Doing Business
Colombia 2015
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1. Corporate Matters

1.1 Permanent activities in Colombia

Pursuant to article 474 of the Colombian Commerce Code, if a foreign organization performs any of the following activities within a business scheme, such organization is considered to develop a permanent activity in Colombia:

1. Opening within Colombia territory of commercial establishments or business offices.
2. Participating as contractor in the performance of works or rendering of services.
3. Participating in any private savings managing activity.
4. Carrying out activities related to the extractive industry.
5. Obtaining or participating in a government concession.
6. The running of its shareholders’ meetings, boards of directors, management or administration.

When in performance of business in Colombia, any of the above mentioned presumptions is present, an entity must be formally established in Colombian by incorporating, either a branch or a subsidiary in the country.

1.2 Subsidiaries

A subsidiary is a company established in accordance with Colombia’s corporate types. The most common types of corporations to carry out business in Colombia are Stock Corporations, Limited Liability Companies, and Simplified Stock Corporations.
Stock Corporations

**Concept** – A capital stock structure in which the shareholders' liability is limited to the amount of their contributions. In Colombia, stock corporations are identified by the company name, followed by the abbreviation “S.A.”. It must have a minimum of five (5) shareholders and there is no limit to the number of shareholders.

**Administration and Control** – Administrative functions are performed by (i) the General Shareholders’ Meeting; (ii) the Board of Directors; and, (iii) the Legal Representative. Each share of capital represents one (1) vote. Decisions must be taken by a previously specified majority. Finally, it is mandatory to have a statutory auditor at all times.

**Shareholders’ Liability** – It is limited to the value of the capital contribution. However, according to isolated case law under special circumstances, liability regarding labor matters in stock corporations may also affect its shareholders.

**Capital Stock** – Capital stock is represented by shares. At the time of incorporating the company at least fifty percent (50%) of the authorized capital stock must be subscribed and at least one third of the value of each share must be paid. If payments are to be made by installments, the total payment must be made at the latest one (1) year after subscribing the shares. Contributions in kind are allowed provided that the stockholders agree on their valuation. Assignment of shares is carried out by endorsement and delivery of the respective security.

Limited Liability Company

**Concept** – Corporate structure of people in which the partners are responsible up to the value of their contributions. Its corporate name must be followed by the word —Limited or the abbreviation —“Ltda.”. Failure to include this word in the by-laws shall make the partners responsible in an unlimited and jointly manner in respect to third parties. The number of partners shall not exceed twenty five.

**Administrative and Control** – Administration corresponds to (i) the Board of Partners, and (ii) the Legal Representative. Each quota represents one (1) vote. Decisions require a majority vote and plurality of partners to be approved. This company does not require a statutory auditor as long as its revenues and/or assets do not exceed the limits established by law.

**Partners’ Liability** – It is limited to the value of their contributions, except fiscal and labor liabilities.

**Capital Stock** – Capital stock is represented by quotas. They have to be fully paid at the time of incorporation or every time that there is a capital increase. The assignment of quotas implies a bylaw reform.

Simple Stock Corporations

**Concept** – Corporate capital structure in which shareholders are liable for up to the sum of their contributions. Its corporate name must be followed by the abbreviation —“S.A.S.” It may be incorporated with one or several associated, through an agreement or unilateral act evidenced in a private document without need of a public deed.

**Administrative and Control Functions** – The organizational structure of the company and other regulations that rule its operation are freely determined. However, if not indicated in the bylaws, the administrative duties are exercised by: (i) General Shareholders’ Meeting or Sole Shareholder, and (ii) Legal Representative. Each capital share entitles to a single or multiple vote, as indicated in the bylaws. Decisions must be made by a special majority previously specified.

**Stockholders’ Liability** – It is limited to the value of the capital contribution and its shareholders will never be liable for the labor, tax or any other kind of obligations incurred by the company.

**Capital stock** – The capital stock is represented by shares. The subscription and payment may be made in the conditions, proportions and terms agreed in the bylaws; however, the payment term shall not exceed two (2) years. Contributions in kind are permitted provided that the shareholders agree.
on their valuation. The assignment of shares is made by the endorsement and delivery of the respective security.

1.3 Incorporation

The incorporation has to be done through a corporative contract in which the investor would have to include: (i) name, (ii) corporative object, (iii) corporative organization, legal representatives, and all the aspects related to the general operation of the Company.

According to the kind of Company a public deed of incorporation can or cannot be required.

The whole documentation has to be registered in the chamber of commerce of the incorporation city. This process can be done by a third person using a power of attorney in those cases in which the investor cannot proceed by itself.

1.4 General requirements for Subsidiaries

In terms of the reporting requirements and compliance with Accounting Principles Generally Accepted in Colombia (Colombian GAAP), subsidiaries must keep accounting books and their accounting records denominated in Colombian pesos and in the Spanish language.

The main financial information includes the balance sheet, income statement, statement of retained earnings, statement of changes in stockholders’ equity, statement of changes in financial position, and statement of cash flows.

Branch offices of foreign companies have an obligation to appoint and have a Statutory Auditor regardless of their income and/or shareholders’ equity levels, as provided by article 489 of the Commercial Code.

Pursuant to article 485 of the Commercial Code and Concept 220-58283 dated December 9, 1996 from the Superintendence of Corporations, the home office of a branch operating in Colombia has the risk of being considered responsible for the activities of its branch office in the country.

1.6 Statutory Auditors

It is mandatory to appoint a statutory auditor in branches and stock companies. The other legal entities only require the appoint of a statutory auditor if their gross income exceeds three thousand (3,000) minimum monthly legal wages\(^1\) (equivalent to COP $1,933,050.000 approximately USD $840.456)\(^2\) and/or their assets exceed five thousand (5,000) minimum monthly legal wages (equivalent to COP 3,221,750.000 approximately USD $1,348,317.08).

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1 Law 1314 of 2009. It regulates the principles, accounting regulations, financial information, and insure of the information accepted by Colombia.
2 The Legal Minimum Monthly Wage in Colombia has been fixed at COP$644.350 for the period running from January 1, 2015 to December 31, 2015.
3 Average exchange rate used is COP$2.300
1.7 Entities under surveillance by the Superintendence of Corporations

Pursuant to Decree 4350 of 2006 and 2300 of 2008, in general terms, commercial companies as well as branches of foreign corporations, will be subject to surveillance by the Superintendence of Corporations, provided that as of the date of closing of their financial statements they have assets or gross income that exceed thirty thousand (30,000) minimum monthly legal salaries (equivalent to COP $19,330,500,000 approximately US $8,404,565.214).

1.8 Registration

The registration on Chamber of Commerce is how the merchant makes public his profile to potential consulting client’s record. This commercial registration contains general data information about merchants and companies.

Branches have to make the registry at the chamber of commerce where the principal office develops its activities.

Every year, before March 31, all registered merchant must renovate their registration. If they have commercial establishment it should be renovated as well.

1.9 Homonym

It is a system of the Chamber of Commerce that helps to identify whether there are companies or nationwide establishments, with the same name of companies with all requirements to be created. This mechanism is very useful for the creation of new businesses because it is the instrument to avoid delays in registration process with the Chamber of Commerce in case of homonymy.
2. Exchange and foreign investment issues

2.1 Major regulations

- Law 9 of 1991 (Known as —“Framework Law”)
- Law 31 of 1991 (Central Bank)
- Decree 1735 of 1993 for currency exchange purposes).
- Exchange Regime Manual - External Circular DCIN-83 and its modifications (includes, among others, exchange forms and exchange item numbers to identify transactions).

2.2 Foreign exchange issues supervised by Colombian Tax and Customs Authority (DIAN)

The Colombian Tax and Customs Authority (DIAN) controls the fulfillment of exchange obligations arising from imports and exports of goods and services and their expenses, as well as the financing in foreign currency of any foreign trade operation. In addition, DIAN is entitled to control any other exchange matter that has not been included in the scope of the Financial Superintendence or the Superintendence of Corporations. The applicable regulations are Law 383 of 1997, and Decree 2245 of 2011, which provides the exchange administrative procedure and penalties, respectively.

The Constitutional Court has maintained its doctrine in the sense of accepting in an exceptional manner the objective responsibility in exchange infringements. In judgment C-010 of January 23, 2012 it refers to articles 24 (partially) and 30 of Decree 1092 of 1996 that establishes the objective responsibility for exchange infringements. It argues, that with the exchange regime “the State establishes duties to whom execute those actions, agreements or operation in the exchange market, which control, in order to be timely and effective, demands total objectivity by the administration, which would not be accomplished if the efficiency of
the sanction regime depends on the demonstration of subjective factors such as deceit and guilt, without rebating that certain activities are only exercised by legal entities from which would not be possible to exercise a guilt judgment.

It is concluded in the judgment that would not be possible to apply the objective responsibility as such and to penalize the investigated just for the fact that the infraction is given, if he can prove in the process that force majeure and fortuitous case originated it. The administration will have to do an analysis of the conditions in which the infringement was made with the purpose of determining if the investigated is or not responsible.

This aspect is fundamental in the exchange processes made by the DIAN, as well as by the Superintendence of Corporations, based in the responsibility by the exchange infringements is objective once the infringement is determined, any argument shall proceed in relation with the conditions in which this was made.

2.3 Foreign exchange issues supervised by the Superintendence of Corporations

The Superintendence of Corporations controls the fulfillment of exchange obligations arising from international investments and foreign indebtedness as working capital. Both the penalties and the exchange administrative procedure are established in Decrees 1746 and 2578 of 1991.

2.4 Foreign exchange issues supervised by the Financial Superintendence

The Financial Superintendence controls the fulfillment of exchange obligations by financial intermediaries also known as exchange intermediaries. The penalties that may be imposed by this entity are included in article 45 of Law 795 of 2003.

2.5 Purchase and sale of foreign currency with interventions purposes

The Board of Directors of the Central Bank is the highest authority in Colombia on credit, monetary and exchange matters. The Central Bank may intervene in the exchange market in order to avoid undesirable fluctuations in the exchange rate, as well as in the amount of international reserves, through the spot or future sale or direct or indirect acquisition of foreign currency. However, the Central Bank does not participate in the exchange market to control the exchange rate and said market flows freely.

2.6 Foreign exchange regulations

Although the exchange market flows freely, there are exchange regulations that establish those exchange operations that must be channeled through the exchange market, the procedures and penalties for infringement.

The rules applicable on exchange matters are issued jointly by Congress, the Government and the Central Bank. Congress has jurisdiction to issue general principles that will guide the Government to regulate foreign trade and international exchange as well as to issue laws related to the Central Bank and the duties of its Board of Directors. The Government has the constitutional duty of issuing the foreign capital investment regime. “Banco de la República” is the Central Bank of Colombia and is the maximum authority on credit, monetary and exchange matters and, therefore, is the competent authority to regulate exchange operations.

2.7 Controlled exchange market

According to the Exchange Code, the following operations must be channeled through the exchange market:

- Importation and exportation of goods.
- Foreign indebtedness of Colombian residents and financial costs inherent to these operations.
- Foreign investments and their corresponding profits.
- Colombian investments abroad as well as their corresponding profits.
• Foreign investments in securities or assets located abroad, unless said investment is made with funds that do not have to be channeled through the exchange market.

• Securities and guarantees in foreign currency.

• Derivative operations

The above mentioned operations must be made through a foreign market intermediary and/or through a compensation account.

Nevertheless, the Central Bank may establish through general regulation, special exceptions to the mandatory canalization of such operations.

Free Market

The free market is form by all the operations that are not obliged to be canalized through the foreign Exchange market, for example the service payments, and foreign currencies transfers regarding to donations.

Under this scenario, Exchange residents can constitute deposits on bank account abroad and do through this accounts any of the free market operations.

Foreign market intermediaries

Foreign market intermediaries (FMI) are commercial banks, mortgage banks, financial corporations, commercial financing companies, Financiera Energética Nacional (FEN), Banco de Comercio Exterior de Colombia S.A. (BANCOLDEX), financial cooperatives, stock broker companies and foreign exchange agents.

Compensation accounts

Residents in Colombia may freely establish deposits in financial corporations located abroad, with money obtained through the exchange market or with funds that do not require to be channeled through the exchange market. If the account is used to perform operations that are required to be channeled through the exchange market, the account will be called —“Compensation Account”, which is subject to the following rules:

• The account must be registered before the Central Bank within the month after the first transaction that has to be channelized thorough the exchange market. Due on Form No. 10 “Compensation account registry”.

