuers may issue American Depository Receipts (ADRs) or Global Depositary Receipts (GDRs), which are among the most recognized international mechanisms for such purposes.

6. Private Equity Funds

The Colombian Government, through Decree 2555 of 2010 amended by Decree 1984 of 2018, regulated Private Equity Funds (herein “PEF”). These vehicles can mimic most of the basic provisions found in international private equity funds documentation (e.g. carried interest, preferred return for LPs, indemnification for the GP and its members, etc.). The creation of PEFs is not subject to prior authorization by the Superintendence of Finance. Nonetheless, the administrator of the fund must deliver certain documents to the Superintendence of Finance at least 15 business days prior to the creation of the fund.

The PEF must have a *sociedad administradora* (a locally registered and regulated administrative entity) which acts as the legal representative of the fund and as a liaison between the PEF and the local authority. In addition, the placement terms of the PEF may set forth that a General Partner (*gestor professional*) will be brought on by the administrator of the fund for purposes of making the investment decisions in connection with the portfolio investments of the fund. This General Partner must be an expert with at least 5 years of experience in the administration

of investment portfolios or the management of the assets of the type in which the fund invests.

Pension Funds and Insurance Companies are allowed to invest in these private equity funds, and no registering requirement exists for offshore private equity funds; although they shall comply with certain assets under management amounts and marketing rules. It is important to mention that, by virtue of Law 2112 of 2021, Pension Funds must invest at least 3% of their resources in Private Equity Funds , Debt Funds and Funds of Funds -that is, Funds that invest in other Funds-. Recipient funds must comply with certain requirements in their investment policies.

Decree 1242 of 2013 contained a prohibition for PEFs to invest 75% or more of their funds in real estate assets. Such prohibition was amended by Decree 1403 of 2015, which allows PEFs to invest 100% of their funds in real estate assets.

Under the new regulations, a PEF is allowed to increase its leverage by issuing debt instruments, such as bonds and Decree 053 of 2022 allowed Funds to redeem units when they were issuers provided that they complied with certain financial requirements. Additionally, Decree 1984 of 2018 amendedand clarified the possibility of a PEF to invest through debt instruments. Furthermore, this new set of rules recognizes the possibility that PEFs may become a fund of funds.

Obligation to Disclose Material Information to the Market

Issuers are required to disclose to the market on timely basis material information, related to itself or its issuance that would have been considered by a prudent and diligent expert when buying, selling or keeping the issuer's securities or when exercising the political rights inherent to such securities.

Recently, the Ministry of Finance enacted Decree 151 of 2021 which modified the *information revelation regime.* Such regime establishes events, situations and acts that must be disclosed to the investors and the general public. However, this Decree establishes a transition period for compliance of up to 2 years. Nevertheless, this new regime can be implemented and complied with at any moment before the 2 years (during the transition period, the current information revelation regime is applicable). Also, Decree 151 of 2021 establishes that issuers must disclose information related

to any material changes in the issuer´s practices, processes, policies and indicators related to environmental, social and corporate governance criteria implemented by the issuer.

The Superintendence of Finance may request from issuers any other information it considers material to ensure and preserve the capital markets behavior.

Insider Trading

Insider trading is regulated in Colombia by means of provisions relating to the use of privileged information. Decree 2555 of 2010 defines "privileged information" as concrete information that is subject to confidentiality and has not been disclosed to the public and, had it been disclosed, would have been considered by a diligent and prudent investor when negotiating the respective securities.

Pursuant to Article 75 of Law 45 of 1990, any person will be subject to sanctions imposed by the Superintendence of Finance if that person, directly or indirectly, (i) undertakes one or more transactions on the securities market using privileged information, (ii) provides privileged information to a third party who is not entitled to receive it, or (iii) provides such privileged information to advise on the purchase or sale of securities. Pursuant to Articles 50 and 53 of Law 964, 2005, the Superintendence of Finance may impose one or more of the following sanctions: (i) reprimand, (ii) fines, (iii) suspension to act as corporate officer (i.e. perform administrative, management or control activities), (iv) temporary or permanent removal (as the case may be) from administrative executive or financial positions of any of the entities subject to supervision by the Superintendence of Finance, and (v) suspension or cancellation of registration in any of the registries included or referenced in Law 964, 2005.

The misuse or misemployment of privileged information is penalized under the Colombian Criminal Code. However, such behavior may only be prosecuted against certain people.

9. Investor Protection – Corporate Governance

Corporate Governance refers to the set of control and supervisory mechanisms adopted by issuers to allocate powers amongst its shareholders, executives and board of directors, or its equivalent, with the ultimate goal of maximizing shareholder value.

The Superintendence of Finance has followed international standards for the implementation of the best practices regarding corporate governance, such as the Principles for Corporate Governance developed by the Organization for Economic Co-operation and Development - OECD (from 1999, and revised in 2003), which served as the grounds and inspiration for the so called *Código País*.

In 2007, the Superintendence of Finance issued the *Código País*, a model code of corporate governance for issuers, which contained provisions of voluntary adoption covering, among others, the following subjects:

- Rights and equal treatment for all shareholders.
- Participation of minority shareholders in shareholders' meetings.
- Additional committees to support the board (i.e. corporate governance committee).
- Related-party transactions.
- Dispute resolution mechanisms.

The Superintendence of Finance issued a revised *Código País* in 2014 with the purpose of strengthening corporate governance best practices in Colombia and attracting investors from international markets. The new *Código País* contains recommendations covering the following matters:

- Rights and equal treatment of shareholders.
- The general shareholders' meeting.
- The board of directors.
- Internal control.
- Transparency of financial and non-financial information.

Issuers are required to file an annual report disclosing their compliance of the new *Código País* during the immediate previous year of the report. The report must be submitted to the Superintendence of Finance within the 8th and 31st of January of each year, before the general shareholders meeting is undertaken. Although the new *Código País* considers recommendations and, hence, of voluntary adoption, issuers are still required to explain to the Superintendence of Finance and to the public in general, the reasons for non-compliance.

10. Well-Known Seasoned Investors

Decree 2510 of 2014 introduced Well-Known Seasoned Investors (*Emisores conocidos y recurrentes*, herein"WKSI") in Colombian regulations. WKSIs' securities are deemed automatically registered with the RNVE and the public offering of its

securities is deemed authorized after submitting certain documentation to the Superintendence of Finance with informative purposes, which implies substantially quicker and less cumbersome proceedings for securities offerings in the primary market. Decree 2510 of 2014 was complemented by the regulations issued by the Superintendence of Finance in July 2015.

An issuer must comply with the following requirements for being qualified as a WKSI:

- Have been an issuer of securities registered in the RNVE for 3 or more years.;
- To have filled-out the annual *Código País* report and disclosed it in due time, during the last 3 years.
- To have made at least 3 public offerings of RNVE registered securities, for an aggregate amount of 1,200,000 current monthly legal minimum wages (cfr. $320,806,476.54 USD)[40]. At least one of such offerings must be outstanding. This requirement may also be fulfilled if the issuer has a securities program authorized by the Superintendence of Finance.
- To have shares, bonds or titles derived from securitization processes duly registered with the RNVE.
- The issuer, its controlling shareholders and their managers and directors must not have been sanctioned for breaching the rules of the securities market in Colombia or abroad.

Once an issuer has been qualified as a WKSI, they must certify during the first 4 months of each year that they are following the aforementioned requirements.

WKSIs may carry out a public offering of securities 2 working days after filing the following documents with the Superintendence of Finance :

- A certificate with respect of the compliance with the requirements for registering securities with the RNVE and making the public offering.
- The offering memorandum.
- The other usual offering documents.

[40] Exchange rate of US$1=COP 3,740.57

These documents are filed for informational purposes and are not reviewed and commented by the Superintendence of Finance.

Applicable regulations emphasize the accountability of managers and directors of WKSIs regarding the truthfulness and completeness of the information used in the offering documents and with respect of the information certified to meet the requirements to be classified as a WKSI. As the Superintendence of Finance will not review and comment the offering documents, managers, directors, financial and legal advisors of the WKSIs are required to meet higher diligence standards.

Labor and Employment

Employment Regulations

a. Governing Law

Colombian legislation establishes the principle of territoriality, which states that all employment relationships executed in Colombia, shall be governed by Colombian law regardless of the written agreement between the parties.

b. Wages & Salaries

The salary is the main and direct compensation that the employer provides to the employee for his or her services, disregarding the form or the name given by the parties to the payment.

Nevertheless, Colombian employment law has provided that certain payments that arise from the employment relationship are not considered salary given that the payment is not made as a direct consideration for the services rendered by the employee. As such, the following conclusions can be drawn regarding non-salary payments:

Occasional payments made at the sole discretion of the employer:
Occasional payments made by the employer as a unilateral act made at its sole discretion are not considered salary in nature, so long as they are not made in direct consideration for the services rendered by the employee, but they obey to the free will of the employer.

Payments made to allow the fulfilment of duties:

Payments made by the employer to the employee in order to ensure the correct performance of the employment contract,

such as representation expenses, payment for transportation or any other tools necessary for the proper performance of the functions of the employee, are not considered salary.

Fringe benefits:

Fringe benefits outlined by employment laws are not considered payments of salary nature.

Non-salary payments by express agreement between the parties:

Those extra-legal aids or benefits, made on an occasional or regular basis, in cash or in kind, by agreement between the parties are not to be understood as payments of salary nature if the parties expressly agree that said benefits will not be deemed salary. The intention of these payments is to provide a greater benefit to the employee without directly remunerating services, i.e., hiring bonuses, transportation allowances, complementary health plans, etc.

However, according to Colombian employment law, employers and employees shall expressly agree which payments shall not be considered salary. In any case, every payment granted to an employee as a direct compensation for his/her services is considered salary regardless of what the parties may have agreed. In this regard it is worth considering that payments that are directly linked to employee's individual performance or results, are considered salary without exception. Moreover, if the payments are linked to the global results of the company or a business unit, they may be excluded from the salary base.

Although non-salary payments are not included in calculating fringe benefits, vacations, severance payments, payroll fees and social security contributions; whenever a non-salary payment exceeds 40% of the employee's total income (on a monthly basis) the excess must be added to the basis for paying social security contributions and payroll taxes.

The difference between salary and non-salary payments is important from the legal and economic perspective, because salary payments shall be included in the base for the calculation and payment of:

- Fringe benefits if applicable (unemployment service aid, interest on the unemployment services aid, and legal services bonus).
- Vacations.

- Severance payment or indemnification in case of termination without cause.
- Payroll fees.
- Contributions to the Social Security System (pension, health and labor risks), among others.

In Colombia, employment law distinguishes between 2 types of salary: “regular salary” and “integrated salary”.

A regular salary is a compensation paid to the employee, by the employer, in return for work performed, which may be fixed or variable. In addition to the regular salary, the employer shall pay the employee:

- Mandatory fringe benefits.
- Any additional compensation for overtime work (except if the employee is classified as management or trust personnel).
- Surcharges.
- Percentage on sales and commissions.
- Additional wages and regular bonuses.
- Permanent travel expenses for employee’s meal and lodging, and
- In general, any payment made as direct compensation of the employees’ work.

The integrated salary is a lump sum that, in addition to compensating the ordinary work, remunerates the value of all surcharges, benefits in money or in kind expressly identified in the agreement, and mandatory fringe benefits. Vacations are not included in the integrated salary. Consequently, employees with an integrated salary will only be entitled to paid vacations and no other mandatory fringe benefit. Integrated salary must be agreed upon in writing and applies only to employees who earn over 10 times the minimum legal monthly salary plus a fringe benefit factor of at least 30%, which, for the year 2022, is the equivalent to Colombian $13,000,000 or USD $ 3,258.14 per month.

It is important to bear in mind that in Colombia, a full-time employee cannot earn a salary lower than the minimum legal monthly salary, this is, for 2022 COP$1.000.000 or USD$ 250.62.

c. Work Hours

Working hours are limited by law to 8 hours per day and 48 hours per week, distributed in a maximum of 6 days per week. However, with the proper authorization granted by the Ministry of Labor, an employee is entitled to work up to 12 hours of overtime per week, this is,

2 extra hours per day. Employees in positions of management and confidence are not subject to said restrictions.

In any case, it is possible to arrange it so that the daily working hours are increased up to 2 hours daily, with the only purpose of permitting the employees to rest onSaturday. This increase in the working hours does not constitute overtime, thus no surcharges must be paid.

Work performed between 6:00 a.m. and 9:00 p.m. is considered daytime work; and the daytime overtime will be compensated with a 25% surcharge over the daytime hour.

Work performed between 9:00 p.m. and 6:00 a.m. is considered nighttime work, and it has a 35% surcharge over the daytime hour, for the sole fact of being nighttime work. Additionally, nighttime overtime is paid with a 75% surcharge over the daytime hour.

It is important to mention that Law 2101 of 2021 will reduce the maximum work schedule from 48 to 42 hours per week. The reduction of the work schedule will be carried out progressively and will begin in 2023.

d. Vacations and Sick Leaves

All employees are entitled to enjoy 15 working days of remunerated vacation per year of service and proportionally for any fraction thereof.

Upon request of the employee and the acceptance of the employer, the parties can agree to compensate in cash up to half of the employees´ accrued days of vacations. Moreover, in the event that the employment contract is terminated, and the employee has not enjoyed the accrued vacation days, employer shall pay them in the final liquidation of their employment accruals.

Employees must enjoy at least 6 continuous working days of vacations annually, which may not be accumulated. As a general rule, vacation days may be accumulated for up to 2 years, but in some special circumstances, such as regarding personnel classified as management or trust or foreigners, accumulation can be for up to 4 years.

Employees are entitled to time off in case of illness or injury whenever they present the corresponding medical certificate to the employer. Employees who suffer from illness of common source will receive remuneration as follows:

- For the first 2 days of sickness leave, the employee will receive from the employer an aid corresponding to 66.67% of the employee's salary.

- From the day 3 to the day 90, such aid will correspond to 66.7% of the employee's salary.

- From the day 90 to the day 180, it will correspond to 50% of the employee's salary. During this period, compensation is paid by the Health Promoting Enterprise (herein "EPS" for its acronym in Spanish) to which the employee is affiliated.

- From the day 180 to the day 540, the aid will correspond to 50% of the employee's salary and will be paid by the Pension Fund Administrator to which the employee is affiliated.

- From the day 540 and thereof the aid will correspond to 50% of the employee's salary and is paid by the EPS to which the employee is affiliated in the three circumstances set forth by Decree 1333 of 2018: (i) when there is a favorable concept of rehabilitation issued by the physician, by virtue of which it is required to continue in medical treatment; (ii) when the patient has not had recovery during the course of the illness that caused the disability, having followed the recommendations of the physician and (iii) when due to concomitant diseases, new situations have taken place that require more recovery time from the patient.

