Country Guide
Colombia

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DOING BUSINESS

IN COLOMBIA 2020

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Content

Colombia at a Glance

According to the World Bank's 2019 Doing Business survey, Colombia has the third business environment in Latin America, after Mexico and Chile. With a strategic location, prosperous economic development and stable government policies, Colombia is an ideal country for doing business in the region.

REPUBLIC OF COLOMBIA, BOGOTÁ D.C.

Main language
SPANISH

Official currency
COP$
Colombian Peso

1 US Dollar:
$3,277.14 COP*

1 Euro:
$ 3,687.63 COP*

48.2M
Estimated Population

3rd
most populated
COUNTRY
in Latin America

Largest country
with a
CARIBBEAN AND PACIFIC
coastline

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COLOMBIA AT A GLANCE

Population and demography

Colombia is the third most populated country in Latin America. According to the latest report of the National Statistics Department (DANE for its Spanish acronym), by the end of 2018, Colombia had an estimated population of 48,258,494 million (51,2% women, 48,8% men). It is estimated that by 2020, Colombia will reach a total population of 50.9 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 8,200,000 inhabitants.

There are three main age groups that consolidate Colombia´s population: kids from 0 to 14, which represent the 22,6%; people from 15 to 65, which represent the 68,2% and people older than 65, which represent the 9,1%.

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 area is 3,208 km (1,994 mi.) (Caribbean Sea 1,760km (1,094 mi.) and Pacific Ocean 1,448km (900 mi.).

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 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 rise up to 35° Celsius (95° F). In the central highlands the temperature may drop to 15° Celsius (59° F). At the central Andes Mountains, the temperature ranges between 14° and 18° Celsius (57° and 64° F), and in the eastern lowland plains the temperature rises up to 32° Celsius (90° F).

Environment

Colombia is one of the world leaders in fauna and flora diversity. 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 snowfalls in the Andes mountains, Colombia's wide-ranging ecosystems makes 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 in the warm and clear water of the Caribbean Sea and 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 alongside the territory.

Infrastructure

Colombia continues with the development of ambitious infrastructure projects. The so-called "*4th Generation Toll Road Program*" (herein "4G")" is currently under performance. As an important number of projects have reached their financial closure and are currently performing works, a secondary market has opened, due to the fact that some concessionaires are selling part of their stocks with the purpose of reaching new funds. Moreover, several initiatives under the scheme of Public Private-Partnerships ("PPP") are still being approved by the Government.

Furthermore, the National Government is currently working on structuring a significative number of developments that are going to be known as the "*5th Generation Toll Road Program*" (5G), which include the following projects: (i) Ruta del Sol I; (ii) Ruta del Sol II; (iii) Access – Cali – Palmira; (iv) Buga – Buenaventura and (v) Variante del Estanquillo (aiming to cover from Pasto to Popayán). The National Government has also informed that it aims to include these projects in a public policy document known as the CONPES Document.

The development of the first metro line for the city of Bogotá is of special relevance, for being the largest and most complex infrastructure project in the country up to date. The project was awarded at the end of October 2019, alongside with the Project Management Office, whilst the Auditing of the project should be awarded during the first quarter of 2020. The construction of the project is expected to start by the second semester of 2020 and is planned to last between 5 and 7 years.

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% of the amount of the income tax, infrastructure or public utilities projects from a list included within a public registry managed by the

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

Territory Renewal Agency (*Agencia de Renovación del Territorio*).

On the other hand, regarding regulatory matters, Colombian Congress enacted, the National Development Plan[2] for the current Government. This Plan introduces several amendments to the infrastructure sector, among which, it is important to underscore:

- Several 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); this aims to improve the physical facilities of the premises of state entities.
- The former restriction for Industrial and Commercial State Companies (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 PPP Contracts.
- Contributions from the National Infrastructure Agency ("ANI" for its acronym in Spanish) for concession contracts that are early terminated may be destined to continue the works, guarantee the trafficability and usability of the works performed, among others.
- The evaluation period for Private Initiatives PPP may be reduced in half whenever the projects refers to public scenarios such as stadiums, coliseums, convention centers, among others.
- There were several adjustments made regarding the amendments to port concessions, and to the possibility to include the development of the infrastructure needed for access ways to
- the port into the business and finance model of a port concession.
- A trust fund is to be created by the Colombian Civil Aviation Authority ("AEROCIVIL" for its acronym in Spanish) in order to manage all the resources necessary for the structuring of *Aeropuerto del Café*.

Roads

As explained above, the Colombian Government has structured an ambitious toll road program called the "*fourth generation of road concession*" (4G), which comprises 29 projects aiming to build roads totaling approximately 8,000 kilometers (4,970 miles) long and requires investment of around US$24.4 billion. Up to this date, 17 of these projects reached a financial closing, two of them were reached in 2019. These cases were Pasto-Rumichaca, in the south of the country, and Mar 2, in Antioquia[3].

According to information provided by the Ministry of Transport, a goal has been set for the first 6 months of 2020, which consisted in reaching 21 out of the 29 projects, that is, 70% of the 4G program, they expected to have 90% of the projects in operation before the end of the year 2019.[4]

According to the National Infrastructure Agency (ANI for its acronym in Spanish), the following are the projects that comprise the *4G program*, including Private Initiatives, that have been awarded and started[5]:

[2] Law 1955 of 2019

[3] Source: https://www.portafolio.co/economia/infraestructura/siete-vias-4g-pendientes-para-ser-reactivadas-533177

[4] Source: https://www.larepublica.co/especiales/infraestructura-julio-2019/actualmente-hay-21-proyectos-en-marcha-de-las-vias-4g-en-colombia-2885872

[5] Source: https://www.ani.gov.co/carreteras2

	Status*	Name	Lenth
First Wave of 4G Contracts	Preconstruction	Mulalo – Loboguerrero Higway	31 Km (19 mi)
		Conexion Pacifico 1 Highway	49 KM (30 mi)
		Girardot – Honda – Puerto salgar Highway	190 KM (118 mi)
	Construction	Conexión Norte Highway: Remedios – Zaragoza – Caucasia	140 KM (86 mi)
		Conexión Pacifico 2 Highway	193 KM (119 mi)
		Highway to Magdalena River 2	144 KM (89 mi)
		Conexion Pacifico 3 Highway	146 KM (90 mi)
		Perimetral Oriente de Bogota	106,9 KM (66 mi)
		Cartagena – Barranquila and Circunvalar de la Prosperidad Highway.	146,7 KM (91 mi)
	Finished	Rio de Oro – Aguaclara - Gamarra	82 KM (50 mi)
Second Wave of 4G Contracts	Preconstruction	Bucaramanga – Barracabermeja – Yondo Highway	151 KM (91 mi)
		Villavicencio – Yopal Highway	261 KM (162 mi)
		Popayan – Santander de Quilichao Highway	76 KM (47 mi)
		Puerto del Hierro – Palmar de Varela and Carreto – Cruz del Vizo Highway.	195 KM (121 mi)
		Sisga – El Secreto	137 KM (85 mi)
	Construction	Mar 1 Highway	176 KM (109 mi)
		Santana – Mocoa -Neiva Highway	447 KM (277 mi)
		Pasto – Rumichara Highway	83 KM (51 mi)
		Mar 2 Highway	245,2 KM (152 mi)
Third Wave of 4G Contracts	Preconstruction	Pamplona – Cucuta Highway	51 KM (31 mi)
		Bucaramanga – Pamplona	133 KM (82 mi)
Private Initiative	Preconstruction	Acceso Norte de Bogota	4.2 KM (2 mi)
		Bogota – Girardot (Third lane)	142 KM (88 mi)
		Antioquia – Bolivar	493 KM (306 mi)
		Via al Puerto	26 KM (16 mi)
		Vias del NUS	157 KM (97 mi)
		Malla vial del Meta	354 KM (219 mi)
		Neiva – Espinal – Girardot	193 KM (119 mi)
		Cambao - Manizales	256 KM (159 mi)
	Construction	Chirajara - Fundadores	61.3 KM (38 mi)
		Girardot – Ibague – Cajamarca	35 KM (21 mi)
		Cesar – Guajira	350 KM (217 mi)

*** Status up to November 2019**

Railways

Colombia's railway system comprises a total of 3,304 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 Bogotá-Atlantic rim, are used to haul goods, mostly coal, to the Caribbean and Pacific ports.

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, under bidding processes, or under structuring that involve the provision of public transport systems through several railway types.

Bogota's most important project is its first Metro Line. It was awarded in October, and its estimated approximate budget is USD$4,400 million. The project comprises a total length of 23.96 Km, 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, with an average commercial speed 43 Km/h and a total rolling stock of 23 trains.

The *Regiotram* project comprises an electrical system, 39.9 Km of interventions on the main corridor, 17 stations, 2 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 yard and 1 garage).

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

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

On the other hand, the Rionegro municipality in Antioquia is also carrying out the selection process in order to award the concession contract for the Rionegro Automatic Train. The project is the first automatic train project in Colombia, which will travel 16.7 Km from the *Belén* sector to *José María Córdova* International Airport. The project comprises 11 stations and the ability to transport 33,000 passengers daily.

The project will be developed through a concession contract with a 29-year term in which the concessionaire must perform the definitive designs and studies, the social, land and environmental management, construction, maintenance, and the operation and commercial exploitation of the train and its stations.

Finally, a project is under structuring for the renovation of the Antioquia Railroad, through a multipurpose transport (solid wastes, cargo and passengers) aiming to reconnect the different municipalities in the Valle de Aburrá sector.

The corresponding entity has already contracted a structuring team and is also aiming to get National co-financing of the project.

Ports and Waterways

Nowadays, anyone willing to construct and/or operate a port in Colombia, whether if it is for public or private service, must file a port concession request ("PCR") before the competent authority, which is the National

Infrastructure Agency ("ANI" for its acronym in Spanish), except for the ones regarding San Andres Island and maritime area, or the Corporación Autónoma 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, in general, the following documents[6]: (i) The technical identification and description of the lands in which the port is planned to be performed along with its adjacent areas and the general description and designs of the project; (ii) The financial information of 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 a Port Company if the PCR is approved; (iv) Evidence of certain information of the PCR had been published in two nationwide newspapers duly complying with the requisites of the Ports Statute.

Once the PCR is filed, there is a term in which citizens and certain authorities can oppose to 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 is granted, and after an explicit term without oppositions to such resolution, another resolution will be issued formally granting the concession with the agreement of the port concession.

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 done and the method for calculating the concession fees. Regarding this latter point of the concession fees, Law 865 of 2003 modified the original article that regulated concession fees in Ports Statute and is a disposition that must be taken into account in addition to said Ports Expansion Plans.

Currently, Colombian main operating ports and harbors are located in Barranquilla, Buenaventura, Cartagena, Barrancabermeja, Puerto Bolívar, San Andrés, Santa Marta, and Tumaco. Likewise, there are ports under construction in Turbo, Sitio Nuevo, Magangué, San Antero and three new different ports in Buenaventura (Aguadulce, Proyecto de profundización de acceso and Puerto Solo).

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 been developing and is close to finalizing the structuring and commencement of the bidding process for two projects regarding dredging and navigability: (i) The PPP for the navigability of the Magdalena

[6] According to Decree 1079 of 2015

River, and (ii) The dredging of *Dique Canal* as the access gate to Cartagena's ports.

The PPP project for 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 Puerto Salgar – La Dorada municipalities until Bocas de Ceniza in Barranquilla, including the port zone of Barranquilla, approximately 908 km in total.

The structuring phase determined a PPP contract that includes two 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.

Additionally, the structuring has preliminary determined the following enabling requirements to participate in the public bidding, which is expected to take place in 2020:

(i) Net Worth: USD$8,696,175
(ii) Credit Capacity: USD$4,348,087
(iii) Financing experience of one infrastructure project concession of USD$5,217,705

Moreover, the *Canal del Dique* 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 USD$696 million, whilst the structuring is reaching Phase III and the public bidding is expected to begin in 2020.

Airports

Colombia has 13 international airports, with most traffic coming from Bogotá, Cali, Barranquilla, Medellín and Cartagena. In addition, Bogotá'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 their privatization. Due to the successful results shown by the privatization of the above-mentioned airports, in 2007, El Dorado was granted in concession to the Opain consortium, as the operator company for the airport's renovation and expansion. The new international terminal was inaugurated on October 17, 2012 and is currently the largest airport in Latin America in terms of cargo, and the third largest in passenger number.

Currently, the Colombian Civil Aviation Authority ("AEROCIVIL" for its acronym in Spanish) and the National Infrastructure Agency ("ANI" for its acronym in Spanish) are structuring a public

private partnership (PPP) in order to grant in concession, phase II of Bogotá's El Dorado International Airport. The ANI has recently completed the structuring of the project. It is expected that the project will be located between the Municipality of Madrid and Facatativá in the Department of Cundinamarca, and it is estimated to be worth up to COP $3.5 billion. The project includes the integration of the air terminal with Bogotá and El Dorado Airport I, by means of a light rail from Cundinamarca or Regiotram. On June 14th, 2019 the National Environmental Licensing Authority ("ANLA" for its acronym in Spanish) filed the environmental license request, required for the construction of the El Dorado Airport II, due to the lack of technical studies.

Moreover, there is a structuring process ongoing for a second airport located in Cartagena de Indias. The project is being developed as a private initiative and is set to cost approximately USD$600 million. It is expected to reach a feasibility stage in late 2019, aiming to have an area of 57.000 square meters, and operate 25 aircrafts per hour, with hopes of reaching a capacity for over 9 million passengers per year. The project is located 30 minutes away from downtown.

Additionally, national authorities announced their support for the construction of the *Aeropuerto del Café* Project that will be located in the municipality of Palestina - Caldas. The National Development Plan 2018 – 2022 set forth the creation of a Trust to manage the resources for the construction of this airport. This project is currently in structuring stage.

Public Transportation

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

Bogotá 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, such cities and their transportation systems are migrating to a new business model. With the issuance of Law 1753 of 2015, SITM's concessionaries are improving new green-technologies that impact their cash-flows, but also the quality service standards.

Several Colombian cities, such as Medellín, Bogotá and Cali, are also implementing a cable car system as a way of transportation in order to connect the mountains and hills of the surrounding cities. Regarding the city of Bogotá, it has developed the *Transmicable* project, with an investment of approximately USD$79 million.

[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.

The project comprises a length of 3.34 kilometers with 160 booths that will move up to 7,200 passengers per hour according to Bogotá's District Development Institute ("IDU" for its acronym in Spanish).

Bogota's first Metro line was awarded on October 16th, 2019 to a plural structure integrated by China Harbour Engineering Company and Xi´an Metro Company Limited. The concession agreement's purpose is to complete the studies, final designs, financing, construction, supply, tests, operation and maintenance of Bogotá's Section 1 of the first Metro line. The Metro line will have 16 stations throughout 24.5km, and it will be integrated to 3 *Transmilenio* trunks. It will transport approximately 990,000 passengers per day.

Additionally, the integrated transportation system of the Bogotá Region - Regiotram Project's objective is to award a concession agreement for the operation, maintenance, rehabilitation and operation of the railroad corridor between the Sabana and Facatativá stations, in order to connect the municipalities of the Western Sabana with Bogotá. It is expected to enter operation in 2023 and its studies are planned to be completed by June 2020. The tender is currently open.

On the other hand, *Calle 80 Tramway - Medellín* Project is at feasibility stage. It consists on the construction of a railway project along the Avenue 80 corridor in the city of Medellín. The system will be integrated by 15 stations, including 4 intermodal stations connected to Medellín's Metro System and Metrobus (BRT). The investment is calculated on USD $930 million.

Finally, the extension of the *Caracas' Transmilenio* trunk between the sectors of *Molinos* and *Yomasa,* in Bogotá is currently at feasibility stage. It will connect to the future trunk of the *Boyacá* Avenue. The trunk extension will have a length of 8.7 kilometers, and it will include 3 stations, platforms and bike paths, benefiting 381,000 habitants in the area. The investment is calculated at USD$328 million.

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 communications radio spectrum. Congress recently passed Law 1978 of 2019, to modernize the ICT sector by achieving the following main objectives: (i) reduce the digital gap, (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 in order to establish a unique regulator of the ICT sector.

To that effect, Law 1978 aims to increase investment from the private sector, make the institutional framework simpler and improve efficiency in payment of regulatory fees by the relevant actors. Television (Laws 182 of 1995 and 1507 of 2011) and postal services (Law 1369 of 2009) are subject to different sets of laws, but subject to Law 1978.

Telecommunications are considered a utility in which regulation and supervision corresponds to the government. Pursuant to Law 1341, in general, all companies can render communication services and operate communications networks (other than radio and television). The only requirement for companies to provide telecommunications services and/or networks ("Telecommunications Networks and

Services Providers" or "TNSP") is to register before the Ministry of Information and Communication Technologies ("MinICT") by filing a form and providing some basic corporate and technical information, which may vary depending on the type of activity to be undertaken (the "ICT Registry").

Besides TNSP, applicable laws require companies that operate broadcast television services and companies that utilize radio spectrum frequencies, to register in the Unique 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 the national policy for communications and information technologies; managing the radio spectrum allotted to Colombia administering the use of the *.co* domain name; administering the ICT Registry; fixing the fees to be charged to private entities for the use of spectrum and the rendering of communications services and to exert oversight and control over the provision of television services. The Communications Regulation Commission ("CRC"), the sole regulator of the ICT sector, is a separate independent and autonomous body responsible for the regulation of the market to promote competition, to prevent any abuse by dominant players and to guarantee that the provision of services is efficient.

The use of 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.

Pursuant to Law 1978, permits for the use of spectrum now to have a duration of 20 years (it used to be 10 years), renewable for an additional 20-year term. This 20-year term intends to give companies more time to recover their investments, so that it becomes an incentive for them to enter remote rural areas where deploying infrastructure is currently not as profitable. Applicants shall not be denied permits for the use of spectrum on the basis of the technology they propose, as long as the technology does not cause interference with other services, is suitable under international market trends, does not affect national security and contributes to sustainable development. In accordance with Law 1978, price offered by companies in public bids will not be the decisive factor for allocating spectrum. Companies that in their proposals 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 prior approval by the MinICT. The National Spectrum Agency ("ANE" for its acronym in Spanish) and the MinICT will determine which spectrum will be assigned, 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 (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 Single Regulatory Fee, notwithstanding, has not

yet been regulated. This Fee will now be charged to television service providers as well. 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, via investments in 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 for the renewal of permits to use the radio electric spectrum.
Exceptionally, for reasons of national defense, attention and prevention of emergencies, and for public safety concerns, the Colombian Government may impose additional obligations to TNSPs.

Breach of the telecommunications legal regime may entail: (i) fines up to 15,000 minimum legal monthly wages (i.e. COP$12,422,415,000, approximately US$3,711,451) for legal entities and 2,000 minimum legal monthly wages (i.e. COP$1,656,322,000, approximately US$494,940) 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.

Regarding television services, pursuant to Law 1978 of 2019, the MinICT is the entity with powers to handle matters related to radio spectrum used for television services, as well as the rendering of television services, and grant concessions for the operation of such services and networks.

Water and Sewerage

In the last decade the government has given top priority to improving water and sewerage coverage and quality, which has required an estimated investment of more than USD $2 billion 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 (“SSPD” for its acronym in Spanish) has foreseen investments of USD $2,200 million for water and sanitation in small municipalities with low income. Reflecting these efforts, the number of subscribers to the sewerage service increased from 8.35 million in 2014 to 9.40 million in 2017.