• Every month the holder of the account must report the consolidated movement of the operations carried out through it, to the Central Bank through the Webpage of said entity through Form No. 10 “Compensation Account movements”.

• In addition, the transactions made through the account that are the competence of the DIAN, shall be reported quarterly to the mentioned entity in accordance with the last digit of its tax identification number (NIT).

• The foreign currency deposited to the compensation account may be sold only to exchange market intermediaries, other holders of settlement accounts or be used to pay foreign currency operations that require or not to be channeled through the foreign exchange market or wire tranfered to other accounts of the same owner.

• The exchange declarations that the account holders not shall deliver to the Central Bank, including those revised in point 8.4.1 of chapter 8 of the DCIN 83, which presents incomplete or wrongful information in the space of the compensation account code, date, number of exchange form, will not generate an exchange infringement, in those cases the holder will be able to modify in any moment the information and shall keep the forms with the respective supports without requiring to send them to IMC or DCIN.

2.8 Transfers in foreign currency allowed between a head office and its Colombian branch

In general terms, the head office and its Colombian branch are allowed to transfer foreign currency corresponding to the following items:
• Transfers of assigned capital or supplementary investment to the assigned capital.

• Remittance of profits or capital assigned and supplementary investment.

• Payment of foreign trade operations in compliance with tax and customs regulations.

• Payment of services in accordance with tax regulations.

2.9 Prohibition to pay in foreign currency between Colombian residents

In general terms, Colombian residents should pay their mutual obligations in Colombian legal currency. However, since Resolution 1 of 2013, Colombian residents can pay and receive payments in foreign currencies as long as they do it through their compensation accounts.

2.10 Deposits in foreign currencies in Colombia

It is not permitted that Colombian residents make deposits or have checking or savings accounts in foreign currency in Colombian banks. Exceptions: a) Individuals and legal persons not resident in the country; b) Diplomatic and consular mission accredited before the Colombian Government and his officials; c) Multilateral organizations and its officials; d) Public or private entities that are carrying out international technical cooperation programs with the National Government for amounts effectively disbursed by foreign cooperation organizations; e) International transportation agencies, travel and tourism agencies, deposits and bonded warehouses and entities that provide port and airport services; f) fiduciary companies in performance of trusts or as representative, speaker or administrator of autonomous equities; and g) Foreign agents who act as liquidity suppliers of foreign currency settlement and assessment systems.

2.11 Foreign exchange regimes -- general, special, and general oil and gas regime

General Foreign Exchange Regime

Applicable to branches of foreign companies and companies incorporated under the Colombian legislation not engaged in the oil and mining sector.

Under this regime, Colombian residents cannot pay their obligations (with other residents) in foreign currency. However, there are some exceptions, such as special settlement accounts. In addition, Colombian residents may pay in foreign currency to ECOPETROL and to companies engaged in oil refinery, purchase of fuel for ships and aircraft intended to international trips.

Residents in Colombia can also pay in foreign currency the purchase of crude oil and natural gas produced in the country, to the companies engaged in the exploration and production of oil and natural gas.

Entities that are part of the special exchange regime are permitted access to the exchange market in order to obtain the resources to pay their obligations as nonresident. Therefore, imports and exports of goods may be reimbursable and have access to foreign debt.

Special Foreign Exchange Regime

Applicable to branches of foreign companies engaged in the exploration and production of coal, natural gas, oil, ferronickel and uranium and to the branches that provide services exclusively to the oil sector pursuant to Law 9 of 1991 and Decrees 2058 of 1991 and 1629 of 1997.

Branches that do not wish to be part of the special regime must notify this fact to the Central Bank by means of a written communication and would be excluded from it for ten (10) years counted as of the filing of said communication.

Branches of the special regime are authorized to make and receive payments in foreign currency between themselves within the country, provided that the foreign currency proceeds from resources obtained in their operation. In addition, they have no obligation to reimburse to the exchange market the foreign currency from their sales in foreign currency.
These branches are not allowed to access the exchange market and therefore cannot acquire foreign currency in the exchange market under a different concept outline below. Consequently, they have no access to foreign debt, their imports of goods are not reimbursable (they do not generate payment obligation abroad) and their exports of goods do not have a refundable nature.

Nevertheless, prior certificate from the statutory auditor, they are allowed to resort to the exchange market in order to issue abroad the following sums: a) The return of the capital investment in case of liquidation of the company, and b) the sums received in local currency on occasion of the internal sales of oil, natural gas or services inherent to the oil sector and for c) refund the currencies required to meet expenses in local currency. For this effect, expenses contributions in cooperation agreements are considered expenses.

These branches can make and receive in their unregulated market accounts, payments from abroad, as well as those arising from internal operations provided for in Article 51 of the RE8/00 JD

2.12 Foreign investments

Foreign capital investments are allowed in Colombia, including the acquisition of real estate. However, certain specific sectors are forbidden for foreign investments, for example: foreign investments in the national security or defense activities or in activities related to the processing and disposal of toxic, hazardous or radioactive waste produced abroad.

On the other hand, and according to Law 182 of 1995 modified by Law 680 of 2001, Law 182 of 1995 and Decree 1629 of 1997, the foreign investment in television is limited to 40% of the total capital stock. Accordingly, 60% of the capital participating in these companies must be Colombian capital.

Foreign Investment Categories

Foreign capital investments in Colombia may be of the following types:

Direct Foreign Investment

Activities deemed as direct foreign investments include the following: a) the acquisition of participations, shares, corporate quotas, contributions representative of capital of a company or bonds mandatorily convertible into shares; b) the acquisition of rights in autonomous equities created by means of trust agreements to carry out a company or for the purchase, sale and administration of participations in companies that are not registered in the National Register of Securities and Intermediaries; c) the supplementary investment to the assigned capital of branches in Colombia; d) the acquisition of real estate, as well as equity securities issued as a result of a real estate securitization process of a real estate or construction projects or through real estate funds; e) contributions made by the investor such as acts or contracts when it does not represent a participation in the company and the income that generates the investment depend on the profits of the company; f) the acquisition of participations in private capital funds.

Portfolio Investments
In Colombia, portfolio investments are defined as any investment made in shares, bonds mandatorily convertible into shares, and other securities registered in the National Register of Securities. They are of speculative character.

**Modalities of Foreign Capital Investment**

Foreign investment in Colombia may entail the following modalities: a) import of foreign currency freely convertible into local currency; b) import of tangible goods such as machinery and equipment or other physical goods imported under a non-reimbursable modality; c) contributions in kind consisting of intangibles such as technological contributions, trademarks, patents, etc.; d) funds in local currency entitled to be remitted abroad such as the principal and interest of foreign credit, sums due corresponding to reimbursable imports, profits entitled to remittance and royalties derived from duly registered contracts; and e) funds in local currency arising from local credit operations entered into the credit institutions, intended to the acquisition of shares made through the stock market.

**Registration process of Foreign Investments before the Central Bank**

There are different types of registry:

**Automatic registration via the presentation of the international investments exchange statement (Form No. 4)**

This type of registration is applicable to the foreign currency remitted to Colombia for direct and portfolio investment, provided that the operation is performed through the exchange market.

**Automatic registration via a request in due form (Form No. 11 and plane file)**

This type of registration is applicable for investments under the modality of sums entitled to remittance, whether it refers to direct or portfolio investment.

In case of direct foreign investment, Form No. 11 must be submitted no later than the following 12 months from the date of the capitalization accounting receipt is produced. This term is not extendable.

In case of portfolio investments, the registration will be made with transmission by the local administrator of the fund, of the corresponding plane file, within the month following that of the investment and in this case, this term is not extendable.

**Registration with fulfillment of requirements for investment (Forms 11 and 13)**

This type of registration is applicable to the investment in autonomous equities, to the acquisition of real estate goods, to the investment in kind (tangible and intangible assets) and acts or contracts that do not grant any participation in the capital of a company; to the acquisition of shares through the stock market with local currency funds resulting from local credit operations, as well as the supplementary investment to the assigned capital that are part of a special exchange regime.

**Other types:**

**Electronic registry.**

When it is about capitalization of sums with right to be wired originated in the portfolio investments and in direct foreign investments, the registry will be made by the administrator.

When it is about foreign investment of portfolio originated in the dividends in kind derived from the portfolio investments, the registry will be made by the centralized deposit of local values.

The registry has to be made in the following month of the investment by the fulfillment of Form No. 19 “registry of the investment of foreign capital of portfolio – different modalities to foreign exchange”, to the DCIN of the Central Bank, according to section 1 of the annex 5 of DCIN 83, about an administrator of IMC quality, of administrator without IMC quality or the centralized local deposit of values, respectively.
The registration must be made during the following month after the investment performance, counted as of:

- Autonomous equities and real estate: from the date of the exchange declaration for international investments.

- Contributions in kind (tangible and intangible goods): from the date of nationalization or customs clearance of ordinary of non-reimbursable ordinary imports; the date when temporary imports become ordinary; the date of the form of movement of goods in free trade zones (entry of goods) issued by the operator user and, the date they are accounted for in the case of intangible assets.

- Acts or contracts without participation in the capital: from the date of the exchange declaration for international investments in case that foreign currency is channeled through the exchange market and in modalities other than foreign currency said term will be counted as of the date that the contribution is accounted for.

- Supplementary investment to the assigned capital for branches of the special exchange regime: from the date of the annual closing of the financial statements as of December 31st.

- When someone asks the Central Bank the qualification as national investments, has to ask simultaneously the cancellation of the registry of the foreign investment. The communication for the cancellation of the registry must be submitted by the investor or its legal representative to the DCiN of the Central Bank, and shall include the following information: NIT or code of the investor and additionally if it is about a foreign investment in a Colombian entity it shall indicate the NIT of the receiver company and the number of shares or social quotas to be cancelled. The date of the cancellation will be the date of the application of qualification as a national investor.

**Investments in foreign branches exclusively dedicated to the provision of services inherent to the hydrocarbons sector (added to the DCiN 83 by bulletin No. 18 of the 15 of May, 2011)**

The branches of foreign companies dedicated exclusively to the provision of services inherent to the hydrocarbons sector, accordingly with what is provided in article 16, Law 9 of 1991, and the Decree 2058 of 1991, belongs to the special exchange regime from the expedition of the certificate of exclusive dedication emitted by the Ministry of Mining and energy.

The Central Bank assumes that the branches that deliver the corresponding information of the investment operations of foreign investments under exchange numerals of the special regime that have obtained the certificate.

The branches of foreign companies that from its constitution has as exclusive objective the provision of services inherent to the hydrocarbons sector, that has canalized the foreign investment using the exchange numerals of the general regime from a previous manner to the obtaining of the certificate made by the Ministry of Mining and energy, once obtained that certificate they shall:

a. Inform that fact to the DCiN of the Central Bank by written communication accompanied of the certification.

b. Modify the exchange numerals of the general regime used initially in the exchange declarations for international investments (Form No. 4).

c. In the event that that the branch has presented or transmitted the form No. 15 “patrimonial conciliation – companies and branches of the general regime” accordingly with the dates established in this circular, has to send the DCiN of BR a Form No. 13 “Registry of supplementary investment to the assigned capital and updating of patrimonial accounts – branches of the special regime” duly completed. The supplementary investment will be understood as registered with the date of submission of Form No. 15. When the branches of foreign companies operate under...
the special regime and lately do not obtain the renewal of the exclusively dedication certificate issued by the Mining and Energy Ministry, shall inform the change of regime by a written communication addressed to the DCIN of the BR accompanied by the certification.

**Qualification as national investors to non-residents**

The Central Bank will qualify as national investors the non-residents that apply like that, accordingly with what is prevised in the international investment regime. For that, it is necessary to send a certification of the Migratory Office, in which is indicated its permanence in the country for a non-inferior period to the one prevised in Decree 1735 of 1993. The effect of the qualification as national investor will be the cancellation of the foreign investments that to date are registered in the BR, that is why it should additionally request the cancellation of the foreign investments in the terms previously prevised.

**Foreign investment cancellation**

Total or partial cancellations are generated from total or partial sales of the investment to Colombian residents. This includes the shares re acquisition.

Any cancellation has to be informed by the investor or his attorney to the Central Bank during the 12 months after the cancellation through a written communication.