If the leave derives from a work-related accident or illnesses, the Labour Risk Administrator (herein "ARL" for its acronym in Spanish), a subdivision of the Social Security System, will remunerate the employee corresponding to 100% of the employee´s salary from day 1.

e. Fringe Benefits and transport aid

Under Colombian employment law, every employer must grant its employees with regular salary certain benefits, in addition to their salaries, known as legal fringe benefits.

Said benefits are the following:

- *Transportation aid*: Employers must pay a legally quantified transportation aid to all employees who earn up to two minimum monthly legal wages (for 2022, it is of $117.122 COP (c. $ 29.35 USD);

- *Footwear and dress*: In accordance to the duty for which the employee was hired for, the employer must grant, three times a year, an endowment of 1 pair of shoes and 1 labor dress to those employees who earn up to 2 minimum monthly legal wages and who have been employed for at least 3 months. This endowment must be delivered to the employees on April 30th, August 31st, and December 20th of each year.

- *Unemployment Saving Aid (cesantía)*: Prior to February 15th, employers must make an annual direct deposit into an Unemployment Saving Aid Fund, to the account of each and every employee, known as "cesantía", in an amount equivalent to 1 month's salary. This payment shall be done to employees who have worked for 1 year between January 1st and December 31st, or proportionally for fractions thereof. Failure to make timely the required deposit would accrue a penalty of 1 day's salary for each day of delay until payment is made. Unemployment Saving Aid cannot be paid directly to the employee.

- *Interest on Unemployment Saving Aid (intereses de cesantía)*: Every year, employers must pay an interest charge of 12% per annum on the balance the *unemployment saving aid* owed for the previous year of work (January 1st to December 31st), which interest must be to be paid no later than January 31st of the subsequent year. Failure to perform payment of the interest would accrue a penalty equal to an additional 12%.

- *Service Bonus:* Employers must pay semi-annually (in June and December) a service bonus in an amount equivalent to 15 days of each employee's monthly salary. This payment shall be done to employees who have worked for 1 year between January 1st and December 31st, or proportionally for fractions thereof.

Additional Regulations

a. Social Security

Every employer must affiliate itself and its employees to the Social Security System in pensions, health, and employment related risk. Employees may voluntarily choose the entities regarding Pensions and the Health System, and the employer will choose the employment related Risks Administrator. Contributions are calculated on a shared basis between the

employee and the employer, considering the employee's salary[41] as follows:

System	Contributions (% of salary) [1]	
	Employee	**Employer**
Pension [2]	4%	12%
Health	4%	8.5% (if aplicable) [4]
Labor Risks	-	Between 0.522% and 6.9% (varies in accordance with the exposure to risks)
Solidarity Pension Fund	Between 1% and 2% [3]	-
[1] Contributions cannot be made considering a salary lower than the minimum monthly legal wage and cannot exceed 25 minimum monthly legal wages. [2] Under special circumstances, foreigners may be excepted from affiliating to the pension system. [3] Employees earning more than four minimum legal monthly salaries shall make an additional contribution to the Pension System as follows: between 4 and 16 minimum monthly legal wages: 1%; between 16 and 17: 1.2%; between 17 and 18: 1.4%; between 18 and 19: 1.6%; between 19 and 20: 1.8%; more than 20: 2% [4] Companies are not required to pay the corresponding health contributions (8.5%) for employees earning less than 10 minimum monthly salaries, for 2022 COP$10.000.000 c. USD$2.506.		

Employers are not required to pay health contributions, with respects to those employees who earn up to 10 minimum monthly legal wages. Contributions to the Social Security System of employees who earn an integrated salary are calculated over 70% of said salary.

b. Payroll Fees

All employers must pay payroll taxes, calculated as percentages of the total value of the company's payroll including the remunerated rests. Such payments are allocated to the following entities: The Family Compensation Bureau (*Caja de Compensación Familiar* – herein "CCF" for its acronym in Spanish), the National Apprenticeship Service (*Servicio Nacional de Aprendizaje* – herein "SENA" for its acronym in Spanish) and the Colombian Institute of Family Welfare (*Instituto Colombiano de Bienestar Familiar* – herein "*ICBF"* for its acronym in Spanish), according to the parameters listed in the following chart:

[41] Contributions for employees earning an integrated salary are calculated over 70% of said salary and for those who receive a regular salary over 100%.

Entity	Payroll percentage
CCF *Caja de Compensación Familiar*	**4%**
SENA *Servicio Nacional de Aprendizaje*	**2%**
ICBF *Instituto Colombiano de Bienestar Familiar*	**3%**

Employers are not required to pay payroll taxes to SENA and ICBF, with respects to those employees who earn up to 10 minimum monthly legal wages. Payroll taxes for employees earning an integrated salary are calculated over 70% of said salary.

c. Employment Licenses

Licenses and permits for employees have no time limit. Licenses can be remunerated or not. In the second case, the employee does not render his or her services and the employer in consequence has no obligation of paying any remuneration whatsoever.

Remunerated licenses are specified by law, and it is an obligation of the employer to grant them, as noted:

- *Bereavement license*: The employee is entitled to five working days of paid leave in the case of death of the employee's spouse or permanent companion, or relative up to the second degree of kinship, first degree of affinity or first civil degree.

- *Domestic calamity*: Whenever an employee suffers from a domestic calamity, the company must grant a remunerated leave to the employee. The Internal Working Regulations should establish the conditions and requirements in which the license will be granted.

- *Union Activity*: Employers must grant paid permits and leaves to union members for the performance of their activities.

- *Maternity Leave:* every employee is entitled to receive a remunerated leave of 18 weeks at the moment of the child's birth, compensated with the salary that she is receiving at that time. The Social Security System is obliged to pay 100% of the leave, provided that all legal requirements

are met (e.g., proof of birth, having complied with legal monthly contributions to the health subsystem of the social security system).

- *Paternity Leave:* all parents are entitled to receive a remunerated leave of two weeks, provided that all legal requirements are met. This leave will be extended by 1 additional week for each percentage point decrease in the structural unemployment rate, and in no case will it exceed 5 weeks. An employee is entitled to this leave from the time in which he becomes a father of a child (time of birth). This leave is compensated with the salary that the employee is receiving at the time of birth. The Social Security System is obliged to pay 100% of the leave, provided that all legal requirements are met.

- *Shared parental Leave*. All parents are entitled to freely distribute the last 6 weeks of maternity leave between them. The mother must take at least the first 12 weeks of the maternity leave, which are non-transferable. The remaining 6 weeks may be distributed between the mother and the father (as a shared parental leave), by mutual agreement between both. The paternity leave time may not be shortened with the application of this parental leave. The Social Security System is obliged to pay 100% of the leave, provided that all legal requirements are met (i.e., proof of birth, mutual agreement between the parents expressed through a signed document, and authorization from a physician).
- *Flexible part-time parental Leave.* An employee is able to change a determined period of their maternity or paternity leave for a part-time work period, equivalent to double the time corresponding to the selected period. The Social Security System is obliged to pay 100% of the leave, provided that all legal requirements are met.

- *Jury Duty Leave.* The employer must allow the employee to attend voting days or jury duty. As compensation for attendance, the employee shall receive a half day off in the month following the month of the voting day, and a day off in case of jury date following the 45 days of jury duty.

The companies may establish additional permits and licenses (marriage, changes of domicile, etc.) in the Internal Working Regulations, or in the collective bargaining agreement.

d. Safety Standards

Employers who have more than 10 permanent employees must have Hygiene and Industrial Safety Regulations.

Safety and Health in the Workplace Management System (herein "SG- SST" for its acronym in Spanish) is mandatory for any company. Employers shall comply with the Minimum Standards of the SG-SST, which must be adequate for the type of enterprise, number of employees and economic sector of the employer.

The following are the most important aspects of the Minimum Standards of the SG-SST:

- Companies with 10 or less employees must obtain a certificate of accompaniment of the ARL (Labor Risks Administrator) to carry out hazard's identification, evaluation and risk assessment.
- Companies with contracs of 10 or less employees, that provide services in their premises, will be able to support them, train them, and advise them in the design and implementation of their SG-SST.
- Medical evaluations may be carried out through the provision of extramural services and telemedicine.
- New minimum standards are created for agricultural production companies.
- Activities and plans can be carried out jointly with other companies or entities of the same economic activity, geographical area or economic field.
- Strategic Traffic Safety Plans (PESV for its acronym in Spanish) are articulated with the SG-SST.
- As of November 2019, each company must self-evaluate in compliance with the minimum standards and generate an annual improvement plan that must be sent to the ARL.
- Starting in 2019, companies must keep a record of the following performance indicators of Occupational Health and Safety (herein "OH&S"): frequency and severity of accidents, proportion of fatal accidents, prevalence and incidence of occupational disease and absenteeism due to medical reasons.
- Independent workers and individuals who perform domestic work are excluded from the minimum standards.
- Companies with less than 10 workers and risk I, II and III, will have to comply with 7 minimum standards; companies with 11 to 50 workers and risk I, II and III, must comply with 21 standards; agricultural production units with 10 or less workers and classified under risks I, II and III, with 3 standards; those of 50 or less workers and risk IV and V and companies with more than 50 workers and risk I, II and III, have 60 minimum standards.

- The inspection, monitoring and control phase carried out by the Ministry of Labor, is postponed from April 2019 to November 2019 and onwards.

By the year 2020, all companies must execute their SG-SST on an annual basis.

All companies and institutions, public or private with 10 or more employees[42] are required to constitute a Safety and Health in the Workplace Peered Committee (herein "COPASST" for its acronym in Spanish), which shall be composed of an equal number of representatives of employers and employees with their respective replacements, according to the total amount of employees hired.

Additionally, every employer must supply its employees with all necessary equipment to perform their job and keep the facilities in which they will perform their tasks in good working conditions, in order to preserve the employees' health and safety. Employers are also required to carry out medical examinations on their employees at the moment of hiring, during the employment relationship, as well as at the termination.

[42] Employers with less than ten (10) employees are required to hire a Health and Safety watchman.

e. Unions

Unions are lawfully constituted organizations of employees that seek obtaining, improving and consolidating common rights vis-à-vis their employers. It is also the association of employees aimed to defend the individual and collective interests of the members of the union. In accordance with Colombian labor law, a union may be constituted with a group of at least 25 employees, regardless of whether they are employees of the same company or not.

Collective Bargaining and Collective Agreements

Collective bargaining is a right protected by the Colombian Constitution and the Labor Code, for unionized and non-unionized employees. The collective agreement is entered with unionized employees, while collective accords are entered between employers and non-unionized workers, but collective accords can only be executed when no more than one third of the company's employees are members of the union. Likewise, collective accords have a practical limitation, which is that they cannot offer better benefits

than those stipulated in the collective bargaining agreements in force with the employer.

Strike

A strike is the collective, temporary and peaceful suspension of work activities conducted by the employees in a company or establishment, with the purpose of procuring changes with respect to economic and professional matters proposed to their employers, after compliance with certain procedures. The exercise of a traditional strike is only lawful and possible within the collective bargaining process provided that the employees work for an employer in the private sector or public sector, that does not carry out activities classified by law as essential public services. Also unionized employees must have certain majorities in order to be able to lawfully declare a strike (i.e., a minority union can only declare a strike with an absolute majority of the company's employees).

Hiring and Firing Requirements

a. Hiring Requirements

Colombian labor and employment law governs the whole Republic of Colombia and applies to all residents, irrespective of their nationality. In other words, if a foreign company hires an employee in Colombia and the contract is performed in Colombia, it will follow the same rules established for employment contracts executed by domestic companies.

Employment contracts may be classified according to their duration, as follows

Employment Contract	Characteristics
Indefinite Term	This type of agreement does not establish a time period for the life or duration of the contract. Its duration depends on the maintenance of the causes that originated the relationship and the scope of the work to be performed. They are typically used when the term of the contract cannot be estimated or has not been determined, but the parties are willing to work over a long period of time. All verbal contracts are presumed to be indefinite term agreements, regardless of the fact that the parties may have agreed otherwise.

Employment Contract	Characteristics
Fixed Term	It is an agreement in which the parties establish a term for the duration of the contract, which may not exceed three years. This type of contract must be in writing; since otherwise it will be understood as an indefinite-term agreement. There are 2 types of fixed-term employment contracts: (i) those of less than a year and (ii) those between 1 and 3 years. The first ones may only be renewed for three equal or lesser terms. If an additional renewal is desired, the term may not be less than 1 year. The second one may be renewed indefinitely, without turning it into an indefinite-term employment contract.

	Law establishes the automatic renewal of fixed-term employment contracts with an equal term to the one initially agreed, in the event that a further renewal is not desired, prior notice of at least 30 calendar days before the expiration date of the contract, must be given to the other party.
For the time that the performance of the work may last	The term of the contract depends directly on the period the duty for which the employee was hired lasts, or the work that has been contracted. In that sense, it does not permit any renewals. Since it is necessary to specify in detail the work or duty to be performed, the contract must be in writing.
Occasional, accidental or transitory	This type of contract is appropriate for the fulfilment of duties that vary from the normal activities of the Company, and its duration is of less than 1 month.

b. Trial Period

During the trial period, which must be stated in written, the employer has the opportunity to evaluate the employee's performance, and, at the same time, the employee may evaluate the work environment. Pursuant to the Labor and Employment Code, an employee's trial period may not exceed 2 months in the case of indefinite term contracts and no more than one-fifth of the total term of fixed term contracts. During this period, either party may terminate the employment contract without prior notice or thereby incurring into severance payments.

c. Firing Requirements

As a rule, every employer has the right to unilaterally terminate the employment contract at any time (unless reinforced stability situations), either with or without cause[43]. Upon termination without cause, the employer shall pay a severance that remedies all damages caused by the termination (this amount will vary depending on the salary and seniority of the employee). In order to terminate the

[43] Among others, employees that are protected against dismissal are: (i) pregnant women, women who have given birth on the last three months or during breastfeeding period, (ii) employees that have submitted an employment harassment complaint, (iii) employees with health problems or conditions, (iv) employees that are less than three years to the retirement age, (v) employees in sick leave or with medical recommendations, etc.

employment contract without cause, it is not necessary to follow any special procedure and therefore notification of the decision, even with immediate effects, would suffice.

Under fixed term contracts, the contracting party should notify the employee 30 days prior to the termination of the contract to avoid its automatic renewal for the same term previously agreed upon.

d. Severance Payments

(i) Fixed term contracts: salary corresponding to the time remaining until the completion of the initial term or its renewal.

(ii) For the time that the performance of the work may last: salaries corresponding to time remaining until the completion of the hired work, which may not be less than 15 days of salary.

(iii) Indefinite Term Agreement:

- Employees with salaries less than 10 times the Legal Minimum Monthly Wage: 1 year or less of service, 30 days of salary; plus 20 additional days for each subsequent year and proportionally for fractions thereof.

- Employees with salaries equal to or that exceed 10 times the Legal Minimum Monthly Wage: 1 year or less of service, 20 days of salary; plus 15 additional days for each subsequent year and proportionally for fractions thereof.

- Employees with 10 years or more of services as of December 27, 2002: 45 days of salary for the first year, plus 40 additional days for each subsequent year and proportionally for fractions thereof.