Colombia has given top priority to the accomplishment of the Sustainable Development Goals promoted by the United Nations in regards with the full coverage of water and sewerage service to all the Colombian population. Thus, since 2012 the Government has implemented the “Water for prosperity” program (*“Aguas para la Prosperidad”*). An ambitious program comprising over COP $775,000 million (approximately US$ 236,887) in more than 648 projects, in which the Ministry of Environment and Sustainable Development (“MADS” for its acronym in Spanish) alongside with the Territorial Development Financier (“FINDETER” for its acronym in Spanish) have had an important role. The program has reached over 27 Departments such as Chocó, Magdalena, Bolívar, Sucre, Antioquia and Valle del Cauca.

Additionally, according to the Colombian Ministry of Housing, in recent years investments of COP $8.1 trillion (approximately US$ 2.476.306.940) 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 COP $4.2 trillion (approximately US$ 1.284.011.006), excluding the COP $3.9 trillion (approximately US$1.192.295.934) assigned to 424 projects in progress.

Furthermore, the National Planning Department ("DNP" for its acronym in Spanish) issued the Decree 063 of 2015 by means of which it intends to facilitate and implement the use of PPP schemes for developing water and sewerage 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.

Electricity

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, the electric energy matrix is rapidly transforming into a renewable's one with up to 10% of its energy coming from renewable's sources in 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 few years.

Along with its internal restructuring, Colombia, as part of the Andean Community has propelled 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 Panamá.

Colombian capacity to generate electricity is close to 17,300 MW with two thirds being generated by hydroelectric plants. In addition, the government expects to decrease the percentage of thermal and hydroelectric generation, due to the entrance of at least seven renewables projects by 2022.

On May 13th, 2014, Colombia's National Congress enacted Law 1715 of 2014 ("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 wastes
- Solar energy
- Wind energy
- Geothermic energy
- Small-scale hydroelectric energy (PCHs)
- Use of waves, tides and ocean thermal difference

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 auto-

generators to sell their electric power surpluses to the grid, and tax benefits.

In addition, the Energy and Gas Regulatory Commission ("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 guaranty the supply of energy that will be demanded until 2023. This, 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 in 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)

On the other hand, as a development of Decree 0570 of 2018, which sets forth the public policy guidelines to define a mechanism that promotes long-term contracting, the Ministry of Mines and Energy ("MME") issued Resolution 40590 of 2019 "Which defines and implements a mechanism to promote the long-term contracting of electric 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 ("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. Also, the mechanism is applicable to new projects (namely pending to commence construction or under construction at the time of awarding), and 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 two branches, which means that the contracts will be awarded to both power buyers (MEM traders) 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 ("UPME" for its acronym in Spanish) will administer the auction.

Based on Resolution 40590, UPME performed a renewables auction CLPE 02 of 2019. In such auction, the government awarded 15-years power purchase agreements between generation and commercialization companies to seven generation projects (based on solar and wind sources). The seven awarded projects sum up a total capacity of 1,298 MW, which will represent close to 10% of Colombia's electric energy matrix by 2022.

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 Petreóleos* ("Ecopetrol"), was

restructured and the National Hydrocarbon Agency ("ANH" for its acronym in Spanish) was created as an independent regulatory body with the power and authority to control, monitor and supervise hydrocarbons activities and to manage the country's hydrocarbons 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.

In 2003, through Decree 1760, Colombian government restructured Ecopetrol in order to make it more competitive in the global marketplace, becoming a public corporation, initially 100% owned by the State. In 2004, the government sold approximately 10% of its shares in the Company to the public. Ecopetrol's shares are actively traded in the Colombian Stock Exchange. The shares are also listed in the NewYork Stock Exchange (NYSE).

The authority to manage and dispose of the hydrocarbon resources was transferred in 2003 to the ANH. Ecopetrol maintained title to any oil and gas fields which, at the time, operated directly or through associations with private oil and gas companies. Additionally, the Company maintained areas over which it had already undertaken exploration work as part of its assets.

These measures helped modernize Colombia's hydrocarbon 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. The Company is now devoted exclusively to its core activities as a producer and refiner of oil. It holds significant fields that it operates directly and is a partner in many other ventures that are subject to association contracts entered into before 2003 with oil companies from around the world.

The ANH assumed the management, control and regulatory responsibilities over the hydrocarbons sector, consequently, the authority to administer all land and hydrocarbon resources that did not remain within the control of Ecopetrol was transferred to and vested in this government body. Additionally, the ANH was assigned supervisory and regulatory authority over oil and gas operations. Accordingly, since 2003, any investor interested in engaging in exploration and exploitation activities in areas administered by the ANH must apply for a concession agreement, which regularly conducts competitive bidding processes to allocate such concessions among interested investors.

With respect to the contractual regime applicable to the oil and gas sector in Colombia, three 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 ("E&P Contracts") with the ANH or technical evaluation agreements ("TEAs").

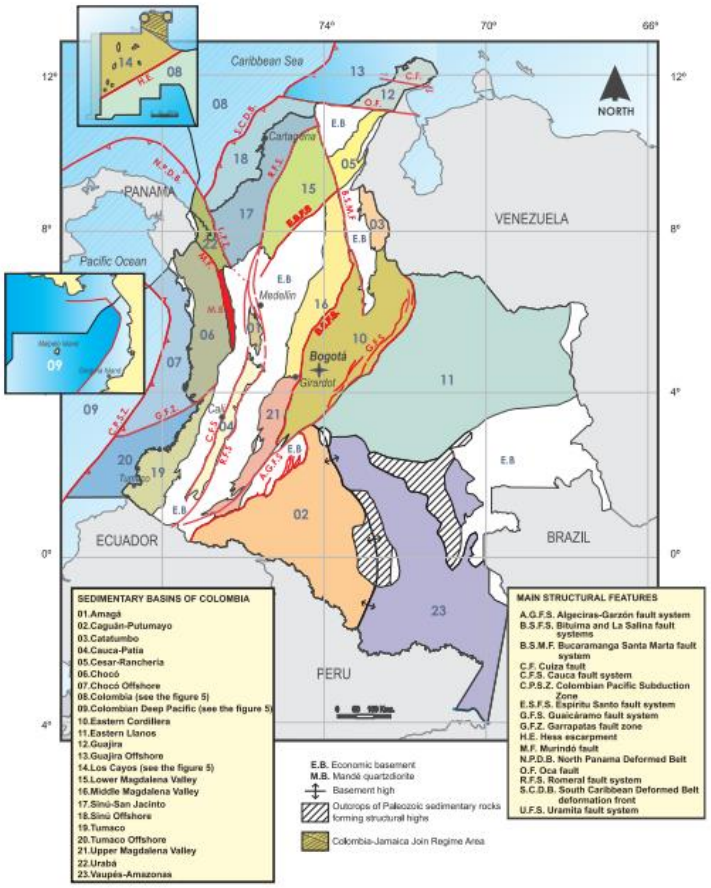
An E&P Contract comprises three phases: exploration, evaluation and production[8]. The

[8] As of the issuance of *Acuerdo* No. 2 of 2017, all E&P Contracts include a preliminary phase where the contractor must perform prior consultation proceedings with ethnic communities, if applicable. The preliminary phase has a term of 24 months. Some E&P Contracts granted before the issuance of *Acuerdo* No. 2 also contemplate this preliminary phase.

duration of each phase is determined by the terms of reference issued for each competitive bidding procedure. However, usually the exploration stage lasts six-years (nine years for unconventional and offshore fields); it is typically divided into yearly exploration stages. Following the exploration period, and assuming a discovery is made, the block enters an evaluation phase in order to determine its commercial potential.

Once the evaluation is completed, the contractor (usually a foreign oil company) must advise the ANH whether it intends to commercially exploit the discovery. If commercially viable, the production period will last for 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 May 26, 2015 and regulations issued by the ANH. 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 Colombian must establish a Colombian branch with domicile in Bogota in order to enter into contracts in the hydrocarbons sector.

Pursuant to its regulatory authority, the ANH issues regulations and guidelines (*acuerdos*) that apply to the procedures that oil and gas investors must follow to enter E&P and TEA contracts with respect to areas under the control of the ANH. Also, said regulations implement rules related with the exploration and production of hydrocarbons. In 2017, the ANH issued *Acuerdo* No. 2 which regulates the awarding of E&P Contracts and TEAs. As per *Acuerdo* No. 2, both, the E&P Contracts and TEAs are awarded to investors by the ANH through open or closed competitive bidding procedures known as rounds (*rondas*). Their terms and conditions may vary depending on the terms of reference that the ANH issues for each competitive bidding round. On the other hand, the ANH is also entitled to directly assign E&P Contracts or TEAs under exceptional conditions.

Acuerdo 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 *Acuerdo* No. 2, in order to be registered in the Stakeholders Registry and must update such registry annually.

In September 2017, the ANH launched a competitive bidding round for 15 areas located in the Sinu-San Jacinto sedimentary basin for which six companies qualified. This process was terminated by means of Resolution 607 of December 17, 2018 as between September and November 2018, the six qualified companies decided not to participate in the competitive bidding round due to technical and economic reasons.

However, on February 5, 2019, the ANH by implementing the *Acuerdo* No. 2 opened a permanent competitive bidding procedure ("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, located in the sedimentary basins of Caguán-Putumayo, Catatumbo, Cordillera Oriental, Guajira Offshore, Eastern Plains, Sinú-San Jacinto, Sinú Offshore, Inferior Valley of the Magdalena, Middle Magdalena Valley and Upper Magdalena Valley. It is important to emphasize that the areas that the Sinu San Jacinto competitive bidding round offered are part of the PPAA.

Through the PPAA, the ANH, as stated in *Acuerdo* No. 2, established the following basic rules for the implementation of PPAA: (i) permanent qualification of the oil & gas companies for a two year term; (ii) periodic offer of area by ANH; (iii) the possibility for interested companies to request the incorporation of areas

to the PPAA; and (iv) the option to submit counteroffers and to exercise the right of option of improvement.

In this sense and in application of the aforementioned rules, the ANH issued terms of references for the PPAA and has carried out two cycles both of which are divided in the following four stages: (i) submission of the proposals and selection of the initial proponent; (ii) submission of counterproposals and selection of the most favorable counterproposal; (iii) exercise the right of option of improvement by the initial proponent; and (iv) allocation of areas and execution of contracts.

As part of the first cycle of the PPAA for allocation of areas, the ANH offered 18 continental areas and two offshore areas. On June 4, 2019, the bid was carried through a public hearing and received 20 offers. In the same way and according to the process timetable, on June 26, 2019 the counteroffers public hearing was carried out and only one counteroffer was submitted for the so-called area VIM 22. As a result, the ANH awarded 55% of the offered areas for the first cycle of the PPAA for allocation of areas.

In parallel, interested companies submitted their applications to include areas in the second cycle of the PPAA for allocation of areas. As a result, upon request of the interested companies, the ANH is aiming to allocate for such cycle 32 strategic areas, nine of which correspond to blocks that remained unassigned in the first cycle, and 23 new areas, of which 13 are clearly leaning towards gas.

Submissions for the second cycle will be held on November 26, 2019 for offers and on December 5, 2019 for counteroffers, therefore on December 10, 2019 the ANH will allocate the areas in the cases that do not receive counteroffers, otherwise it would be December 19, 2019.

Colombia's estimated oil reserves increased by 9.9% between 2017 and 2018; it went from a total of 1,782 million barrels in 2017 to a total of 1,958 million barrels for the year 2018[9]. Therefore, the average useful life of Colombia's reserves increased from 5.7 years to 6.2 years. Furthermore, Colombia's production average in 2017 was 852.750 daily barrels of oil and 865.000 daily barrels of oil in 2018.

Public Utilities

Law 142 of 1994 established a new regime for public utilities. It authorized private companies to render public utilities. As a result, users have benefited with better quality and lower prices of public utilities. The government continues to render public utilities in regions where private companies do not.

Tourism

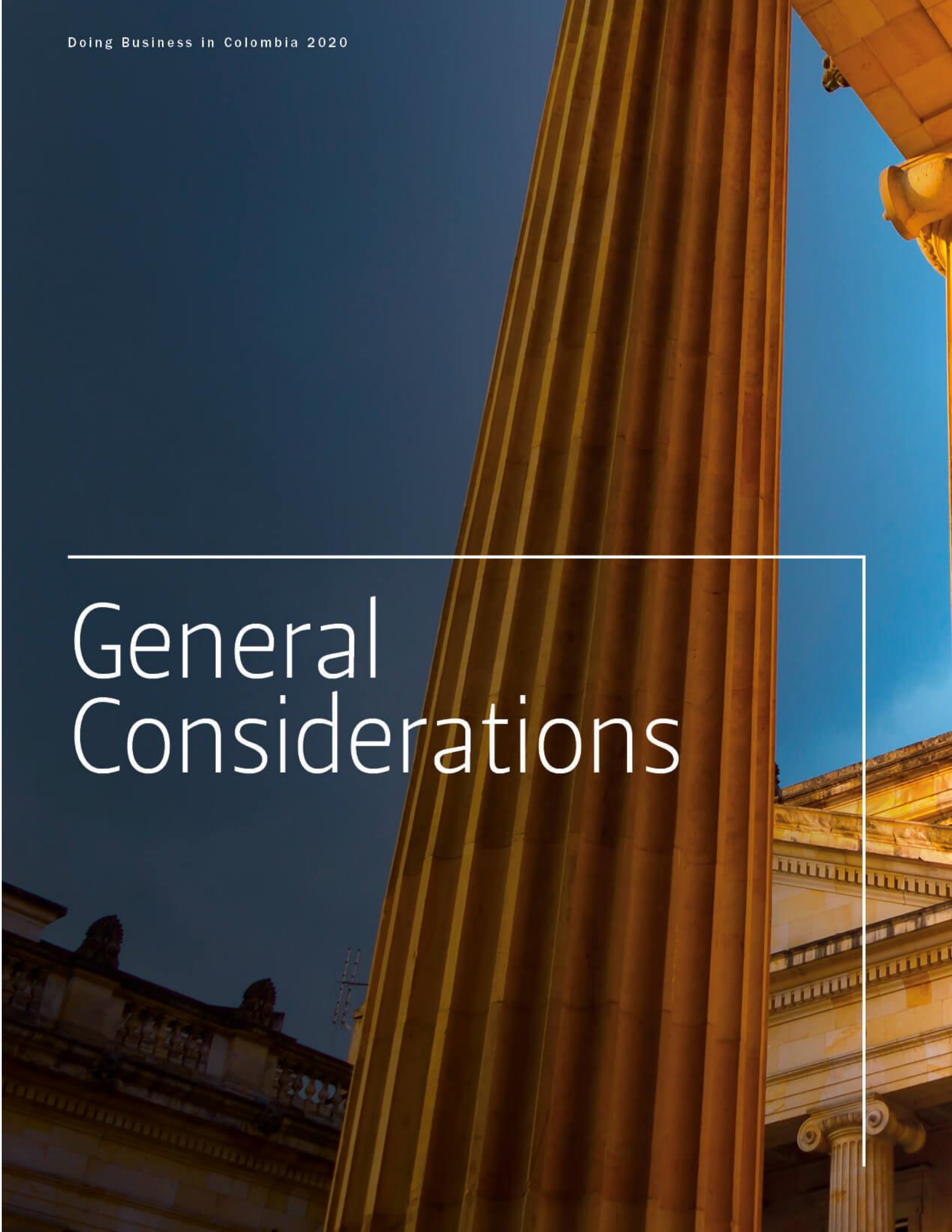
The Colombian Ministry of Trade, Industry and Tourism reported a 3.4% growth of the sector in 2019. Approximately 2.8 million foreign arrivals were registered in 2019, coming mainly from the United States (22%), Perú (20%) and Panamá (17%). It is one of the sectors with greatest projection in the Colombian economy, expected to generate more than USD $6,000 million in foreign exchange per year and revenues for

9 https://www.dinero.com/pais/articulo/cuales-son-las-reservas-de-crudo-de-colombia/27171

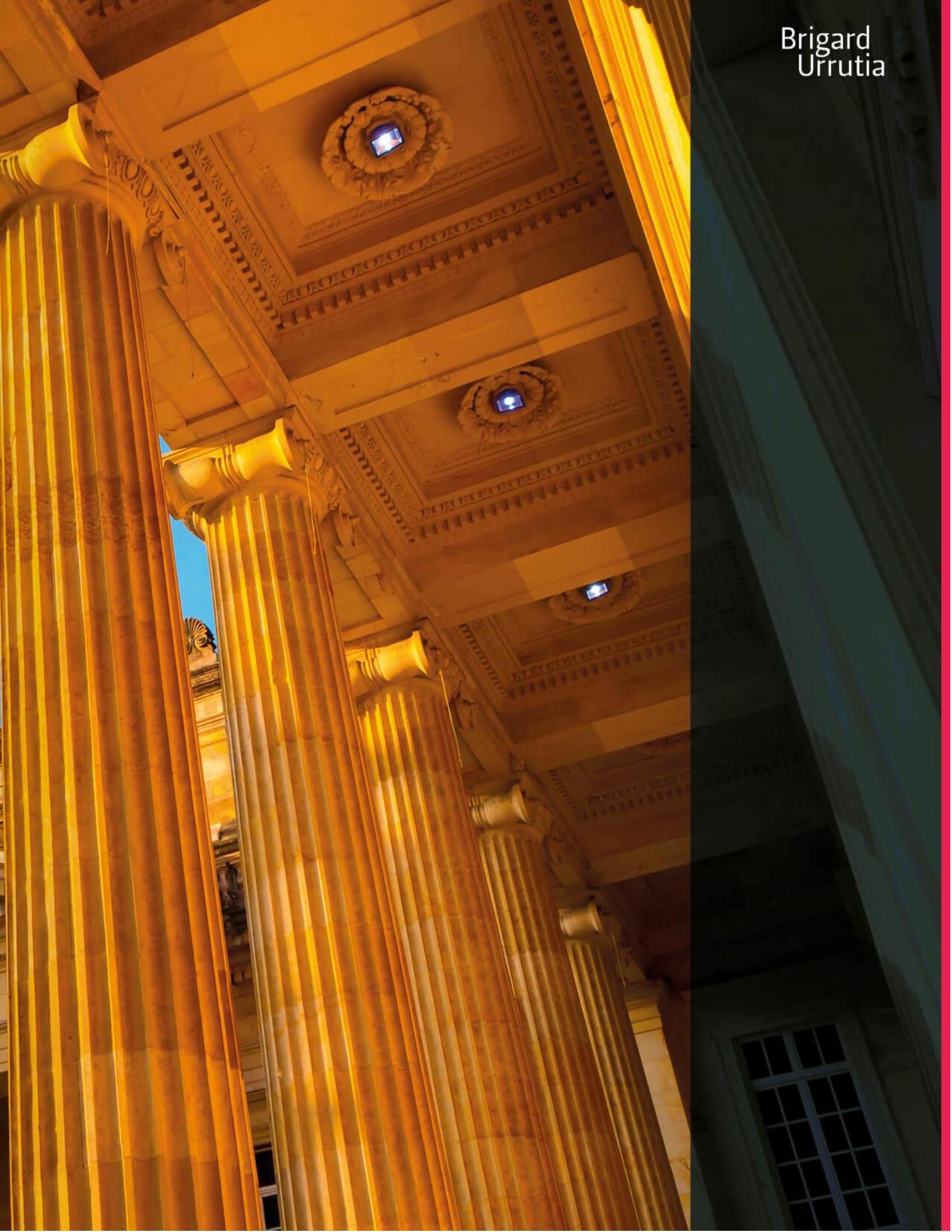
COP $34 billion (approximately US$ 10.394.375.)

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 in 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.