**Foreign investment substitution**

Foreign investments can be substituted in: (i) the investor, (ii) the destination, in/ or (iii) the investment receptor.

Any substitution has to be informed by the investor or his attorney to the Central Bank during the following 12 months after the substitution through a written communication.

**2.13 Importations and exportations of goods**

Reimbursements or payments of importations of goods shall be channeled through the foreign exchange market. Reimbursements will be paid up once the Form No. 1 (exchange declaration for import of goods) is duly filled-out and processed.

On the other hand and in general terms, residents in the country shall channel through the exchange market the foreign currency from their exports of goods including those that they receive directly in cash, either in the case of refund for exports or those that are received as advance payment for future exports of goods (prior to the shipment of the goods). The reimbursement must be made through Form No. 2 (exchange declaration for exports of goods).

The foreign currency received by exporters on futures exports of goods, shall not constitute a financial obligation with recognition of interest, or generate for the exporter an obligation other than the delivery of the goods.

Finally, it is important to point out that offsetting is not admissible in foreign trade operations.

**2.14 Foreign indebtedness**

The foreign currency received or paid as a consequence of a credit operation must be channeled through the exchange market. In addition, prior to or simultaneously with the disbursement, it will be required to report the foreign debt to the Central Bank through the exchange market intermediaries.

Colombian residents can only obtain credits in foreign currency from: a) foreign financial institutions (FFI); b) foreign market intermediaries (FMI) directly or against rediscount public entity funds, and c) through the placement of securities in international capital markets. These modalities are considered liability credits since the debtor is a Colombian resident. This is not applicable for loans granted by foreign individuals.

On the other hand, Colombian residents may grant loans in foreign currency to non-residents and this modality is called active credits since the creditor is a Colombian resident.
From an exchange perspective and for the private sector, the parties may freely agree the terms, interest and, in general, the terms and conditions of the credit.

Offsetting and condoning are not permitted. Dation in payment is admissible prior approval by the Board of Directors of the Central Bank.

2.15 Deposit

The deposit is a mechanism to discourage Colombian residents from obtaining credits in foreign currency, since financial costs become more expensive. The deposit is a requirement for the disbursement of the foreign liability credits (when the debtor is a resident), non-formalized investments, imports of financed goods and foreign portfolio investments. However, now a days is 0%. 
3. State contracts

3.1 Applicable Regulation

State contracts are subject to the General Contracting Code of the Public Administration, provided by Law 80 of 1993 and Law 1150 of 2007 and their regulatory Decrees.

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In general terms, regulations specified in the General Contracting Code of the Public Administration are applicable to government agencies, as provided for in article 2, Law 80 of 1993. Nonetheless, it should be noted that certain agencies, regardless of their public nature, perform contractual activities that fall under special regimes other than those defined under the General Contracting Code, as is the case of publicly funded utility companies, governmental financial institutions, and industrial and commercial State-owned companies, as well as mixed entities in which the National government owns more than 50% of their corporate capital. To become eligible to operate under special regimes, the aforementioned entities are required to remain competitive and operate under monopolistic or regulated markets.

Both, entities governed by the regime specified in Law 80 of 1993, as amended, and State-owned entities that operate under regimes other than those specified in the General Contracting Code, shall execute their contractual activities under certain guiding principles which are intended to provide such activities with the levels of transparency, accessibility, efficiency, equality and frugality that the Colombian National Government wishes to instill and sustain at State-owned entity levels.

The scope of the General Contracting Code covers essentially the following stages of the contracting process: (i) Pre-contractual, that is, the stage which involves planning for the forthcoming contracting process, and selection of contractors; and, (ii) Contractual, that is, the stage which involves the execution of all contractual activities until the successful termination and payment of all contracts in effect.

Private law is applicable to governmental contracts, except in those cases in which the Colombian Political Constitution, the General Public Administration Contracting Code, or the respective special regime specify specific regulations which are to be incorporated into a certain contract.

3.2 Public procurement and purchases system.

With the issuance of Decree 1510 of 2013, which aims at making the procurement process efficient and effective regulatory framework is proposed.

Stands of this Decree, establishing the procedure for the preparation and use of the Framework Agreement Price.

According to the acquisition plans of each Entity, Colombia Buy Efficient (CCE) Framework Agreements subscribe Prices for goods and services of uniform technical features Framework Agreement establishes Prices how to evaluate the performance of the obligations, guarantees, how to proceed with the default within the time limits, qualities, among others, the publication of the catalog for Framework Agreements Pricing is by CCE

Public entities are required to check the Framework Agreement Price existence to satisfy your needs. If such is the case the Entity presents the Framework Agreement Price according to CCE.

3.3 Contracting Requirements - Form

In general, contracts in Colombia are entered into through the undersigning of a written document and do not require a public deed.

Law 1150 of 2007, article 13. General principles for contractual activities by entities not subject to the general public Administration Contracting Code. “State-owned entities that by law are required to operate under a contractual regime other than that of the General Public Administration Contracting Code shall apply, pursuant to their special legal regime and during the execution of their contractual activities, the administrative function and fiscal management principles provided for in articles 209 and 267 of the Colombian Political Constitution, respectively as the case may be, and shall further be subject to the abilities and incompatibilities regime legally instituted for all governmental contracting activities.”

Except for those contracts which imply either a change of ownership or the enforcement of encumbrances and real
If there is an evident urgent situation, that is, the immediate need to overcome or put an end to exceptional circumstances or disaster, it is not necessary to enter into a contract through a written document. In these cases, the payment to the contractor must be agreed by the parties, a situation that must take place, at the most, when the execution of the contract begins. If there is no agreement, a third party or mediator makes the valuation.

It is important to state the fact that public entities, based on the principle of publicity, should publish all procedures and actions to be generated at the time of contracting processes, including the publication of the contract, their additions, extensions, modifications, suspensions and transfers, regardless the amount or the type of contract, with specific exceptions to the rule.7

An articulated review of the State’s entity annual budget and contract value, may determine that the contract not only must be in writing, but also must be published in the Official Diary. In these cases, the contractor covers all the publication costs. The general contracting code contains the relevant guidelines.

It should be noted that, pursuant to the regulations specified in all applicable laws8, the execution of any governmental contract shall only take place if the following requirements are duly met: (i) Approval of the Single Performance Guarantee submitted by the contractor before the government entity; and, (ii) Availability of budget funds allocated to the contracting public entity for contractor payment purposes, as certified in the entity’s official records.

Minimum Requirements

Registration in the Single Suppliers Register

easements upon real estate properties, and, in general, for those contracts that pursuant to legal regulations in effect must comply with said formalities.

The Single Suppliers Register (“RUP”, for its acronym in Spanish) is the registration made by the Chamber of Commerce, which contains information on the national or foreign individuals or legal persons domiciled or with branch in Colombia, who expect to enter into contracts with State entities.

RUP is the source of accreditation of the qualifying requirements to be met by bidders to participate in the contracting processes, such as legal capacity and financial experience and organization conditions.

Any entity willing to become a contractor for the Colombian Government must be registered in the RUP, except for those specific cases discussed under Law 1150 of 2007. Decree 1510 of 2013 indicates that foreign individuals or corporations with headquarters or branches in Colombia interested in participating in recruitment processes convened by State Entities must be registered in the RUP. Among such exceptional cases, the following should be mentioned: Direct contracting; contracts for the rendering of healthcare services; contracts with a contract value no greater than 10% of the lower-value contracting mark fixed for the respective entity; state property alienation processes; contracts for the acquisition of goods of agricultural origin or destination, as offered in legally constituted product exchange markets; acts or contracts whose main purpose is to carry out commercial or industrial activities which are inherent by nature to the performance of commercial or industrial practices by Governmental entities, mixed economy entities, or through the undersigning of any concession contract whatsoever. In all cases referred to above, contracting entities are liable for verifying the bidders’ conditions and situation.

It corresponds to the interested bidders to carry out the process of registration at the corresponding Chamber of Commerce, which in turn will have the responsibility of checking the documentation submitted in order to classify and rate the bidder in respect to his experience, legal, financial and organizational capacity.

7 Decree 1503 of 2013 which regulates Public Procurement and purchases system, Provides that public entities should publish all the actions of the contracting process in the electronic system for public procurement: SECOP.

The registration procedure, its administration and the work by the Chambers of Commerce are ruled by Decree 734 of 2012.

If the bidder adopts an association scheme, such as consortium or temporary union, it is necessary that each member of the association will register independently in the RUP. The registration in the RUP is a minimum requirement in order to submit an offer within a selection process. Registration is subject to modifications.

Through data updates which can be performed by the contractor when renewing the commercial register, as required (the fifth working day of April). If the interested party fails to renew the RUP within the term specified by the corresponding Chamber of Commerce, all registration benefits will cease to exist until the interested party reactivates the registration.  

After making the registration, the respective Chamber of Commerce will certify the rating, classification and qualifying requirements of the bidder. Consequently, government agencies shall refrain themselves from requesting any information that is already certified under the RUP, and shall therefore carry out their reviewing activities on the basis of the information duly certified by the Chamber of Commerce with jurisdiction.

State entities will also provide information to the Chambers of Commerce, in order to register the data in respect to the contractors, such as contract awarded, contract performance indicator, amount of contract, value of fines and description of fines imposed.

**Absence of inabilities and incompatibilities**

The inabilities and incompatibilities are exceptional situations and comprehensive under Colombian law. The incompatibilities prevent the participation of the bidder in a selection process. Inabilities and incapacities are defined pursuant to various regulations which are enforced to protect the public interest and relate to the achievement of fixed levels of impartiality, effectiveness, efficiency and morality during the execution of contractual operations. Inabilities and incompatibilities can only be established by law. Therefore, the state entities themselves cannot establish inabilities or incompatibilities.

In general terms, the inabilities and incompatibilities seek to avoid the execution of contracts with the state in case of family ties, or previous ties between the contractor and the directors of the State entity and the penalties imposed to the contractor in the past, among other circumstances.

Inabilities and incompatibilities may take place before or after the selection process. Once the selection process starts, the inability or incompatibility may take place during the selection process or during the performance of the contract. The latter inabilities or incompatibilities are called “surviving inabilities or incompatibilities”.

**Effects arising from inabilities and incompatibilities - Issues identified prior to the Selection Process**

(a) In regards to the selection process:

- Report to the Chamber of Commerce in such a way that the inability will be recorded for future purposes; and
- Report to the General Attorney’s Office of the Nation, which is the Colombian entity that exercises the disciplinary control on public aspects including State contracts.

(b) In respect to the contract:

- The legal representative of the State entity may terminate or avoid the contract;
- If a good faith failure is proven, possible disciplinary penalty for gross negligence of the officers who took part in the contracting process;
- Impossibility to contract with the State during the five (5) years following the execution of the contract; and
- Possible criminal liability of public officials and contractors.

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9 Limitations to benefits include refusal by the Chamber of Commerce to issue any certificate on behalf of the bidder (regardless of the aforementioned, Chambers of Commerce may keep the bidder’s historical records in their files).
Effects arising from surviving inabilities or incompatibilities:

(a) In respect to the Selection Process:

- Termination of the bidder participation within the selection process; and
- Correlative impossibility to assign its participation to any third party.

(b) In respect to the contract:

- Assignment of the contractual position to a third party, prior approval by State entity;
- Termination of contract if no assignment is possible; and
- If the situation affects any member of the association scheme such as a consortium or a temporary union, the affected member must assign its contractual position within the association scheme to a third party that has no ties with the remaining members.

Definition of Legal Structure or Associative Scheme

Consortium or temporary unions

The general contracting code confers them capacity to enter into a contract, notwithstanding the fact that those association schemes do not have a legal entity status. This means that consortiums and temporary unions do not have the legal status of a corporation, but are able to enter into state contracts as if they were corporations.

The members of the consortium or temporary union have an individual and joint liability before State authorities, in respect to the obligations related to the offer and the contract. Under this liability regime, the State entity may act against any member and claim the total amount arising from the non-fulfillment of the obligation. Each member of the consortium or temporary union must register in the RUP, in the case of those contracts for which said requirement is mandatory.

It should be noted that the main difference between a consortium and temporary union is that, if any bidding/contract non-compliance penalty is enforced upon the latter, such penalty will be imposed individually to each of the members of the temporary union, according to the degree of involvement each one had in the execution of the obligations in question, while if enforced upon the former, penalties will not be individualized and all consortium members will jointly liable regarding the penalty imposed.