- Employees with 10 or more years of services as of January 1991, have the right to be restored in his/her position. In case of a termination without cause, the employer must pay an indemnification of 45 days of salary for the first year and 30 days of salary for the additional years; without prejudice that the employee files an employment lawsuit seeking restitution to the original workplace.

Collective Dismissals

An employer who wishes to collectively dismiss its employees will require authorization from the Ministry of Work. A dismissal is deemed collective provided that in a term not exceeding or equal to 6 months several employees starting with 30% out of the total persons hired by the company with an employment contract are affected, in companies with 11 to 49 employees, and down to 5% of the employees, in companies with 1,000 employees or more.

Notwithstanding the above, collective dismissal only applies to unilateral termination of employment contracts without cause. Thus, it excludes terminations with cause, resignation of the employee and termination by mutual agreement. Obtaining the Ministry's authorization to perform the collective dismissal does not release the company from its obligation to pay each of the dismissed employees the severance to which they are entitled, due to termination of the contract without just cause.

Immigration Requirements

Immigration Controls

Foreign nationals entering the country must abide by immigration laws and regulations. The country's current economic situation, investment opportunities and inclusion into a number of Free Trade Agreements (USA, European Union, Canada etc.) has motivated keeping a more open-barriers policy.

The immigration system in Colombia regulates the access, stay and exit of foreign assignees in Colombia. In this chapter we will describe the Colombian Immigration System, along with the permits and the main categories of visas that may be requested from an expat wishing to make contacts, provide services, conduct business activities, or keep investments in Colombia.

a. Legal Framework

The immigration legal framework is established by the Constitution through a compendium of laws, decrees and resolutions.

Colombian Constitution regulates and describes the principles for Colombian inhabitants, including the principles of citizenship and foreign nationals in the country.

The decrees and resolutions, in the Colombian legal framework are as follows:

- Decree 1067 of 2015 is the so called “Unique Regulatory Decree of the Administrative Sector of Foreign Affairs” and it compiles with all the immigration related decrees valid to June 12, 2015, including entry permit and visa eligibility criteria.

- Decree 1743 of 2015 partially modifies Decree 1067 of 2015, especially in when it relates to consular/consul matters, passports, and visa dispositions.

- Resolution 6045 of 2017 establishes the types of visas and requirements.

- Resolution 10535 of 2018 lists the nationalities that require a visa to enter the country, and those who can enter the country with an entry permit.

- Resolution 3167 of 2019 establishes entry permit eligibility criteria.
- Resolution 2061 of 2020 establishes other immigration obligations and procedures.

- Resolution 3770 of 2021 establishes additional immigration obligations and the punitive procedures for non-compliance with immigration dispositions.

- Resolution 10687 of 2019 establishes the requirements to validate foreign degrees.

b. Colombian Government Entities Responsible of Immigration Practice

The enforcement of immigration regulations is in the head of The Special Administrative Office Migration Colombia. Nevertheless, the Ministry of Foreign Affairs, Colombian consulates, the Ministry of National Education and the Professional Councils play an important role in the issuance documentation required in order to be compliant with the immigration and professional regulations.

Ministry of Foreign Affairs

The Ministry of Foreign Affairs has specialized divisions for the issuance of immigration-related documents including legalizations, apostilles, and the issuance and renewal of passports and visas.

Special Administrative Office Migration Colombia

The Special Administrative Office Migration Colombia (herein “MC”) is a

division of the Ministry of Foreign Affairs is in charge of the immigration control, visa registration, foreigners' identification cards, immigration audits and sanctions. It is a police-like entity in charge of granting temporary visitor permits and extensions, issuing waivers when visas have expired, keeping a registry of all foreigners residing in the country.

c. Other Colombian Government Entities[44]

Ministry of National Education

Foreign professionals may apply for validation of their degree or professional diplomas before the Ministry of Education. This procedure takes an average of 8 months. After receiving such certification, the foreign national must apply for a professional license in the relevant Professional Council. Validation of the foreigner`s diploma will enable the foreign national to perpetually exercise a regulated profession in Colombia.

Professional Councils

Professional Councils regulate certain professions and activities in Colombia that cannot be practiced without a license. There are certain Professional Councils that grant temporary licenses that allow foreigners to work in a regulated industry for a temporary period, usually 1 year, and such temporary license may be renewed. Such licenses are normally requested by foreigners who do not want to apply for permanent residency in Colombia.

Immigration Requirements / Formalities

a. General Requirements

A visa is a permission granted by the Ministry of Foreign Affairs or through Colombian consulates abroad, to foreigners aiming to enter and remain in Colombia. There are 3 different types of visas: (i) visitor (V) (ii) migrant (M), (iii) residence (R). These types of visas are divided into categories, each granted for a specific situation.

In order to apply for any of these visas, it is necessary to submit a list of general requirements, along with some specific requirements that vary depending on the visa category. It is important to bear in mind that any documents issued abroad

[44] While the Ministry of National Education and the Professional Councils are not immigration bodies, these entities play an important role in the regulation and accreditation for the exercise of professional activities.

and, in a language other than Spanish, must be translated into Spanish by an official translator authorized by the Ministry of Foreign Affairs or by the foreign office of the country where the documents were originated. Public documents to be used in Colombia should be certified via an apostille or legalized by the local Colombian consulate.

This section will describe some of the main visa categories.

b. Visitor visas "V"

According to Resolution 6045 of 2017, there are 16 types of activities permissible under the visitor visa category, including business activities. For this review, we have selected the following:

Visitor visa for business activities

This visa may be issued to the foreign nationals visiting the country with the purpose of conducting business negotiations, market studies, investment plans, incorporating a commercial company, negotiate or execute contracts or commercial representation.

This visa may be granted for a validity of up to 2 years and an authorized stay of up to 180 days continuous or discontinuous in a period of 365 days. It is issued with multiple entries. Additionally, this type of visa may be renewed, and it will lose its validity if the foreign national exceeds the authorized time of permanence.

Visitor visa for intra-company transfer

This visa may be granted to foreign nationals visiting the country with the purpose of occupying a position in an office in Colombia of a company with presence abroad, in virtue of intra company transfer of personnel.

This visa may be authorized when, within the framework of existing international agreements, there are specific commitments regarding the entry and temporary stay of people for business purposes. For these purposes, the Ministry will take into consideration the following treaties: FTA Canada, FTA Chile, FTC Korea, FTA Mexico, FTA Triángulo del Norte, European Union and Peru treaty.

Considering that this visa allows for the exercise of working activities, the foreigner and the company are not exempted from complying with employment law obligations.

This visa may be granted for a maximum term of 2 years and an authorized stay for the same term of the validity. This visa is issued with multiple entries. Additionally, this type of visa may be renewed, and the beneficiary will have a work permit only for the corresponding company and activities requested.

Visitor visa for temporary services

This type of visa may be granted to the foreigner entering the national territory to exercise temporary services (including technical activities).

Considering that this visa allows the exercise of working activities, the foreigner and the company are not exempted from complying with employment law obligations.

This visa may be granted for a maximum term of 2 years and an authorized stay for the same term of the validity. It must be noted that this visa will grant a work permit only for the corresponding company and activities requested. Additionally, this visa is issued with multiple entries and may be renewed and allows sponsoring of dependents.

c. Migrant visas "M"

These types of visas are granted to foreign nationals that wish to enter and stay in the country with the intention of settling down, and do not comply with the conditions to request a residence "R" visa.

There are 11 categories, but the most relevant are described below:

Migrant visa for working activities

This visa may be granted to foreigner entering the national territory under a labor relationship or service contract with an individual or a company domiciled in Colombia. This kind of visa is issued despite the legal requirements for the exercise of each profession or occupation in the country.

Additionally, this visa may be granted with a validity of up to 3 years or less, depending on the duration of the contract. The authorized stay will be equal to its term of validity This visa is issued with multiple entries and will grant a work permit only for the sponsoring company. This type of visa may be renewed and allows sponsoring of dependents. Finally, this visa will lose its validity if the foreign national remains out of Colombia for more than 180 days continuously.

Migrant visa under Mercosur agreement

This type of visa may be granted to the foreign national of a country member or associate of the Mercosur agreement with whom Colombia has reciprocity. Currently Colombia is granting Mercosur visas to foreigners from Argentina, Ecuador, Peru, Brazil, Bolivia, Uruguay, and Paraguay. Migrant visa holders under Mercosur Agreement are allowed to conduct any legal occupation in the country including working activities.

This visa is normally granted with a validity of up to 3 years. Upon expiration, the foreigner needs to apply for a residence visa or other type of visa that will allow them to continue executing activities in Colombia. This visa is issued with multiple entries and allows sponsoring of dependents. The authorized stay of this visa is for the same term of the validity.

Migrant visa for entrepreneurs

This type of visa may be granted to the foreign national that has constituted or has purchased shares in the capital of a commercial company for a minimum amount of 100 legal minimum monthly salaries (approximately $24,601 USD for 2021)

This visa may be granted with a validity of up to 3 years and is issued with multiple entries. The authorized stay of will be the same of its term of validity. This visa will have a work permit only for the company where the foreign national has his/her investment. Additionally, this type of visa may be renewed and allows sponsoring of dependents. The visa loses its validity if the foreign national remains out of Colombia for more than 180 days continuously.

Migrant visa for independent activities

This visa may be granted to the foreign national that counts with coalification and expertise to exercise his/her profession independently.

This visa may be granted with a validity of up to 3 years or less and is issued with multiple entries. The authorized stay of this visa is for the same term of the validity. This visa will grant a work permit only for the profession with which the foreign national applied for the visa. Furthermore, this type of visa may be renewed and allows sponsoring of dependents. This visa loses its validity if the foreign national remains out of

Colombia for more than 180 days continuously.

One of the requirements for this type of visa is to provide evidence of accreditation in order to render activities that fall under the scope of a regulate profession. The accreditation can be issued in the form of a temporary professional permit or a degree validation (and permanent license when applicable).

d. Entry Permits

Pursuant to Resolution 10535 of 2018, nationals of more than 90 countries are called "non-restricted nationality foreigners." Nationals from countries not included on the list[45], must apply for a visa in order to enter the Colombian territory.

Furthermore, nationals from Cambodia, India, Nicaragua, Myanmar, Thailand and Vietnam can enter the country without a visa with an entry permit as long as they comply with one of the following conditions:

- Hold a residence permit a Schengen country or from the United States.
- Hold a Schengen visa or a US visa with a validity of minimum 180 days at the time of entry to Colombia. Transit visas are not taken into consideration.

Additionally, nationals from Nicaragua that hold a visa or residence permit from Canada.

Nationals from the countries listed above are allowed to enter the country without a visa and stay in national territory under an Entrance and Stay Permit (herein "PIP") granted at the port of entry.

Currently, there are 3 types of entry and stay permits (PIP), depending on the activities that the foreigner intends to

[45] Albania, Andorra, Antigua and Barbuda, Former Yugoslav Republic of Macedonia, Argentina, Australia, Austria, Azerbaijan, Bahamas, Barbados, Belgium, Belize, Bolivia, Bosnia and Herzegovina, Brazil, Brunei-Darussalam, Bulgaria, Bhutan, Canada, Czech (Republic), Chile, Cyprus, Korea (Republic of), Costa Rica, Croatia, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Germany, Georgia, Grenada, Greece, Guatemala, Guyana, Honduras, Hungary, Indonesia, Ireland, Iceland, Israel, Italy, Jamaica, Japan, Kazakhstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malaysia, Malta, Marshall Islands, Mexico, Micronesia, Moldova, Monaco, Montenegro, Norway, New Zealand, The Netherlands, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russia (Federation of), Saint Kitts and Nevis, Samoa, Saint Marino, Saint Lucia, Holy See, Slovakia, Slovenia, Spain, Saint Vincent and the Grenadines, Serbia, Singapore, Solomon Islands, Sweden, Switzerland, Suriname, Trinidad and Tobago, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, United Arab Emirates, Uruguay and Venezuela. Passport holders of Hong Kong – SARG China, Malta, Taiwan-China and Nicaragua, who prove to be natural from the Autonomous Region of the North Caribbean Coast and of the Autonomous Region of the South Caribbean Coast shall also be exempt from visa before entering the country.

conduct in the country. We will review the PT and POA (urgent technical assistance):

(i). **PT** – This permit is granted to the foreigner entering the country for the performance of the following activities:

- Tourism
- Medical treatment
- Participate in cultural, scientific, sports events.
- Participate in conventions.
- Business activities

This permit is issued with a validity of up to 90 days. If necessary, this permit may be extended for another 90 days, but for no more of 180 days per year. The Special Administrative Unit Migration Colombia will monitor the number of days of permanence of each foreigner holder of PT, to prevent stays longer than 180 calendar days, continuous or discontinuous, within the same calendar year. It is necessary to have an invitation letter when entering the country and present it to the immigration authorities.

(ii). **POA (urgent technical assistance)** - This permit is granted to foreigners who needs to enter the country to provide urgent technical assistance. Among the requirements, the Colombian company must submit a letter justifying the urgency of the trip at least 5 business days before the foreign national´s arrival. The technical entry permit is issued for up to 30 days and cannot be renewed. Furthermore, technical entry permits are only granted for a maximum of 30 days within 1 year.

Intellectual Property

Trademarks, Patents and Know-How

In Colombia, trademarks (including other distinctive signs such as trade names and slogans), patents, utility models, industrial designs and know-how are governed by Decision 486 of 2000 of the Andean Community of Nations (herein "Decision 486")[46]. Decision 486 sets forth the Industrial Property common regulations applicable to all countries that are members of the Andean Community (herein "CAN") (namely Bolivia, Colombia, Ecuador and Peru). In Colombia, the governmental agency in charge of industrial property is the Superintendence of Industry and Commerce (herein "SIC").

Most issues in connection with industrial property are carefully governed by Decision 486, including both substantial and procedural matters. Trademarks are only protected through registration, whereas trade names and emblems attain protection by evidencing continuous and public use. Novel and inventive products and processes are protected by patents, utility model patents and industrial designs. Any act or agreement in connection with both trademarks or patents, such as transfers, or even modifications regarding the owner's name or his place of business, must be recorded before the SIC to become enforceable vis-à-vis third parties.

Further to the FTA between the U.S. and Colombia, the failure to record trademark license agreements does not affect the standing, validity and/or enforceability vis-à-vis third parties.

Trademark registration affords protection throughout a 10-year term, which may be renewed indefinitely for subsequent equal terms. In turn, patent protection is in force throughout a 20-year term and, in the case of utility model patents and industrial designs, a 10-year term is also applicable, subject to the payment of annuities for patents).

Priority claims are granted to the holders of trademarks that have been requested within Andean Community member countries or countries who are members of the Paris Convention for the Protection of Industrial Property. Hence, in a period of six months counted from the date of the initial application, trademark owners can

[46] Decision 486 entered into force on December 1, 2000 and is regulated by External Resolution No. 10 of August 6, 2001.

request the same trademark in any other member country, and the filing date will not be the date of the new application, but the date of the first application (in the other country). A 12 month period will apply for patent applications.