General Considerations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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 purposes of the State are to 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 checks and balances scheme (pesos y contrapesos), the organic structure of the Republic of Colombia is tripartite and, therefore, it has three main branches: (i) the legislative branch (headed by the two 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 Comptroller's Office (Contraloría General de la República), and the Central Bank (Banco de la República), among others. These agencies oversee maintaining the balance within the three main branches of the public power. In accordance with the rule of law principle, 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 five 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 nine magistrates of the Constitutional Court are selected by the Senate, from the list of three candidates sent by the President, the Supreme Court, and the Council of State respectively, and serve for one eight-year 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 eight-year term.

(iii) The Council of State (Consejo de Estado) is the highest court of administrative law. The 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 eight-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 seven members of the Disciplinary Chamber of the Higher Council of the Judiciary are elected by the Congress for a one eight-year term and the six members of the Administrative Chamber are elected by the Supreme Court of Justice (two), the Constitutional Court (one) and the Council of State (three). 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 two different new entities i.e. the National Discipline Commission (Comisión Nacional de Disciplina) 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 four-year term.

The structure of the judicial branch is organized as follows:

<table>
<tr><th colspan="2">Type of Jurisdiction</th><th>Type of Courts</th><th colspan="3">Other parties involved</th></tr>
<tr><td colspan="2">Constitutional Jurisdiction</td><td>Constitutional Court</td><td colspan="3"></td></tr>
<tr><td colspan="2">Ordinary Jurisdiction</td><td>Supreme Court of Justice</td><td>District Court of Appeals</td><td>Circuit Courts</td><td>Municipal Courts</td></tr>
<tr><td colspan="2">Administrative Jurisdiction</td><td>Council of State</td><td colspan="2">Administrative Tribunals</td><td>Administrative Courts</td></tr>
<tr><td colspan="2">Disciplinary Jurisdiction</td><td>Higher Council of the Judiciary</td><td colspan="3">Sectional Council of the Judiciary</td></tr>
<tr><td colspan="2">Other Jurisdiction</td><td>General Prosecutor's Office</td><td colspan="2">Sectional prosecutors</td><td>Local prosecutors</td></tr>
<tr><td rowspan="2">Specials Jurisdictions</td><td>Peace Jurisdiction</td><td>Peace Courts</td><td colspan="3"></td></tr>
<tr><td>Indigenous Jurisdiction</td><td>Authorities of the Indigenous Territories</td><td colspan="3"></td></tr>
</table>

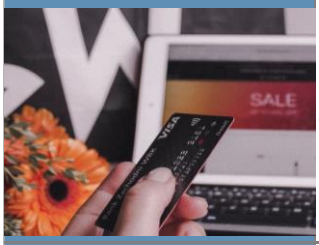
Financial System

Legal Framework

The Organic Statute of the Financial System (the "OSFS", Decree 663 of 1993) 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 operating licenses.

Financial Entities

Under Colombian law, entities subject to the supervision of the Superintendence of Finance ("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 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 and 3.18% for 2018).
Banks 	The principal business of banks is to take deposits from the public by means of checking accounts and time deposits in order to extend credit to the public. 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.
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.

Entities	Description
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.
Insurance Entities and Intermediaries 	Insurance entities are engaged in the business of providing casualty and life insurance products in the Colombian market. They are also empowered to engage in reinsurance activities. However, casualty and life insurance must be organized as separate entities and their corporate purpose is exclusive to the respective type of insurance.
Entities Specialized in Deposits and Electronic Payments 	Since Law 1735 of 2014 and Decree 1491 of 2015, entities specialized in deposits and electronic payments (Sociedades Especializadas en Depósitos y Pagos Electrónicos, SEDPE), regulated by the Superintendence of Finance, are engaged in taking deposits by means of electronic accounts and make electronic payments and transfers.

Deposit taking restrictions

The main restriction set forth in the OSFS is the prohibition to raise deposits from the public without a governmental license from the Superintendence of Finance. Failure to comply with regulatory requirements related to such deposit taking activities may lead to severe sanctions, including criminal penalties and fines.

Colombian law set forth strict limits in order to engage in financial activities. The notion of financial activities is directly associated with that 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 ("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.

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 three-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 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 therefor pursuant to legal and regulatory provisions, 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".

Interests Restrictions

The current interest rate (*interés bancario corriente*) is defined as the average interest rate charged to the public by Credit Entities, banks and other lending institutions. 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" rate for each month. In addition, they certify three 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 18.91 % and this percentage will be applicable until December 31, 2019.

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 28.37% and this percentage is applicable until December 31, 2019 (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. Indeed, 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.

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. 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 imply a process that takes between six and eighteen 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 applicable capital requirements currently in force:

Type of Credit Entity	Minimum capital requirement (Amount expressed in COP)	Amount expressed in USD (Exchange rate: $1 USD - $3.277,14)
Bank	$ 96.813.000.000	$ 29.541.918
Financial Corporation	$ 35.214.000.000	$ 10.745.345
Financing Company	$ 24.945.000.000	$ 7.611.820

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, expanding significantly its international engagement, both bilaterally and multilaterally. This context and the State's actions for the promotion of foreign trade will have a profound influence over the international agenda in the upcoming years, since Colombia is expected to strengthen and enhance the existing Free Trade Agreements and to seek strategic global alliances aimed at boosting its economic development.

COLOMBIA has signed treaties to avoid **DOUBLE TAXATION** with **17** COUNTRIES

Bilateral investment treaties: **SPAIN, CHINA JAPAN and SWITZERLAND**

Member of more than **15** **INTERNATIONAL ORGANIZATIONS**

Mutual recognition agreements: **EUROPEAN UNION SOUTH KOREA COSTA RICA PACIFIC ALLIANCE and CAN**

Colombia belongs in **17** **REGIONAL FREE TRADE AGREEMENTS**


Brigard
Urrutia

Brigard Urrutia

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:
- T 1994 (General Agreement onSettlement Understanding).
- 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.

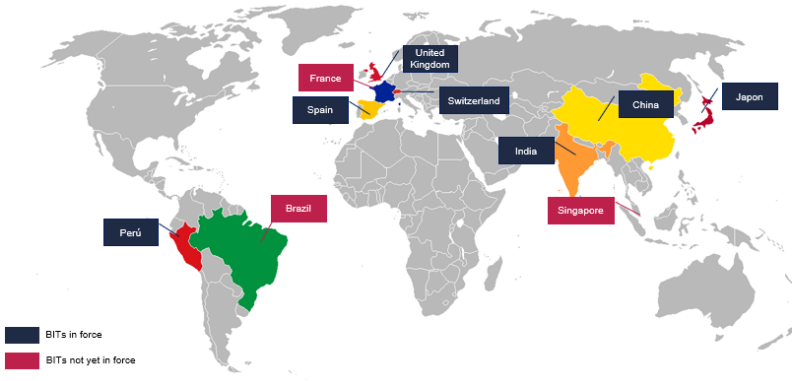
Additionally, Colombia has signed or is negotiating the following treaties (not yet in force):

- The Free Trade Agreement with Panama.
- The Free Trade Agreement with Israel.
- The Trade Continuity Agreement with the United Kingdom.

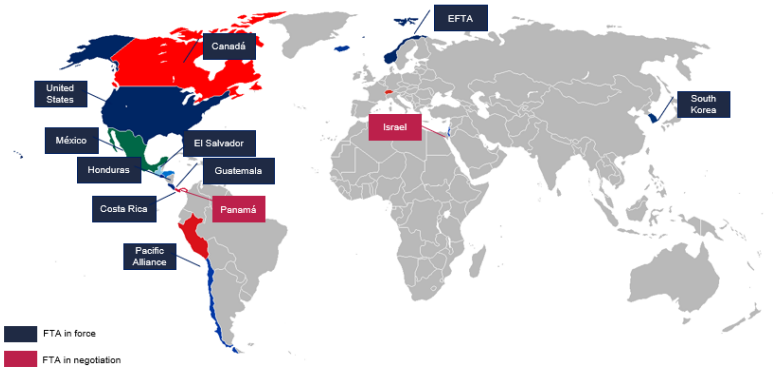
Furthermore, Colombia is currently negotiating the Free Trade Agreement with Japan, the Free Trade Agreement with Turkey, the Framework Agreement of the Pacific Alliance in order to grant Australia, Canada, New Zealand and Singapore the status of Associate States, and the Multilateral Trade in Services Agreement (TiSA), which provides a predictable environment for service suppliers addressing discriminatory barriers to cross-border trade in services.

Bilateral Investment Treaties

Currently, Colombia has the following BITs:



In addition, several Free Trade Agreements, that are in force, in process of approval, or in the negotiations' stage, have their corresponding Investment Chapters, such as:



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:

- FTA European Union
- FTA South Korea
- FTA Costa Rica
- Pacific Alliance MRA
- CAN 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. Currently, treaties with Chile, Spain, Switzerland, Brazil, Argentina, Panama, Italy, Japan, Venezuela, Canada, and Germany are in force. In addition, Colombia has signed treaties to avoid double taxation with South Korea, Mexico, India, Portugal, the Czech Republic, and negotiations with Belgium have been already concluded and are pending approval.

STRUCTURES FOR A BUSINESS IN COLOMBIA

Government participation and restrictions

Colombia's government owns and participates in different types of companies in the national, regional and city levels, as it is allowed by 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 sector of the economy, as it is a consequence of dated policies deviced 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 public or 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[10].

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 public share of more than 50% is subject to the PPS. However, there are several exceptions to this general rule 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 mix economy companies that although having more than 50% of public share, 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

[10] 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 (the "PPS")

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 debarments 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 the 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 disposition 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, legal social benefits and 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 it's important to take into account that the government can exercise the so called exceptional powers o clauses ("*Poderes Excepcionales*" or *"Clausulas Exorbitantes").* In such cases, the government agency that acts as a Contracting Party is allowed to terminate unilaterally the contract, 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 this 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 "exceptional 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 organization 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 organization 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 participating in procurement procedures, by means of the following associative forms: (a) Consortiums, (b) Temporary Unions and (c) promises of incorporating future companies.

A consortium[11] exists when two 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, the temporary union is defined as a consortium in which the bidders that submit

[11] Article 7 of law 80/1993.

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 this registry 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/his/her domicile in Colombia, including those that allow verifying its/his/her 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 ("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 in 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 whether is mandatory the submission of the bidder's public registry-RUP.

These documents must be filed before the respective Chamber of Commerce, who will verify them based on the rules set forth under the referred regulations. Once the verification has ended, the interested bidder will receive a certificate evidencing and summarizing its financial capacity (i.e. liquidity, indebtedness and interest coverage ratio), organizational capacity (i.e. assets and equity's profitability) and its experience. Other information includes, among others, the classifications in which the interested bidder certifies that it provides goods and services to government owned entities (using the United Nations Standard Products and Services Code), the other corporations that are a part of the economic group (i.e. parent company if applicable) and, the name and powers granted the companies legal representative.

It is important to bear in mind that, according to the rule established in Decree 1082 of 2015, any company, during the first 3 years of its incorporation, will be able to accredit in RUP the experience of its shareholders or partners. 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 important to underscore 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 10, 2012, and after a fast track legislative procedure, the law on Public Private Partnerships was enacted, and it has greatly incentivize 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 improves the country's previous private finance initiatives regime.

The main objective of the PPP Law is to utilize 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[12]. In essence, contractors will not be paid for work performed until the project is completed in accordance with the original project plan.

Generally, the 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 ("CONPES" for its acronym in Spanish) such maximum term 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.

[12] 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.

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 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 was not able 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 any public resources, once accepted by the public entities, there will be a period from one to six 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, obviously at all times 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 (modified by Law 1753 of 2015, with a maximum of 20% of the project price in roads and 30% in other types of projects) 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 private initiative project, the proposing contractor must pay for any expenses incurred in connection with the structuring process. However, if the proposing contractor does not succeed 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 mean of retribution, rights over land that is not affected by the project, which has another important advantage, due to the fact that the value of that property do not count in the percentage limit of public expenditure (20% or 30%) explained before.

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

Regulatory bodies and respective powers common to energy and gas markets

The Energy and Gas Regulatory Commission (“CREG” for its acronym in Spanish), is the technical entity created by the National Government in 1994 to regulate the domestic

utilities of electricity and fuel gas from 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 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 (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 ("UPME" for its acronym in Spanish), directly supervise over 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 ("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 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

Colombia has reduced the requirements to formalize the incorporation of companies and doing business in the country. If a company wishes to engage in permanent businesses in Colombia it must observe some rules.

It is important to point out that 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, analyzed on a case-by-case basis. 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.

Investment Methods

General Comments

Colombian law provides for two main alternatives to do business with presence in Colombia: (a) the branch of a foreign company (a commercial establishment) or (b) a subsidiary. The main types of legal entities that are 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.

As a general rule, in the incorporation documents, including the by-laws of a Colombian company, its shareholders or partners must establish among others, (i) the name under which the company will run its business, (ii) corporate purpose of the company, which in some cases shall be express and exhaustive, (iii) the capital to be contributed and (iv) the term of duration of the company. 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. As a general 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 a fiscal/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 ("LLC") requires at least two (2) partners and may not have more than twenty-five (25) partners. The capital of an LLC is divided into quotas of capital. The transfer of quotas implies an amendment to the by-laws of the LLC and must be formalized by means of a public deed before a local notary public.

The LLC does not require a Board of Directors. The LLC is deemed to be managed directly by the partners, although they are entitled to delegate their authority to general managers or to a board of directors.

An LLC does not require a fiscal auditor except when (i) the gross income exceed 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 taxes not paid by it, 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 (*Sociedad por Acciones Simplificada* - "SAS") can be formed by one (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, in general, 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 set forth in the bylaws 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 general 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 a fiscal auditor except when (i) the gross income exceed 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 as well as there is a prohibition for a SAS shares to be listed.

Limited Partnerships

The Limited Partnerships (*Sociedades en Comandita*) are formed by two 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 two 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 only 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 ("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 two 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. Likewise, unanimity is also required for the following decisions: (i) total or partial assignment of the interests held by a partner in the general partnership; (ii) assignment of administrative and control functions to a person alien to the GP; (iii) exploitation by one of the partners, on its own behalf or for third parties, directly or indirectly, of the same type of business in which the GP is engaged in, and (iv) be part of other companies engaged in the same type of business of the GP and participate in their management.

Benefit and Public Interest Companies (BIC)

The Public Benefit and Interest Companies ("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 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. Those activities are not exclusive. Accordingly, Law 1901 of 2018 states that BICs besides the benefit of their shareholders, will pursuit the general interest of the collectivity and the environment.

Agricultural Transformational Companies (SAT)

Agricultural Transformational Companies ("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 separately consider from its partners.

Additionally, to incorporate a SAT is important to consider the following:

- Its shall 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 demonstrates 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 three partners. In all cases, the majority, must be comprised of individuals.

The SATs were created and are principally governed by the 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 are companies whose capital is divided into shares, which 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. Utility Companies 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 ("ESP", for its acronym in Spanish), is a term reserved by the 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.

The Law 142 of 1994 expressly allows that the contribution of capital to this 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. It is important to point out that the parent company is liable for all of the operations and transactions of its Colombian branch.

Representative Offices

On the other hand, it is important to mention that the 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 Companies. Among other requirements, the Superintendence 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 ofassociation / agreement under Colombian law and are governed by contractual principles in Colombia. It is important to mention that private joint ventures do not have detailed regulation. Thus so, joint ventures are commonly used in Colombia and are ruled by the clauses agreed upon in the joint venture agreement due to the lack of detailed regulation in Colombian law. Thus, it is worth noting that regulation of joint ventures in Colombia is limited to certain economic fields such as petroleum and communications.

It is important to point out that some general private law rules apply to such contract. In particular regulations of article 825 of the Colombian Commercial Code are 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 the contract compliance.

Andean Multinational Enterprise (EMA)

The Andean Multinational Enterprise (*Empresa Multinational Andina* or “EMA”) was created by the Andean Community under Decision 292 of 1991. Pursuant to Andean Regulations, the EMA must be incorporated as a corporation and shall fulfill all requirements established by the relevant legislation. The main purpose of these companies is to promote the interregional investment, which means that it promotes business between companies located in member countries of the Andean Community.

The EMA must be located in the territory of the

member countries of the Andean Community: Colombia, Ecuador, Peru or Bolivia. For all purposes, the name of the company must be followed by the abbreviation EMA and its capital must be divided into shares, which must be denominated in the local currency of the country of incorporation, or in the currency allowed by the relevant local laws. The contributions made by national investors of two or more-member countries must add up to more than 60% of the capital stock of the company.

The managers of the company must be, at least, one director of each member country (but only from those countries where an investment of at least 15% of the Company's total equity comes from). For administrative purposes, the sub-regional majority must be established in each of the corporate departments (i.e. technical, administrative, financial and commercial).

The bylaws must provide a right of first refusal in favor of the shareholders. Nonetheless, any shareholder may resign to the right of first refusal.

Within sixty (60) days following the incorporation/conversion of a company into an EMA, the corresponding registration entity (i.e. the Chamber of Commerce) shall notify the Andean Board about the registration. Once registered, the Andean Board must notify the other Country members of such registration within the next thirty (30) days.

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, taking into account that the country of the parent company is a party to The Hague Convention 1961[13].

In case the parent Company is not a part of The

[13] 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

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 additionally 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 ("DIAN" for its acronym in Spanish) using a Unique Tax Registration ("RUT" for its acronym in Spanish) and will be assigned 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 (simplified stock companies, corporations and stock-issuing limited partnerships), 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 one (1) year for the corporations and the stock-issuing limited partnerships and two (2) years for the simplified stock companies;
- How the company's operations will be managed, as well as the limitations to the managers' powers and authority;
- 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

to the Convention may be certified by means of the Aposille 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.

which inventories and general balance sheets must be drawn up;

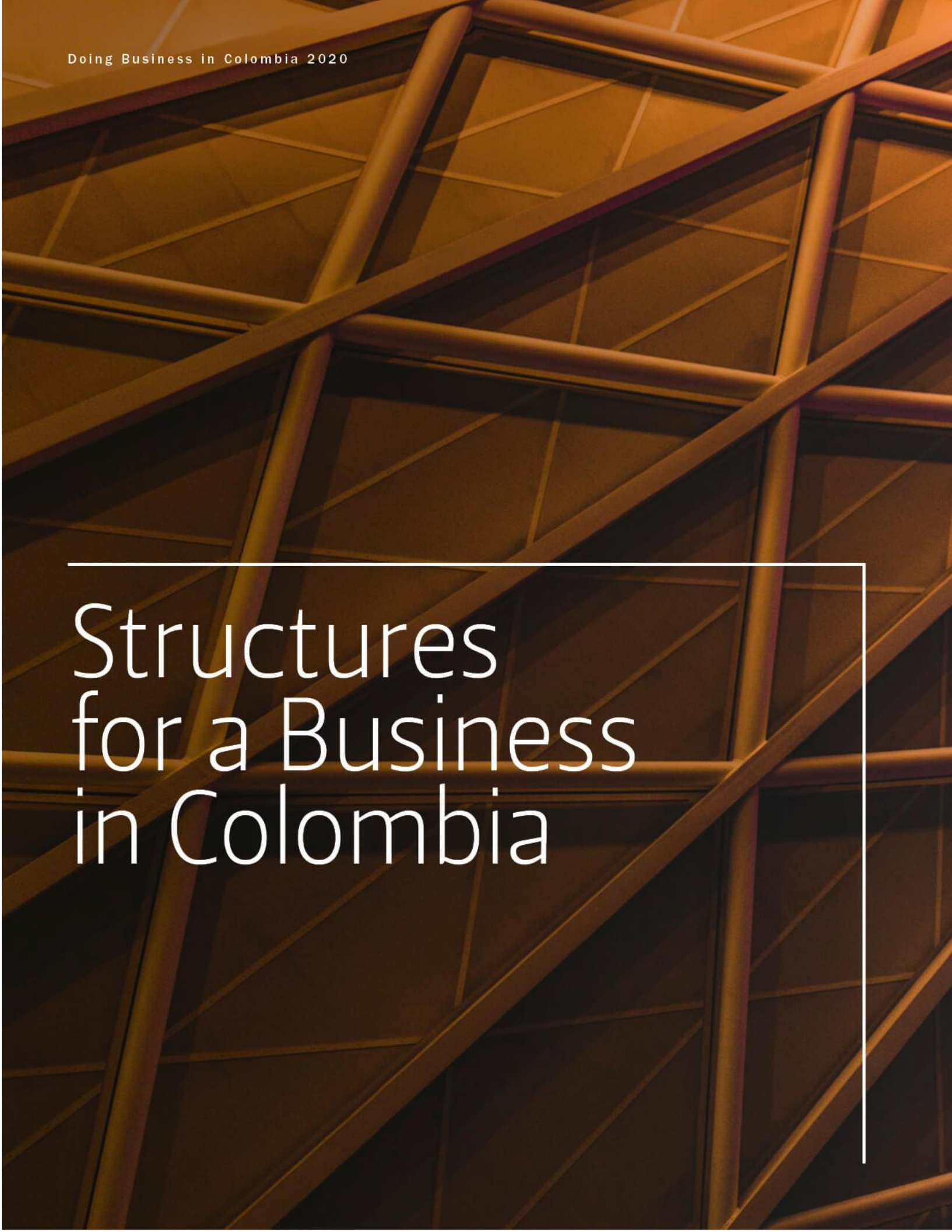
- The procedure for distribution of profits or income in each fiscal term, with an indication of reserves to be made;
- The exact duration of the company (corporations and branches) and the grounds for early dissolution. Nonetheless, the simplified stock companies may be incorporated with an indefinite 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.