Single-purpose corporations

These corporations are created with the sole purpose of submitting the offer and performing the contract. If the contract is not awarded to the single-purpose corporation, then it will be dissolved. The liability of the partners is the same liability applicable to the members of a consortium.

Project corporations

These are commonly used in concession contracts related to construction. The partners are bound by a promise to incorporate the company. This promise must be incorporated into the offer. If the state contract is awarded to the project corporation, then it must be incorporated. The liability of the partners is the same applicable to the members of a consortium.

Participations by Foreign Companies

Pursuant to Decree 1510 of 2013, all foreign legal entities or individuals with a domicile or branch in Colombia willing to enter into an agreement with any Government Entity shall be duly registered under the Single Suppliers Register (RUP).

Therefore:

- Foreign entities with a branch in Colombia will register before the Chamber of Commerce where the branch is registered,
- Foreign individuals domiciled in Colombia shall submit a statement (understood to be made under oath) indicating the municipality where they are currently domiciled. If a foreign individual were to have more than one
domicile, such foreign individual shall register before the Chamber of Commerce with jurisdiction at the municipality where the individual’s main business office is established.

**Fulfillment of qualification factors**

Qualification factors or requisites are defined as the minimum criteria applied to identify the bidder’s capacities. These requisites shall not be deemed as scoring parameters, but rather as verification tools.

On a case-by-case basis, government entities define the requirements to be applied to each bidding process. By law, compliance with such requirements will not award scoring points to the bidder under the bidding process, since such requirements are merely the minimum or enabling requisites which all applicants must meet to become eligible to participate in the actual selection process.

Pursuant to Law 1150 of 2007, and as a general rule, Chambers of Commerce are required to verify all data submitted by companies under the RUP, as evidence to support their experience and eligibility. Hence, government entities are not authorized to demand as further evidence any document that has already been verified by a Chamber of Commerce with jurisdiction.

Consequently, in order for government entities to make an objective selection during the process of awarding a contract resulting from a bidding process, Law 1150 of 2007 provides the following as enabling requisites for bidders:

1. Legal capacity.
2. Experience levels.
3. Financial capacity.
4. Bidders’ organization.

**3.4 Bid Scoring Criteria**

Qualification criteria of the contracting proposals are determined primarily from the type of contract that is to be celebrated. Still, the best deal for bid selection processes, as the general rule, is the result of the balancing of technical and economic factors of supply.

**3.5 Treatment to National and Foreign Offers**

The General Contracting Code contains the reciprocity principle of treatment between national and foreign offers. According to this principle, an equal treatment is given to national and foreign bidders, provided that national bidders receive the same treatment as foreign bidders in the country of the latter. In any event, national offers have priority if there is a tie.

Currently there is a legal regime that supports national industries. In this respect and in order to support those industries, there is a legal distinction between national goods and services and foreign goods and services. If the goods or services are national, the State entities assign a specific percentage score within the selection process, which is higher than the one given to offers containing goods or services of foreign origin.

Notwithstanding the aforementioned, it should be noted that Colombian laws provide the same legal treatment given to national goods or services to any good or service of foreign origin that were to be provided or rendered as part of the execution of a contract with a government entity, inasmuch as the country of origin of the bidder in question reciprocates and gives equal treatment to Colombian goods or services.

**3.6 Selection Process**

**Bidding**

Bidding is one of the selection processes specified in Law 80 of 1993, pursuant to which a contractor will be selected as a result of a procedure by which a public entity publicly calls on all persons legally able to participate, and invites them, under the principle of equal opportunity, to submit their proposals. The bid that is deemed as the most favorable to the Colombian public is then selected.

Public biddings will be legally applicable to all cases in which government entities need to acquire
goods, works or services, except for those events specified in items 2, 3 and 4 of article 2, Law 1150 of 2007; that is, those events in which government acquisitions are deemed as eligible for abbreviation selection, contest of merits, or direct contracting processes.

Biddings are public processes that, driven by the principle of equal treatment, intend to make an objective selection of public contractors. As a general rule, selection processes are performed as biddings, unless a special regulation exists which overrides this general choice of process and is specifically applicable to the topic object of the selection process.

These processes are subject to a case-by-case regulation called terms of reference. Bidders must strictly abide by the provisions set forth in the terms of reference. The content of same is incorporated into all contractual activities, including the sales contract.

Bidders produce and submit their proposals within strictly defined terms. Then, an evaluation report produced by the government entity is forwarded to bidders, as a means to obtain feedback, comments and opinions by participants. Once the referred to above events are completed, the government entity may or may not choose to award the contract which results from the bidding process.

**Short-term Selection Process – Abbreviated Selection**

The abbreviate selection is another process specified in Law 1150 of 2007, pursuant to which a contractor will be selected as a result of a procedure that, due to the characteristics of the object of the contract, the contracting circumstances, or the value or destination of the goods, works or services to be provided, can be simplified to guarantee the effectiveness of the contractual management practices implemented by the Colombian Government.

It applies in the following cases:

- Acquisition of goods and services with common technical characteristics and usually required by State entities;
- Contracts for small amounts. In order to determine whether or not a contract is for a small amount, it is necessary to check the general contracting code, which contains guidelines that permit a joint analysis between the annual budgets of State entities and the sums described in terms of minimum wages;
- Contracts for rendering healthcare services;
- In case that a competitive bidding process is cancelled by the State entity, that is, when the state entity decides not to award the contract to any bidder;
- Real estate sale contracts;
- Contracts related to products or agricultural origin or destination;
- Contracts required to carry out customary activities of commercial and industrial State entities and of corporations with private and public investment, when the public investment is higher than the private one;
- Contracts entered into by State entities whose activity involves the performance of programs intended to protect threatened persons, demobilization and reinsertion programs for members of illegal armed groups, programs for assistance to victims of violence and violation of human rights; and
- Contracts related to goods or services for security or national defense purposes.

**Contest of Merits**

Pursuant to Law 1150 of 2007, this type of selection process promotes the contracting of consultant or expert services under projects which encourage
contracting efforts driven by talent and experience rather than by price.\textsuperscript{10}

Consulting services contracted via contest of merits procedures pertain to all assessments required for the execution of investment projects, diagnostics, program prefeasibility or specific projects, as well as technical advisory on coordination, control and supervision activities. Consulting contracts also include those whose main purpose is to perform activities such as auditing, consulting, advisory, work/project management, top management, and programming and execution of designs, blueprints, project outlines and projects.

Under this type of selection process, contests sponsored by government entities may be open or pre-classified; in the latter case, definition of the list of pre-classified bidders is made through a public invitation to bid.

Since the purpose of the agreement for this type of contracting mainly addresses the offering of intellectual products, then the proposal evaluation process is targeted to the qualification of the bidders’ intellectual assets, and takes into account all criteria applicable to the bidder’s work team and the proposal’s technical aspects. In contests of merits, the bid price shall not be deemed as an effective selection indicator.

**Direct Contracting**

Direct contracting takes place exceptionally, since most of the State contracts are subject to bids or contest procedures. Direct contracting can only occur if there is a legal base that gives rise to that process.

Under a direct contracting process, there are more flexible terms than those obtained in bidding processes.

In any event, selection processes both by public bidding and by direct contracting are subject to the principles of state contracts, including equal treatment and the obligation to make an objective selection.

The following are the legal bases upon which direct contracting processes are allowed:

- Situations of latent urgency.
- Loan agreements.
- Inter-administrative agreements, inasmuch as any obligation arising from said agreements is directly related to the object of the executing entity, as provided by law or the entity’s own bylaws. Exceptions to inter-administrative agreements include contracts for public works or procurement, trust management agreements and public trusts, whenever public higher-education institutions are the executing party. These contracts may be entered into by said entities, inasmuch as they participate in public biddings or abbreviations selection processes, as specified in items 1 and 2 of the foregoing article.
- In those cases in which the executing party’s regime is other than the one specified in Law 80 of 1993, the execution of the contract will always be subject to the administrative function principles referred to in article 209 of the Colombian Political Constitution; the objective selection duty; and, the inabilities or incompatibilities regime discussed under Law 80 of 1993, except for those cases in which the executing party is a public higher-education institution; if such is the case, the undersigning and execution of the contract may be performed pursuant to the specific contracting rules specified by such entities while observing all applicable regulations arising from the principle of university autonomy provided for in article 69 of the Colombian Political Constitution.
- In those cases in which the executing public entity requires subcontracting for any of the activities deriving from the principal contract, neither the executing party nor the subcontractor may contract or engage individuals or entities who have effectively

participated in the production of any preliminary study, design or project that is directly related to the object of the principal agreement.

- Insurance contracts entered into by government entities are excluded from the legal figure of inter-administrative agreements.

- Contracting of goods and services by the National Defense sector or the Colombian Administrative Department of Security (DAS), as these goods and services require high levels of secrecy and confidentiality at the time of purchase.

- Contracts for the performance of scientific and technological activities.

- Trust management agreements entered into by public entities, whenever such entities enter into a Liabilities Restructuring Agreement, as specified in Laws 550 of 1999, and 617 of 2000, as amended and supplemented, inasmuch as the trust management agreements are entered into by and between the aforementioned public entities and any public financial entity.

- Whenever availability of suppliers is severely limited within the market.

- The rendering of professional and management support services, or of artistic services that may only be executed by a select group of natural persons.

- The leasing or acquisition of real estate.

**Minimum contracting quantity Article 85 of the Decree 1510 of 2013**

- The 10% of the acquisition of goods and services of minimum contracting quantity must have a simplified previous study containing the elements described in article 84 of the Decree.

- This type of contracting doesn’t apply when another type of contracting is supposed to proceed, according to numeral 4 of article 2 of the law 1150 of 2007.such as direct contracting. In this case, the dispositions that must be followed are the ones included in the paragraph of paragraph 1 of the Decree.

### 3.7 Exceptional Clauses (Inclusion into the Agreement)

In State contracts, there may be clauses that grant certain powers to State entities over private entities. Those powers are contained in the general contracting code and seek to materialize an adequate, expeditious and proper contractual performance. In case of fundamental breach of contract, the power may entail a penalty, as it is the case with the so called lapse of contract.

Exceptional clauses are excluded in some contracts. In other contracts, they may be included and in other they must be included.

**Contracts in which exceptional clauses are excluded**

Exceptional clauses cannot be included in the following contracts:

- Contracts involving international public parties.

- Contracts regarding cooperation and assistance activities.

- Inter-administrative agreements.

- Loan contracts.

- Donation contracts.

- Contracts regarding commercial or industrial activities by public entities, which do not match the activities specified for contracts requiring exceptional clauses.

- Contracts required for the execution of scientific or technological activities.

- Insurance contracts undersigned by government entities.
Contracts that Allow the Inclusion of Exceptional Clauses

It is possible to include exceptional clauses in the following contracts:

- Supply contracts; and,
- Service agreements.

In practice, it is common to find this type of clauses in supply agreements, since they represent one of the main sources procurement of State entities.

Contracts in which the inclusion of exceptional clauses is mandatory

Exceptional clauses must be included in the following contracts:

- Contracts regarding activities deemed as Government monopolies.
- Utilities contracts.
- Public goods concession contracts; and,
- Construction contracts.

In respect to public utilities contracts, it is necessary to make a distinction between domiciliary and non-domiciliary public utilities.

In the former, the regulatory commissions determine the cases and contracts where exceptional clauses must be incorporated. In the latter, their inclusion is mandatory.

3.8 Exceptional Clauses (Types of Clauses)

Unilateral Interpretation

This term is applied to those cases in which a dispute arises between the public entity and the private party, due to differences in the interpretation of any contractual stipulation, in circumstances under which such dispute may lead to the disruption or alteration of the utility service which, under any other circumstance would be provided pursuant to the terms of the contract. In case no agreement may be reached among the parties, the public entity, by ways of a motivated administrative action, will make their own interpretation of the contractual term in question.

Unilateral Modification

This term has the same purpose as the unilateral interpretation clause. In case that there is a difference with the private party and in the absence of an agreement, the state entity goes on unilaterally to modify the contractual terms by adding or eliminating works, supplies or services.

In this case, the private party may terminate the contract if the modification is equal to or higher than twenty percent (20%) of the contract value initially agreed. If there is a termination, the parties will go on to liquidate the contract.