Pursuant to Law 1343 of 2009, effective as of April 13th, 2012, the country's adherence to the Trademark Law Treaty has been enacted, which intends to simplify and harmonize the administrative procedures regarding national applications and the protection of marks and allows applications in multiple classes of the International Nice Classification.

By means of Law 1455 of 2011, effective as of on August 29th, 2012, the Madrid Protocol and its regulatory framework have been approved. It offers the possibility of protecting trademark registrations and/or applications in several countries (members of the Madrid Union), through a single application filed before the SIC, in one language (Spanish), with a pre-established set of fees in one currency and does not require the appointment of a local agent for the prosecution of an application. It also enables trademark applications in other countries to be designated and protected in Colombia.

Per Decree 4886 of 2011, effective as of December 26th, 2011, final decisions rendered by the SIC can only be subject to an appeal motion.

Per Law 1450 of 2011, effective as of June 16, 2011, rights on intellectual property made on a work-for-hire basis, within the scope of an employer-employee relationship or under an agreement for the provision of services, are presumed to be assigned to the employer or contracting party, unless agreed otherwise and provided that the corresponding agreement is in writing.

Information that is meant to be used in an industrial, productive or commercial activity, and whose nature allows it to be transferred from one party to another, will be protected as an industrial secret, provided that (i) is secret, in such a way that it is not of public knowledge, nor may it be easily attainable by those knowledgeable in the respective matter; (ii) has a commercial value due to its secrecy, and (iii) has been subject to reasonable efforts to keep the information confidential. Consequently, industrial secrecy protection arises regardless of registration, whenever the requisites are met. Among others, know-how and confidential information can be protected as industrial secrets. Decision 486 also

contains regulations regarding other relevant industrial property issues, such as a special chapter devoted to the legal actions that can be undertaken against industrial property infringement and unfair competition in connection with industrial property.

Regarding Trademark Infringement Actions, and for the purposes of facilitating the valuation of the indemnification for damages, on November 11th, 2014, the Government enacted Decree 2264 under which the plaintiff may opt for the Predetermined Compensation System (Statutory Damages). The plaintiff, may still however, opt for the traditional system where they prove consequential damages and loss of profit. Punitive damages are not applicable in Colombia. In this last system, the plaintiff must prove, during the judicial proceeding, the amount of the requested indemnification, through the general evidentiary system established in our civil legislation.

Should the plaintiff decide to apply the above-mentioned Predetermined Compensation System it will only be required to prove that the trademark infringement was committed, for the civil court to condemn the defendant to pay a preset indemnification. Said compensation fluctuates between 3 to 100 minimum wages. The compensation may increase up to 200 minimum wages if (i) the infringed Trademark is recognized to be a well-known distinctive sign, (ii) there is bad faith on the infringing party, (iii) the infringement endangers the life or health of people and/or, (iv) the infringement is repetitive.

During 2020, SIC enhanced applications for non-traditional trademarks such as sound marks, color marks and position marks, by further regulating the requirements.

Copyrights

In Colombia, Copyrights are governed by Decision 351 of 1993 of the Andean Community, Law 23 of 1982, Law 44 of 1993, Law 599 of 2000 (Colombian Criminal Code) and Law 1915 of 2018.

Colombia has a *droit d'auter* system, due to the country's civil law tradition, differing from the copyright system found in common law countries. Per Colombian law, authors are the individuals who craft a protected work, to whom moral and economic rights are conferred.

The definition of "protected work" is very wide, and includes any scientific, literary (including software) or artistic creation,

regardless of the medium in which the work is fixed.

Copyright protection is granted without registration. However, to provide enforceability *vis-à-vis* third parties and evidence, among others, authorship, and date of creation of a work. Therefore, it is advisable to register the work and contracts associated thereto before the National Copyright Registry.

The protection afforded by Colombian law rests exclusively on the way ideas are expressed, rather than on the idea as such, throughout the author's life and 80 years after his death, when the owner of the copyrights is an individual; whereas when the owner is a legal entity, protection endures for 70 years as of the first calendar year of the first authorized publication of the work. However, if the work has not been published with the permission of the rights holder within 50 years from the date of creation, the term of protection is 70 years as of the first calendar year of its creation.

Per Law 1450 of 2011, effective as of June 16th, 2011, exploitation of economic rights in copyrightable works made on a work-for-hire basis, within the scope of an employer-employee relationship or under a service provision agreement, are presumed assigned to the employer or hirer at the time of creation of the work, unless agreed otherwise and provided that the corresponding agreement is in writing. Moral rights are not transferrable and remain with the author.

Law 1915 of 2018 updated the national copyright system regarding the use of technological measures to protect copyright titleholders, including interdiction to avoid technological measures meant to control de access to a protected work.

Additionally, it allows the plaintiff in a copyright infringement process to request precautionary measures, according to the General Procedure Code. Precautionary measures may vary, but they always must be reasonable, effective and proportional to the plaintiff's claims. These precautionary measures may be decided *ex parte*.

Law 1915 of 2018 also included the Statutory Damages system, allowing the plaintiff to determine an approximate amount of the damages caused by the defendant, without having to provide evidence regarding this amount.

Finally, Law 1915 of 2018 included the parody as an exception of copyrights.

Plant Varieties

In accordance with the CAN Decision, Colombia has the obligation to have a system for the protection of the plant breeder's rights. Plant breeder's rights are intellectual property rights granted on new plant varieties developed by a person or a legal entity through hybrid or biotechnology procedures, genetic modifications, regeneration process of the plants from transformed cells, or any other.

For Colombia, this protection has been strengthening through the Union for the protection of New Plants Varieties (herein "UPOV") system, that is, that the Colombian Government recognizes and guarantees the protection of the breeder's rights of new plant varieties through the granting of a certificate. This structure was erected in Colombia over 20 years ago with adherence to the 1978 UPOV Convention and the promulgation of Decision 345 of 1993 of the Commission of the Andean Community of Nations. Currently, the entity that regulates this field is the Agricultural and Livestock Institute (herein "ICA" for its acronym in Spanish).

In Colombia, said right granted by the State to exclusively exploit a new obtained variety is given to the breeders that have created a new, homogeneous and stable plant varieties, and that have been assigned a denomination that constitute their generic designation. This right has a period of 20 to 25 years in the case of vines, forest trees, fruit trees including their rootstocks, and 15 to 20 years for the remaining species.

Domain Names

In 2010, the Colombian Ministry of Information and Communication Technologies appointed a privately held company called. Co Internet SAS as administrator of the ".CO" domain and domain name registry for Colombia, a task which had always been performed by a local university. Ever since, Co Internet SAS undertook the administration of domain names for Colombia, it has accredited different organizations as registrars for ".CO" domains and has eased the registration procedure, by removing previous requirements for domain name applicants (i.e., local presence and corresponding trademark).

For instance, in March 2010, Co Internet SAS launched the new ".CO" Country Code Top Level Domain (i.e.co). These

days, the registration of .CO domain names is open to many registers which enable their purchase, renewal and control.

".CO" domain name owners are subject to the Internet Corporation for Assigned Names and Numbers (ICANN) and the Uniform Dispute Resolution Policy (UDRP).

Important changes to regulations for industrial property proceedings

Several amendments which ease the interaction with the SIC have been set in place, as follows:

- Documents in languages different to Spanish can be filed along with a simple translation and do not require any formalities (i.e., authentication, attestation, apostille, etc.).

- Documents are admissible without authentication, attestation, legalization or other certification of signature or other means of identification.

- It is not necessary to evidence the existence and legal representation of the person who files the application unless the respective authority requires it.

- Powers of attorney required by the SIC in administrative procedures may be granted in a private document, without the need of notarization, authentication or legalization.

- Regarding difficulties that may arise during trademark application proceedings due to previous registrations, there is now a hearing in which the appointed SIC officer may propose and endorse binding agreements between the parties involved. This hearing shall be requested by both parties and summoned *ex officio* by the SIC.

- The hearing may be held at any time after the 30 working-day term for responding an opposition has expired, and at any time before a first decision has been issued. Said hearing may take place in the following cases:

  - When, within the trademark application proceeding, no oppositions have been filed but the rights of a third party are relevant for overcoming the obstacle which prevents the registration of the respective trademark; and
  - When, within the trademark application proceeding,

oppositions have been filed on the grounds of previously secured rights.

- It is now possible to request an expedited trademark application examination, which if requested, should be decided within 6 months, subject that is does not affect a third-party right derived from priority claim.

- To accelerate the publication for opposition purposes of the application, the SIC has also offered the possibility to request an accelerated examination of formal requirements seeking to decrease the time taken to publish the application in the Industrial Property Gazette, if the application follows the suggested Madrid Protocol goods and services classification.

- The Customs and Tax Authority has also enabled a Directory of Trademarks seeking to provide their customs officers a way to confirm if counterfeited products are entering Colombia via ports and airports.

Regulatory Guidelines for Licenses

According to Decision 486, all trademark and patent licenses must be registered before the SIC, to make them binding vis-à-vis third parties. As mentioned earlier, due to the FTA in place between the U.S. and Colombia, the failure to record license agreements no longer affects the standing, validity and/or enforceability vis-à-vis third parties. Nevertheless, for publicity purposes and to produce prima facie evidence of the respective license agreement and the terms contained therein, it is advisable to record the agreement before the SIC. However, for complex transaction of distribution structures, it is advisable to review the convenience to refrain from registration of the license with the competent agency.

Trademark owners are legally obliged to effectively control the quality of goods and services manufactured and rendered by their trademark licensees, provided that they are jointly liable with their licensees before third parties for damages brought thereto. License agreements may not include provisions which undermine or restrict competition.

In addition, trademark license agreements, as well as technology transfer agreements, which involve royalties being sent abroad, may be recorded before “DIAN” for the obtention of a tax benefit in favor of the licensee. Colombian legislation does not explicitly require these agreements to be recorded

before the DIAN, nor does the failure to do so foresee any kind of sanction or penalty.

Agreements between Foreign Corporations and their Wholly Owned Subsidiaries

The most common agreements related to industrial property rights entered into by foreign corporations with their subsidiaries are:

- Trademark and Patent Licenses;
- Technical Assistance Agreements; and
- Technology Transfer Agreements.

It is also common that corporations not interested in a centralized administration of their industrial property portfolios transfer the local registered trademarks to their subsidiaries.

However, entering into license agreements with the subsidiaries to allow use of the intellectual property is not mandatory, and therefore, the convenience of doing so, should be analyzed on a case-by-case basis.

Health Care System

Generalities of the Colombian Healthcare System

The Social Security System in Health (herein "SGSSS" by its acronym in Spanish) can be considered as a mature system, which has been in place for approximately 27 years. With a stable model that has been gradually evolving to update its institutions and adapt to modern needs in terms of financing, structure, control bodies, expansion of coverage and adaptation to new technologies.

The right to health is enshrined in article 49 of Colombia's Constitution, recently established as a fundamental right in a statutory law.

In November 2020 the Ministry of Health and Social Protection reported[47] that 95% of Colombia's population has healthcare coverage. This means that about 47 million Colombians are affiliated with a health insurance regime.

Statistical data also reported by the Ministry of Health and Social Protection[2], have shown a steady growth of health insurance of Colombian citizens. From

[47] https://www.minsalud.gov.co/Paginas/Colombia-sigue-avanzando-en-la-cobertura-universal-en-salud-.aspx

1995 to the end of the year 2020, coverage has grown by 29.21%. The goal of the national government is to achieve universal coverage in citizens' health.

The social security system in health was created with Law 100 of 1993, with the aim of creating a system based on the principles of universality, solidarity and efficiency. The system is financed by the payment of a contribution by citizens with economic capacity, and by public resources at the central and territorial level, and consists of 3 regimes: subsidized, contributory and special or exception. The population insured in health in Colombia is distributed as follows:

- 47,89% belong to the subsidized regime.
- 47.58% belong to the contributory regime.
- 4.52% belong to exceptions regimes.

The Colombian healthcare system offers comprehensive coverage to its users in accordance with the health benefit plan including topics such as emergency care, medications, surgical procedures, diagnostic examinations, among others.

Institutions of the Colombian healthcare sector that are worth highlighting:

- **Ministry of Health and Social Protection:** is a public entity at the central level of the Government, it is the highest governmental authority of the health sector in Colombia. The Ministry is responsible for formulating, adopting, directing, coordinating, implementing and evaluating public policy on health, public health and social health promotion.

- **ADRES:** is an entity attached to the Ministry of Health and Social Protection. Its acronym means: Administrator of the resources of the General System of Social Security in Health. The main functions of ADRES are: Perform the recognition and payment of the Capacitation pay unit UPC (*unidad de pago por capacitación*) and other health insurance resources, make payments to health service providers and health technology providers, administer the Unique Affiliate Database (BDUA) and perform the recognition and payment of social benefits.

- **Superintendency of Health:** It is the entity responsible for the monitoring,

surveillance and control of the actors inthe health care system.

- **Invima[48]:** It is the country's regulatory agency, responsible for the monitoring and control of sanitary issues. It is responsible for applying sanitary standards in issues such as food, medicines, medical devices, among others.
- **EPS or EAPB:** They can be considered as health insurers; are responsible for the management of the resources. Health insurers must guarantee to their affiliates access to the health benefit plan.
- **IPSS:** They are the institutions responsible for the provision of healthcare services, under this classification we can find the public and private hospitals. As a rule they have a contract with an EPS to provide services to its affiliates.

Important regulation:

The healthcare sector in Colombia is highly regulated, with a significant number of laws and technical standards that are responsible for guiding activities related to this sector. Regulation is dynamic and seeks to respond to the changing needs of an ever-evolving industry. In recent years the healthcare sector has undergone a major legislative update, which has been reflected in the issuance of a significant number of laws and regulatory decrees.

As an example of the most relevant and recent laws and regulations, we can identify the following:

- **Law 1751 of 2015:** With this statutory law there is a paradigmatic change that deserves to be highlighted because it establishes the right to health as a fundamental right. This law develops the content and obligations of the State in relation to this fundamental right and regulates important issues such as medical autonomy in health professionals.

- **Decree 780 of 2016:** In view of the large number of regulatory rules governing the healthcare sector, the Ministry of Health and Social Protection issued a unique regulatory decree, with the aim of compiling and streamlining the rules governing the healthcare sector, and additionally having only one legal instrument for it.

[48] National Institute of medications and Food Surveillance

- **Resolution 3100 of 2019**:. This resolution establishes the procedures and conditions for the registration of healthcare service providers and the habilitation of healthcare services.

- **Law 1955 of 2019:** Is the National Development Plan 2018-2022. "pact for Colombia, pact for equity". Article 237 of the aforementioned law structures "Ley de punto final", a mechanism with which it seeks to heal healthcare sector debts to clean up payments for services and technologies not financed by the UPC. In addition, this law makes important clarifications to the social security system in health, for example:

  - Include health technology logistics operators and pharmaceutical logistic operators as system actors.
  - Interoperability of health records .
  - Incentives for quality and health outcomes.
  - Efficiency in health spending and payment logistics.