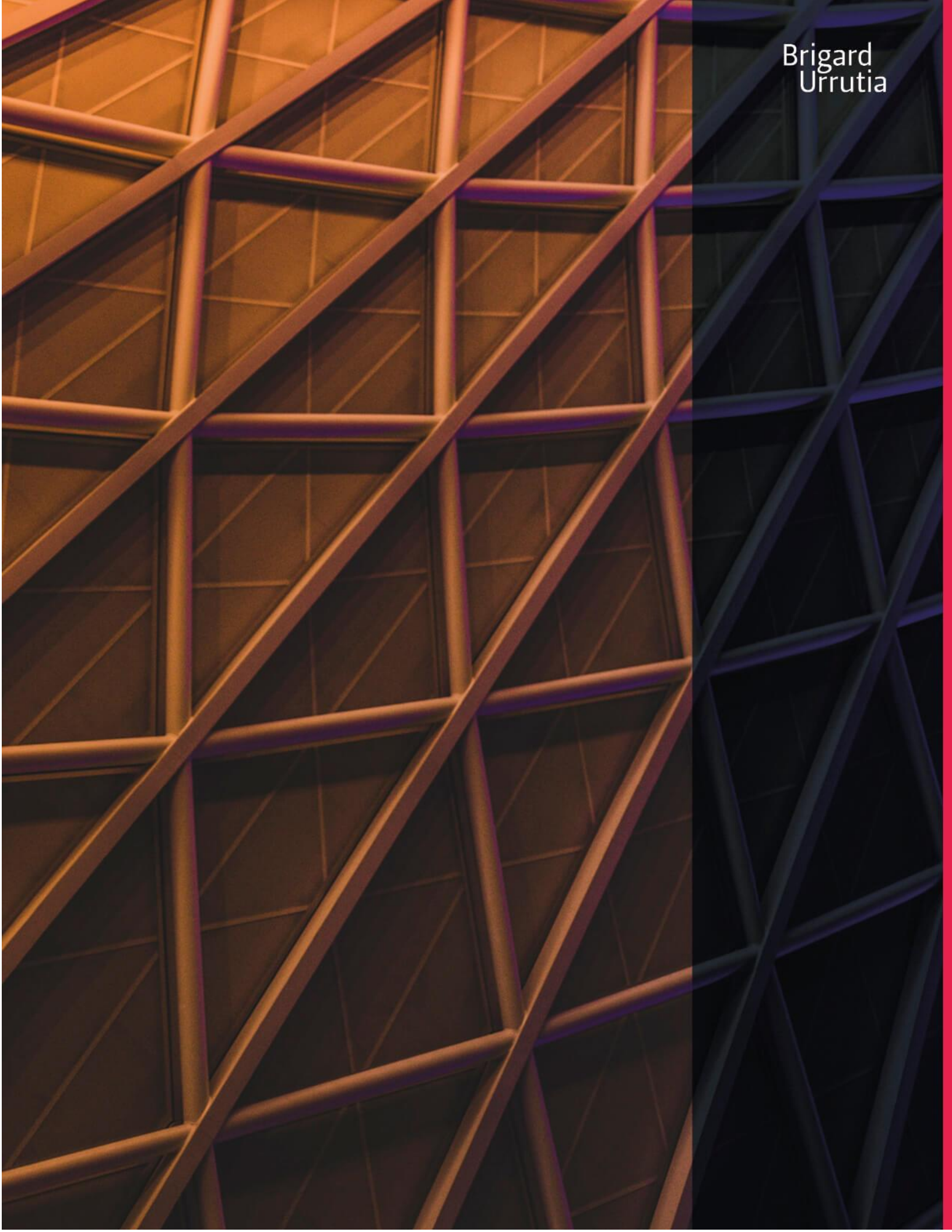
If the company is incorporated by means of a power of attorney, it should grant sufficient authority for the attorney to:

- Incorporate the new company;
- Execute the founding deed or private document for the simplified stock companies;
- Separate power to obtain a tax identification number from the tax administration for the partners or shareholders, if necessary;
- Separate power to obtain the personal tax identification number (RUT) for the managers of the Company; and
- 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 the payment of the taxes and applicable fees.



Structures for a Business in Colombia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ESTABLISHING A BUSINESS IN COLOMBIA

ANTITRUST LAW

As per Colombian Law[14], 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 ("SIC" for its acronym in Spanish) are required to inform the SIC about the transactions they intend to carry out in order 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[15]:

(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" – COP$49,686,960,000, i.e. approximately US$16.8 million for 2019); or

(ii) Individual or combined assets as of December 31st of the year immediately preceding the transaction equal to or exceeding 60,000 MMLW (COP$49,686,960,000, i.e. approximately US$16.8 million for 2019).

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]. Whenever the parties to 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 and the worldwide group entities that

[14] Articles 9 through 13 of Law 1340/2009 and Resolution 10930/2015 of the SIC.

[15] At the average exchange rate for 2019 as reported by the Colombian Central Bank: 1USD = COP$3.271,60

[16] By related entities, it is understood as group entities that participate either in the same economic activity or in the same value chain.

participate in the same economic activity or value chain.

However, whenever the interested parties to the transaction meet one or both of the aforementioned conditions but, jointly considered, hold a market share below 20% in the relevant market, they will only be required to 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 full filing is taken, the following procedure needs to be followed:

(i) The parties must submit a pre-evaluation request with a summary of the proposed transaction and 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 three (3) days following the filing, the SIC will publish a notice on its website and, if it opts to do so, may order the parties to publish a notice in a daily newspaper of national circulation. Third parties will have 10 business days following the publication of the notice to intervene.

(iii) The SIC has a 30-business day term, counted from the date of filing of the pre-evaluation request, 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) If the SIC determines that a more detailed analysis of the transaction is necessary, it will notify the parties and thereafter the parties will have a 15-day term to submit further information, contained in the SIC's analysis guidelines.

(v) The SIC will then have a 3-month period to make its final decision that can be to (i) fully clear the transaction, (ii) conditionally clear the transaction, 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 substantive analysis conducted by the SIC aims to determine whether the transaction has any adverse effect on the relevant market or any negative impact on the consumers, and particularly if it limits

the production, provision, distribution or consumption of raw materials, products, goods or services, whether national or foreign, or if it infringes in any way competition regulations or if affects the economic efficiencies of the market. An undue restriction of competition in the local market is the only basis for the SIC to challenge a transaction involving a merger, consolidation or integration.

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

However, pursuant to article 12 of Law 1340/09, the SIC will not challenge a transaction if (i) the parties technically demonstrate that the positive effects it will have for the consumers exceed the possible negative effects it may have on competition, or (ii) the SIC considers that regardless of the market share post-merger, the overall conditions of the market and its surrounding markets guarantee free competition.

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 two possible sanctions:

(i) Fines can be imposed pursuant to articles 25 and 26 of Law 1340/09. The fines run up to 100,000 monthly minimum legal wages ("MMLW") (currently COP$82,811,600,000, i.e. approximately US$26 million for 2019) for the companies involved and up to 2,000 MMLW (currently COP$1,656,232,000, i.e. approximately US$507,000 for 2019) for the individuals who have executed, authorized or tolerated the conduct (including management members of the involved companies)[17].

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

[17] At the average exchange rate for 2019 as reported by the Colombian Central Bank: 1USD = COP$3.271,60

ENVIRONMENTAL LAW

Regulation

Colombian environmental legislation may be defined as 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.

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

Pursuant to the Colombian Constitution, Law 23 of 1973 and Decree 2811 of 2974 (Colombian Code of Natural Renewable Resources) the elements of the environment (air, water, soil, forests) are sole property of the Colombian State, which acts as an administrator of said resources (hereinafter referred to as "natural renewable resources", as defined in Colombia's environmental law currently into force). The Colombian Constitution of 1991 also recognized the right to a healthy environment for all Colombian citizens and incorporated the sustainable development criteria as a constitutional command.

Based upon such principles, in Colombia 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 (hereinafter referred to as "beneficiary") to apply for and obtain from the competent environmental authorities (either national, regional or district) the environmental licenses, concessions, permits and/or authorizations (hereinafter referred to as "control instruments"), prior to the breaking ground or commencing the corresponding project.

The Colombian Constitution further defines Colombia as a multicultural state in where several ethnicities coexist. Particularly important are indigenous and afro-descendant groups of people, for they are afforded special protection by applicable Colombian legislation. With respect to special rights of the Colombian ethnicities, the National Government introduced ILO Convention 169 on Indigenous and Tribal Peoples by means of Law 21 of 1991, and therefore, assumed obligations with respect to obtaining 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

As previously explained, in Colombia there are 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 (MADS for its acronym in Spanish)

According to Law 99 of 1993, the Ministry of Environment and Sustainable Development - MADS is considered the maximum environmental authority of Colombia. The Ministry 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 (ANLA for its acronym in Spanish)

As per Decree 3573 of 2011, the ANLA 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. The ANLA is entitled to exercise surveillance of the projects, works, or activities subject to environmental licenses, in order to ensure that said projects effectively comply with the environmental regulation currently into force. In this respect, the authority has power to impose preventive measures and/or sanctions to environmental offenders.

c. The Special Administrative Unit of National Natural Parks of Colombia ("UAESPNN" for its acronym in Spanish)

National Natural Parks of Colombia was created as a Special Administrative Unit of the national level. Its responsibility is mainly referred to administrate and manage the "System of National Natural Parks" and the coordination of the "System of National Protected Areas". In addition to the latter, in accordance to 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 (CARs) and the Corporations for Sustainable Development (CDS) are government

environmental authorities of the regional level and are considered as 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. They also 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 of the regional level) have some residual competencies on the administration of the environment. The Departments do not have any competences with respect to imposing sanctions.

Urban/Municipal levels:

a. The Urban Environmental Authorities (UEAs)

The Urban Environmental Authorities – UEAs operate the same way CARs/CDS do. In that sense, these authorities execute the same functions CARs/CDS have, with the difference that they do so 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 some residual competencies on the administration of the environment. 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 with thep rotection and preservation of the

environment, natural renewable resources, and the 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 Comptroller Office, responsible for directing and coordinating the surveillance of the environmental management in charge of the public servers in relation with all megaprojects of the State.

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

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

d. Scientific Authorities

As per Law 99 of 1993, in Colombia there are several scientific institutes which make part of the National Environmental System – SINA. Said institutes and entities are in charge of producing technical support information useful to decision makers and environmental authorities.

e. Colombian Police

As per 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 the environmental authorities.

f. Colombian Armada

As per Law 1333 of 2009, the Colombian Armada has power to impose preventive measures as to prevent damages to the environment. If so, the Armada shall then notify the competent environmental authority and send all the documentation for the environmental authority to proceed imposing the sanctions established by Colombian law.

Colombian environmental authorizations

As previously indicated, in Colombia there is the need to request an environmental authorization (either a license or a permit) before undertaking projects or activities which may adversely affect the environment, or which will need to make use of natural renewable resources. Please find a brief description below of the Colombian environmental authorizations in force:

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[18].

The Environmental License only applies to those projects or activities that may imply serious deterioration of the natural renewable resources, or that have the capacity to make considerable changes to the landscape (i.e. mining exploitation, oil transportation and storage, projects on natural park areas, hydrocarbons exploration and exploitation, infrastructure projects, among others).

Please note that in Colombia, said activities are limited and clearly defined in Decree 1076 of 2015, which means that the Environmental License only applies to those activities that are effectively listed above.

The Environmental License is granted by the competent environmental authority (either the ANLA, or the CARs) according to geographic location, territorial jurisdictions 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[19] requires the registration of some sources of air emission is mandatory 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.

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

[19] Is regulated essentially 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.

(ii) Water

Colombian use of water regulation[20] determines four 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; its term is ten years or in some cases up to fifty years. Discharge waste permits grant the right to discharge waste into the water; their term may be of up to five years. Permits to occupy a riverbed apply in the construction and in the operation of hydraulic works for the defense and conservation of lands, riverbeds and riverbanks, streams or of any other body of water, or whenever infrastructure projects imply 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 two 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 applicable regulation[21], all generators of residues or wastes and/or hazardous wastes are required to register in the Generators Registry of the competent environmental authority,

[20] Decree 1076 of 2015

[21] The rules to handle, manage and finally dispose 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.

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 ways to make the devolution and collection of residues easier.

The Management Plans for the Devolution of Post Consumption Products (Take-back systems) are regulated by 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) among others. Please note that 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 Law 1672 of 2013.

(iv) Noise

The levels of noise emissions are regulated in Colombia. There are several maximum levels of noise that have been established by Decree 1076 of 2015 and by Resolution 627 of 2006, among other regulations. Any activity requires the compliance of the maximum noise levels established in the said regulations. Nevertheless, regulations have stated special occasions where a person or company may exceed said maximum levels.

(v) Offensive odors

Offensive odors are regulated[22] in Colombia, said resolutions establish the limits applicable to the emission of substances or mixtures of substances that cause offensive odors, particularly hydrogen sulphide, sulfur and ammonia. Whenever an activity involves said substances, the aforesaid regulations apply, and the competent environmental authorities have the power to enforce the regulations.

(vi) Wildlife and protected areas and environmental strategic ecosystems

Colombian environmental legislation initially created a system of protected areas known as the National Natural Parks System (the "System"), according to Decree 2811 of 1974 (the Natural Resources Code), composed of certain areas that represent remarkable values for the natural national heritage, that were declared as specially protected for their natural, cultural and historic characteristics. As this System refers to

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

protected areas, there are certain projects and activities that cannot be developed on those specific areas, such as mining and hydrocarbons projects.

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, and Park Ways.

In addition, please note that the activities that are allowed on those areas are limited to the following: preservation, investigation, education, recreation, culture, recovery and control.

Subsequently, Decree 1076 of 2015 developed and regulated the "*National System of Protected Areas- SINAP*", defined as a set of protected areas, private actors, institutions, management instruments and strategies that articulate those areas and that contribute to the compliance of general purposes of conservation of the country. Decree 1076 established two types of protected areas:

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

Additionally, areas of moorland and sub moorland ecosystems, water source areas, and underground aquifer areas are considered as strategic ecosystems of special ecological importance with singular protection, that require from environmental authorities' actions focused on conservation management. Recently, the Congress of Colombia issued the law on moorlands in the country. Note that as per 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", namely:

- 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; and
- Forestry Reserve of the Amazon.

Other forestry reserves were also declared by means of Decree 111 of 1959, Law 52 of 1959, Decree 2278 of 1953 and Decree 0111 of 1959, and according to Decree 877 of 1976, all the aforesaid

reserves are deemed to be National Forestry Reserves.

Finally, other forestry regional reserves have also been declared by the competent Regional Environmental Authorities. Please note that in order to undertake activities within such areas, special environmental rules apply to deploy specific activities considered as of producing a low environmental impact.

Furthermore, fauna and flora regulation 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 Cartagena Protocol on Biotechnology Security of the Agreement about Biological Diversity entered in Montreal on January 29, 2000, and
- the Convention on International Trade of Threatened Wild Fauna and Flora Species (CITES). Endangered species are protected by the Colombian environmental laws as well as by criminal law. Particularly trading, transportation, exploitation and other activities involving endangered species without complying with applicable legal requirements. Persons engaging in said activities are exposed to liability and may be subject to fines and may be imprisoned.

(vii) Forestry

Forestry matters are mainly regulated by Decree 1076 of 2015.

In order to cut-down natural forests/trees or to exploit products from the wild flora, the interested individual/company must obtain a Forestry Use Permit.

Said permits must include the specific obligations with respect to cutting down trees or using forestry-related products, their duration, and the reasons for an eventual revocation or termination.

Depending on the types of activities, there are three 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 only, limited to an annual amount of 20 cubic meters of wood.
- Forestry Permit for a Single Use of Wild Flora: in order to cut down natural forests for 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, if the forestry species is considered to be a protected species, an additional procedure for “lifting the closed season to use the species” applies as to cut said forestry individual.

(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. In accordance with regulation,[23] Outdoor Advertising is essentially 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 defines Colombia as a multicultural state in which several ethnicities coexist. Particularly important are indigenous and afro-descendants' groups of inhabitants, for they have special protection under legislation currently into force.

With respect to special rights of the Colombian ethnicities, by means of Law 21 of 1991, the National Government subscribed to ILO Convention 169 on Indigenous and Tribal Peoples. This implies that Colombia assumed obligations with respect to obtaining 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. In order to comply with the said obligation, particularly the need to undertake a previous consultation with the communities concerning a project, a Previous Consultation Protocol must be entered into with the communities directly affected by the project or activity.

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

Presidential Directive 10 of 2013, the Decree 1066 of 2015 and the rules established by the case law of the Constitutional Court of Colombia, the Previous Consultation Protocol has 5 phases, namely:

- Certification phase;
- Coordination phase;
- Pre-consulting phase;
- Consultation Phase; and
- Follow-up phase.

The process of consulting the communities must be undertaken under the supervision of delegates of the Colombian Ministry of Interior and of the Attorney General's Office (Procuraduría General de la Nación). At the end of the process, the agreements with the community must be formalized in minutes

[23] Law 140 of 1994

that serve as evidence that said Protocol was applied. Finally, as a formal pre-requisite for obtaining an Environmental License, a Previous Consultation Protocol must be carried out, 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 Interior. The Directorate must provide an answer based on the information that is available.

In the event where 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 above. However, if there is 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 along the terms mentioned above, prior to commencing any type 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 in relation with the development of the project. If the developer is not able to reach an agreement with the communities, this will not prevent the development of the project, which may proceed once the consultation has taken place.

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

a. 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 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 been commenced without the relevant environmental license, permit or authorization, where required.

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.

Furthermore, generally the failure to comply with the environmental regulation can imply other type 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 the 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 who wants to perform real estate related business in Colombia should consider that Colombia protects private property, nevertheless, private property may be subject to certain limitations because of public utility or social interest.