Unilateral Termination

Unilateral termination may be enforced by the public entity by means of a motivated administrative act, if any of the following situations were to exist:

- Whenever public utilities requirements demand the termination of the agreement, or whenever public policies require such termination;
- Death or total incapacity of the private contractor (if an individual); or, dissolution of a company, in which case the warrantor may continue to comply and execute the contract;
- Legal injunction or declaration of bankruptcy, in which case the warrantor may continue to comply and execute the contract; and
- Any suspension of payments, insolvency or court order to freeze assets against the contractor, inasmuch as such requirements may severely affect the execution of the agreement.

Under any of the clauses referred to above, the contractor will have the right to receive any sort of compensatory payments that may arise from the government entity’s decision to terminate the contract.
**Lapse of the Agreement**

If there is a breach of contract by the contractor, which seriously and directly affects the contractual compliance and may lead to its interruption, the state entity may order, by virtue of a reasoned administrative act, the termination and liquidation of the contract.

If the entity decides not to exercise this power, adopts the measures to guarantee the fulfillment of the contract, notwithstanding its right to take possession of the works or installations or its right to continue immediately with the contractual performance, by means of a guarantor or another contractor.

In case that the lapse is declared, the contractor would not be entitled to compensation, would have inability to participate in any bidding or competitive process, and would not be able to enter into contracts with the State during five (5) years following the declaration of the lapse of contract.

**3.9 Penalties**

Under Colombian law, penalties are not deemed as exceptional clauses. Nonetheless, the National Government and the private contractor may include such penalties in the contract to be entered into by and between them. Most public contracts include penalties that provide government entities with the right to enforce the penalties included therein upon the contractor, in case of any breach of contract. The government entity shall then follow a procedure to enforce the penalties agreed on, and such procedure will involve a public hearing in which the principles of due process and fair trial will be honored to the fullest extension of the law.

The government entity may materialize the aforementioned penalties by way of paying any outstanding balance to the contractors, either by executing the corresponding guarantee or by any other means within its reach that may allow disbursement of said payment.

**3.10 Economic Balance**

If unforeseeable events, beyond the control of the party affected take place during the contractual performance, and those events alter the economic balance of the transaction, the affected party is entitled to obtain the restoration of the economic balance up to a point where it has no loss. If the unforeseeable events form a part of the usual or ordinary risks that arise from the contract, then there will be no right to restoration.

If the restoration is applicable, then the parties shall adopt, as soon as possible, all economic and financial measures that lead to the restoration of the economic balance of the transaction.

**3.11 Dispute Resolution**

The parties of State contracts may stipulate arbitration in order to obtain a final and binding solution of their disputes. However, Colombian case law, in the field of state contracts, has determined that the legality of the so called exceptional clauses is not within the scope of the arbitrator’s jurisdiction (lack of objective arbitrability). According to said case law, exceptional clauses refer to public policies and sovereign powers of the State. Therefore, the arbitrability of these clauses is not possible, since the arbitrators have been characterized as private parties that act as judges occasionally and transitorily. Thus, domestic arbitration, within the field of State contracts, is possible in respect to almost any situation that arises from a State contract, except the legality of exceptional clauses.

In any event, Colombian state entities may be the subject of international arbitration either with investors (investment arbitration) or private contractors (commercial arbitration). In fact, Colombia is party to the New York Convention on the recognition and enforceability of foreign arbitration awards and also party to the Washington Convention, whereby the International Center for Settlement of Investments Disputes (ICSID). On the other hand, Colombia recently closed negotiations of the Free Trade Agreement with the United States of America (FTA). Therefore, in case that any differences arise between investors and state...
entities on the parts of the treaty, such differences may be submitted to investment arbitration, pursuant to the rules contained in the treaty.
4. Legal Labor System of Colombia

4.1 Foreign employees

Foreign employees’ entrance as well as their stay and exit are regulated by the Colombian Government always based on international treaties.

Colombian laws apply to foreign employees since they sign the employment agreement, which must be made in writing.

Foreign employees have no obligation to enroll in the pension systems with the social security authorities if they are covered by social security programs at their countries, (only if such programs provide them with similar benefits) and remain within Colombian territory for no longer than one month, otherwise they must be affiliated to Colombian pension system.

4.2 Working hours

Both, the employer and the employee are free to agree the working hours without exceeding the legal limit of hours per week. The law provides a work week of forty-eight (48) hours, eight (8) daily hours basis. The employer and the employee may agree that said work period be performed in flexible work hours distributed in a maximum of six (6) days a week, with a mandatory rest day (Article 161 of the Labor Code, modified by article 51 of Law 789 of 2002).

The employer and the employee may agree on the mandatory rest day. The number of hours worked per day may be divided in a variable manner with a minimum of four (4) consecutive hours per day and a maximum of ten (10), without need to pay overtime for the two (2) additional hours.

The employer may increase these hours if it pays overtime at the rates established.

4.3 Overtime

In no case the day or night overtime may exceed two (2) hours per day and twelve (12) hours per week (Article 22, Law 59 of 1990).

One (1) overtime daytime hour (that is, from 6:00 a.m. to 10:00 p.m.) must be remunerated with twenty-five percent (25%) of increase over the ordinary work hour (Article 168, Labor Code and Article 25 of Law 789 of 2002). On the other hand, one (1) overtime nighttime hour (that is between 10:00 p.m. and 6:00 a.m.) must be remunerated with an increase of seventy-five percent (75%) over
the ordinary work hour (Article 168 of the Labor Code).

One (1) normal night time hour is remunerated with an increase of thirty-five percent (35%) over the ordinary work hour (Article 179 of the Labor Code, modified by Article 26 of Law 789 of 2002).

Increases may be simultaneous, that is if one hour of overtime required to the worker is worked on a Sunday or holiday, it would have an overcharge of 100%, 25% for being overtime and 75% for being a Sunday or holiday.

4.4 Vacations

Every employee is entitled to fifteen work days of paid vacation per year of service (Article 186, Labor Code, modified by Article 27 of Law 789 of 2002).

If the employment agreement ends, and the employee has not taken the corresponding vacation, the Labor Law authorizes the remuneration of the vacation time in cash (Article 1 of the Law 995 of 2005). The right to remuneration in cash exists regardless of the time worked, that is, it exists as of the first day (Judgment by the Constitutional Court C-019 dated January 20, 2004).

The Labor Code was modified in this issue by the Law 1429 of 2010. This modification establishes that the employer and the employee can agree the vacation's remuneration in cash, as long as the employee required it before (Article 20 of the Law 1429 of 2010).

4.5 Minimum age

As a general rule, the Colombian Constitution prohibits employment of children under fourteen (14) years of age in most jobs. Youngsters under eighteen (18) years of age exceptionally may work, but provided they have authorization from the labor inspector or the first local authority from its parents request or the family ombudsman (Article 30, Labor Code).

Children under fifteen years can only work up to a maximum of fourteen hours a week (Article 35, Law 1098 of 2006). Children between fifteen and seventeen (15-17) years old may work a maximum of four (6) hours a day and thirty (30) hours a week and until 6:00 p.m. (Article 114, Law 1098 of 2006).

Youngsters older than seventeen years old can only work a maximum journal of eight (8) hours daily and forty (40) weekly (Article 114, Law 1098 of 2006).

4.6 Minimum wage

Every December, the Government establishes the minimum monthly salary for workers that will serve as reference for salary negotiations (Article 145 of the Labor Code).

The minimum monthly wage fixed for year 2015 Through Decree No. 2731 of December 30th, 2015 is COP $644.350 (approximately USD $322).

Based on the country’s inflation rate every year, the minimum monthly salary is increased (Law 278 of 1996).

4.7 Mass termination

Mass termination of labor agreements requires the express authorization in writing by the Ministry of Labor. Any termination of agreement will be deemed as mass termination in accordance with the company’s total employees and the period of time elapsed while agreements are effectively terminated (Article 67, Law 50 of 1990).

4.8 Legal service bonus

Every year, in the months of June and December, employers are required by law to benefit all their employees with a legal services premium pay. This legal premium pay is equivalent to a fifteen (15) working days salary (Article 306, Labor Code). For labor settlement purposes, the legal premium pay is not deemed as a salary.

4.9 Transportations allowance

Employees earning up to two (2) minimum monthly wages are entitled to a transit subsidy benefit equivalent to COP 74,000 per month (approximately USD $37) in 2015 (Decree No. 2731, 2014).
4.10 Work garments

Employees earning less than two (2) minimum monthly wages are entitled to receive from their respective employers, a pair of work shoes and work clothes consistent with their line of work, three (3) times a year (Article 230, Labor Code).

4.11 Severance

Upon expiration of the labor agreement, each employee is entitled to receive an additional payment called severance, which is equivalent to a one-month salary for every year of service, and proportionally for any outstanding portion of time (Article 249, Labor Code modified by Article 21 of Law 1429 of 2010. This article abolished the authorization from the Social Security Minister to pay the severance).

Every year, this payment is deposited in a Private Severance Fund chosen by the employee. The employee cannot withdraw this severance while the employment agreement is in effect, except if the funds withdrawn are intended to buy or improve the home or for college education always that it is for a not major value than the required for such effects (Article 256, Labor Code).

4.12 Interests on severance

Together with the payment of the severance, the employee is entitled to receive annual interest of twelve (12%) percent on the severance. This amount is deposited in the personal bank account of the employee. It has to be paid on January of each year using the rate of the severance accrued during the immediately preceding year (Article 1, Law 52 of 1975).

4.13 Integral salary system

Employees whose monthly income equals or exceeds ten minimum monthly salaries may choose to be remunerated through this system (Article 132, Labor Code).

The integral salary system includes the base salary and the fringe benefits, which shall not be less than thirty percent (30%) of the base salary. The resulting amount is equivalent to thirteen (13) minimum monthly salaries. All legal benefits, except vacation, are included within the monthly salary payment (Article 132, Labor Code).

This type of integral salary must be agreed by both parties and by means of a written document. For the year 2015 the minimum integral salary is COP $8,376,550 (approximately USD $4.188).

4.14 Integral social security system

Every employer has the obligation to enroll his employees in the social security entities that the employee voluntarily chooses, to cover all risks that may affect his health or income. The enrollment is mandatory for all dependent or independent workers. As well, the employer shall inform the employee about the paid contributions (Article 32, Law 1393 of 2010).

The integral social security system is established for pensions, healthcare, labor risks, family fund and other supplementary services that the Colombian legislation defines.

Law 1562 of 2012 modifies the name of work-related risks to labor risks.

The maximum limit on which the contribution to the pension system and in general to the healthcare and labor risks systems is made is twenty-five (25) minimum monthly legal wages.

Decree 2616 of 2013 regulates the contribution to the pension system, labor risks and dependency allowance for dependent workers who work for less than one month periods.

It is the responsibility of the employer to carry out the social security contribution of such workers. It shall be a minimum weekly contribution of one quarter (1/4) of the legal monthly minimum wage.

4.15 Healthcare

The contribution to the social security for healthcare is equivalent to twelve point five percent (12.5%) of the base salary, which shall not be less than the minimum monthly legal wage. Eight point five
percent (8.5%) of this sum has to be paid by the employer and four percent (4%) by the employee (Articles 52 and following, Law 100 of 1993).

4.16 Pension Regime

Pensions in Colombia cover old age, disability by ordinary risk (that is, not related to work accident or disease) and death.

Article 15, item 2 of Law 100 of 1993 sets forth that, foreigners who remain in the country under an employment agreement, must be enrolled in the social security system for pensions, provided they are not protected by another regime in their country of origin. Accordingly, any foreign worker who has this risk covered by a foreign system should not be affiliated to Colombian Pension System (if the local labor agreement is for no longer than 1 month no affiliation must be made, otherwise the affiliation would be advisable).

The affiliation is mandatory for all workers being dependent or independent (Article 2, Law 797 of 2003).

Employees enrolled in the General Pension System may choose the pension system they prefer. Once the initial selection is made, they can only change system once every five (5) years, counted as of the initial selection. After January 29, 2004, the employee enrolled cannot change pension system when ten (10) or more years remain until he has the age to be entitled to old age pension (Article 2, Law 797 of 2003).

The employers shall pay the 75% of the total quotation and the employees the 25% (Article 7, Law 797 of 2003).