New technologies in the health service:

The technological evolution issues of the healthcare sector are no strangers to Colombian reality, with Covid 19 as a driver of major structural changes two important issues are on the technological innovation agenda of the Colombian health system.

The first is telehealth, although there was an intention of the government for several years to develop this practice, it was the pandemic that accelerated this service and took it massively to Colombian households. This tool is seen as essential to bring healthcare services closer to the farthest areas of the country, and to provide the possibility of having specialist doctors in areas where these health specialties are not available.

Law 1419 of 2010 defines telehealth as:

> *"It is the set of activities related to health, services and methods, which are carried out remotely with the help of information and telecommunications technologies. It includes, inter alia, Telemedicine and Health Tele-Education."*

Among the variants of Telehealth, the most important is Telemedicine, which is legally defined as:

> *"It is the provision of distance health services in the components of promotion, prevention, diagnosis, treatment and rehabilitation, by health*

professionals using information and communication technologies, who are allowed to exchange data in order to facilitate access and opportunity in the provision of services to the population with supply constraints, access to services or both in your geographic area."

To regulate Law 1419 of 2010, the Ministry of Health issued Resolution 2654 of 2019 establishing provisions for telehealth and parameters for the practice of telemedicine in the country. This resolution, defined the categories of telemedicine, concerning the prescription of medication and authorization of health services, which is relevant to the quality and security of information and data, and other topics.

Information provided by the Ministry of Health[49] reveals that this service is consolidated in Colombia. Between January 1st 2020 and September 30th 2020, there was a 117% increasein the offices of healthcare providers offering telemedicine, and by 192% for services in this modality.

Recent experiences with telehealth suggests that its use will be maintained after the Covid 19 pandemic. The advantages that this service offers to stimulate patient health care throughout Colombia, and if we add to this the increasingly frequent access of citizens to information technologies such as smartphones, it makes it possible to establish that the use of this tool will be on the rise in the coming years, and become common practice.

A second topic of relevance to the healthcare sector is the issue related to electronic health record. Faced with the logistical challenge of transforming the day-to-day operation of health sector institutions and overcoming the inconveniences related to paper health records and the associated costs and risks in the compliance of physical files for these documents, Law 2015 of 2020 was issued.

This law[50] aims to regulate in Colombia the interoperability of electronic health record, with this initiative seeks to facilitate and guarantee the exercise of the rights to health and information of citizens respecting the habeas data and confidentiality of this document. In addition, this law[51] determines that healthcare providers are required to diligently dispose of medical history data,

[49] https://www.minsalud.gov.co/Paginas/Durante-la-pandemia-se-consolido-la-telemedicina-en-el-pais.aspx

[50] Article 1 Law 2015 of 2020
[51] Article 3 Law 2015 of 2020

documents and records on the government's interoperability platform. This law granted for a 5-year period to implement the electronic health record in Colombia.

In recent years, other important initiatives have been advanceing to organize the logistics and operation of the healthcare sector, such as **RETHUS** (National Single Registery of Human Talent in Health), in order to achieve a unique registery of health professionals. Like MIPRES, a tool created for prescribing drugs not included within the health plan, and which are not funded by the UPC.

Regulation against Covid 19

In this regard, Law 2064 of 2020 was issued, with it declaring the general interest of the public strategy for the immunization of the Colombian population against Covid 19. The public vaccination program for all citizens was established free of charge.

Decree 1787 of 2020 was also issued, to make the procedure for the approval of medications for the treatment of Covid 19 in the Colombian territory a simpler process. This measure establishes an emergency authorization tool for chemical and biological synthesis medicines and vaccines, the authorization procedure is responsibility of INVIMA, an entity that continues to conduct rigorous scientific analysis of medications approved under the aforementioned mechanism.

To the manage the Covid 19 pandemic, the Colombian government focused its efforts on aspects such as the availability of intensive care units in public and private hospitals and on the access of the Colombian population to vaccines against this disease. To achieve this, the government decided to negotiate with different pharmaceutical laboratories, and established a national vaccination plan in which the population most susceptible to the coronavirus was prioritized.

During the second half of 2021 and the first quarter of 2022, a large part of the Colombian population had a complete vaccination scheme. It was even possible to vaccinate a large part of the citizens additionally with booster doses. Currently, a fourth booster dose is being considered and measures such as the mandatory use of face masks in the main cities of the country have been relaxed. Additionally, social and economic activities have been reactivated in Colombia at levels similar to the pre-pandemic era, with low levels of Covid 19 cases which continue to be monitored by the Ministry of Health.

In the course of 2022, the Ministry of Health has issued a significant number of regulatory decrees. These decrees seek to update several issues that could not be regulated due to the effects of the pandemic.

The current intention of the Ministry of Health is to strengthen the transparency of the health sector through technological platforms designed to provide information on contracts between the different actors of the Colombian health system. Likewise, Decree 441 of 2022 was issued, which was responsible for updating the minimum requirements of the contracts signed between EPS, public and private hospitals, health technology logistics operators and pharmaceutical logistics operators. It is expected that, duringthe remainder of the current national government, the Ministry of Health will continue with this trend, issuing regulatory decrees on various issues.

Termination of a business

TERMINATION OF A BUSINESS, DISPUTE RESOLUTION AND FORECLOSURE PROCEEDINGS

Insolvency Proceeding

Insolvency proceedings are governed by Law 1116 of 2006 (herein “Law 1116”), which establishes rules regulating the reorganization and the judicial liquidation of insolvent business entities. Law 1116 also regulates the validation of an extrajudicial reorganization agreement and cross-border insolvency proceedings based on the law model of the United Nations Commission for the International Commercial Development.

Law 1116 applies to merchants, trust agreements that carry out business activities, and legal entities that are not expressly excluded from its application, and to branches of foreign companies that conduct permanent business in Colombia. Among the entities excluded from the application of this law are the stock exchange entities, entities under the Superintendence of Finance surveillance, public entities, and non-merchant individuals, among others.

It is important to note that some changes have been introduced to Law 1116. First, Law 1429 of 2010 reduced some terms established in Law 1116 (herein “Decree 1429”). Also, only in certain circumstances a promoter will be appointed and, therefore, pursuant article 35 of Decree 1429, the tasks traditionally assigned to the promoter of the insolvency proceedings –for instance, the drafting the project of votes and claims- will be assumed by the legal representative of the debtor.

Second, Decree 1749 of 2011 (herein “Decree 1749”) regulated Law 1116 in specific aspects regarding the insolvency proceeding of business groups (*Grupo de Empresas*). The abovementioned decree entered into force on May 26th, 2011.

Decree 1749 defined business groups as the organizations comprised by individuals and legal entities that intervene in economic activities, related to each other because of its condition of controlling entity or subsidiary or because a major portion of its capital assets belong or are administrated by an individual or a legal entity. An important part of the definition contained in Decree 1749 is that the concept of business groups extends to those related parties because they are guarantors of each other.

Also, Decree 1749 establishes, exceptionally, the consolidation of the patrimony (*consolidación patrimonial)* of the business group. This means that the assets and liabilities of two or more debtors of one business group are merged in the liquidation proceeding. The consolidation of the patrimony is applicable only if certain requirements are met (i.e. the assets of two or more entities are comingled in a way that cannot be separated without incurring in unreasonable expenses or time or when the companies executed fraudulent transactions).

Third, Law 1676 of 2013 introduced some modifications to the rights of secured creditors to enforce their security interests during insolvency proceedings. Law 1676 of 2013 was regulated by Decree 1835 of 2015 that establishes the steps to enforce security interests during insolvency proceedings.

Fourth, Decree 991 of 2018 introduced some modifications to the insolvency proceedings related to appointments of promoters and liquidators, their fees, rules to present certain reports, suspension of effects of precautionary measures in a judicial liquidation proceeding, among others.

Moreover, upon the Covid-19 pandemic, insolvency emergency legislation was enacted through Decree 560 of 2020 (herein "Decree 560"), which was regulated by Decree 842 of 2020. Decree 560 is applicable to companies negatively affected by the pandemic and it provides: (i) two new expedite insolvency proceedings, (ii) applicable measures for ongoing proceedings and; (iii) rescue measures.

New insolvency proceedings include the emergency negotiation of reorganization agreements and the business recovery proceedings before the Chambers of Commerce.

Decree 560 also simplified the admission to the traditional insolvency proceedings set in Law 1116, by providing that the insolvency court will only review that the required documents to initiate the proceeding are complete but will not audit them. Also, Decree 560 allows the debtor to pay minimis claims and sell non-essential assets, which do not exceed 5% of the total debt, without the previous authorization of the insolvency court.

Additionally, Decree 560 establishes different measures that seek to protect both the debtor and its creditors, such as the capitalization of credits, the discharge

of debts, sustainable debt agreements, and new incentives for debtor-in-possession financing.

Specifically, in certain circumstances, Decree 560 allows the debtor to obtain financing without prior court approval. Perhaps more importantly, this financing is granted the same level of priority as other post-petition claims - and may even rank senior to tax claims -, and the debtor is allowed, subject to insolvency court approval, to grant a lien on its assets to secure payment of any obligation resulting from post-petition financing.

Finally, it is important to mention that through Decree 772 of 2020, another emergency decree, two additional insolvency proceedings were created: (i) the abbreviated reorganization proceeding; and (ii) the simplified judicial liquidation proceeding. Both proceedings are intended for companies whose assets are less than 5,000 legal minimum wages. (Approximately $1,348,817 USD for 2022).

Business Reorganization

The purpose of business reorganization is to reach an agreement between the internal and external creditors, and to promote the viability of the business through the restructuring of assets and liabilities and the stabilization of commercial and credit relations through operational, financial, and administrative restructuring. The Reorganization Proceeding seeks to maintain the operation of the business that is facing financial difficulties, but that is still able to be productive and to recuperate. Reorganization may be carried out by means of judicial proceedings ("Reorganization Proceeding") or by means of a private agreement between the debtor and its creditors with the further approval of the agreement from the insolvency court ("Judicial Validation of Reorganization Agreement Proceeding").

For the commencement of a Reorganization Proceeding, the debtor or its creditors must file a petition before the insolvency court. If it complies with legal requirements, the insolvency court will order the commencement of the proceedings.

It is worth noting that some effects take place just from the filing of the reorganization petition. In fact, once insolvency petition has been filed, debtor's officers and directors shall not undertake or perform certain actions without prior authorization from the insolvency court. Such acts include:

- Amending the by-laws
- Granting or enforcing security interests over debtor's assets, including collateral trusts.
- Paying or otherwise offsetting any outstanding obligations.
- Entering into arrangements or settlements regarding any outstanding obligations.
- Terminating judicial proceedings.
- Transferring assets and carrying out operations out of the ordinary course of business.

Moreover, if any of the acts forbidden as of the filing of the petition is executed after the admittance of the debtor to a Reorganization Proceeding, without authorization of the insolvency court, in addition to the fines that may be imposed to the directors, the act will be ineffective.

Regarding collection proceedings, as of the acceptance of the reorganization petition, creditors must suspend and cannot commence any collection proceedings against the debtor. The ongoing proceedings will be incorporated to the reorganization proceedings. Any collection proceeding commenced or continued against this prohibition will be void and null.

Pursuant to Law 1676 of 2013, in a Reorganization Proceeding, secured creditors may enforce their security interests over assets that are not necessary for the business of the debtor. If the insolvency court rules that the encumbered asset is not necessary for the business of the debtor, it may authorize the enforcement of the security interest (unless the secured creditor decides to be part of the reorganization plan). If the insolvency court decides that the encumbered asset is necessary for the business of the debtor, it will order the implementation of some protection measures in favor of the secured creditor. Once the reorganization plan is filed, the secured creditor may decide to participate or not. If the secured creditor is not willing to be bound by the reorganization plan, the secured claim must be paid by the debtor (or at least the part of the credit that is past-due).

Additionally, Decree 560 establishes two new emergency recovery proceedings applicable to companies that are not excluded from the scope of Law 1116 and to companies that, even if excluded from the scope of Law 1116, do not have a mandatory recovery insolvency proceeding.

In an emergency negotiation proceeding, the debtor must file an intention brief accompanied with the documents

required in Law 1116 to file for a reorganization agreement. The insolvency court will review the completeness of the information and will formally admit the company to the proceeding. Subsequently, a 3-month term will initiate for the debtor to file before the insolvency court a reorganization agreement that establishes the plan and terms of payment of the credits accrued prior the initiation of the proceeding. Once the term is concluded, the insolvency court will summon a hearing to solve the creditors objections and will decide on the confirmation of the reorganization agreement. Once the reorganization agreement is confirmed, it will have the same effect as if it were negotiated in a traditional reorganization proceeding.

In a business recuperation proceeding the debtor must file the intention brief before the mediator. Once the proceeding has initiated, a 3-month term will initiate for the debtor to file before the mediator an agreement that establishes the plan and terms of payment of the credits accrued prior the initiation of the proceeding. In this proceeding, alternative dispute resolution mechanism may be used to rule on the objection or matters related to the reorganization agreement.

If a debtor is admitted to an emergency negotiation or a business recuperation proceeding, it will be stayed from:

- Amending its by-laws.
- Granting or enforcing security interests over debtor's assets, including collateral trusts.
- Paying or otherwise compensating any outstanding obligations.
- Entering into arrangements or settlements regarding any outstanding obligations.
- Terminating judicial proceedings.
- Transferring assets and carrying out operations out of the ordinary course of business.

Once the insolvency court admits the debtor into an emergency negotiation or a business recuperation proceeding, collection proceedings against the debtor, will be suspended.

Judicial Liquidation

The Judicial Liquidation seeks to sell or assign all the debtor's assets through direct sale or at a private or public auction. Creditors are to be paid with the proceeds from the sales and the remaining assets will be assigned pursuant to an assignment agreement entered by the creditors or by judicial ruling of the insolvency court . In these type of proceedings, the insolvency court will

appoint a liquidator that will act as the legal representative of the debtor.

As to the effects of the liquidation, since the commencement of the proceeding the debtor is stayed from engaging in transactions to develop its corporate purpose. From the commencement of the proceeding the debtor may only engage in activities related to the liquidation of the business and with the preservation of the assets. The transfer of any asset of the debtor to pay an obligation accrued prior to the commencement of the judicial liquidation proceeding will be ineffective.

Other effects of judicial liquidation commencement include:

- Dissolution of the legal entity.
- Removal of the directives.
- Termination of installment contracts and other contracts that are not necessary to preserve debtor's assets.
- Termination of labor contracts with employees.
- Termination of fiduciary contracts and collateral trusts over assets of the debtor to secure its obligations or obligations of third parties.
- Acceleration of all obligations of the debtor.
- Incorporation of all collection proceedings against the debtor to the judicial liquidation proceedings.