Moreover, property has a sense of public interest, which entails property must benefit the common good and in general the welfare of the nations' citizens. Therefore, for reasons of public utility or of social interest, the Nation may start an expropriation proceeding by means of which the government will acquire privately owned property, that in some cases may be against the owners interest, for the property to be used for the benefit of the general public. However, Expropriation must be executed by means of a ruling or an administrative act, and prior compensation to the properties' owners.

Colombian nationals and foreigners have equal rights regarding the purchase of real estate, except for the acquisition of vacant lands (*baldíos*) when these properties are located in national coasts or bordering regions in accordance with Decree 1415 of 1940. Real estate transactions do not involve additional tax, legal or financial burdens for foreign investors to those applicable to Colombian nationals.

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

Real Estate Property Acquisition in Colombia

a. Due diligence

When an investor intents to acquire real estate in Colombia, the following documents should be reviewed in order to verify that there is no lien, encumbrance or, in general, any limitation of the ownership right or that the current owner of the property has the right to transfer it under Colombian regulation:

- A recently issued Certificate of conveyance and good standing (*certificado de tradición y libertad*) of the property to be acquired, issued by the competent Public Registry Office;
- The latest acquisition deed of the property to be acquired; and
- Any other legal acts that have been executed over the property to be acquired such as tax payment certificates, cadastral certificates, land use certificates and/or urban or construction licenses

Furthermore, it is important for investors in Colombia to execute a title search report and/or a land use report over the property they will acquire:

- Title Search Report: This report allows investors to determine if there

are any circumstances that affect, limit or are likely to affect or limit the ownership right over the property, such as liens, encumbrances or registered lawsuits. This search also enables investors to verify if the seller is the current owner of the real estate and his capacity to transfer the property.

- Land Use Report: This report comprises a land use review in order to determine what type of construction or activities are permitted on the property subject to acquisition in accordance with the applicable zoning regulations (*Plan de Ordenamiento Territorial*).

In relation to the acquisition of rural land, it is important to note that there is a special regulation that imposes certain limitations on the purchase of those properties. For example, article 72 of Law 160 of 1994 forbids the acquisition of vacant land (*baldíos*) if the size of the Family Agricultural Unit (UAF) is exceeded. Please note that the size of the UAF depends on each region where the property is located and it is regulated by means of Resolution 041 of 1996 issued by the INCORA (today, "*Agencia Nacional de Tierras*").

b. Agreements

In Colombia, it is common for the acquisition of real estate properties to start by executing a promise to sale and purchase agreement before concluding the transfer transaction. This agreement must be done in writing.

In the promise to purchase and sale agreement, the future purchaser and the future seller agree to transfer the property, upon the essential elements of these agreements established in article 1611 of the Colombian Civil Code (*e.g.* price, purpose, date and place of execution of the public deed by means of which the property will be transferred). This promise agreement is usually entered into when the parties have agreed on all the conditions for the purchase agreement, so that for its signature and execution only the formalities required by law are missing.

Once the parties comply with all the conditions of the promise agreement, the seller and the purchaser will carry out a purchase and sale agreement over the property. This agreement must be executed by means of a public deed before a notary public. The cost of this procedure is approximately 0.3% of the purchase price and is typically paid by both parties.

Furthermore, pursuant to Law 1943, 2018, when the transfer value of the property exceeds 26,800 UVT (for year 2019 it was COP 918,436,000), the buyer must pay a percentage a of 2% of the purchase price as a consumption tax. Please note that this consumption tax will be enforceable until December 31st, 2019. Nevertheless, it is possible that this consumption tax may

be approved and applicable for the year 2020.

c. Registration procedure and effects

Real estate property rights are transferred by means of the registration of the public deed of sale before the competent Public Registry Office (*Oficina de Registro de Instrumentos Públicos*) where the property is located.

Prior to the registration of the public deed of sale, a registration tax must be paid to the respective government, equivalent to approximately 1% of the highest value of the property between the cadastral appraisal (*avalúo catastral*) and the purchase price.

Please note that the registration procedure generates a registration fee, which is calculated according to the following table:

Registry Expenses	Rate % or Fixed Price	Description (Updated up to December 2019)
Fee Registration of public deed	Depends on accorded property transfer value	Less than 10 Colombian Minimum Wage ("**CMW**") = COP 8,261,160 Amount expressed in USD: 2.521 **Fee:** COP 36,400
		Between 10 CMW and 150 CMW = 8,261,160 - 123,917,400 COP Amount expressed in USD: 2.521 - 37.813 USD **Fee:** 0.622%
		Between 150 CMW and 260 CMW = 123,917,401 - 214,790,160 COP Amount expressed in USD: 37.813 - 65.542 USD **Fee:** 0.773%
		Between 260 CMW and 385 CMW = 214,790,161 - 318,054,660 COP Amount expressed in USD: 65.542 - 97.053 USD **Fee**: 0.861%
		More than 385 CMW = 318,054,661 COP or more Amount expressed in USD: 97.053 USD or more **Fee**: 0.91%

These registration fees are usually paid by the purchaser.

Lease agreement

Lease agreements allow the use and tenure of a real estate property by a different person from its owner. These agreements can be executed verbally or in writing. Nevertheless, we recommend that the lease agreement be executed in writing.

Landlord and tenant agree on the essential elements of a lease agreement, such as rental fee and the leased property. Additionally, parties agree upon the following elements:

- Payment method of the rental fee;
- Delivery date;
- Duration;
- An inventory of the utilities, objects or associated uses;
- Other obligations related to improvements or public utilities.

The tenant's main obligations are to:

- Pay the rental fee;
- Use the property in accordance with the provisions of the lease agreement;
- At the end of the lease agreement, return the property;
- Make the locative repairs;
- Comply with the condominium regime of the property, if applicable;
- Pay on time the utilities expenses.

The landlord's main obligations are to:

- Deliver the property to the tenant;
- Guarantee the possession, use and full enjoyment of the property in a quiet, peaceful and uninterrupted manner and, if it is disturbed, take the necessary measures to achieve the immediate cessation of the cause that gave rise to the disturbance.

The rental fee can be agreed in any foreign currency; nonetheless, it must be paid in Colombian Pesos, either at the exchange rate established by the parties in the agreement or, at the market exchange rate established on the date of the agreement in the event the parties did not determine a specific exchange rate.

According to the Colombian Commerce Code, in lease agreements over real estate properties where a commercial establishment is constituted, after two (2) consecutive years of lease to the same commercial establishment, the tenant acquires the right to automatically extend such agreement upon its expiration, unless one of the following scenarios occurs:

- Breach of agreement by the tenant;
- When the landlord requires the real estate property for his own housing or for a commercial establishment of his own, destined to a substantially different business from the tenant's; or
- When the property requires demolition, to be rebuilt or repaired, in a way that it cannot be executed without the delivery or vacancy of the property from the tenant[24].

[24] Article 518 of Colombian Code of Commerce (Decree 410 of 1971).

Furthermore, note that on July 10th, 2003, Law 820, 2003 was enacted in order to regulate the regime of urban housing lease agreements. This law sets forth the formalities that a lease agreement must include in urban matters, the obligations of landlords and tenants, as well as some procedural provisions.

Urban regulations

In Colombia, local authorities are legally obliged to issue a territorial zoning plan (*Plan de Ordenamiento Territorial* or "POT") in order to regulate all aspects related to developments and land uses. 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.

By means of the corresponding POT, the municipalities and districts are categorized as urban, rural or land for urban expansion. This classification must be considered by investors in order to determine if the activities and the uses to be developed in the property are permitted under the zoning and land use regulations.

Special taxes that levy real estate property

a. Capital gain (*Plusvalía*)[25]

This tax is triggered by acts that involve transfer of real estate property, change of the use of the land, an in the issuance of construction permits, which are carried out after an administrative act that authorizes the increase of buildable surface area or the allocation of the property into a more profitable use, in accordance to the zoning regulations. Added value ranges between 30% and 50% of the higher value per square meter of the property caused by the abovementioned zoning action.

b. Betterment levy (*contribución de valorización*)

The betterment levy is a lien on real estate property, which is imposed to the owners or possessors of real estate properties, who benefit from the implementation of public works carried out by the State. This lien is registered in the certificate of conveyance and good standing of the property and prevents the owner from fulfilling any transaction over the property until the complete payment of the lien is performed and its cancelation is registered in the certificate of conveyance and good standing.

c. Property tax

The property tax is a levy at the municipal level, which must be paid by the owners of different types of properties, from homes, lots, offices, farms, warehouses and commercial premises. The property tax is calculated considering the cadastral

[25] Regulated by Law 388 of 1997.

appraisal and the socioeconomic zone where the real estate is located.

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.

Colombian Government has stimulated the development of the agribusiness sector by granting numerous incentives to investors. Among these incentives, it is worth highlighting 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 incentives which make the investment in this sector highly attractive for investors.

Vacant lands (baldíos)

Pursuant to Colombian Civil Code, a vacant land is a property that does not have an owner and therefore the State is the righteous owner of such lands. Thus, Colombia's Government is entitled to adjudicate or allocate those vacant lands to individuals that fulfill certain requirements defined by law.

Since the beginning of the twentieth century, vacant land in Colombia has been regulated by different laws: Law 200 of 19363, Law 160 of 1994 ("Law 160") and Law 1776 of 2016, among others, constitute the applicable legal regime to formerly vacant land currently owned by individuals.

In general terms, Law 160 sets forth the principles and regulations that govern the vacant land regime in Colombia and establishes a special regime for vacant lands that imposes certain area limitations upon the owners of lands adjudicated by the Government.

INSURANCE AND REINSURANCE

Regulatory overview

Insurance and reinsurance business are an activity deemed of public interest and, therefore, may only be carried out with prior authorization of the State. Accordingly, it must be noted that 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 contract 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, 2010 provides larger and more particular legislation with regards to the 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 are Circular 100 of 1995 and Circular 029 of 2014. Circular 100 provides de accounting guidelines for financial institutions and Circular 029 provides the legal framework for the 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 three, 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 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*.

In addition, in accordance to 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, however, only by means of one of these alternatives: (i) by registering at the Registry of Foreign Reinsurers and Reinsurance Brokers (*REACOEX)* held by the Superintendence of Finance, (ii) by setting up a representative office in Colombia and/or (iii) by incorporating a reinsurance company or a branch in Colombia.

Insurance intermediation

The insurance intermediation is an activity regulated by the Superintendence 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;
- The compulsory insurance;
- The insurance in which the policyholder, insured or beneficiary must provide evidence, prior to purchasing the respective insurance, that it has a compulsory insurance or that 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.

FOREIGN EXCHANGE REGIME

The Colombian Foreign Exchange Regime is strictly regulated. The main foreign exchange regulations are issued by the Board of Directors of the Central Bank (*Banco de la República*) and the International Investment Regime is issued by 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") (residual competence).

Pursuant to foreign exchange regulations, there are two types of currencies markets: (i) the Foreign Exchange Market and (ii) the Free Market.

Foreign Exchange Market

This type of market is strictly regulated and comprises foreign exchange transactions that must be completed through authorized foreign exchange intermediaries (i.e. local banks or local financial entities that are authorized for these purposes) or compensation accounts.[26]

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

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

- Import and export of goods;
- Foreign debt operations;
- Investment of foreign capital in Colombia;
- Investment of Colombian capital abroad;
- Financial investments in securities issued abroad and their returns, excepting those made with resources currently in the free market;
- Granting of guarantees and collateral structures in foreign currency; and
- 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 of Colombia and not registered as compensation accounts before the Central Bank (*Banco de la República*)

Bank accounts authorized to non-residents in local currency

By means of a recent modification to Regulations DCIN 83, the Central Bank (*Banco de la República*) amended section 10.4.2 that refers to deposits of non-Colombian residents in local bank accounts in Colombian Pesos. The following accounts opened by non-Colombian residents do not require any authorization from the Central Bank (*Banco de la República*): (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 (mandatorily traded operations and disbursements of credits in local currency may not be completed through these accounts); 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 (a) accounts for direct foreign investment operations that are used to receive resources from local credit operations with local banks, with the purpose of acquiring shares in the public securities market; (b) deposits of foreign portfolio investment (individual and omnibus accounts), which may only be used for foreign capital portfolio investments and related operations; (c) 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 investment and related operations; and (d) 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 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.

Foreign Direct Investment in Colombia

The most important principle guiding foreign investment in Colombia is that foreign investments must receive equal treatment *vis-a-vis* those 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; and
- 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.

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

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 Trust: The acquisition of rights in trust agreements with trust companies under surveillance of the Superintendence;
- 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; and

- Private Equity Funds: Participation of non-residents in local private equity funds,
- Intangibles: Acquisition or contribution in intangible investment.

The following are examples of portfolio investment:

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

Foreign investment duly registered with the Central Bank confers to 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; and
- 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.

Foreign investment can be carried out in foreign currency, the investor must complete any transfer of funds through the foreign exchange market by means of filing a Declaration for Foreign Investments (formerly known as *Form number 4*) in order to perform the registration with the Central Bank (*Banco de la República*). Foreign investment can also be performed in kind and as per any lawful agreement, in which case is mandatory to file a Declaration of Registration of Foreign Investments (Form 11) with the Central Bank (*Banco de la República*), at any time.

Finally, foreign investors shall comply with the following obligations:

- Registration, update and materialized the foreign investment in Colombia with the Central Bank (Banco de la República).
- Appoint a proxy in Colombia for foreign investment purposes, who shall submit, through foreign exchange intermediaries or directly to the Central Bank (Banco de la República), 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[27] abroad

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

- Investment of Colombian capital abroad: acquisition of shares, quotas, rights and other participation in abroad companies' equity, branches or any other type of company, acquired by a lawful act, contract or operation.
- Financial investments and investments in any kind of assets abroad: purchase of securities issued 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 Central Bank (Banco de la República), Colombian investors obtain the duty to 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 a Foreign Exchange Declaration for Foreign Investments (formerly known as Form number 4) to the Central Bank (Banco de la República) by any of the mechanisms authorized by foreign exchange regulations, if the funds to complete the investment are transferred from Colombia. 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 Declaration of Registration of Foreign Investments (Form 11) with the Central Bank (Banco de la República), at any time.

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; or
- Provide services that are inherent to the hydrocarbon and mining sector and exclusively devoted to this kind of

[27] Pursuant to article 2.17.1.2 of Decree 1068 of 2015, Colombian residents are (i) individuals that have been in Colombian territory for 183 days or more in a 365-day period and (ii) legal entities that are incorporated in the country, as well as branches of foreign companies that are established in Colombia. In contrast, non-Colombian residents are individuals or legal entities, who do not comply with these requirements.

services as set forth by Law 9th of 1991 Art. 16 and Decree 1073 of 2015. This kind of 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. Additionally, these branches are not allowed to open or hold compensation accounts.

This Branches are only authorized to transfer money abroad though the intermediaries of the exchange control market, in the following cases, a certificate of the fiscal auditor of the Branch is required:

- Funds obtained as a result of internal sales of petroleum and natural gas or services rendered to other residents, payables in Colombian pesos, and
- The remaining funds in the case of liquidation of the branch.

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) 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. This income will be reflected as part of the supplementary investment to the assigned capital of the branch.
- Payments derived from contracts with Colombian residents, may be made in foreign currency to the extent that the Colombian resident is also a branch subject to the special foreign investment regime or a company that performs activities as part of the hydrocarbon and mining sector, 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

Foreign indebtedness regime applicable in Colombia is divided in two type of

international loans: (i) Passive Foreign Indebtedness, in which a Colombian resident is debtor of the loan and a non-resident (limited to corporate non-residents) or a Foreign 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 Regulation DCIN-83, registration of foreign loans granted by Colombian residents require a code for 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 certain restrictions as to the registration of said operations and must be reviewed carefully on a case by case basis in order to avoid sanctions.

Importation of Goods

The importation of goods is a transaction that must be paid through the Foreign Exchange Market regardless of the form of payment (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 a "Foreign Exchange Form" for the importation of goods, as established by the Central Bank

(Banco de la República). There is not a legal term to pay imports of goods and the import financing do not qualify as a foreign indebtedness.

Exportation of Goods

The exportation of goods is a foreign exchange transaction for which payments must be completed through the Foreign Exchange Market, by means of filing an Exchange Form No. 2 "Declaration for Export of Goods". Reimbursement of exports can be done through the Foreign Exchange Market regardless of the form of payment (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. These types of accounts are used to pay and receive foreign currency for transactions that are mandatorily 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 registered no later than one month following the first foreign exchange transaction that must 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 per year, 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 in the website of the Central Bank (Banco de la República). 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 since the registration of the compensation account until its cancellation before the Central Bank (Banco de la República).

CUSTOME 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.

Recently the Colombian Customs Regulation has experienced further amendments,[28] it grants legal certainty to foreign trade operations, given that it gives clarity about the regulations that are currently in force.

Changes to the Customs Regulation include: unification of the terms used in the different customs rules, elimination of the requirement of financial statements for users who do not need to prove equity, establishment of re-shipment as an export modality, direct performance of importers and exporters as declarants, possibility of exportation from a free trade zone through the postal traffic and urgent deliveries export modality, among others.

It is expected that the implementation of the technological system will take place shortly and, consequently, customs procedures will be simplified and expedited.

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 ("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 aimed at centralizing all the government procedures related to foreign trade operations in one simple electronic interface. To this end, VUCE has 3 separate sections: Imports, Exports and Single Foreign Trade Form ("FUCE"), that allow on-line transactions such as electronic payments to speed up the 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 Colombian Tax and Customs Authority ("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,

[28] Decree 1165 of 2019, which compiles and harmonizes applicable customs rules, and Resolution 46 of 2019, which regulates Decree 1165 of 2019. Decree 1165 replaces and repeals Decree 2685 of 1999, Decree 390 of 2016 (except for the first subsection of Article 675), Titles II and III of Decree 2147 of 2016, and Decree 349 of 2018.

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"[29] 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 4153 of 2016. This Schedule lists the applicable tariffs to 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 to be produced by the corresponding government authority (i.e. importation of fuels, used or refurbished machinery, among others). Such authorization is electronically requested to the corresponding authority through the Single Window for Foreign Trade ("VUCE") and it must be presented before the Colombian Tax and Customs Authority ("DIAN") as part of the supporting documentation of the Declaration of Importation.

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).

[29] 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".

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

(ii) Long-term

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 agreement's duration term 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, re-importation for active perfecting, re-importation in the same condition, importation for warranty compliance, importation through postal traffic and urgent deliveries, and travelers' regime.

Exportation

According to Colombian law, exportation is a foreign trade operation which consists 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 ("RUT" for its acronym in Spanish) before the Colombian Tax and Customs Authority ("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) issued by the DIAN through the customs electronic system known as *MUISCA*.

Once the goods have been authorized for their 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. Please take into account 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 whose 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 or acquiring domestic goods exempt from the 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 (CERT) for export. Said Certificate must be agreed with the producer.
- 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 on 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 acquired 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 bond 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 by Procolombia in the development of work plans in international markets.
- Support by 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 (ILDC) are public deposits authorized by Colombian Tax and Customs Authority ("DIAN"), located in ports, airports and Specialized Logistics Infrastructures[30], in which it is possible to store foreign and national goods, as well as merchandise that is in the process of finalizing a temporary importation or of transformation and/or assembly. Such goods will be distributed through re-shipment[31], import or export, and may remain in the ILDC for up to 1 year from the date of arrival in the National Customs Territory. This period may be extended for an equal term.

ILDC can only perform the following activities: conservation, handling, packaging, repackaging, sorting, cleaning, laboratory analysis, surveillance, labeling, marking, placement of commercial information legends, package separation, preparation for the 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 only in the departments of Guainía, Vaupés, Putumayo and Amazonas authorized by DIAN, are not subject to income tax. However, in cases in which the foreign companies or the persons without residence in the country, that own the merchandise, have some kind of 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.

d. Special Import and Export Programs – 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.