Employees who earn more than four (4) minimum monthly legal salaries must pay one percent (1%) additional on their salary for the solidarity fund (Article 7, Law 797 of 2003), and the contribution to the fund increases if the salary is higher, as follows:

- 4 to 16 minimum monthly wages: 1%
- 16 to 17 minimum monthly wages: 1.2%
- 17 to 18 minimum monthly wages: 1.4%
- 18 to 19 minimum monthly wages: 1.6%
- 19 to 20 minimum monthly wages: 1.8%
- Over 20 minimum monthly wages: 2.0%

In general terms, there are two (2) pension systems in Colombia: one is Medium Premium with Definite Benefit or pay-as-you-go, which the one is assumed by Colpensiones, the new entity attached to the Ministry of Labor. The other is the Individual Saving with Solidarity, which consists in the contribution that is made to a pension fund previously selected by the employee. It is worth mentioning that Government employees and employees of the private sector that so wish it, belong to the pay-as-you-go system.

4.17 Old-Age Pension (OAP)

Medium Premium Regime (Pay-as-you-go)

In order to have access to the old age pension it is necessary to be 57 years of age (women) and 62 (men) and have one thousand two hundred and seventy five (1,275) weeks of contributions to the ISS up to the year 2014. In addition, the number of weeks of contributions will increase in January of each year by 25 per year until one thousand three hundred (1,300) are reached in 2015 (Article 33, Law 100 of 1993). The monthly amount for the old age pension will be 65% of the income basis for pension calculation. However, for each additional 50 to 1,000 until 1200 weeks , this percentage will increase by 2% to the contribution period to 73% of base income settlement. For every 50 additional 1,200 to 1,400 weeks, this percentage will increase by 3% instead of 2%, up to a maximum amount of 85% of base income settlement (Article 9 Act 797 of 2003).

Individual Saving with Solidarity System

The member enrolled in this plan may be pensioned at any age provided he/she has enough capital accumulated in his/her account to obtain a pension of one hundred and ten percent (110%) of the minimum monthly legal wage then in effect.
Depending on the level of savings the employee has, the system defines amounts payable.

### 4.18 Disability pension

**Contributory System**

**Disability due to illness** – Member must have contributed fifty (50) weeks within the three years immediately preceding the pension structuring date (Article 39 of Law 1993, modify of article 11 of Law 797).

**Disability due to accident** – Member must have contributed fifty (50) weeks during the three-year period prior to the occurrence of the event that caused the disability (Article 39 of Law 1993, modify of article 11 of Law 797).

**Underage** – Individuals under the age of twenty (20) will only need to demonstrate a minimum of twenty-six (26) weeks of contributions within the calendar year prior to the occurrence of the event causing the disability, or the date in which same was formally certified (Article 39, paragraph 1, Law 100 of 1993).

The amount of the disability pension will be forty-five percent (45%) of the income basis of the pension calculation, plus one point five (1.5%) of said income for every fifty (50) weeks of contributed credited to the member after the first five hundred (500) weeks contributed, when the reduction in the work capacity is equal to or exceeds fifty percent (50%) and lower than sixty-six percent (66%) (Article 40, Law 100 of 1993, partway regulated of Decree 832 of 1996).

If the level of work disability is equal or higher than sixty-six percent (66%) of the employee’s full ability to work, then the percentages referred above will increase as follows: fifty-four percent (54%) of employee’s base income for settlement, plus two percent (2%) of said income for every additional fifty (50) weeks of contributions over the initial eight-hundred (800) weeks, as duly accredited by the applicant (Article 40, literal b, Law 100 of 1993 partway regulated of Decree 832 of 1996).

Disability pension payments may not exceed seventy-five percent (75%) of the applicant’s base income for settlement.

Under no circumstance will the disability pension payment fall below the legal minimum monthly wage level (Article 40, Law 100 of 1993, partway regulated of Decree 832 of 1996).

**Individual Savings Solidarity System**

The same information indicated for the Medium Premium Regime is applicable.

### 4.19 Survivor’s pension

**Medium Premium Regime (Pay-as-you-go)**

It is governed by Law 100 of 1993, Articles 46 and following.

Survivor’s pensions will only be granted to employee’s beneficiaries (eligibility is further described below). If no beneficiaries exist, then no survivor’s pension will be granted.

**Beneficiaries** – The following individuals will be entitled to a survivor’s pension:

- The members of the family group of the individual pensioned for old age or disability for ordinary risk who dies, and
- The members of the family group of the member of this system, who dies, provided that he has contributed fifty (50) weeks within the three (3) years immediately prior the death, and the following conditions are evidenced.

**Death caused by disease** - if member is more than 20 years, has to contribute twenty-five percent (25%) of the elapsed between the time he turned 20 and the date of his death.

**Death caused by accident** - if member is more than 20 years, has to contribute twenty percent (20%) of the time elapsed between the time he turned 20 and the date of his death.

Survivor’s pension payments will be equivalent to eighty percent (100%) of amounts payable to employee, had he/she been granted an old-age pension.
Individual Saving Solidarity System

The same criteria to identify beneficiaries is applied. (Article 79 and following, Law 100 of 1993).

4.20 Labor risks

Contribution will be paid in full by the employer, and shall depend on the class and degree of risk imputed to the economic activity performed by the employee. If employer fails to provide employee with this coverage, the employer will become directly liable for covering all expenses arising from professional risks affecting the employee. In case of permanent disability, the worker will be entitled to pension payments equivalent to sixty percent (60%) of base income for settlement; however, in case of total disability, pension payments increase to seventy-five percent (75%) of base income. In the case of survivor’s pension, payable amount will be equivalent to seventy-five percent (75%) of base income for settlement (Decree 1295 of 1994).

The percentage may increase by 15% when the person needs help from others.

4.21 Temporary work visa / Visa TP-4 for employment agreement (Decree 834 of 2013 and Resolution 4130 of 2013)

This visa is granted for those people who prove a direct legal - labor relationship with a Colombian entity and that the execution of services is developed within the national territory.

According to Decree 834 of 2014 and Resolution 4310 of 2013, temporary working may be granted to foreign individuals who enter Colombia under employment contracts with Colombian companies.

These visas are issued by the Ministry of Foreign Affairs or the Colombian Consulates.

A visa for employment agreement is issued for up to three (3), this visa granted multiple entry. The holders of visas for employment agreement must register at the Migratory Office within fifteen (15) calendar days following their arrival to Colombia, and then apply for their ID Foreign. To register foreigners must present a valid passport and the additional information required by the Migratory Office.

4.22 Temporary work visa / Visa TP-4 eligibility requirements (Decree 834 of 2013)

The visa application by labor contract shall be made directly by the non-resident or by the entity or company where it works or sponsored, or the person duly authorized, authenticated and signed abroad and personal presentation of the person showing its identification document before the office that issued the visa. In any case, the application form shall be signed for the non-resident applicant.

4.23 Business visas (Decree 834 of 2013)

Business visas are granted to tradesmen, industrialists, executives and businesspeople wishing to enter Colombia for business purposes. Business visas are granted for a maximum of five (5) years, and authorizes multiple entries, the residence of the visa holder depends on the type of visa granted (Article 6 Decree 0834 of April 24, 2013). Business visa holders may neither establish their residence in Colombian territory nor earn professional fees or salaries in Colombia. Any breach to said regulations may result in the holder’s deportation and the enforcement of penalties upon his/her sponsor and foreign

If the sponsor is a company, is necessary a letter undersigned by the company’s legal representative and shall include as an attachment, a certificate of good standing and incumbency, or an equivalent document. Likewise, the applicant must forward a note explaining the reasons for his/her visiting Colombia, as well as evidence of financial good standing or a commitment note by his/her Colombian sponsor whereby the latter accepts to take liability for the applicant’s good conduct while in the country.

4.24 Temporary visa – technical assistance permit (Decree 834 of 2013)

For foreigners who enter the country in order to provide specialized technical assistance, with or without an employment contract to public or private
entities. This visa is valid for one hundred eighty (180) days with multiple entries.

The foreigners may remain in the country during the validity of the visa.

Applications must be submitted before a Colombian consulate official, or forwarded to the Visas Division of the Ministry of Foreign Affairs. Depending on the applicant’s nationality, proceedings may require payment.

4.25 Mercosur Visa (Decree 834 of 2013)

Temporary resident has a valid permit for 2 years that can be issued as long as the country of the foreigner has equivalent measures for Colombian citizens.

In observance with the principle of reciprocity this permit currently can only be issued to nationals from: Argentina, Brasil, Bolivia, Peru, Chile, Ecuador, Uruguay and Paraguay.
5. Environmental Issues

5.1 Legal framework

The Colombian Code of Renewable Resources (CRR) was enacted in 1974, and has been complemented thereafter by various Decrees which provide for the protection of the country’s environment. Additionally, the Colombian Political Constitution of 1991 modernized the applicable legal framework by including several environmental regulations accepted worldwide. The environmental rights and rules are established for the citizens as well as the means to require them.

The Colombian Constitution appointed environmental jurisdiction to various public entities that are currently liable for the supervision of all environmental planning, prevention and protection activities in Colombia. The major environmental authorities are the Ministry of Housing, Land Development and the Environment, entity responsible for the management of all environmental matters and of non-renewable resources, as well as the Autonomous Regional Corporations (CAR) that control the natural renewable resources within their jurisdiction and are committed to the sustainable development of those resources.

The most recent legislations on the matter include Decree 2820 of 2010, whereby formal definitions for environmental issues are specified, and various related procedures, such as the granting of environmental licenses.

Likewise, Law 1259 of 2008 established the so-called “Environmental Summons” (Comparendo Ambiental), as a punitive measure applicable to both, individuals and entities that breach any environmental regulation in force, regarding solid residue, debris and waste disposal activities. Applicable penalties vary from filing educational memos to enforcing economic penalties for amounts of up to twenty (20) legal minimum monthly wages.

The Environmental Penalty Procedure was established by The Law 1333 of 2009. It defined the Environmental sanctions, the penalty procedure and preventive actions and some faculties of the Environmental Ministry.
As for the observance of international environmental regulations, Colombia ratified the Montreal Protocol on Substances that Deplete the Ozone Layer, agreed on September 16, 1987, as adjusted and/or amended in London (June 29, 1990), Nairobi (June 21, 1991), and Copenhagen (November 25, 1992). Also, Colombia is party to the United Nations Framework Convention on Climatic Change (UNFCCC), agreed in New York, on May 9, 1992.

5.2 Environmental licenses

Environmental licenses are authorizations granted by the Colombian environmental authorities to entities willing to perform projects, civil works, or any other activity that might endanger the country’s landscape or renewable natural resources. Furthermore, environmental licenses may specify requisites whereby the licensees may be required to prevent, mitigate, correct, compensate, and manage environmental effects arising from the performance of activities or civil works included therein.

The Ministry of Housing, Land Development and the Environment, the Regional Autonomous Corporations (CAR), the Sustainable Development Corporations, the Territorial Entities designated by the Autonomous Regional Corporations (CAR), and some municipal governments are considered environmental authorities and would be in charge of granting licenses depending of the importance, location and impact of the project.

The Ministry of Housing, Land Development and the Environment has restricted jurisdiction to grant licenses for large scale projects. According to Decree 2820 of 2010 a license granted by the Ministry or by an Autonomous Regional Corporation is necessary in order to carry out the following projects:

1. Hydrocarbons sector: Exploration, exploitation, perforation, transportation, delivery, mobilization of liquid hydrocarbons, and construction of warehouses, oil pipes, or hydrocarbon refineries.
2. Mining sector: Exploitation of coal, construction materials, and metals and gemstones, as well as extraction of other minerals.
3. Construction of dams and reservoirs with capacities exceeding 200 million cubic meters of water. For dams and reservoirs of smaller capacity, applicants shall be granted an environmental license by the corresponding Regional Autonomous Corporation.
4. Electrical energy sector: Construction of electrical power plants generating energy in excess of 10 MW; project exploration and use of alternate sources of energy; and, expansion or installation of the National electric network system.
5. Nuclear energy projects.
6. Port, Sea, Land and Air sector: Construction of international airports and landing strips, construction of docks and expansion of infrastructure for deep-draft vessels; port dredging; and, construction of highways, tunnels and secondary roads.
7. Construction of railways and expansion of the national railway network.
8. Public fluvial works.
9. Construction and operation of irrigation systems.
10. Importation or production of pesticides or any toxic product used in agriculture.
11. Any project that might have a negative impact on Colombia’s National Nature Reserve areas.
12. Any project developed on behalf of Regional Autonomous Entities, as appointed by section 2, Sub-item 19 of article 31, Law 99 of 1993.
13. Entry of foreign animal or vegetable species to Colombian territory, which can affect the environmental stability.