Nonetheless, some of these effects are not applicable regarding acts and contracts that have the purpose or result in the issuance of securities or other negotiable instruments in the public market of Colombia or abroad and collateral trusts over assets subject to securitization in the public market and collateral trusts that are part of the structure for the issuance of securities traded in the public market.

A Judicial Liquidation proceeding may be requested by the debtor or commenced by the insolvency court, or as a result of the failure of the reorganization proceedings. The insolvency court will appoint a liquidator that will undertake the legal representation and management of the debtor's assets.

Cross-border Insolvency

Law 1116 incorporated the cross-border insolvency regulation of the UNCITRAL (United Nations Commission on International Trade Law) Model Law on Cross-Border Insolvency. The cross-border regulation intends to eliminate obstacles and improve international cooperation to achieve in an efficient,

transparent, and timely manner the purposes of the insolvency regulations. Such purposes include:

- Adequate protection to all creditors of the insolvent debtor located in the country at the center of main interests and abroad.
- The existence of transparent and flexible proceedings that protect the interests of the insolvent debtor.
- Preservation of the value of the debtor's assets to avoid its fraudulent disposition in the interest of certain creditors or third parties.
- Equal treatment to all creditors of the same class regardless of their nationality.
- Prevention of the dismemberment of the debtor's assets by means of individual collection proceedings.
- Recognition in Colombia of foreign insolvency proceedings and recognition of Colombian insolvency proceedings abroad.

General Matters of the Insolvency Regime contained in Law 1116

Although the different types of proceedings have particular purposes and procedural requirements, Law 1116 establishes certain general rules applicable to all proceedings regulated therein as follows:

Jurisdiction

The Colombian insolvency court for commercial companies is the Superintendence of Companies. In addition, the Civil Circuit Judge of the domicile of the debtor will have jurisdiction in some cases, especially regarding the insolvency proceedings of individuals that are engaged in business and non-profit companies.

Powers of the Insolvency Judge

In general, the insolvency court has power and authority to lead the process and to comply with its overall purpose. The insolvency court may request or obtain necessary information, take all necessary measures to protect, guard, and recover the assets of the debtor, including revoking acts and contracts, removing and imposing sanctions and fines on officers and directors of the debtor for failing to comply with insolvency orders or their legal duties and obligations, and act as a mediator during the proceedings.

Priority in the payment of claims

The Insolvency Regime establishes the following rules in connection with debt payment order:

a. Claims classes

The classes of claims are established in the Colombian Civil Code and may only be modified in situations expressly authorized by Law. The classes of claims are the following:

- First class creditors (judicial costs, salaries and other payments derived from labor contracts, liabilities in favor of the tax authorities and credits from any judicial decision regarding fiscal responsibility, fiscal fines, and insurance policies and other guarantees in favor of public entities that are integrated to a judicial decision of fiscal responsibility.
- Second class creditors (liabilities secured with a pledge).
- Third class creditors (liabilities secured with a mortgage).
- Forth class creditors (liabilities to strategical suppliers).
- Fifth class creditors (all the other creditors).

b. Administrative Expenses

The obligations accrued after the initiation of the insolvency proceeding are deemed to be administrative expenses and will have a preferential payment over the obligations subject to the insolvency proceedings. Consequently, they have to be paid when they are accrued.

c. Legal Postponement of Payment

Pursuant to Law 1116, certain credits will only be paid once all the other credits are paid in full. The credits that will be legally postponed include obligations with “especially related entities.” The “especially related entities” include:

- Legal entities related to the debtor due to their link as subsidiary or controller.
- Company’s officers and representatives, fiscal auditors and judicial attorneys and representatives for their salaries and professional fees that were not registered in the relevant fiscal period, as well as the indemnifications, fines and interest from settlement hearings, judicial rulings o similar acts. An exception to this rule are the obligations that arise from resources handed out after the admission of the debtor to the insolvency proceeding and

aimed at the company's recuperation.

In the same way, the claims of those creditors that intend to obtain payment avoiding the insolvency regulations or that breach their obligations under the reorganization agreement or judicial liquidation proceedings will be legally postponed.

Avoidance of Transfers

According to Law 1116, any creditor, the promoter (which is an auxiliary to the court), or the receiver may request a claw-back action ("*acción revocatoria*") or declaration of fraudulent transfer ("*acción de simulación*") of some acts executed by the debtor when they are:

- Found to have inflicted damages upon creditors.
- Have affected the priority order for payment of credits owed by the debtor.
- Have affected the property that constitutes the debtor's assets, in such a way that the assets are insufficient to pay the total amount of credits recognized in the proceedings.

Different periods are applicable depending on the type of transaction ("*Suspect Period*"):

- Any act that results in the transfer or conveyance of property, including the transfer to a collateral fiduciary contract, a payment of a prepetition obligation, granting or cancellation of a lien, termination of a lease agreement with the effect of obstructing the insolvency proceeding, may be revoked if such act took place within 18 months of commencement of the insolvency proceeding if the transferee or lessee cannot prove to act in good faith.

- Any gratuitous transfer of property executed within 24 months before the commencement of the insolvency proceeding may be revoked.

- Any amendment to the bylaws executed within 6 months of commencement of the insolvency proceeding when such amendment reduces the debtor's patrimony to the detriment of the creditors or reduces the liability of the members of the debtor entity.

Limits to Contractual Clauses

Law 1116 sets forth that contractual provisions intended to prevent, directly or indirectly, the reorganization of a debtor, such as early termination clauses or acceleration clauses upon commencement of reorganization proceedings and, in general, any other provisions intended to preclude the debtor from being subject to reorganization proceedings, are deemed to be void or ineffective ipso iure.

Moreover, should the creditor attempt to enforce any of the above-mentioned provisions, payment of its credits shall be legally postponed until all other credits of the same debtor within the insolvency proceeding have been paid in full. Furthermore, the insolvency court may impose fines and order cancellation of all security interests granted by the debtor or by third parties to secure such creditor's claims, when the insolvency court deems that measure to be necessary to achieve the purpose of the proceedings.

Duration

The average duration of the reorganization proceedings is 20 months from the date of the admission by the insolvency court to the date of confirmation of the reorganization agreement and approximately 18 to 24 months from the admission to the judicial liquidation until its termination.[52]

Enforceability of security interests in an insolvency proceedings

Under Law 1676, the enforceability of security interests during insolvency proceedings will depend on the type of proceeding. In a reorganization proceeding, security interests on assets that are not necessary for the business of the debtor may be enforced (with prior authorization of the insolvency court) and claims secured with assets that are necessary assets for the debtor's business must be paid with priority over the unsecured creditors (even over first class claims – except over the claims of the pension creditors). In a liquidation proceeding, the encumbered assets shall be excluded from de liquidation estate in favor of the secured creditors, provided that the debtor's assets are sufficient to pay employment and labor claims and children expenses.

[52] Average taken from Decree 560 of 2020.

These rules are regulated by Decree 1835 of 2015, which entered into force on September 16, 2015.

Dispute Resolution and Foreclosure Proceedings

Judicial Litigation and Dispute Resolution

Under the Colombian judicial system, pursuant to the new General Procedure Code, two different kinds of procedures may be undertaken before civil courts.

Ordinary Proceedings

The main purpose of these proceedings is to seek a judge's declaration regarding the existence or not of a particular right or situation. Pursuant to Article 590 of the General Procedure Code, precautionary or conservatory measures (*medidas cautelares*) may be issued and practiced from the commencement and/or along the proceeding. Accordingly, from the filing of the lawsuit, the plaintiffs may request the decree of precautionary measures, which will be decreed if the court is aware of the standing or interest to act of the plaintiff and the existence of the threat or violation of the right. In any case, for the practice of the precautionary measures the plaintiff must provide security equivalent to (20%) of the value of the claims estimated in the lawsuit, to respond for the damages that could be caused with their practice. These precautionary measures may be lifted in case the debtor provides security enough to protect the interests of the rights-holder.

Collection Proceedings

Under Colombian law, these proceedings may only be commenced if a creditor has an original document executed by the debtor, containing an express and clear payment obligation which is currently collectable (*i.e.* currently due). In other words, the document must contain a due obligation whose value is easily determinable by using "*simple mathematical calculations*". A document meeting the aforementioned characteristics is called a collectable instrument (*título ejecutivo*). It is worth to note that final rulings issued by judges within the course of ordinary proceedings, arbitral awards granted within arbitration proceedings and other ADR instruments (as explained below), may also be used as collectable instruments, provided that they establish clear, express, due, and payable obligations corresponding to the declaration of a right.

As in ordinary proceedings, plaintiffs may also request precautionary or

conservatory measures (*medidas cautelares*), such as attachment and seizure of the debtor's assets.

In addition to the general collection proceeding, Colombian law provides special collection proceedings for creditors whose obligations are secured by mortgages and/or securities over movable assets (*garantías mobiliarias*). In these cases, the corresponding attachment and seizure will take place over the secured assets and the creditor shall have the privilege to be paid first and foremost with the money received from the secured assets' sale in public auction.

Alternative Dispute Resolution

Alternative Dispute Resolution mechanisms (herein "ADR", or "MASC" forits acronym in Spanish) are usually the fastest and most effective methods to solve disputes in Colombia, considering time and costs associated with litigation before national courts.

Currently, the most frequent used ADR mechanisms in Colombia are: conciliation, settlement agreement, amicable composition and arbitration.

ADR mechanisms are essentially regulated by Law 640 of 2001, by Law 1395 of 2010, by Law 1564 of 2012, and by Decree 1069 of 2015 on matters related to conciliation. Alongside, Law 1563 of 2012, which entered into force as of October 2012 (the "Arbitration Statute"), which regulates both arbitration and amicable composition.

a. Conciliation

Conciliation is a mechanism pursuant to which the parties directly settle their differences assisted by a third party, independent and neutral, called the conciliator. The conciliator shall propose ways by which the parties may settle their conflict. However, the conciliator does not solve the conflict directly, nor do they issue rulings binding to the parties.

Conciliation may be judicial or extrajudicial. Conciliation is judicial when is performed during a judicial proceeding; therefore, the judge acts as conciliator. On the contrary, conciliation is extrajudicial when it is performed within a conciliation center or with the assistance of a conciliator authorized by law, for instance a public notary.

Pursuant to Article 52 of Law 1395 of 2010, conciliation is a prerequisite to the initiation of a civil, commercial, administrative or family proceeding (with

some exceptions, such as when precautionary measures are requested).

The conciliation proceeding shall end either with a conciliation agreement, or with a non-settlement minute. The conciliation agreement reached by the parties is *res judicata* and constitutes the title to commence collection proceedings in order to obtain a judicial order to comply with the agreement.

b. Settlement Agreement

A settlement agreement (*transacción*) is a contract by means of which the parties settle their disputes directly, without the intervention of a third party.

The settlement agreement is *res judicata* and constitutes the title to commence collection proceedings in order to obtain a judicial order to comply with the agreement.

c. Amicable Composition

Amicable Composition is an ADR mechanism pursuant to which the parties delegate the resolution of their conflict to a third party. This mechanism is regulated by Section 2 of Law 1563 of 2012.

The *amiable compositeur* acts as an agent of the parties in the conflict and has the power to establish the scope of the conflict, the status of the obligations' fulfillment by the parties and the way they must comply with their obligations thereof. The amicable composition has the same effects as a settlement agreement. Therefore, it is *res judicata* and constitutes the title to commence collection proceedings in order to obtain a judicial order to comply with the agreement.

d. Arbitration

Arbitration is an ADR mechanism by means of which the parties delegate the settlement of their dispute to an arbitration panel.

The Colombian Arbitration Statute contemplates a dual arbitration system. Thus, national and international arbitration are subject to different regulations.

With respect to international arbitration, Colombia is party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (herein the "NY Convention"), as well as to the 1975 Inter-American Convention on International Commercial Arbitration, and the 1965 Washington Convention for the Settlement of Disputes between States and Nationals of Other States.

Both the 1958 NY Convention and Law 1563 of 2012 govern the recognition and enforcement of both arbitral agreements and international arbitration awards in international business contracts, as well as international commercial arbitration proceedings in Colombia.

Although there are some differences, Colombian rules on international arbitration are heavily based on the UNCITRAL Model Law on International Commercial Arbitration (herein the "UNCITRAL Model Law"), as amended in 2010.

Pursuant to Article 62 of the Arbitration Statute, an arbitration proceeding seated in Colombia is considered to be international when it meets any of the following three conditions:

- When the parties to an arbitration agreement have, at the time of the conclusion of said agreement, their domiciles in different states.
- When the place of performance of a substantial part of the obligations, or the place to which the dispute is most closely related are located outside the State in which the parties are domiciled.
- When the dispute submitted to arbitration affects the interests of international trade.

In respect to the applicable law, pursuant to Article 101 of the Arbitration Statute and following the UNCITRAL Model Law, the arbitration panel may decide the dispute based on the law chosen by the parties, or by the one determined by the arbitration tribunal should the clause not set forth the applicable law.

Additionally, under the Arbitration Statute, the parties in international arbitration proceedings may request precautionary measures to the arbitration panel when they are pertinent, relevant and reasonable. Precautionary measures shall be ordered even if the proceeding has not been subject to a recognition procedure before national courts.

Regarding domestic arbitration, arbitration is classified as: institutional or independent (*ad hoc*). Arbitration shall be institutional when it is administered under the rules of an arbitration center. Consequently, tribunal fees, the appointment of the arbitration panel (when the parties do not reach an agreement), and other related matters, will be governed according to the arbitration center rules.

Independent or *ad hoc* arbitration is characterized by its flexibility, due to fact

that the parties autonomously may establish the arbitration procedure. As a consequence, the parties may choose the arbitrator(s) appointment mechanism, the duration of the proceeding, and other procedural matters. The *ad hoc* arbitration is therefore directly administered by the arbitration panel.

Despite its classification as an ADR mechanism, the arbitration procedure adopted by each of the aforementioned categories is quite similar to the existing civil procedure in Colombian law.

The main features of the Arbitration Statute, on domestic arbitration, are the following:

- The duration of the proceeding, including the clarification and complementation stages of the arbitral award, will be of 6 months as of the First Procedural Hearing. This term may be extended by the parties up to 6 additional months, but the suspensions cannot exceed a 120day term. A practical consequence may be that arbitration will be faster than it used to be under the previous regulation.

- The parties may request the application of the same precautionary measures as in the ordinary and administrative proceedings by the arbitration panel, pursuant the section 32 of the Arbitration Statute. Also, the arbitration panel may order any precautionary measures that it deems reasonable.

- The right of the parties to challenge the Court magistrates that resolve the annulment on the same grounds as they challenge the arbitrators.

- There are some modifications to the annulment grounds.

Common types of Security Interests

Mortgage

A mortgage (*hipoteca*) is a security over a real estate and certain other assets such as aircrafts and major ships granted in favor of a creditor in support of a specific obligation. Pursuant to a mortgage agreement, the mortgagor (guarantor) maintains the possession on the mortgaged asset. However, in the event of a payment default, the mortgagee (secured party) has the right to commence the corresponding collection proceedings (*proceso ejecutivo hipotecario*) in order to sell the mortgaged assets in a court administered public auction. The income from the sale of the mortgaged asset is

used to pay any outstanding amount of the secured obligation.