[30] 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.

[31] 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.

(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 complete 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 type of *Vallejo Plan*, the Importer of Record is obliged to export 100% of the goods that incorporate the imported raw materials and inputs.

(ii) *Vallejo Plan* for capital goods of the agricultural sector: Starting on January 1, 2007, this plan provides customs duty exemptions for the importation of capital goods, spare parts and intermediate goods, except for products of the agricultural sector which are not subject to any government subsidies.

(iii) *Vallejo Plan* for services' exports: Allows the temporary importation of capital goods listed in Decree 2331 of 2001, with total or partial suspension of any tariffs and deferment of VAT payment.

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 amount of imports, in US$, to be used for the temporary import of spare parts to be integrated into capital goods, with the exemption of the applicable tariffs.

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

e. Free Trade Zones

Free Trade Zones ("FTZ") are geographical areas within the Colombian Territory intended to develop highly productive and competitive industrial processes. In said areas companies establish their projects in order to produce goods or services or to perform commercial activities under special tax, customs and international trade regulations.

The main purposes of a Free Trade Zone are:

- Create employment and receive capital investments;
- Enhance the competitiveness of the regions where they are established;
- Encourage the development of new technologies and of value-added processes in the production of goods and services;
- Stimulate economies of scale;
- 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 the law, namely:

- The FTZ status cannot be granted in geographical areas suitable for the exploitation or exploration of non-renewable resources[32].
- 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 FTZ can be imported to the National

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

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 to remove temporary raw materials to process them outside the FTZ for 6 months, extended maximum for other 3 months.
- 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.

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 FTZ are limited geographical areas where multiple companies are established to undertake industrial processes, render services or perform commercial activities

- The single company FTZ 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 of the hydrocarbon sector and seeking 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 done off-shore; and, (…) Logistics, compression, transformation, gas liquefaction and all other activities related to the oil and gas sector done off-shore.*"

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

COLOMBIAN TAX REGIME

Colombian national taxes are administrated and collected by the Colombian Tax and Customs Authority ("DIAN") 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, equity tax (or wealth tax) and debit tax. The most relevant local taxes are turnover tax, real estate tax, and registration tax.

Regarding national taxes, please note that a tax reform was passed by Congress on December 2019 (Law 1943 of 2018) that changed certain relevant issues for both domestic and foreign investors. Nonetheless, the Constitutional Court declared this law unconstitutional, since there was a lack publicity on the legislative process. Therefore, the Government has until December 31, 2019 to pass another tax reform in due process or the previous tax code will rule automatically. According to the bill that is being discussed in Congress, no substantial changes were made, and, in case of approval, the taxes exposed below will be unmodified.

Income Tax

National legal entities are subject to this tax on their worldwide ordinary and extraordinary income. Conversely, foreign legal entities and its branches are taxed solely on their Colombian-sourced, ordinary and extraordinary income the tax base amount is a net value after non-taxable items, costs and allowable deductions.

Income tax is levied on net profits derived by a taxpayer during a certain fiscal period (whether individual or entities) and is assessed in connection with two specific components: income tax, which is determined upon the taxpayer's ordinary income, and capital gains tax, which is determined upon occasional income obtained by taxpayers.

Both components must be included in an annual income tax return. As provided in the latest tax reform[33], ordinary income is subject to a 33% tax rate for year 2019, 32% tax rate for year 2020, % tax rate for year 2021 and 30% for 2022 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 taken into account when calculating the ordinary taxable income.

There are two ways to determine a taxpayer's income tax. The first is the taxpayer's ordinary system (gross

[33] Law 1943, 2018

revenues of the company, less deductible costs and expenses); being the second the taxpayer's presumptive income.

Presumptive income is only applicable as from the second year of operation of the entity in Colombia, in the case of companies. Presumptive income is equal to 1,5% of the taxpayer's net assets, counted as of the last day of the immediately preceding taxable year. As of 2021, presumptive income will be 0 per cent, so this regime will effectively cease to operate. Income tax will be assessed and paid on the higher between the ordinary income and the presumptive income.

When determining income tax under the ordinary system, income-deductible items are costs and expenses incurred with regard to the income-generating activity, provided that they are necessary and proportional to such activity and that they are accrued or paid in the tax year in which they are claimed as deductions[34]. 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.

Please bear in mind that once a Permanent Establishment ("PE") is formed in Colombia, it will be liable to income tax on any Colombian income or gain 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 company), other than an 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.

Dividends Tax

Dividends tax applies to profits distributed from 2017 onwards by Colombian entities. Dividends distributed by a Colombian entity from profits that were taxed at the corporate level will be taxed at the level of shareholders (foreign entities or individuals) with a dividends tax at a 7.5% rate. No additional taxes would accrue. Bear in mind that no dividends tax would be applicable for the distribution of dividends by a Colombian entity to other national legal entity, as long as the profits were already taxed at the corporate level.

[34] Section 107, Colombian Tax Code

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 level of shareholders (foreign entities or individuals) at the applicable income tax rate according to the fiscal year on which the dividends are distributed and the 7,5%, after subtracting the income tax amount, absent any applicable tax treaty.

To determine if profits to be distributed (e.g. profits based on IFRS) have or have not paid taxes at 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 terms, a taxable income will accrue at head of 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 two 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[35] are required to file an annual *Informative Return*. Additionally, they must prepare and submit a *Transfer Pricing Study* if the operations exceed certain amounts[36], 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*, it is 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 industry and commerce 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, the 50% of turnover tax may be taken as a tax discount from the income tax, as long as **(i)** it is effectively paid on the taxable year in which the discount is recognized and, **(ii)** it has relation with the economic activity of the taxpayer. Additionally, the turnover tax used as a discount in income tax may not be taken deductible.

Withholding Taxes

Colombian tax system provides for tax withholdings 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 Colombian Tax and Customs Authority ("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.

[35] A taxpayer must comply with the formal rules of transfer pricing if: (i) It has or holds gross assets worth at least 100,000 Tax Units ("UVT" for its acronym in Spanish) (COP3,315,600,000 for 2018 approx. EUR989,000) or have obtained gross income during the previous year in excess of 61,000 UVT (COP2,022,516,000 approx. EUR603,700).

[36] A taxpayer must comply with the Transfer Pricing Study for the operations that surpass 45,000 UVT (COP1,492,020,000 approx. EUR445,000).

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

Domestic-source income derived by non-residents in Colombia is generally subject to a final withholding tax levied at the same rates as the income tax. However, special withholding rates apply for some payments abroad as follows:

- 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;

- Payments to non-residents in connection with 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;

- Taxable dividends (the portion that has not been taxed at the corporate level) distributed to non-resident companies are subject to withholding tax at a rate of the income tax. The amount of the divided that has been tax at the corporate level is not subject to tax upon distribution.

Value Added Tax (VAT)

VAT is levied on the sale or transfer, at any title, of tangible movable and immovable goods, sale or right cessions over 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. VAT is generally 19% on 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).

Since VAT taxes added value, 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 or exempted goods. Otherwise, positive balance can only be carried forward to offset tax liabilities in subsequent periods.

Wealth Tax.

According to Law Number 1943 of 2018, the new Wealth Tax is triggered if a

person[37] has Colombian net-worth, as of 1 January 2019, exceeding COP $5,000,000,000 (approx. USD 1,538,000) . Broadly, the taxpayer's net worth is the difference between the taxpayer's gross equity (for tax purposes) and its liabilities.

This tax will accrue on January 1 of fiscal years 2019, 2020 and 2021 (though it is payable later in the year). The tax rate is 1% and the taxable base corresponds to the net equity (assets minus liabilities and certain exclusions, including a portion of the value of the house of dwelling and 50% of the goods object of normalization repatriated) in each of the dates of accrual. Note that in the case of non-resident individuals and foreign companies, the equity to be taken into consideration is the one located in Colombia.

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 checks 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 financial transaction total amount. As of 2019 the applicable rate will progressively be reduced[38] till year 2022, when it will be 0%.

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; and (iii) 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.

[37] Resident and non-resident individuals, non-resident entities (except for those that exclusively own shares of Colombian companies, accounts receivable and/or portfolio investments), and permanent establishments of foreign individuals and of foreign companies.

[38] Financial transaction tax rates will decrease to 3%, 2% and 1% in 2019, 2020 and 2021, respectively.

There is a special 16% rate for cars and plains.

National Tax on the "Consumption" of Real Estate Goods

The transfer of real estate, new or used, including indirect transfers made through the transfer of rights in trust or non-listed funds (private equity funds or collective investment funds) exceeding 26,800 UVT (COP$918,436,000 or approx. USD 274.160 or EUR 245.000 for 2019) is taxed at a rate of 2%.

Note that this tax excludes rural property destined to agricultural activities and properties destined to construction and development of certain social housing projects.

Billboard Tax

The billboard tax is also a local tax and might vary depending on the municipality where the billboard is installed. This tax is triggered by the placement of announcements in public spaces and is levied on any taxpayer engaged in industrial, commercial and service activities that use the public space to advertise their business through billboards. The tax base is the industry and commerce tax charge, and the applicable rate changes depending on the jurisdiction, however it cannot be higher than 15%.

Real Estate Tax

Real estate tax is a municipal tax directly applied to 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 can 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 age of the property.

The owner or possessor of the real estate is liability for this tax.

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). The tax base is the value referenced in the document, when the document does not have a stated value, special rates apply. 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 per cent and one per cent for documents to be registered before the Public Registry Office;
- Between 0.3 per cent and 0.7 per cent for documents to be registered before the Chambers of Commerce; and
- Between 0.1 per cent and 0.3 per cent 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 two and four minimum daily wages (approximately USD 16.48-32.96 or EUR 14.72-29.45). Therefore, if agents execute documents subject to registration with a Chamber of Commerce or the Public Registry Office, registration tax will apply. If the document must be registered before the Chamber of Commerce and the Public Registry Office, registration tax will only apply before the latter.

MERGERS AND ACQUISITIONS

As a result of a sustained general improvement of the national economy and investment conditions during the past years, Colombia has experienced a significant growth in foreign direct investment ("FDI"), consequently, Colombian market continues to consolidate as a leading M&A market in Latin America.

Reports of the fourth quarter of 2019 evidence that Colombia remains as one of the top six M&A markets in Latin America. According to TTR there is an "investing appetite" of US, Mexican and Spanish companies in Colombia. The most attractive subsectors in the country's M&A market during 2019 have been (i) energy, (ii) finance and insurance, (iii) technology, (iv) pharmaceutical and cosmetics and (v) internet[39].

Up to the first semester of 2019 and according to our central bank (*Banco de la República)*, Colombia's FDI reached an estimate amount of US$ 3,855 million. Such amount is US$ 1,427million more than the FDI recorded for such same period during 2018.[40]

Also, in June of 2019, Moody's rated Colombia as Baa2 stable. Even though, the country is not in the higher rating, since 2016 the rate has not significantly varied, which means that the economic, regulatory and political conditions have

[39] Transactional Track Record. Quarterly Report 3Q2019 Colombia. November 2019.

[40] Banco de la República. Flujo de Inversión Extrajera según País de Origen. November 2019.

been stable, and the situation remains favorable for foreign investors.

After a decade of intense M&A activity in the country, the landscape portraits a more mature market. 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. Also, there are new participants in the market, such as pension funds (including mainly Canadian, Asian and Middle East funds) and venture capital funds. The result of this is a much deeper and more diverse M&A ecosystem. Unique transactions like the investment by Softbank in Rappi, Colombia´s first tech unicorn, are an example of this. Furthermore, Colombian peso devaluation 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.

Colombian M&A market has not only grown in numbers but has also 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 state owned companies have increased their participation in the M&A market, mainly through reorganization and privatization processes. Transactions such as the merger of Millicom and UNE EPM Telecomunicaciones SA ESP in 2014 and the privatization of Isagen are being structured employing some of the contractual tools commonly used in private transactions but include a strong element of public law, which may vary depending on the structure given to the transaction which may include from little publicity requirements to mandatory offerings to the general public and mandatory bidding processes.

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, 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. In light of this, (1) certain notice provisions aimed at protecting the sellers' creditors will apply, and (2) 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 in (1) the shareholders' approval of the merger project, including the application of certain formalities to allow the shareholders to review the conditions of the transaction; (2) notice to, and rights of, the public and the creditors of the companies involved in the merger; (3) appraisal rights; and (4) the clearance proceedings before the relevant authorities (usually the Superintendence of Companies), when required.

The 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*. distributions of dividends, capital increases, amendments to the governing documents, board approvals, etc.).

Finally, the Colombian Commercial Code contains somewhat 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.

The 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 (1) 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; (2) notice to, and rights of, the public and the creditors of the companies involved in the spin-off; (3) appraisal and withdrawal rights; (4) call-options; and (5) the proceedings before the relevant authority (usually the Superintendence of Companies), when required.

Law 225 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 to, for simplicity, simply 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 (SAS, as it is known 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 an 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; and

- 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 ("SIC"). 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 at 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. Decree 2555 sets forth a mandatory offer process whereby the acquiror is required to make the offer to all the shareholders of the corporation. The 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 sub-section 3 below.

g. Decree 1074 of 2015

Decree 1074 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 Procedure 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 (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 17, 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 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 SHAs.

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 has acknowledged that only SHAs 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 with 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 25% or more of the voting securities of a listed company and wishes to increase its interest in 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 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.

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 two rules that make M&A transactions involving state owned companies notably challenging.

Firstly, legislation gives a right 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 two stages, where the first one directed to the solidarity sector and the last one to the general public.

Secondly, the constitution forces 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. Applicable tax rules are set forth in the Colombian Tax Code, as such code was materially amended by means of Laws 1607 of 2012. As a general rule and consistent with the tax treatment afforded by many jurisdictions, 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. The sale of the shares or participations in the entities participating in the corresponding transaction within the following two years triggers additional taxation (i.e., an additional 30% of the tax resulting from the sale) at the level of the shareholders.

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 339% (in 2015), and for foreign non-resident individuals is 353% and for Colombian-resident individuals rates vary according to the taxable income from 0% to 35%, 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 (industry and commerce tax). For example, the sale of inventory may be subject to VAT at a general rate of 196% 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% that will be gradually reduced to 0% over a period of 4 years.

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 investors' participation. Colombian Constitution sets forth the rights of equality, freedom of association and the protection of enterprise, promoting domestic and foreign investment through the 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 the 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-months analysis process presented its recommendations on August 9, 2019, in an 80-pages document that includes more than 60 initiatives that aim to improve the market regulation and conditions.

The recommendations are grouped in seven 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 in 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).

a. Regulation and Supervision of the Securities Market

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

(i) The Congress of the Republic: The 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 ("AMV" for its acronym in Spanish), which also exerts a disciplinary and surveillance function, and (ii) the Colombian Stock Exchange ("BVC" for its acronym in Spanish)

b. Securities Market Structure

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, 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. However, and even though the securities are not traded in 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 to the Colombian regulations and will be subject of the surveillance of the Superintendence.

In Colombia, a broad range of securities' activities may be performed through local capital markets, which is divided in a "primary" and a "secondary" market; 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.

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

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

On the second or alternate market, only qualified or professional investors may purchase or sell securities. Decree 2555 of 2010 states the requirements to be a qualified or professional investor: having at least a net worth equal to or greater than ten thousand (10,000) current monthly legal minimum wages (cfr. US$ 2.700.000) 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 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 to implement a corporate governance code;

- there is not a minimum required amount for public offerings, contrary to what is required in the main market;

- the information and documentation requirements are simpler than the ones applicable to the main market;

- the securities intended to be offered in 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;

- the approval of the public offering is simpler and considerably quicker than in the main market. The Superintendence has a 10 working days deadline in order to verify whether the information and documentation requirements are met, time after which the public offering will be deemed authorized.

1. Trading Systems: Stock and Over-the-Counter Market

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's surveillance may administer the Foreign Securities Quoting System. Since September of 2012, all investors, including 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.

1.1 Bogota, Lima, Santiago and Mexican Stock Exchange Integration

The Integrated Latin American Market (*Mercado Integrado Latinoamericano* – MILA) is the result of an agreement entered into by and between the Santiago's Stock Exchange, the Colombian Stock Exchange, the 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, el 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 four 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.

1.2 Dual Listing

Colombian regulations allow for a foreign issuer to list its securities on the BVC either (i) through a dual listing procedure 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 and additional procedure with the BVC to be negotiated in the Foreign Securities Quoting System securities trading system.

1.3 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 funds 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.

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

2.1 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 are those that are 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.

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

Pursuant to Decree 2555 of 2010, if a foreign entity ("Foreign Entity") is intended 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 ("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, in order for those subsidiaries to use their affiliated company's Rep Office, they will have to receive an authorization from the Superintendence.

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.

3. Public Offerings and Private Placements

3.1 Public Offerings

In general, a security offering in Colombia is deemed as a public offering if

addressed to one hundred (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 of the Superintendence.

3.2 Public Offerings of Securities by Foreign Issuers in Colombia

According to Decree 2555 of 2010, the Superintendence 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:

- 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; and

- Prior to the offering, the issuer must have registered securities in one or more internationally recognized stock markets or meet different requirements, such as:

    - The foreign issuer's domicile of incorporation must be localized in an acceptable jurisdiction, considered as such, by the Superintendence; 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 issued the External Circular 019 of 2018, which adopts standards that homogenize the content and presentation of public offers' information prospectus. The Superintendence 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 aforementioned 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.

3.3 Issuance of Securities by Multilateral Credit Entities

According to Decree 2555, the Superintendence 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.

3.4 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); and

- 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.

- 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.

Please note that for an offering to be recognized as a Public Offering Authorized Abroad applicable regulations require that the relevant Foreign Authority and the Superintendence have entered into an exchange of information agreement (*convenio de intercambio de Información*) or oversight protocol (*protocol de supervision*) (the "Supervision Agreements"). As of July 2018, the only countries whose Foreign Authorities has established an information exchange and supervision protocol with the Superintendence are those belonging to the Pacific Alliance (México, Perú and Chile). The Superintendence 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 regarding issuers and securities.

4. Private Placements

A private offering is one that meets one of the following conditions: (i) the offering is addressed to less than 100 specifically identified investors; (ii) the offering is addressed to the shareholders of the issuing company, so long as there are less than 500 shareholders; (iii) the issuer is a public utilities company which is offering securities to investors who will benefit from investments in infrastructure; or (iv) the offering is part of an 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 plans legal regime. Under this new regulation, Colombian corporations, its parent company, its affiliates or its 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 three 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 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 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 regulations.

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 ("PEFs"). 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. Nonetheless, the administrator of the fund must deliver certain documents to the Superintendence 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 engaged 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 five 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.

Decree 1242 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. Additionally, the Decree 1984 of 2018 amendments clarified the possibility of a PEF to invest through debt instruments. Furthermore, these new set of rules recognizes the possibility that PEFs may become fund of funds.

7. 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 taken into account 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. In addition, the aforementioned article provides a list with examples of situations, decisions and events that may constitute material information. The Superintendence may request from issuers any other information it considers material to ensure and preserve the capital markets behavior.

8. 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 taken into account 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 if that person, directly or indirectly, (i) undertakes one or more transactions in 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 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 position of any entities subject to supervision by the Superintendence, 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 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 issued the *Código País*, a model code of corporate governance for issuers, which contained provisions of voluntary adoption covering, among others, the following subjects: (i) rights and equal treatment for all shareholders, (ii) participation by minority shareholders in shareholders' meetings, (iii) additional committees to support the board (i.e. corporate governance committee); (iv) related-party transactions; and (v) dispute resolution mechanisms.

If any issuer did not comply with the provisions contained in the *Código País*, it was required to give an explanation to the Superintendence on the reasons for non-compliance.