15. Any other project specified in articles 8 and 9 of the aforementioned Decree.

In order to obtain a license, the applicant must present an environmental impact study and the means to prevent or control any damage that it may cause. The requirements for the license are established by Law 99 of 1993 and since then by Law 491 of 1999. To obtain a license for considerable impact projects (according to the definitions expressed in Decree 2820 of 2010), the interested party must present to the competent authority an environmental diagnosis of the alternatives accompanied by the “National Environmental License Application Form”. It is important to bear in mind that no project or civil works will require more than one environmental license.

Colombian environmental legislation has defined a procedure that enables competent authorities to amend, grant, or suspend any environmental license; specifies the liabilities to be undertaken by the interested parties; and describes the surveillance powers granted to competent authorities as a means to supervise the adequate exercise of the granted license.

The so-called Environmental Guidelines (Guías Ambientales) are briefings issued by the Colombian Ministry of Housing, Land Development and the Environment, whereby technical contents addressing specific production sectors are provided as an orientation for the proper performance of all environmental operations and procedures during the execution of the activities object of the environmental license. Said guidelines are specified in Resolution 1023 of 2005, and compliance therewith is deemed as a technical requirement for the effective granting of an environmental license.

Currently, there are Environmental Guidelines available for the following industrial sectors in Colombia: Hydrocarbons, Energy, Agriculture, Industrial Manufacturing, and Infrastructure and Transportation.

Pursuant to Laws 633 of 2000 and 344 of 1996, activities involved in the granting, renewing and following-up on Environmental Licenses require payment of certain taxes in Colombia. Such fees are variable and depend on the costs incurred by the government while performing all surveys and verifications required in the process of granting, renewing or following up on the effectiveness of the granted license.

5.3 “Green Taxes”

Any type of business, project, work, or activity which directly or indirectly uses the Colombian atmosphere, waters or soils, or which disposes of waste within country borders, will be subject to retributive charges.

Compensatory and retributive tax charges are not deemed as income or transactional taxes; pursuant to Law 99 of 1993, the Colombian Ministry of Housing, Land Development and the Environment must fix a minimum payable fee, as well as certain criteria to determine whether, in some specific cases, an additional sum is to be paid by the interested parties, depending on the depreciation level of the affected natural resource, the degree of social and environmental damage caused, and the costs of renovating the affected resource.

Compensatory taxes must be paid up by any user of the country’s natural resources, as a means to cover for all renovation costs involved. Similarly, retributive taxes are enforced as a means to compensate for any damage caused by the authorized users upon the country’s natural resources.

An example of green retributive taxes currently in force in Colombia, is the regulatory framework governing the use of water sources in Colombia. Any user or class of person who affects the country’s water resources is required by law to invest 1% of the project’s equity in the preservation and maintenance of water sources. Pursuant to regulations in Decree 1900 of 2006, the Ministry of the Environment shall see to it that such investments are effectively made, and shall further enforce any applicable penalty upon non-compliance with said requirement.
In the case of taxes applicable to waste disposal, such rate is intended to charge the user with the estimated amount an environmental authority would incur in, had it been the actual user and needed to remove such waste. Calculation of this tax rate is based on a number of variables, including regional factors, volumes and frequency of disposal efforts, as well as the amount of collateral damages arising from substances being disposed.

Additionally, a percentage of the yearly property tax imposed upon Colombian taxpayers is allocated to the regional environmental authorities called Autonomous Regional Corporations for the protection of renewable natural resources and the environment. Additionally, municipalities may choose to charge a surtax that shall not be of less than 1.5 per thousand, or in excess of 2.5 per thousand on the appraisal of the goods that serve as a basis to calculate the property taxes.

5.4 Special charges for the energy industry

According to Law 99 of 1993, which regulations became effective by Decree 1933 of 1994, modified in part by Decree 1729 of 2002, the electric sector must transfer a percentage of its gross sales according to the following:

1. Hydroelectric power generation plants must transfer three percent (3%) to the Regional Autonomous Corporations, one and one half percent (1.5%) to the municipalities and the districts of the hydrographic basin that supplies the reservoir and another one and one half percent (1.5%) for the districts where the reservoir is locate (for a total of 6%).

2. Thermal generation plants must transfer two and one half percent (2.5%) to the Regional Autonomous Corporations, one and one half percent (1.5%) to the municipalities where they are located (for a total of 4%).

The above mentioned government offices must allocate those sums to protect the environment and recover affected areas. This regulation is applicable to the sale of power produced by public companies owned by the state and private companies with generation plants which installed base is over 10,000 kw. Please take note that the transfer of money made by hydroelectric and thermoelectric plants may be considered tax as percentage of gross sales.

5.5 Tax incentives

The Colombian law contemplates certain tax incentives to encourage investment in technology that protects the environment.

Investment to control and improve the environment is deductible from the income tax. The deduction shall not exceed twenty percent (20%) of the tax reported by the taxpayer, before deductions.

The sale of national or imported equipment and supplies used to construct, install, assembly and/or operate environmental monitoring and control systems will be excluded from the value added tax (VAT).

The imported equipment that is not manufactured in Colombia and is used in recycling, treatment or reprocessing of trash or waste, treatment of residual water, sewerage, cleaning of rivers or environmental sanitation, to control and reduce CO₂ emissions or others harmful for the atmosphere, is not subject to VAT.

Deliveries of natural gas to domiciles, both in cylinders and by pipelines, will not be taxed with the value added tax.

Income from the sale of electric power, generated by wind, biomass or agricultural resources, as well as the income from the rendering of Ecotourism or development of new forest platforms, are considered exempt for income tax purposes.
6.1 Generalities

In Colombia, intellectual property rights are divided into two main categories: (i) Industrial property, which covers new creations (patents), know how (industrial secrets), and slogans; and (ii) copyrights, which make reference to the protection granted to artistic, scientific and literary works susceptible of being reproduced or distributed in any form, as well as to rights by artists, performers and producers of audio recordings and owners of copyrights on computer programs.

Colombian laws provide for criminal, commercial and civil sanctions applicable to breaching parties as legal means to protect and call on the enforcement of intellectual property rights.

6.2 Industrial property

As stated above, protection of the industrial property is divided into three main categories: distinctive signs, industrial secrets, and new creations. Distinctive signs include trademarks, slogans, commercial names and commercial emblems. New creations include inventions, patents, utility model patents, industrial designs, and integrated circuit (IC) layout designs.

6.3 Common regime

The common regime for industrial property is Decision 486 of the Andean Community of Nations, effective on December 1, 2000. In Colombia this provision is regulated by Decree 2591 of December 13, 2000 and regulatory Resolution of January 15, 2001.

6.4 International treatments

Concerning the International Registration of Marks (approved by Law 1455 of 2011) among others.

6.5 Local legislation


The Colombian Commerce Code (currently suspended in regards to industrial property matters, pursuant to Decision 486 of the Andean Community of Nations).

6.6 Trademarks, trade slogans, collective trademarks, certification marks and trade names and emblems

Legal Framework

- Common Regime: Decision 486 of the Andean Community of Nations (Article 134 – 199).
- Local legislation:
  - Decree 2591 of 2000 (Articles 15 and 16).
  - Resolution 210 of 2001 (Articles 17 to 21).
  - Single Circular (Title X).

A trademark is a distinctive sign for a specific product or service in the market. All trademarks must be distinctive and graphically reproducible (Article 134, Decision 486).

A slogan is a word, phrase or caption used as a supplement to a given trademark. Slogans are always linked to a specific trademark or trademark registration request and, therefore, are bound to the products or services identified by brand and effectiveness thereof (Article 175, Decision 486). All provisions under the title “Marks” in Decision 486 of 2000 are applicable to trade slogans.

A commercial name is a distinctive sign for a specific economic activity, company or business; and, a commercial emblem is a distinctive sign for a specific commercial establishment.

Rights Granted

Upon registration before the Trademark Bureau (Colombian Superintendence of Industry and Commerce), owner of a trademark will be granted the free and exclusive entitlement to the use of such sign, as well as the right to deter any illegal or unauthorized use of said sign by any third party (Articles 154 and 155, Decision 486).

The term of a commercial slogan will be that which is defined for the related trademark (Article 178, Decision 486).

As opposed to any entitlement on trademarks, all entitlements on commercial names and emblems become effective upon initial commercial use, and are terminated upon final suspension or discontinuation of use of commercial name, or when company or establishment using said commercial name ceases to operate. Registration is not mandatory, but might serve as evidence in potential disputes over first historical use.

Registration

- Distinctive signs for specific products and services in the market, capable of being geographically reproducible (Article 134, Decision 486).
- Trademark registration requests must be submitted before the Colombian Trademark Bureau (Article 138, Decision 486).
- The Nice International Classification of Goods and Services for trademarks applies in Colombia, this classification was adopted in 1957 (Article 151, Decision 486).
- Priority may be claimed on the basis of a historical first filing of a request in another country, inasmuch as claim in made within the six (6) months following initial request in Colombia. This procedure provides protection similar or analogous to that which is in effect in...
Colombia and a priority right exists by a treaty (Article 9, Decision 486).

- It is possible to claim as filing date of a trademark registration application: the date on which a trademark has distinguished goods or services in a fair or show official recognized and carried out in any country, provided that when the registration is requested within the following six (6) months counted as of the date on which those goods or services are shown for the first time under said trademark (Article 141, Decision 486).

**Licenses and Transfers**

Any trademark already granted, or trademark registration request in progress, may only be transferred or assigned through a written instrument, and the resulting agreement shall be filed before the Competent National Trademark Bureau (Article 161, Decision 486).

Trademark emblems may only be transferred, assigned or licensed in conjunction with their related trademarks.

**Cancellation of trademark registration**

Cancellation actions based on the use of a registered trademark may be filed against the registration of trademarks that have not been used during the three (3) years prior to the date on which the cancellation action was filed. The action may also be used as a defense against opposition processes filed on the basis of the non-use of trademarks, always that its non-use has not been by force majeure or fortuitous case (Article 165, Decision 486).

It is possible to request the partial cancellation of a trademark registration when the trademark has not been in use in some of the products for which it has been registered (Article 165, Decision 486).

The person that obtains a favorable resolution will be entitled to a preferential right on the registration. Said right may be invoked as of the presentation of the request for cancellation and up to three months following the date in which the resolution of cancellation may be enforced (non appealable) (Article 168, Decision 486).

It is also possible to request the cancellation of the registration of a trademark when it becomes a sign of common use or a generic word (thus losing its distinction capacity – Article 169, Decision 486).

Likewise, it is possible to request the cancellation of a trademark registration when the same is confusingly similar to a recognized trademark (Article 235, Decision 486).

**Collective Trademarks**

A collective trademark is a distinctive sign that differentiates the origin or any other characteristic common to various goods or services from different companies that use such distinctive sign under the control of a single owner (Article 180, Decision 486).

**Certification Trademarks**

A certification trademark is a sign applied to products or services to indicate that said products or services meet certain quality standards or alike which have been duly certified by the trademark owner (Article 185, Decision 486).

**6.7 Commercial names and emblems**

Pursuant to Article 611 of the Colombian Commerce Code, all regulations regarding commercial emblems will be applicable to commercial emblems.

**Legal Framework**

- Colombian Commerce Code (Articles 603 and 611).
- Andean Community Decision 486 (Articles 190 to 199).
- Decree 2591 of 2000 (Articles 17 and 18).
- Resolution 210-2001 (Articles 22 and 23).
Definitions

The term “commercial name” defines any distinctive sign that specifically identifies a certain economic activity, company or trading establishment. Any company or establishment may have more than one commercial name. Among others, the corporate name, the corporate purpose, or any other name filed as part of any registration of persons or partnerships procedure may be used as the commercial name of a company or trading establishment (Article 190, Decision 486).

Rights Granted

Rights on commercial names are granted to the first historical use of the distinctive sign for commercial purposes. Registration of commercial names is not mandatory, but might be used by the interested party as evidence in potential disputes over first historical use (Article 603, Commerce Code; Article 190, Decision 486).

Registration of commercial name grants no right on such distinctive sign. First historical use will be presumed as that which is initially recorded after the date of registration (Article 605, Commerce Code).