A mortgage is granted to secure the performance of a principal obligation. Therefore, it is considered as an accessory right subject to the rules set forth in Articles 2432 to 2457 of the Civil Code.

The main characteristics of a mortgage are:

- *Preference*: A mortgagee has a preferred right for payment of the debt with the proceeds from the judicial auction of the mortgaged asset.

- *Enforceability against third parties (oponibilidad)*: Title and ownership of the real estate subject to a mortgage may be transferred to any third party despite that mortgage is in effect, unless the mortgage agreement expressly restricts such transfer or requires the prior consent of the creditor. However, to the extent the mortgage is registered in the competent Registry of Public Instruments (i.e. *Oficina de Registro e Instrumentos Públicos* for real Estate, *Aeronáutica Civil for aircrafts and Dirección General Marítima* for Major Ships), any third party must recognize the rights granted to a secured party by a mortgage agreement, even in such cases in which the asset has been transferred.

- *Multiple mortgages over one asset*: One real estate property may be subject to more than one mortgage; in which case their order of priority will be subject to the chronological order in which the mortgages are registered before the competent Registry of Public Instruments (Oficina de Registro e Instrumentos Públicos).

- *Maximum security amount*: The amount secured by the mortgage cannot exceed twice the amount of the secured obligations. In case the mortgage exceeds this amount, the mortgagor may request reduction of the mortgage to the maximum amount.

Security over movable assets

On February 20st, 2014, Law 1676 of 2013 entered into force, establishing the rules applicable to security over movable assets (*garantías mobiliarias*) such as goods, rights and shares, that may be used as security for credit transactions. In addition, Law 1676 created a national centralized registry for security over movable assets (the “Centralized

Registry") and new rules for the foreclosure of the security during insolvency proceedings.

Pursuant to Law 1676, a security interest over a movable asset is perfected by means of a written agreement entered between the guarantor and the secured party. The security agreement must include, at least, the parties that enter the agreement, the maximum amount covered by the security, as well as a generic or specific description of the secured assets and the obligations being secured thereby.

Registration of a security agreement before the Centralized Registry provides to the secured party (i) the right to enforce the security against third parties (*oponibilidad*); and (ii) preferential rights with respect to other creditors in the event of a foreclosure or insolvency proceeding involving the respective secured party.

Furthermore, Law 1676 provided that a security on movable assets granted prior to February 20st, 2014, and their corresponding registries, if properly made, would remain valid and enforceable. However, pursuant to Article 85 of Law 1676, the rules on foreclosure, insolvency proceedings and enforceability against third parties set forth therein, will only be applicable if such security complies with the requirements of enforceability against third parties and of the Registry provided in Law 1676. In accordance with the foregoing, a security over movable assets governed by the rules of the Commercial Code (or any other applicable law issued before February 20st, 2014) must be registered before the Centralized Registry within the six months following said date (August 20st, 2014), subject to losing the validity and effectiveness of the registration already in place.

In general, a single guarantor may create more than one security interest over the same asset, in which case the right of payment priority among the respective secured parties will be determined by the chronological order of filing of each security interest before the Centralized Registry. Nevertheless, where a secured party maintains possession of the secured asset, the rights of the secured party holding possession of the asset will rank higher in priority of payment.

In the event of breach of the secured obligations, Law 1676 establishes three foreclosure procedures for security over movable assets:

- Direct payment
- Judicial proceeding

- Special foreclosure of the security.

In general, under these three procedures, once the foreclosure petition has been filed, the secured party may gain possession of the secured assets; they may request a court to order the seizure of such assets in case the guarantor does not allow it.

Direct payment

When permitted by the security agreement or when the secured party holds possession over the secured asset, the debtor may repay its credit directly with the secured asset, in accordance with the following rules:

- Filing a foreclosure form before the Centralized Registry.
- Notifying the guarantor about the filing of the foreclosure form, indicating the foreclosure mechanism to be used.
- If the secured asset is not delivered by the guarantor, the secured party may request a judicial authority to order the seizure and delivery of the asset, without requiring further procedure.
- The valuation of the asset is determined by an appraisal, selected from a list of expert appraisers by the Superintendence of Companies. The appraisal must be made at the time of delivery of the asset by the secured party.
- If the asset value exceeds the amount of the secured obligation, the secured party must advance any excess amount to other secured parties or the guarantor. The value of the security asset can be established by an expert from the Superintendence of Companies.

Judicial proceeding

The secured party may commence executory judicial proceedings pursuant to Articles 467 and 468 of the General Code of Procedure and Article 61 of Law 1676. In these events, the secured party must file a foreclosure form before the Centralized Registry, which will have noticeable effects for the debtor and will be deemed a collectable instrument (*título ejecutivo*). This means it is an instrument that will suffice as evidence that the secured obligations are due and payable and eligible for collection by means of execution proceedings.

If the debtor or the owner of the asset does not appeal, the secured party may request

the court that ownership to the asset be transferred to their name as full payment of the principal secured obligation.

Special foreclosure of the security

Law 1676 provides the possibility for the parties to create a security agreement over movable assets to set the rules of procedure applicable to enforcement of the guarantee. To the extent that the parties agree upon the applicable procedure, it can take place as a non-judicial proceeding before a chamber of commerce or a public notary. The parties may agree on this type of proceeding when, among others, the creditor has possesion of the secured assets, a legal right to keep it, when the value of the asset is less than the amount of 20 times the Colombian minimum monthly wage(as of 2022 it is roughly$5395 USD), when the obligation was subject to a condition, or a term and it is due or when the asset expires.

Technology Platforms

TECHNOLOGY PLATFORMS OPERATED FROM ABROAD THAT OFFER CONSUMER GOODS/SERVICES IN COLOMBIA

Employment Law

Engagement of individuals who perform services making use of electronic platforms

If the individuals who provide services (i.e. food delivery) making use of electronic platforms are engaged by means of employment agreements, all employment regulations will apply, and the employer must comply with all employment laws (payment of salaries, fringe benefits, contributions to the Social Security System, etc.). If this is the case, even when Colombian law does not expressly determine that the employer must be legally incorporated in Colombia, in practice, such legal incorporation is required. This, since the employer must obtain a Tax Registration Number which will allow it to affiliate itself and its employees to the Social Security System.

These individuals may also be engaged by means of independent services agreements, in which case the employment regulations explained in this document will not apply. These types of agreements are regulated by civil and commercial laws. For this relationship to be legally performed, please note that the provision of the services by the independent contractor must comply with the following rules:

- The stipulation of a specific service.
- The contractor's independence and autonomy in the performance of said service.
- The assumption of its own risks.
- The ownership of the means necessary to perform the service.

Finally, individuals may also provide services under a peer-to-peer model in which, as it occurs with independent contractors, employment laws will not apply.

What matters the most if this is the case, is that the company operating the platform does not exercise subordination actions over the individuals. In practice, this means, mainly, that it cannot impose specific instructions, provide them orders or impose them sanctions (i.e. economic fines).

Colombian employment law is also ruled by the principle of primacy of reality over formalities. This means that if in practice, individuals hired through an independent services agreement or a peer-to-peer model are treated as employees, regardless of any agreement signed by the parties, a Judge will declare the existence of an employment relationship and will order the payment of all the accruals mentioned above.

General Commercial Law

Consumer Protection:

Under Colombian law, there are 2 main legal structures that apply to entities interested in offering their services online: a contact portal ("Portal De Contacto") or e commerce platform ("Plataforma De Comercio Electronico"). According to the Colombian Consumer Protection Statue (Law 1480 of 2011 herein "CPS"), e-commerce marketplaces known as "Portales de Contacto" have limited responsibilities vis-a-vis consumers and suppliers that interact on their online platform. Additionally, a law case has further acknowledged that "Portales de Contacto" may not be liable for the prices advertised/modified by suppliers because the contact portal only provides consumers with an electronic platform where natural or legal persons can offer products for marketing and consumers can contact them through this mechanism.

On the other side, an e-commerce platform ("Plataforma de Comercio Electrónico") is not restricted to be a point of contact between two individual parties but is also part of the consumer relationship by, among others, acting directly as a supplier of goods and services, indirectly by managing the marketing of goods and services of third parties, or its own and third parties´ by intermediating in the relationship and acquiring a percentage of sales or profits from transactions made by the consumer. In this case, SIC has determined that the liability of the e-commerce platform is higher than that of the Contact Portal, primarily because of its implication in the consumer relationship. Therefore, the marketplace (as an e-commerce platform) can be liable for a company selling their goods on their marketplace and changing prices.

Moreover, the CPS includes a specific chapter for e-commerce operations. Specifically, under article 50 of the CPS "(...) *suppliers and retailers <u>located in the national territory</u> who offer products using electronic means must* (…)" comply with certain essential obligations. However, the scope of application of article 50 is limited

to entities located in Colombia. Hence, subject to a case by case analysis, foreign entities that are not located in the national territory do not meet the description of article 50, thus excluding them from the scope of this regulation.

However, article 7 of the CPS sets forth that providers are liable for the quality, suitability, safety, and well-functioning of any service provided to consumers in Colombia. As part of this legal warranty, article 11 of CPS states that a producer shall provide a minimum amount of information, including instructions and use of the service. Failure to provide enough information related to the use of the service, would be a breach of the legal warranty.

Furthermore, the SIC has recurrently extended the interpretation of the CPS general principles and applicability to foreign entities to make them comply with the rules of the CPS. Supported on the fact that the CPS establishes a favorable regime for consumers under constitutional provisions that protect their right to, inter alia, receive sufficient information, SIC may consider that foreign entities are subject to the general scope of the CPS and enforce its provisions.

Nevertheless, the discussion regarding the offshore application of the CPS is still an ongoing matter. According to SIC's interpretation, its jurisdiction is based upon the fact that e- commerce operations have a final effect in Colombia and upon Colombian consumers. As Colombian consumers are targeted, the SIC has determined that no matter the nationality of the provider, retailer, manufacturer, or importer, they are all severally and jointly liable before such authority.

Although the SIC may impose fines over offshore entities that somehow target Colombian consumers, the transnational enforcement of such faculty will be based on international cooperation by means or tools that are currently agreed on between Colombia and other countries, mainly through cooperation and information-sharing treaties. Nonetheless, the only current growing tendency of transnational enforcement of Colombian laws through international cooperation treaties has been in terms of criminal responsibility and state-related liability (i.e. taxes and other government-related liability). Notwithstanding the foregoing, the success of such enforcement is highly dependent on the cooperation agreement or strategy established between Colombia and the corresponding country.

Permanent activities:

Pursuant to the Colombian Code of Commerce (herein "CCC"), a foreign company that undertakes permanent activities in Colombia must establish a branch or subsidiary to perform such activities in the country. However, local regulations do not have a definition of "permanent activity", only a list of examples given by Article 474 of the CCC. This list is not exhaustive and, therefore, other activities may be considered permanent as well, analyzed on a case-by-case basis and depending on the relevant factors:

- To set up within the territory commercial establishments or business offices even if these are solely for a purely technical or advisory purpose.
- Intervene as a contractor in works or service supplies.
- Participate in any way in activities directed to handle, utilize or invest funds arising from private saving.
- Engage in the extraction industry whatever its fields or services.
- Obtain from the Colombian government a concession, whether this has been assigned to it under any title or in which it may participate as an exploiter.

Consequently, to determine whether a certain activity is deemed as permanent, subjective and objective factors should be considered, as follows:

- The objective factors that should be considered, among others, are the duration of the activities[1], elements of perseverance, stability, deployed infrastructure[2], duration and immutability of the activity and also the fact that personnel from the foreign company would be entering the country to perform the tasks under the agreement (or that personnel would be retained in Colombia by the foreign company for such purpose).
- As to the subjective factor (i.e., the "state of mind") is evidenced by the fact that the foreign company has the

[1] The Superintendence of Companies has emphasized the importance of analyzing the permanence of an activity by taking into consideration its nature, how often it occurs, its length, perseverance, stability, duration and immutability, among others. Opinion 220-46798, August 26th, 2005.

[2] Superintendence of Companies- Official communications 220-153582 of 2010, 220- 026980 of 2013 and 220-098155 of 2016

intention to enter into a permanent agreement in the country, something that would turn the nature of an occasional activity into a permanent one.

Moreover, the Superintendence of Companies acknowledged that the regulations contained in Colombian commercial legislation do not enshrine any specific provision expressly regulating the necessity of incorporating a legal entity in Colombia to provide services through electronic platforms as per the permanent activity regulation. It is also important to mention that the Superintendence of Companies has not asserted itself on this matter nor has it established a doctrinal position in this regard.

However, in general terms, this entity analyses that according to Article 20 paragraph 3 of the Civil Code, based on the criterion of the place of performance of the contract (lex loci solutions), if the agreement must be performed in Colombian territory or generates effects that are inherent to the rights and interests of the State, Colombian law shall be applied. Therefore, when the agreement is signed abroad and is to be executed in Colombia, Colombian law must be applied, in accordance with the criteria of the place of execution of the agreement.

Thus, the Superintendence of Companies concludes that it is necessary to reiterate that Colombian commercial law does not specifically regulate the obligation for foreign companies that own electronic platforms to establish themselves in the country. However, the need to comply with the relevant national regulations must be assessed in each case, considering the principles of territoriality of Colombian law."

Privacy

Under Colombian Data Protection Laws (Law 1581 of 2012 and Decree 1074 of 2015, herein "CDPL"), personal data is any information that may be associated or connected to an individual's identity. The CDPL applies to entities established in Colombia processing personal data in the territory.

The CDPL establishes the following requirements:

- Prior, express and unequivocal consent from data subjects before the processing occurs.
- Information regarding (i) the purposes for processing the data, (ii) how data

will be processed, (iii) rights of data subjects and means to exercise such rights, (iv) person or division responsible for handling data protection matters, and (v) term during which databases will be in force.

- Process and address complaints, petitions and requests from data subjects regarding their rights under CDPL.

Implement and keep technical, human and organizational measures aimed at ensuring the integrity, confidentiality and security of personal data.

Finally, although the CDPL establishes criteria for its territorial application, it does not distinguish between activities carried out in Colombia and abroad.

Tax

From a Colombian tax perspective, Fintech companies may be legally incorporated in another jurisdiction and still do business in Colombia. However, the obligation to set up a legal entity in Colombia must be analyzed on a case-by-case basis, from a corporate and regulatory perspective an obligation to be legally present in Colombia might arise if the foreign entity has permanent activities in the country.

If the business is carried out directly from abroad, the foreign entity will be only liable to income tax in Colombia with respect to income and gains from Colombian sources, which is generally paid through a withholding tax mechanism (the obligation to file a tax return must be analyzed in each particular case[53]). If that is the case, it will be necessary to analyze if the foreign entity has a risk of setting up a permanent establishment (herein "PE") in our country, as if a PE is deemed to exist *(i)* it will be subject to income tax on its worldwide income allocated to it, and *(ii)* it must be registered before the Colombian Tax Authority.