The Superintendence 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: (i) rights and equal treatment of shareholders; (ii) the general shareholders' meeting; (iii) the board of directors; (iv) internal control; and (v) 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 within the 8th and 31st of January of each

year, before the general shareholders meeting is undertaken. Although the new *Código País* are considered recommendations and, hence, of voluntary adoption, issuers are still required to explain to the Superintendence the reasons for non-compliance.

10. Well-Known Seasoned Investors

Decree 2510 of 2014 introduced Well-Known Seasoned Investors (*Emisores conocidos y recurrentes*, "WKSIs") 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 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 in July 2015.

An issuer must comply with the following requirements for being qualified as a WKSI:

- Be registered with the RNVE for at least five (5) years;
- To have filled-out the annual *Código País* report and disclosed it in due time, during the last three immediately preceding years.
- To have made at least three (3) public offerings of RNVE-registered securities, for an aggregate amount of 1,200,000 current monthly legal minimum wages (cfr. US$ 323,272,551.724), during the last three immediately preceding years. 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.
- 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, it must certify during the first 4 months each year that it is following the aforementioned requirements.

WKSIs may carry out a public offering of securities 2 working days after filing with the Superintendence i) a certificate with respect of the compliance with the requirements for registering securities with the RNVE and making the public offering, ii) the offering memorandum, and, iii) the other usual offering documents. These documents are filed for informational purposes and are not reviewed and commented by the Superintendence.

Applicable regulations emphasize on 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 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

Employment Regulations

a. Governing Laws

Colombian legislation establishes the principle of territoriality, which clearly states that all employment relationships executed in Colombia, shall be governed by Colombian laws 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 a payments of salary nature as long as 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. On this regard it is worth considering that payments that are directly linked to employees´ 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 to calculate 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.

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: (i) fringe benefits if applicable (unemployment service aid, interest on the unemployment services aid, and legal services bonus); (ii) vacations; (iii) severance payment or indemnification in case of termination without cause; (iv) payroll fees; and (v) contributions to the Social Security System (pension, health and labor risks), among others.

In Colombia, employment law distinguishes between two 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: (i) mandatory fringe benefits, (ii) any additional compensation for overtime work (except if the employee is classified as management or trust personnel), (iii) surcharges, (iv) percentage on sales and commissions, (v) additional wages and regular bonuses, (vi) permanent travel expenses for employee's meal and lodging, and (vii) 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 ten (10) times the minimum legal monthly salary plus a fringe benefit factor of at least thirty percent (30%), which, for the year 2019, is the equivalent to Colombian $10.765.508 or US$3,262[41] per month.

It is important to bear in mind that in Colombia, no full-time employee can earn a salary lower than the minimum legal monthly salary, this is, for 2019 COP$828.116 or US$251.

c. Work Hours

Working hours are limited by law to 8 hours per day and 48 hours per week, distributed in a maximum of six 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, two 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 that the daily working hours are increased up to two daily hours, with the only purpose of permitting the employees to rest during Saturday. 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.

[41] At the average exchange rate for 2019 as reported by the Colombian Central Bank: 1USD = COP$3.271,60

d. Vacations and Sick Leaves

All employees are entitled to enjoy 15 working days of remunerated vacations 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 employment accruals.

Employees must enjoy at least six continuous working days of vacations annually, which may not be accumulated. As a general rule, vacation days may be accumulated for up to two years, but in some special circumstances, such as regarding personnel classified as management or trust or foreigners, accumulation can be for up to four 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:

(i) For the first 2 days of sickness leave, the employees will receive from their employer an aid corresponding to 66.67% of the employee's salary.

(ii) From the day 3 to the day 90, such aid will correspond to 66.7 % of the employee's salary; and 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 ("EPS" for its acronym in Spanish) to which the employee is affiliated.

(iii) 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.

(iv) 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 ("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 since day 1.

e. Fringe Benefits

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 2019, it is of COP$97,032 (a. US$ 29,40));

- *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 one pair of shoes and one labor dress to those employees who earn up to two minimum monthly legal wages and who have been employed for at least three months. This endowment must be delivered to the employees on April 30, August 31, and December 20 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 one 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 one 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 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 shared basis between the employee and the employer, considering the employee's salary[42] as follows:

System	Contributions (% of salary) [1]	
	Employee	Employer
Pension [2]	4%	12%
Health	4%	8.5%
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 over considering a salary lower than the minimum monthly legal wage and cannot be 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%

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* – CCF), the National Apprenticeship Service (*Servicio Nacional de Aprendizaje* – SENA) and the Colombian Institute of Family Welfare

[42] Contributions for employees earning an integrated salary are calculated over 70% of said salary and for those who receive a regular salary over 100%.

(*Instituto Colombiano de Bienestar Familiar* – ICBF), according to the parameters listed in the following chart:

Entity	Payroll percentage
CCF *Caja de Compensación Familiar*	**4%**
SENA *Servicio Nacional de Aprendizaje*	**2%**
ICBF *Intituto 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. Apprenticeship Contracts

Employers of all economic activities, except for the construction sector, with a minimum payroll of fifteen (15) permanent employees are required to hire apprentices in the ratio of one apprentice per every twenty employees. Employers with more than fifteen but less than twenty employees, shall hire one apprentice. Notwithstanding the above, if employers are not willing to hire apprentices, they have the possibility of monetizing the quota, by paying a determined amount (calculated according to law) to the National Service of Apprenticeship (SENA) for each apprentice not hired.

Determination of the apprentice's quota is established by the regional of the SENA from the principal place of business of the employer, and the employer must report any significant variation of its payroll that affects the quota. The report must be filed in July and December or March and September.

d. 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:

(i) *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.

(ii) *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.

(iii) *Union Activity*: Employers must grant paid permits and leaves to union members for the performance of their activities.

(iv) 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).

(v) Paternity Leave: all parents are entitled to receive a remunerated leave of eight working days, provided that all legal requirements are met.

The companies may establish additional permits and licenses (marriage, changes of domicile, etc.) in the Internal Working Regulations, or in the collective bargaining agreement.

e. 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 ("SG- SST" for its acronym in Spanish) is mandatory for any company with either one employee. Employers shall comply with the Minimum Standards of the SG-SST, which must be adequate to 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 contractors 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 initials 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 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 ten (10) or more employees[43] are required to constitute a Safety and Health in the Workplace Peered Committee ("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 to their employees at the moment of hiring, during the employment relationship, as well as at the termination.

f. 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,

[43] Employers with less than ten (10) employees are required to hire a Health and Safety watchman.

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.

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. Its exercise 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 employee must have certain majorities in order to be able to lawfully declare a strike.

Hiring and Firing Requirements

1. Hiring Requirements

Colombian labor and employment law govern 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 executed 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:

Labor Contract	Characteristics
Indefinite Tem	This type of agreement doesn't 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.

Labor Contract	Characteristics
Indefinite Tem	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.
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 two types of fixed-term employment contracts: (i) those of less than a year and (ii) those between one and three 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 one year. The second ones may be renewed indefinitely, without turning 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 of time 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.

2. 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 Labour and Employment Code, an employee's trial period may not exceed two 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.

3. **Firing Requirements**

As a general rule, every employer has the right to unilaterally terminate the employment contract at any time (unless reinforced stability situations), either with or without cause[44]. 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 employment contract, it is not necessary to follow any special procedure and therefore notification of the decision, even with immediate effects, would suffice.

It is also important to bear in mind that under fixed term contracts, the contracting party should notify the employee 30 days prior to the termination of the contract in order to avoid its automatic renewal for the same term previously agreed upon.

4. 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: one year or less than one year 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: one 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

[44] 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.

of salary for the additional years; without prejudice that the employee files an employment lawsuit seeking his restitution to his original workplace.

5. 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 six (6) months a number of 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 to keep 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 Colombian Constitution through a compendium of laws, decrees and resolutions.

The Constitution regulates and describes the principles for Colombia inhabitants, including the principles of citizenship issues and foreign nationals in the country.

The decrees and resolutions, in the Colombian legal framework are as follows:

(i) Decree 1067 of 2015 is the so called "Unique Regulatory Decree of the Administrative Sector of Foreign Affairs" and it compiles all the immigration related decrees valid to June 12, 2015, including entry permit and visa eligibility criteria.

(ii) Decree 1743 of 2015 partially modifies Decree 1067 of 2015, especially in what relates to consular/consul matters, passports, and visa dispositions.

(iii) Resolution 6045 of 2017 establishes the types of visas and requirements.

(iv) Resolution 1112 of 2013 establishes other immigration obligations and entry permit requirements.

(v) Resolution 1220 of 2016 establishes entry permit eligibility criteria.

(vi) Resolution 1238 of 2018 establishes additional immigration obligations and the punitive procedures for non-compliance with immigration dispositions.

(vii) Resolution 1128 of 2018 lists the nationalities that require a visa to enter the country, and those who can enter the country with an entry permit.

(viii) Resolution 6397 of 2018 partially modifies Resolution 1128 of 2018 including Albania, Macedonia and Moldova in the list of nationalities that do not require visa to enter the country

(ix) 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 regulations.

Ministry of Foreign Affairs

The Ministry of Foreign Affairs has specialized divisions for the issuance of immigration-related documents including legalizations and apostilles, the issuance and renewal of passports and visas.

Special Administrative Office Migration Colombia ("MC")

This 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[45]

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 one 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

[45] 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.

foreigners aiming to enter and remain in Colombia. There are three 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 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 or procedures, and creation of a commercial company, negotiations,

conclusion of contracts or commercial representation.

This visa may be granted for a validity of up to two (2) years and an authorized stay of up to 180 days continuous or discontinuous in a period of 365 days. This visa is issued with multiple entries. 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 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 two (2) years and an authorized stay for the same term of the validity. This visa is issued with multiple entries. This type of visa may be renewed, and it 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 two (2) years and an authorized stay for the same term of the validity. This visa will have a work permit only for the corresponding company and activities requested. This visa is issued with multiple entries. This type of visa 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 eleven (11) categories, but we will go through the most relevant ones:

Migrant visa for working activities
This visa may be granted to the 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.

This visa may be granted with a validity of up to three (3) years or less, depending on the duration of the contract. This visa is issued with multiple entries. The authorized stay of this visa is for the same term of the validity. This visa will have a work permit only for the sponsoring company. 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.

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, Chile, 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 three (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 acquired shares in the capital of a commercial society for a minimum amount

of one hundred (100) legal minimum monthly salaries.

This visa may be granted with a validity of up to three (3) years. This visa is issued with multiple entries. The authorized stay of this visa is for the same term of the validity. This visa will have a work permit only for the company where the foreign national has his/her investment. 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.

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 three (3) years or less. This visa is issued with multiple entries. The authorized stay of this visa is for the same term of the validity. This visa will have a work permit only for the profession with which the foreign national applied for the visa. 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 show proof 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 1128 of 2018, nationals of more than 90 countries are called "non-restricted nationality foreigners." Nationals from countries not included in the list[46], must apply for a visa in order to enter the Colombian territory.

Furthermore, nationals from Camboya, India, Nicaragua, Myanmar, People', 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:

a) Hold a residence permit a Schengen country or from the United States.
b) Hold a Schengen visa or a US visa with a validity of minimum 180 days at

[46] 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.

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 (PIP) granted at the port of entry.

Currently, there are ten types of entry and stay permits (PIP), depending on the activities that the foreigner intends to conduct in the country. We will review the PIP-6 and PIP-7:

(i). **PIP 6** – This permit is granted to the foreigner entering the country for the performance of the following activities:

- Participate, in academic, scientific, artistic, cultural and sportive events

  or activities; that do not generate any consideration, or financial retribution.
- Present an interview or participate in a recruitment process.
- Participate in training
- Conduct journalistic reporting.

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 PIP-6, to prevent stays longer than 180 calendar days, continuous or discontinuous, within the same calendar year. It is necessary to carry an invitation letter when entering the country and present it to the immigration authorities.

(ii). **PIP 7** - 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 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 one (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 ("Decision 486")[47]. Decision 486 sets forth the Industrial Property common regulations applicable to all countries that are members of the Andean Community (namely Bolivia, Colombia, Ecuador and Peru). In Colombia, the governmental agency in charge of industrial property is the Superintendence of Industry and Commerce (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. 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 do not affect the standing, validity and/or enforceability vis-à-vis third parties thereof.

Trademark registration affords protection throughout a ten (10) year term, which may be renewed indefinitely for subsequent equal terms. In turn, patent protection is in force throughout a twenty (20) year term (subject to the payment of annuities) and, in the case of industrial designs, a ten (10) year term is also applicable.

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 (6) months counted from the date of the initial application, trademark owners can 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).

Pursuant to Law 1343 of 2009, effective as of April 13, 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

[47] Decision 486 entered into force on December 1, 2000 and is regulated by External Resolution No. 10 of August 6, 2001.

applications in multiple classes of the International Nice Classification.

By means of Law 1455 of 2011, effective as of on August 29, 2012, the Madrid

Protocol and its regulatory framework have been approved. The Madrid Protocol 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 26, 2011, final decisions rendered by the SIC can only be subject to an appeal (previously, the SIC's decisions were subject to a reconsideration petition and a subsidiary appeal).

Per Law 1450 of 2011, effective as of June 16, 2011, rights on industrial 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 have been 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 aforementioned 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 11, 2014, the Government enacted Decree 2264 under which the plaintiff may opt for the Predetermined Compensation System (Statutory Damages) established in said regulation, as opposed to a system where the plaintiff must prove the existence and amount of the damages suffered.

Should the plaintiff decide to apply the above-mentioned Predetermined Compensation System it will only be required to prove that the trademark infringement was in fact committed, for the civil court to condemn the defendant to

pay a preset indemnification. Said compensation fluctuates between three (3) to one hundred (100) minimum wages. The compensation may increase up to two-hundred (200) minimum wages in cases where (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.

Should the plaintiff decide not to apply the Predetermined Compensation System then he is compelled to provide evidence of the existence and amount of the damages suffered. In this case, the plaintiff must prove, during the judicial proceeding, the amount of the requested indemnification, through the general evidentiary system established in our civil legislation, (namely, expert opinions, etc.).

The SIC has established two systems to fasten the registration proceeding of trademarks and slogans. The first one, established through Resolution 48348 of 2014, allows applicants to expressly request, within the application form, the anticipated registration of their mark. By doing so, applicants also accept that their registration is conditioned. It shall be left without effect if an application is filed claiming priority of the Paris Convention and hence deemed previous in time.

The second, intends to accelerate the formal examination and fasten the period between the filing of the application and the publication in Gazette for opposition purposes. It was established by means of Resolution Number 70252 of 2018 and has the following requisites: (i) only applies for traditional trademarks, namely, word, word & design or graphic marks, (ii) the application must be filed through the online system SIPI, (iii) the applicant must use a pre-approved wording for the description of goods, (iv) no discounts are applicable and (v) the mark cannot include disclaimers.

Copyrights

In Colombia, Copyrights are governed by Decision 351 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. This differs from the traditional 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, it is advisable to register before the National Copyright Registry, both the works and the agreements related thereto.

The protection afforded by Colombian law rests exclusively on the way ideas are expressed or depicted, rather than on the idea as such, throughout the author's life and eighty (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 seventy (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 fifty (50) years from the date

of creation, the term of protection is seventy (70) years as of the first calendar year of its creation.

Per Law 1450 of 2011, effective as of June 16, 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 an agreement for the provision of services, are presumed to have been 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 de rights of authors, which includes the interdiction to avoid technological measures which meant to control de access to a protected work.

Additionally, Law 1915 of 2018 allows the plaintiff in a copyright infringement process to request precautionary measures, according to the General Procedure Code. The precautionary measures may vary, but they always must be reasonable, effective and proportional to the plaintiff's claims.

Regarding the infringement procedures, the aforementioned Law also included the preset damages system, which may allow the plaintiff to determine an approximate amount of the damages caused by the defendant, without having to provide evidence regarding this amount.

Law 1915 of 2018 also included the parody as an exception of the copyrights system. Therefore, a third party may alter the original work within a parody, and this may not be a violation of the author's 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 (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 for over 20 years with the

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 (ICA).

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 for the case of vines, forest trees, fruit trees including their rootstocks, and 15 to 20 years for the remaining species.

Domain Names

As of early 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). Now a 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 public authorities have been set in place, as follows:

Several amendments which ease the interaction with public authorities 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.

- The power of attorney required by the SIC may be granted in a private document, without the need of notarization, authentication or legalization.

- Regarding difficulties that may arise in the course of 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 six months.

- In order to accelerate the publication of the application, the CTO has also recently offered the possibility to request an accelerated examination of formal requirements in order to decrease the time taken to publish the application in the Industrial Property Gazette.

Regulatory Guidelines for Licenses

According to Decision 486, all trademark and patent licenses must be registered before the SIC, in order 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 thereof. 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 in general, which involve royalties being sent abroad, should be recorded before the Colombian

Tax and Customs Authority ("DIAN"). Please bear in mind that 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. Nevertheless, a trademark license agreement may include provisions which refer to technology transfer –understood as an arrangement whereby skills, knowledge and/or technologies are shared, to the point that development and progress are encouraged, which

encompass a somewhat more favorable tax treatment regarding the corresponding income withholding tax upon the royalties involved.

With respect to the licensee –regardless of whether or not the agreement is understood to be a technology transfer–, recording said agreements before the DIAN allows him to reduce his taxable income by acknowledging the royalty payments as tax-deductible expenses.

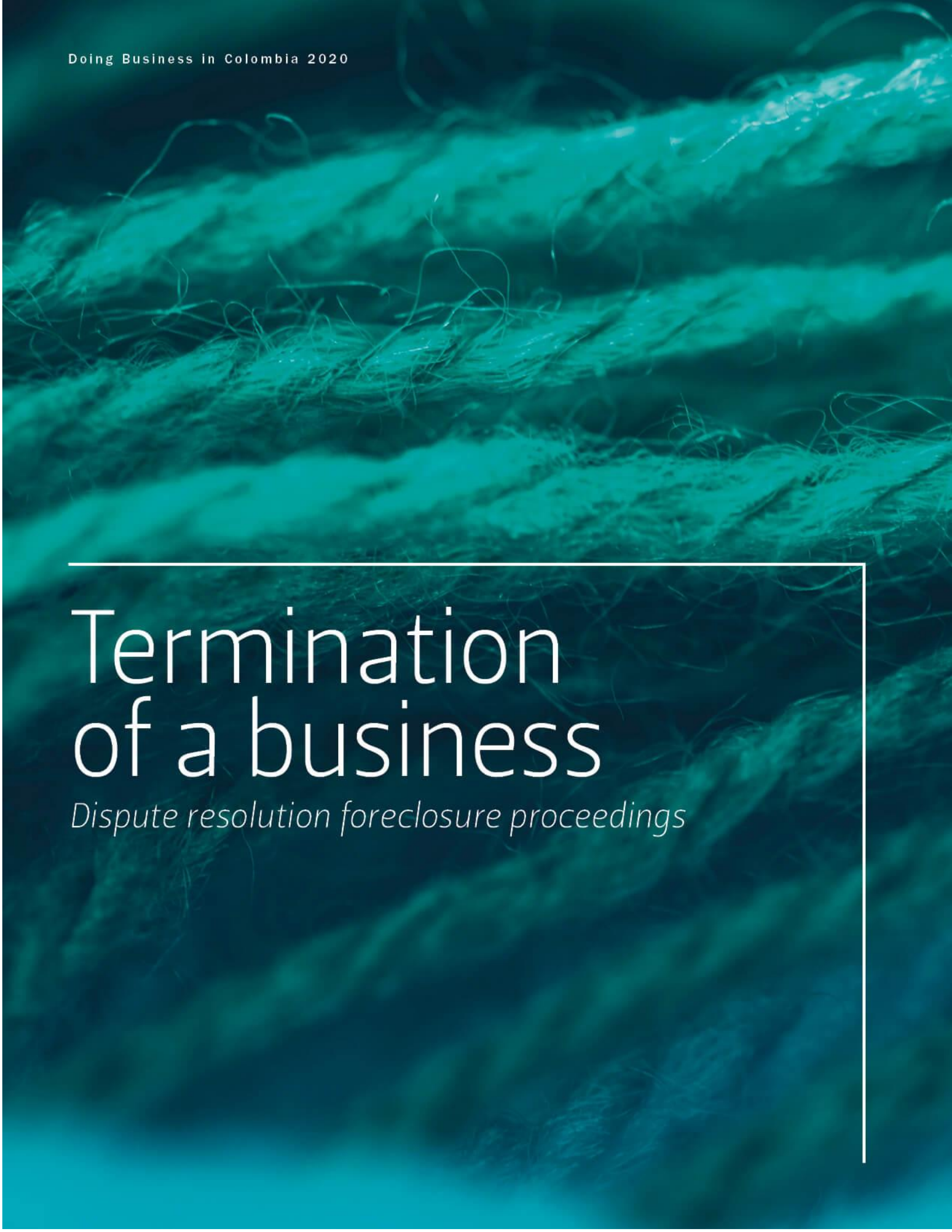
Agreements between Foreign Corporations and their Wholly Owned Subsidiaries

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.

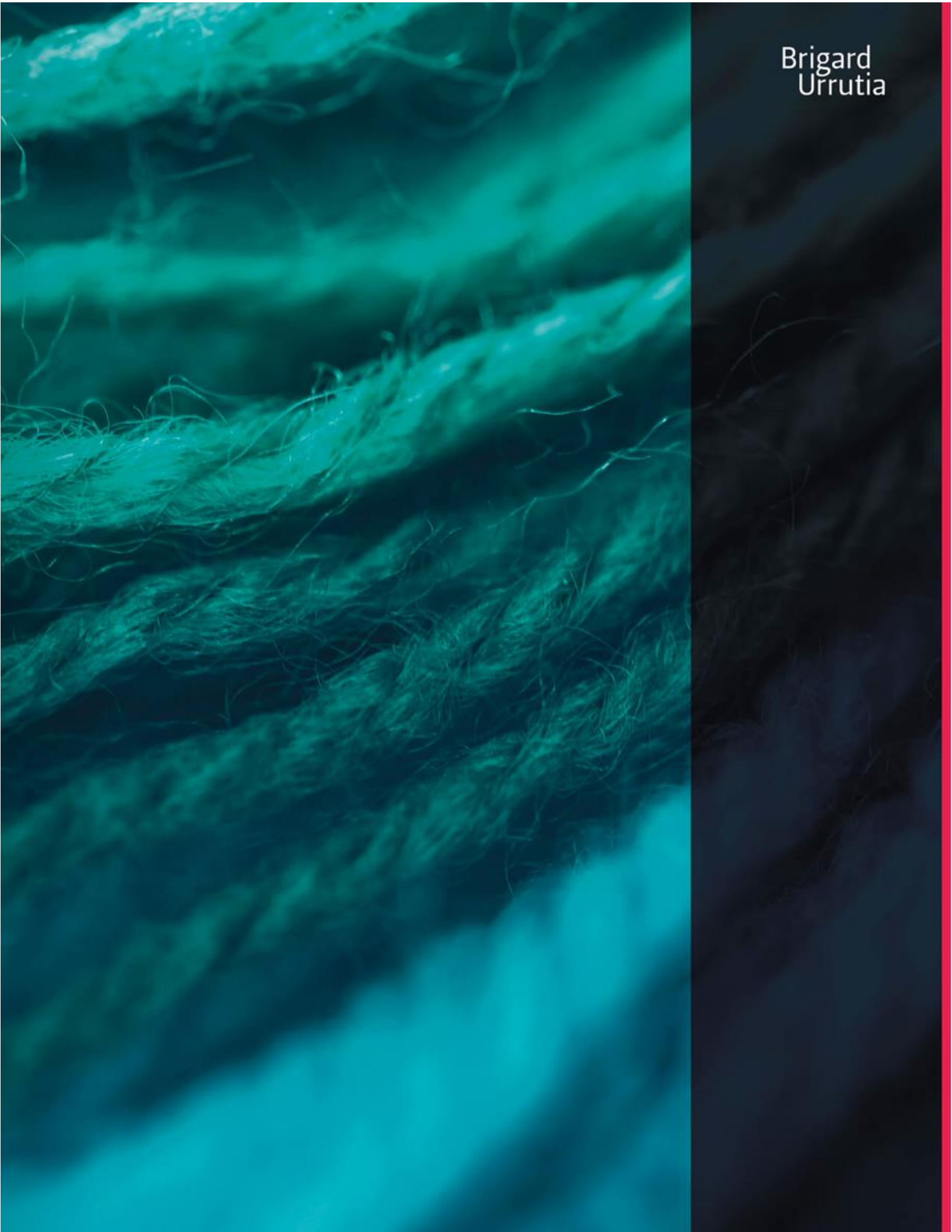
It is also common that corporations not interested in a centralized administration of their industrial property portfolios transfer the local registered trademarks to their subsidiaries.

However, please note that 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.



Termination of a business

Dispute resolution foreclosure proceedings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TERMINATION OF A BUSINESS, DISPUTE RESOLUTION AND FORECLOSURE PROCEEDINGS

Insolvency Proceedings

Insolvency proceedings are governed by Law 1116 of 2006 ("Law 1116"), which establishes rules that regulate the reorganization and the liquidation of insolvent business entities. Law 1116 also regulates cross-border insolvency proceedings based on the model law of the United Nations Commission for the International Commercial Development, which has aim to protect the creditors when the assets, the creditors, or the debtors are in different countries, in order to satisfy the needs of a global economy and international business.

Law 1116 applies to merchants, fiduciary contracts, 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 the law are the stock exchange entities, entities under the Superintendence of Finance surveillance, public entities, and non-merchant individuals (as set forth in article 531 and following of the General Procedure Code)[48].

Please note that some changes have been introduced to Law 1116. First, Law 1429 of 2010 reduced some terms established in Law 1116. Also, only in certain circumstances a promoter will be appointed and, therefore, pursuant article 35, 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 ("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 26, 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 is administrated by an individual or a legal entity. An important part of the definition contained in Decree 1749 is that concept of business groups extends to those related because they are guarantors of each other.

[48] We can provide more information about this matter in case is required.

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).

Third, Law 1676 of 2013 introduced some modifications to the rights of secured creditors to enforce their security interests during insolvency proceedings, such as mortgages or personal warranties. The Law 1676 of 2013 was regulated by Decree 1835 of 2015 that establishes the steps to enforce the security interests during insolvency proceedings.

Forth, 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 liquidation proceeding, among others.

The insolvency proceedings regulated by Law 1116 are business reorganization, validation of an extrajudicial reorganization agreement, judicial liquidation and cross-border insolvency. In general, the Insolvency Regime therein contained has the purpose of protecting credit and recuperating business as a going concern and a source of employment by means of reorganization or the orderly liquidation of the assets.

Business Reorganization

The purpose of the business reorganization is to reach an agreement between the inside and external creditors, and to promote the viability of the business through the restructuring of the assets and the liabilities and the stabilization of their commercial and credit relations through their operational, financial and administrative restructuring. Reorganization seeks to maintain the operation of the business that is facing financial difficulties but is able to be productive and 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 judge (“Judicial Validation of Reorganization Agreement Proceeding”).

For the commencement of the reorganization proceedings, the debtor or its creditors must file a petition before the insolvency judge. If it complies with the requirements of the law, the insolvency judge will order the commencement of the proceedings.

It is worth noting that some effects take place even 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 judge. Such acts include the following: (i) amendments to the by-laws; (ii) granting or enforcing security interests over debtor's assets, including collateral trusts; (iii) set off of obligations, payments, settlements; (iv) make payments of pre-petition claims; (v) make arrangements, settlements over obligations; (vi) withdraw lawsuits or unilaterally terminate judicial proceedings; and (vii) transfer assets and carry out operations out of the ordinary course of business of the company. Moreover, if any of the acts forbidden as of the filing of the petition is executed after the admittance of the debtor to the reorganization proceedings, without authorization of the insolvency judge, in addition to the fines that may be imposed to the directors, the act will be ineffective.

With regards to the collection proceedings it is noteworthy that as of the acceptance of the reorganization petition, creditors must suspend and cannot commence any collection proceedings against the debtor. The on-going proceedings will be incorporated to the reorganization proceedings. Any collection proceeding commenced or continued against this prohibition will be void and null.

Under Law 1676, in a reorganization proceeding, secured creditors are stayed from enforcing their security interests until the hearing in which the insolvency judge decides over the objections related to the claims and voting rights. If the insolvency judge 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 judge decides that the encumbered asset is not 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).

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 within the shortest period possible. Creditors are to be paid promptly 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 if the creditors are unable to reach an agreement. In this type of proceedings, the Insolvency judge will appoint a liquidator that will manage and have the legal representation of the debtor.

As to the effects of the liquidation, it is noteworthy that as of the commencement of the proceedings the debtor is stayed from engaging in transactions to develop its corporate purpose since from that moment 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: (i) dissolution of the legal entity; (ii) removal of the directors; (iii) termination of installment contracts and other contracts that are not necessary to preserve debtor's assets; (iv) termination of labor contracts with employees; (v) termination of fiduciary contracts and collateral trusts over assets of the debtor to secure its obligations or obligations of third parties; (vi) acceleration of all obligations of the debtor; and (vii) incorporation of all collection proceedings against the debtor to the 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.

The judicial liquidation proceeding may be requested by the debtor or commenced by the insolvency court, and it will commence as a result of the failure of the reorganization proceedings. The insolvency judge 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 the obstacles and improve the international cooperation in order to achieve in an efficient, transparent and timely manner the purposes of the insolvency regulations. Such purposes include: a) an adequate protection to all creditors of the insolvent debtor located in the country of the center of main interests and abroad; b) the existence of transparent and flexible proceedings that protect the interests of the insolvent debtor; c) preservation of the value of the debtor's assets to avoid its fraudulent disposition in the interest of certain creditors or third parties; d) equal treatment to all creditors of the same class regardless of their nationality; e) prevention of the dismemberment of the debtor's assets by means of individual collection proceedings; and f) 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 of the proceedings:

Jurisdiction

The Colombian insolvency judge 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.

Powers of the Insolvency Judge

In general, the insolvency judge has power and authority to lead the process and to comply with its overall purpose. Among the powers that the insolvency judge may exercise within the insolvency proceedings are to request or obtain the information necessary for an adequate direction of the insolvency proceedings, to take all measures necessary to protect, guard and recover the assets of the debtor, including revoking the acts and contracts executed in prejudice of creditors, to remove and impose sanctions and fines to the managers of the debtor for failing to comply with insolvency judge orders or their legal duties and obligations, finally, to 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 the situations expressly authorized by Law. The classes of claims are the following: (i) first class creditors (judicial costs, salaries and other payments derived from labor contracts, liabilities in favor of the tax authorities); (ii) second class creditors (liabilities secured with a pledge); (iii) third class creditors (liabilities secured with a mortgage); (iv) forth class creditors (liabilities to providers); and (v) fifth class creditors (all 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.

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: (i) legal entities related to the debtor due to their link as subsidiary or controller; (ii) 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 is the obligations that arise from resources handed 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 (*promotor*) (which is an auxiliary to the court) or the receiver may request the revocation ("*acción revocatoria*") or declaration of fraudulent transfer ("*acción de simulación*") of some acts executed by the debtor when they are: (a) found to have inflicted damages upon creditors; or (b) have affected the priority order for payment of credits owed by the debtor; or (c) have affected the property that constitutes the debtor's assets, in such a way that the assets are insufficient to cover the total amount of credits recognized in the proceedings.

Different periods are applicable depending on the type of transaction:

(i) 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 insolvency proceeding if the transferee or lessee cannot prove to act in good faith;

(ii) Any gratuitous transfer of property executed within 24 months before the commencement of the insolvency proceeding may be revoked; and

(iii) 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 of 2006 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.

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 reorganization proceedings have been paid in full. Furthermore, the insolvency judge may order cancellation of all security interests granted by the debtor or by third parties to secure such creditor's claims, when the insolvency judge deems that measure to be necessary to achieve the purpose of the proceedings.

Duration

Pursuant to the Superintendence of Companies statistics, the average duration of the reorganization proceedings is 302 days from the filing of the petition until the confirmation of the agreement and 510 days from the commencement of the judicial liquidation until its termination.[49]

Enforceability of security interests in an insolvency proceeding

Under Law 1676, the enforceability of the security interests during insolvency proceeding will depend of the type of proceeding. In a reorganization proceeding, the security interests on assets that are not necessary for the business of the debtor may be enforced (with prior authorization of the Bankruptcy 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), provided that the debtor's assets are sufficient to pay employment and labor claims and children expenses. In a liquidation proceeding, the encumbered assets shall be excluded from de liquidation estate in favor of the secured creditors.

Please note that 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 since the commencement and/or along the proceeding. Accordingly, plaintiffs may request attachment and seizure of the debtor's assets. In these events, the

[49] Available to be consulted in: http://portal.supersociedades.gov.co/imagenes/boletin/a%C3%B1o%202012/REORGANIZACION/REORGANIZACION%20A%2030%20DE%20ABRIL%20%20DE%202012.htm

debtor is unable to dispose of the attached assets, which cannot be sold unless the sale is authorized by the judge or the creditor, as the case may be. These conservatory measures may be lifted in case debtor provides a security enough to protect the interests of the right-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 ("ADR", or "MASC" by its initials 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: (**1**) conciliation, (**2**) settlement agreement, (**3**) amicable composition, and (**4**) arbitration.

ADR mechanisms are essentially regulated by Law 640 of 2001, by Law 1395 of 2010, and by Law 1564 of 2012, on matters related to conciliation. By its side, Law 1563 of 2012, which entered into force as of October 2012 (the "Arbitration Statute"), regulates both arbitration and amicable composition.

1. 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 directly the conflict, nor issues 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.

2. Settlement Agreement

A settlement agreement (*transacción*) is a contract by means of which the parties settle directly their disputes, 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.

3. 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 to 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.

4. 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 (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 with some differences, Colombian rules on international arbitration are heavily based on the UNCITRAL Model Law on International Commercial Arbitration (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: (i) when the parties to an arbitration agreement have, at the time of the conclusion of said agreement, their domiciles in different states; (ii) 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; or (iii) when the dispute submitted to arbitration affects the interests of the 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 does not set forth the applicable law.

Additionally, under the Arbitration Statute, the parties to 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:

(i) The duration of the proceeding, including the clarification and complementation stages of the arbitral award, will be of six months as of the First Procedural Hearing. This term may be extended by the parties up to six additional months, but the suspensions cannot exceed a 120 days term. A practical consequence may be that arbitration will be faster than it used to be under the previous regulation.

(ii) 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.

(iii) The right of the parties to challenge the Court magistrates that resolve the annulment on the same grounds to challenge the arbitrators.

(iv) 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:

(i). *Preference*: a mortgagee has a preferred right for payment of the debt with the proceeds from the judicial auction of the mortgaged asset.

(ii). *Enforceability against third parties (oponibilidad)*: title and ownership to the real estate subject to a mortgage may be transferred to any third party despite a 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.

(iii). *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).

(iv). *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 21, 2014, Law 1676 of 2013 entered into force, establishing the rules applicable to the 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 even during insolvency proceedings.

Pursuant to Law 1676, a security interest over a movable asset is perfected by means of a written agreement entered into 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 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 bankruptcy proceeding involving the respective secured party.

Furthermore, Law 1676 provided that a security on movable assets granted prior to February 21, 2014, and their corresponding registries, if properly made, will 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 21, 2014) must be registered before the Centralized Registry within the six months following said date (August 21, 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 and
- 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; it 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 party 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; and

- 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

Where no other procedure has been agreed upon or applied, for purposes of enforcement of the security, 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 notice 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 its name as full payment of the principal secured obligation.

Special foreclosure of the security

Law 1676 provides the possibility for the parties to a security agreement over movable assets to set the rules of procedure applicable to foreclose against the secured asset. 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. In order to agree upon this type of foreclosure, the secured party must have possession 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 wages (as of 2019 it is roughly USD $4894), when the obligation was subject to a condition or a term and it is due or when the asset may expire.

APPENDICES

APPENDIX I —Average Monthly and Annual Exchange Rate Since 2010.

Exchange Rate Since 2010. (*Colombian Pesos per US$1*)

Month	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
January	$ 1.983,40	$ 1.867,10	$ 1.853,30	$ 1.769,70	$ 1.957,30	$2,397.26	$3,270.20	$2,941.40	$ 2.868,57	$ 3.165,19
February	$ 1.951,70	$ 1.882,40	$ 1.782,80	$ 1.790,50	$ 2.038,50	$2,420.67	$3,354.96	$2,879.57	$ 2.860,25	$ 3.115,84
March	$ 1.909,00	$ 1.881,80	$ 1.766,30	$ 1.813,70	$ 2.019,70	$2,585.36	$3,128.79	$2,942.29	$ 2.847,93	$ 3.128,68
April	$ 1.937,40	$ 1.809,80	$ 1.774,20	$ 1.830,20	$ 1.938,40	$2,505.25	$2,997.73	$2,877.82	$ 2.766,29	$ 3.155,77
May	$ 1.983,60	$ 1.800,50	$ 1.793,30	$ 1.847,90	$ 1.915,40	$2,437.54	$2,993.51	$2,923.61	$ 2.861,83	$ 3.304,49
June	$ 1.926,80	$ 1.783,20	$ 1.792,50	$ 1.909,80	$ 1.887,00	$2,562.48	$2,992.86	$2,957.10	$ 2.889,69	$ 3.260,52
July	$ 1.874,40	$ 1.761,60	$ 1.783,80	$ 1.901,50	$ 1.857,60	$2,732.04	$2,961.00	$3,036.58	$ 2.885,32	$ 3.206,60
August	$ 1.821,20	$ 1.785,60	$ 1.805,50	$ 1.902,10	$ 1.898,10	$3,012.59	$2,952.77	$2,973.20	$ 2.958,67	$ 3.410,73
September	$ 1.805,80	$ 1.833,30	$ 1.802,70	$ 1.919,50	$ 1.973,70	$3,066.41	$2,924.27	$2,917.09	$ 3.033,77	$ 3.399,46
October	$ 1.808,60	$ 1.907,60	$ 1.804,40	$ 1.885,10	$ 2.048,60	$2,929.47	$2,929.39	$2,953.76	$ 3.084,83	$ 3.433,31
November	$ 1.863,00	$ 1.919,50	$ 1.821,00	$ 1.921,80	$ 2.128,70	$3,001.38	$3,110.26	$3,013.47	$ 3.194,03	$ 3.401,47
December	$ 1.922,30	$ 1.933,40	$ 1.792,50	$ 1.933,00	$ 2.342,30	$3,244.20	$3,009.86	$2,991.76	$ 3.218,55	$ 3.277,14
Average Annual rate	**1.898,95**	**$ 1.847,14**	**$ 1.797,70**	**$ 1.868,75**	**$ 2.000,44**	**$2,741.22**	**$3,052.13**	**$2,950.64**	**$ 2.955,81**	**$ 3.271,60**

Source: Banco de la República 2019 (www.banrep.gov.co)

Brigard Urrutia

APPENDIX II – Official Map of the Republic of Colombia

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 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
BIT – Colombia India	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 12, 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

Source: Ministerio de Comercio, Industria y Cultura de Colombia. http://www.tlc.gov.co/publicaciones.php?id=5398

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

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

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