Please note that, in general terms, a PE in Colombia is defined as a fixed place of business through which a foreign non-resident entity undertakes wholly or partially its business activities. For a fixed place PE to exist, certain elements must be present, as the PE exists when there is a fixed place of business at the disposal of the foreign enterprise to carry out its business activities in Colombia. In addition, a foreign entity may have a Colombian PE if a person other than an

[53] Withheld amounts are an advance payment of the final tax and are thus creditable. In certain cases, however, the withheld amounts are the final tax. See Section 592 of the CTC.

agent of an independent status, acts on behalf of an enterprise and habitually exercises in Colombia an authority to conclude contracts in the name of the enterprise. No PE is deemed to exist (neither fixed nor by agent) if the activities carried out in Colombia qualify as auxiliary or preparatory.

If the Fintech entity incorporates a legal entity in Colombia (e.g., subsidiary or branch), such entity will be subject to income tax on its worldwide ordinary and extraordinary income and gains. Such tax will be levied on its net income (taxable income net of costs and allowable deductions) at a rate of 32% for 2020, 31% for 2021 and 30% as of 2022 (taxed profits remitted by the Colombian entity to its home office abroad will be subject to a 10% dividend tax, as explained above).

Please bear in mind that in all cases, services rendered in Colombia or from abroad to beneficiaries located/domiciled in the country, are subject to VAT at a 19% rate, unless expressly excluded or exempted. In general terms (but subject to certain limitations) when the taxpayer is a foreign non-resident entity, the Colombian resident beneficiary (that is a VAT responsible) acts as a VAT withholding agent and it is obliged to collect and pay such VAT through a reverse-charge mechanism. This tax (input VAT) could be treated as creditable VAT in the Colombian entity's VAT return, provided the expense is associated to operations levied with VAT. Otherwise, it should be treated as a higher amount of the cost or expense.

Finally, other municipal and transactional taxes may apply depending on the municipalities where the services are rendered, the operations and the type of activities and payments made/received. A case-by-case analysis is strongly suggested to confirm the application of any such taxes.

Finance

Electronic platforms that offer products and services in Colombia usually provide electronic payment options. If the platform is interested in permitting its customers to pay using debit and/or credit cards electronically or by bank account transfers, the platform must hire the services of a payment gateway located in Colombia. The payment gateway service is defined under Colombian law as the service that allows a merchant to offer electronic payment mechanisms to its customers by receiving, processing and transferring electronic payments orders for online purchases. Thus, payment gateways are in charge of processing confidential information that is required to

execute banking transactions over electronic networks. Please note that payment gateway services are not considered financial activities, so long as the provider does not perform massive collection of funds (e.g. deposit taking) nor compensation and liquidation activities in order to process the outstanding amounts between the banking institutions (i.e. clearing houses activities), which are financial activities restricted to entities subject to the Colombian Financial Superintendence. However, payment gateway providers are bound by the requirements that financial institutions are obliged by law to require to its service providers.

Appendices

Supplementary material

APPENDICES

APPENDIX I —Average Monthly and Annual Exchange Rate Since 2015.

Exchange Rate Since 2015.
(*Colombian Pesos per US$1*)

Source: Banco de la República 2021 (www.banrep.gov.co)

Month	2015	2016	2017	2018	2019	2020	2021
January	$2,397.26	$3,270.20	$2,941.40	$ 2.868,57	$ 3.165,19	$ 3.411,45	$ 3.494,53
February	$2,420.67	$3,354.96	$2,879.57	$ 2.860,25	$ 3.115,84	$ 3.539,86	$ 3.552,43
March	$2,585.36	$3,128.79	$2,942.29	$ 2.847,93	$ 3.128,68	$ 4.064,81	$ 3.617,00
April	$2,505.25	$2,997.73	$2,877.82	$ 2.766,29	$ 3.155,77	$ 3.983,29	$ 3.651,85
May	$2,437.54	$2,993.51	$2,923.61	$ 2.861,83	$ 3.304,49	$ 3.718,82	$ 3.741,96
June	$2,562.48	$2,992.86	$2,957.10	$ 2.889,69	$ 3.260,52	$ 3.758,91	$ 3.693,00
July	$2,732.04	$2,961.00	$3,036.58	$ 2.885,32	$ 3.206,60	$ 3.739,49	$ 3.832,24
August	$3,012.59	$2,952.77	$2,973.20	$ 2.958,67	$ 3.410,73	$ 3.760,38	$ 3.887,68
September	$3,066.41	$2,924.27	$2,917.09	$ 3.033,77	$ 3.399,46	$ 3.878,94	$ 3.820,28
October	$2,929.47	$2,929.39	$2,953.76	$ 3.084,83	$ 3.433,31	$ 3.858,56	$ 3.771,68
November	$3,001.38	$3,110.26	$3,013.47	$ 3.194,03	$ 3.401,47	$ 3.611,44	$ 3.900,51
December	$3,244.20	$3,009.86	$2,991.76	$ 3.218,55	$ 3.277,14	$ 3.432,50	$ 3.967,77
Average Annual rate	**$2,741.22**	**$3,052.13**	**$2,950.64**	**$ 2.955,81**	**$ 3.271,60**	**$ 3.729,87**	**$ 3.744,24**

APPENDIX II – Official Map of the Republic of Colombia

REPÚBLICA DE COLOMBIA
MAPA POLÍTICO Y DE FRONTERAS

TOPONIMIA
ADMINISTRATIVA
GEOGRÁFICA

HONDURAS
NICARAGUA
COSTA RICA
PANAMÁ
VENEZUELA
ECUADOR
PERÚ
BRASIL
Antillas Neerlandesas
MAR CARIBE
OCÉANO PACÍFICO

SAN ANDRÉS Y PROVIDENCIA
LA GUAJIRA
ATLÁNTICO
MAGDALENA
CESAR
SUCRE
CÓRDOBA
BOLÍVAR
NORTE DE SANTANDER
SANTANDER
ANTIOQUIA
ARAUCA
CHOCÓ
BOYACÁ
CALDAS
CASANARE
RISARALDA
CUNDINAMARCA
QUINDÍO
TOLIMA
VICHADA
VALLE DEL CAUCA
META
CAUCA
HUILA
GUAINÍA
GUAVIARE
NARIÑO
VAUPÉS
CAQUETÁ
PUTUMAYO
AMAZONAS

APPENDIX III - Treaties

The following is a list of trade treaties, agreements, conventions, and arrangements, which are in force and to which Colombia is a Party:

Name of Organization, Treaty, Convention or Agreement	Entry into force
Free Trade Agreement between Mexico and Colombia FTA- Colombia Mexico	January 1, 1995
Free Trade Agreement between Colombia and El Salvador, Guatemala and Honduras	With Guatemala: November 12, 2009
	With El Salvador: February 1, 2010
	With Honduras: March 27, 2010
Economic and Technic Cooperation Agreement between Colombia and the Caribbean Community CARICOM	January 1, 1995
Protocol of Amendment Establishing the Andean Community (Trujillo Protocol) CAN	December 30, 1997
Economic Complementation Agreement N° 49 between Cuba and Colombia	July 10, 2001
Economic Complementation Agreement N° 59 between CAN and MERCOSUR ACE 59	July 1, 2004
Economic Complementation Agreement N° 72 (MERCOSUR) ACE 72	With Argentina: December 20, 2017
	With Brazil: December 20, 2017
	With Uruguay: June 11, 2018
	With Paraguay: January 29, 2018

Name of Organization, Treaty, Convention or Agreement	Entry into force
BIT – Colombia Spain	September 22, 2007
FTA – Colombia Chile	May 8, 2009
BIT – Colombia Switzerland	October 6, 2009
BIT – Colombia India	November 10, 2009
BIT – Colombia Peru	December 30, 2010
FTA – Colombia Switzerland, Liechtenstein, Norway and Iceland FTA-EFTA	With Switzerland: July 1, 2011
	With Liechtenstein: July 1, 2011
	With Norway: September 1, 2014
	With Iceland: October 1, 2014
FTA – Colombia Canada	August 15, 2011
FTA – Colombia United States of America	May 15, 2012
BIT – Colombia China	July 3, 2012
Partial Agreement between Venezuela and Colombia	September 6, 2012
	(Provisional Application – Decree 1860)
Trade Agreement between Colombia and Peru, and the European Union	August 1st, 2013 (Provisional Application – Decree 1513/2013 and Decree 2247/2014)
BIT – Colombia United Kingdom	October 10, 2014
BIT – Colombia Japan	September 11, 2015
FTA – Colombia Republic of Korea	July 15, 2016
FTA – Colombia Costa Rica	August 1, 2016
Framework Agreement of the Pacific Alliance	July 20, 2015
BIT – Colombia France	October 14, 2020
FTA – Colombia Israel	August 11, 2020

Source: Ministerio de Comercio, Industria y Cultura de Colombia. http://www.tlc.gov.co/publicaciones.php?id=5398

Glossary

List of terms explaining words and expressions used in the document.

GLOSSARY

Aeropuerto del Café
http://site.aeropuertodelcafe.com.co/

Attorney General's Office (Procuraduría General de la Nación)
https://www.procuraduria.gov.co/portal/

Bogotá's District Development Institute ("IDU" for its acronym in Spanish)
https://www.idu.gov.co/

Central Bank (Banco de la República)
https://www.banrep.gov.co/

Colombian Civil Aviation Authority ("AEROCIVIL" for its acronym in Spanish)
http://www.aerocivil.gov.co/

Colombian Institute for Education Abroad ("ICETEX" for its acronym in Spanish)
https://portal.icetex.gov.co/Portal/

Colombian Ministry of Housing
www.minvivienda.gov.co

Colombian Ministry of Interior
https://www.mininterior.gov.co/

Colombian Ministry of Trade, Industry and Tourism
http://www.mincit.gov.co/

Colombian Stock Exchange ("BVC" for its acronym in Spanish)
https://www.bvc.com.co/pps/tibco/portalbvc

Colombian Tax and Customs Authority ("DIAN" for its acronym in Spanish)
https://www.dian.gov.co/

Communications Regulation Commission ("CRC")
https://www.crcom.gov.co/es/pagina/inicio

Corporación Autónoma del Río Grande de la Magdalena (CORMAGDALENA for its acronym in Spanish)
http://www.cormagdalena.gov.co/

Empresa Colombiana de Petróleos ("Ecopetrol")
https://www.ecopetrol.com.co/wps/portal/es

Energy and Gas Regulatory Commission ("CREG" for its acronym in Spanish)
https://www.creg.gov.co/

General National Comptroller Office (Contraloría General de la República)
https://www.contraloria.gov.co/

INCORA (today, "Agencia Nacional de Tierras")
http://www.agenciadetierras.gov.co/

Integrated massive transportation systems ("SITM" for its acronym in Spanish)
Sistemas integrados de transporte masivo

Mining-Energy Planning Unit ("UPME" for its acronym in Spanish)
https://www1.upme.gov.co/Paginas/default.aspx

Ministry of Environment and Sustainable Development ("MADS" for its acronym in Spanish)
https://www.minambiente.gov.co/

Ministry of Finance and Public Credit ("Ministry of Finance")
https://www.minhacienda.gov.co/webcenter/portal/Minhacienda

Ministry of Information and Communication Technologies ("MinICT")
https://www.mintic.gov.co/portal/inicio/
Ministry of Mines and Energy ("MME")
https://www.minenergia.gov.co/

Ministry of Transport
https://www.mintransporte.gov.co/

National Council for Economic and Social Policy ("CONPES" for its acronym in Spanish)
https://www.dnp.gov.co/CONPES/Paginas/conpes.aspx

National Environmental Licensing Authority ("ANLA" for its acronym in Spanish)
http://www.anla.gov.co/index.php/es

National Hydrocarbon Agency ("ANH" for its acronym in Spanish)
https://www.anh.gov.co/Paginas/Agencia-Nacional-de-Hidrocarburos.aspx

National Infrastructure Agency ("ANI" for its acronym in Spanish)
https://www.ani.gov.co/

National Planning Department ("DNP" for its acronym in Spanish)
https://www.dnp.gov.co/DNPN/Paginas/default.aspx

National Registry of Securities Issuer ("RNVE" for its acronym in Spanish)
https://www.superfinanciera.gov.co/jsp/

National Spectrum Agency ("ANE" for its acronym in Spanish)
http://www.ane.gov.co/SitePages/Inicio.aspx

National Statistics Department ("DANE" for its acronym in Spanish)
https://www.dane.gov.co/index.php/en/

PPP Contracts
Public Private Partnerships

PROCOLOMBIA
Is the entity that promotes international tourism, foreign investment, and non-traditional exports in Colombia.
https://procolombia.co/en/about-us/what-procolombia

Public Utilities Superintendence ("SSPD" for its acronym in Spanish)
https://www.superservicios.gov.co/

Registry of Foreign Insurance Entities and Foreign Insurance Intermediaries of Agricultural Insurance ("RAISAX" for its acronym in Spanish)
https://www.superfinanciera.gov.co/inicio/industrias-supervisadas/industria-aseguradora/reacoex-raimat-y-raisax-10082639

Registry of Foreign Reinsurers and Reinsurance Brokers ("REACOEX" for its acronym in Spanish)
https://www.superfinanciera.gov.co/inicio/industrias-supervisadas/industria-aseguradora/reacoex-raimat-y-raisax-10082639

Self-Regulatory Organization of the Securities Market ("AMV" for its acronym in Spanish)
https://www.amvcolombia.org.co/

Single Window for Foreign Trade ("VUCE" for its acronym in Spanish)
http://www.vuce.gov.co/

Special Administrative Unit of National Natural Parks of Colombia ("UAESPNN" for its acronym in Spanish)
http://www.parquesnacionales.gov.co/portal/es/

Superintendence of Companies (Superintendencia de Sociedades)
https://www.supersociedades.gov.co/SitePages/Inicio.aspx

Superintendence of Finance (Superintendencia Financiera de Colombia)

https://www.superfinanciera.gov.co/jsp/index.jsf

Superintendence of Industry and Commerce ("SIC" for its acronym in Spanish)
https://www.sic.gov.co/

Territorial Development Financier ("FINDETER" for its acronym in Spanish)
https://www.findeter.gov.co/

Territory Renewal Agency (Agencia de Renovación del Territorio)
https://www.renovacionterritorio.gov.co/

Unique Tax Registration ("RUT" for its acronym in Spanish)
https://www.dian.gov.co/tramitesservicios/Tramites_Impuestos/RUT/Paginas/default.aspx

Urban Environmental Authorities (UEAs)
http://www.ideam.gov.co/web/ocga/autoridades

Virgilio Barco National Real Estate Agency (Agencia Nacional Inmobiliaria Virgilio Barco)
https://www.agenciavirgiliobarco.gov.co/Pages/default.aspx

Brigard Urrutia

DOING BUSINESS IN COLOMBIA

2022