The owner of a commercial name may deter any third party from commercially using an identical or similar distinctive sign, or one that causes confusion or the risk of associating a third-party company, products or services to the owner's own company, products or services (Article 192, Decision 486).

Registration of a commercial name is effective for a period of ten (10) years, and may be renewed for successive ten-year periods (Article 196, Decision 486).

Renewal of a registration of commercial name shall be requested to a Trademark Bureau within six (6) months prior to the registration's date of expiration, or within six-month grace period granted after actual expiration. Authorities may request evidence of use as a requisite for further renewals, that renewal will be made in the same terms that the original registry (Article 198, Decision 486).

Licenses and Transfers

Transfer and licenses of registered or deposited trade names shall be registered at the competent national offices in accordance with the procedure applicable to transfer and licenses (Article 199, Decision 486).

6.8 Denominations of origin

Legal Framework

- Decision 486 (Articles 201 to 224).
- Decree 2591 of 2000 (Articles 19 to 21).

Definition

As denomination of origin is understood a geographic indication consisting of the denomination of a country, of a region or of a specific place, or consisting of the denomination that without being that of a country, a region or a certain place, refers to a specified geographic zone, used to designate a product originating in it and which quality, reputation and other characteristics are due exclusively or essentially to the geographic medium in which it is produced, including natural and human factors (Article 201, Decision 486).

Declaration of protection for a denomination of origin

The declaration of protection for a denomination of origin will be granted officially at the request of whoever may evidence to have a legitimate interest, it being understood that these are individuals or legal entities, engaged in the extraction, production or manufacture of the product or products that they seek to protect by the denomination of origin, as well as associations of producers. The state, department, province or municipal authorities are also considered to be interested parties, when they refer to denomination of origin of their respective circumscriptions (Article 203, Decision 203).

The authorization for the use of a denomination of origin legally protected will be granted for a period of ten (10) years, renewable for similar periods (Article 210, Decision 486).
Component national offices shall recognize the denominations of origin or geographic indications protected in third countries, provided in any event that it is contemplated in a convention to which the member country where the recognition wants to be made is a party. To request said protection, the denominations of origin shall have been declared as such in their respective countries of origin (Article 219, Decision 486).

6.9 Integrated circuit layout design

Legal Framework

- Decision 486 (Articles 86 to 112).
- Decree 2591 of 2000 (Article 12).
- Resolution 210 of 2001 (Article 15).

Definition

An integrated circuit is a product, in its final or intermediate form, of which at least one element is an active element, and all of whose interconnections constitute an integral part of the body or surface of a piece of material which is intended to perform an electronic function. On the other hand, the layout design is the three-dimensional arrangement of the elements, regardless of form, of which at least one is an active element, and their interconnections into an integrated circuit, as well as said three-dimensional arrangement is prepared to be used in an integrated circuit to be manufactured (Article 86, Decision 486).

Layout designs shall be protected only if they are original designs (Article 87, Decision 486).

6.10 Patents

Legal Framework

- Decision 486 (Articles 14 to 80).
- Decree 2591 of 2000 (Articles 6 to 11).
- Law 463 of 1998 whereby the Patent Cooperation Treaty (PCT) was adopted.
- Resolution 210 of 2001 (Articles 10 to 14).
- Single Circular by the Superintendence of Industry and Commerce (Title X).

Rights Granted and other Legal Aspects

Patents for inventions of any product or process should be granted to new creations featuring characteristics such as novelty, inventive steps, and industrial applicability (Article 14, Decision 486).

The following shall not be considered as inventions: discoveries, scientific theories, and mathematical methods; any living thing – either partial or complete – as found in nature, natural biological processes, biological material as found in nature, or material that may be isolated, including the genome or germplasm of any living thing; literary or artistic works, or any other aesthetic work protected by copyrights; blueprints, guidelines and methods as required to perform intellectual activities, play games, or carry out economic and business activities; computer programs (software), as such; and, methods to present information (Article 15 of Decision 486).

An invention shall be deemed new when not a part of the state of the art (Article 16 of Decision 486).

Patent rights are granted for a term of twenty (20) years, counted as of the filing date of the corresponding application (Article 50 of Decision 486).

Effective patents grant their owners the right to prevent third parties not previously authorized from any of the following acts: a) Where the subject matter of the patent is a product: (i) manufacturing the product; (ii) offering for sale, selling, or using the product, or otherwise importing it for these or any other purposes; and, b) Where the subject matter of the patent is a process: (i) using the process; or, (ii) performing any of the acts referred to above, in paragraph a) with respect to any product obtained directly from the process (Article 52 of Decision 486).
Owners of the patent shall be under the obligation to exploit their patented invention in any Member Country, either directly or through any person duly authorized. Upon expiration of a three-year period, counted as of the granting date of the patent, or of a four-year period, counted as of the filing date of the patent's application, whichever is longer, the competent national office may grant a compulsory license for the industrial manufacturing of the product covered by the patent, or for the comprehensive use of the process covered by the patent, if at the time the application is filed, the patent has not been exploited under the terms specified in Articles 59 and 60, in the Member Country in which the license is requested; or, if the exploitation of the invention has been suspended for more than one (1) year.

Compulsory licenses will not be granted if the owner of the patent is able to justify his failure to act with a valid reason, such as force majeure or act of God, in accordance with local provisions in effect in each Member Country. Compulsory licenses shall be granted only if, prior to the filing of their application, the requesting parties had made efforts to be granted a contractual license from the patent owner under reasonable commercial terms and conditions, and such efforts had not been successful for a reasonable period of time (Articles 59 and 61 of Decision 486).

Colombia is a party to the Patent Cooperation Treaty (PCT) as of year 2001.

6.11 Utility model

**Legal Framework**
- Decision 486 (Articles 81 to 85).
- Decree 2591 of 2000 (Article 12).

**Definitions and Entitlements**
Any new shape, configuration, or arrangement of components of any device, tool, instrument, mechanism or other object, or any part thereof, which enhances or differentiates the operation, use, or manufacturing of the object incorporating it, or which endows it with any utility, advantage, or technical effect said object previously did not have shall be deemed as a utility model (Article 81, Decision 486).

- Utility models shall be protected by patents (Article 81).
- Protection will be granted for a non-renewable term of ten (10) years. (Article 81).

6.12 Industrial designs

**Legal Framework**
- Decision 486 (Articles 113 to 133).
- Decree 2591 of 2000 (Articles 13 and 14).
- Resolution 210 of 2001 (Article 16).

**Definitions and Entitlements**
The particular appearance of a product that may result from any arrangement of lines or combination of colors, or any two-dimensional or three-dimensional external shape, line, profile, configuration, texture, or material, without the utility or purpose of said product being thereby changed, shall be deemed as an industrial design. (Article 113, Decision 486).

Protection is granted for a period of ten (10) years, counted as of the filing date of the application.

6.13 Plant variety protection

**Legal Framework**
- Andean Community Decision 345.

**Definitions and Entitlements**
Any person who has created varieties of plants, when such varieties are new, uniform, distinctive and stable, and when a generic name has been
given thereto, may apply for a Breeder’s certificate before the Plant Varieties Office (in Colombia, the Colombian Institute of Agriculture (ICA for its acronym in Spanish).

Certified breeders may then prevent third parties from using the protected plant variety, as well as all products derived thereof.

Breaches to any right granted by the breeder’s certificate will be subject to legal actions as provided by law.

Protection will be granted for a term of twenty-five (25) years for grapevines, fruits, and foresting trees, and of twenty (20) years for other species, counted as of the granting date of the certificate.

### 6.14 Copyrights

Protection granted to artistic, scientific, and literary works that may be reproduced or disclosed in any known way, as well as any right granted to any artist, performer and producer of audio recordings, or to the intellectual owner of any computer program shall be deemed as copyrights.

#### Legal Framework

- WIPO-WCT (Approved by Law 565 of 1999) and WIPO-WPPT (Approved by Law 545 of 1999).
- Andean Community Decision 351.

#### Protection Criteria

Copyright does not protect ideas, only expressions thereof.

#### Registration

In Colombia, the registration of copyrights is not necessary for the purposes of their enforcement, so the lack of registration of the fact of not registering any of those works does not prevent them from being protected. However, registration with the National Direction of Copyrights is highly recommended, since it is an effective tool against unauthorized copies and it is efficient evidence to prove the rights which facilitates their negotiation and defense at the courts.

#### Term

The length of copyright is the life of the author, plus eighty (80) additional years (Law 23 of 1982).

#### Computer Programs (Software)

Copyright provisions deem computer programs as literary works. Protection covers operative and applicative programs, either in source code or object code. Both, authors and holders of copyright may authorize changes into the programs for proper use. Users of computer programs legally available may copy and adapt same, provided said copies or adaptations are essential for the programs to run properly, or are intended to be used as back-up, that is, to replace the legitimate copy legally purchased, if the latter can no longer be used, due to damages or loss.

Reproduction of any computer program, even for personal use, requires an authorization by the owner or bearer of copyright thereto, except for backup copies.

The licenses and transfer of software must be registered at the National Authority of Copyrights.
6.15 Enforceability of Intellectual Property Rights

Colombian laws provide for legal actions that can be undertaken against any industrial property infringement in connection with trademarks, patents and copyrights, inasmuch as the criminal act is proven beyond a reasonable doubt.

Likewise, acts of unfair competition (Law 256 of 1996 and Decision 486) and enforceability of legal actions (Decision 486) are specified by Colombian laws to protect industrial property rights.
7. Tax Matters

7.1 Income tax

**Colombian source income and foreign source income**

In general terms, the following are deemed as Colombian source income:

1. Transfer or exploitation of tangible and intangible goods located within Colombian territory.
2. Transfer of goods within Colombian territory.
3. Rendering of services within Colombian territory.
4. Rendering of technical services, technical assistance and consulting services, and the undersigning of turn-key contracts, inside and outside Colombia.
5. Earning of profits by Colombian companies.
6. Returns on credits owned in Colombia.

In general terms, foreign source income includes any revenues arising from the transfer or exploitation of tangible and intangible goods located outside of Colombia, and the rendering of services abroad. Furthermore, income generated upon certain foreign loans is not deemed as local source income.

**Taxation applicable to Corporations and Entities in Colombia**

Main applicable issues are:

1. Colombian companies and entities are subject to income tax and income tax for equality – CREE – on their worldwide income. Conversely, branches of foreign corporations are subject to income tax only on Colombian source income received directly or through a permanent establishment; to the income tax for equality-CREE and its surcharge, on their Colombian source income, only received through a permanent establishment located in Colombia.

2. In general, joint stock corporations, limited liability companies, and similar, deemed as National, including foreign corporations and other entities of any kind that obtain their income through branches or permanent establishments, are subject to income tax and CREE at a rate of thirty four percent (34%), plus at 5% for CREE’s surcharge, when the taxable income been equal or higher than COP $800 million. This surcharge will be increased to 6% in 2016, 8% in 2017 and 9% 2018.
3. Law 1607 of 2012 introduced the definition of permanent establishment (hereinafter “PE”) for tax purposes. As provided in the Law, PE means a fixed place of business located in the country, through which a foreign company, whether corporation or any other foreign entity or individual not resident in Colombia, perform wholly or part of its activity.

4. The notion of PE has been partially regulated by National Government through Decree 3026 of 2013.

The main issues covered by this Decree are, the definitions of “fixed place of business” and “preparatory or auxiliary activities”.

5. Dividends distributed by Colombian companies, paid from the profits that have been taxed at the corporate level, are not subject to taxes at shareholder’s level. If those dividends are paid to foreign non-resident partners or shareholders out of the profits that have not been taxed at a company level, they are taxed at the shareholder level via withholding tax at a rate of thirty-three percent (33%).

6. Dividends of Colombian companies, paid from profits obtained as of 2007 that have been taxed at corporate level, are not subject to remittance tax at non-residents partners’ level.

7. If dividends are distributed to shareholders resident in Colombia filers of income tax, over profits that have not paid tax at the company level the distribution will be subject to a withholding tax of 20%, in accordance with Decree 567 of 2007.

8. Dividends which are deemed as not taxable income to shareholder recipient of such shall not be taken into account in the basis of calculation of income tax or the income tax for equality – CREE.

9. Notwithstanding the foregoing, if such dividends are distributed as a taxable income to the shareholder, and if the shareholder is taxpayer of CREE, such dividends will be taxed with income tax at 25% rate, CREE tax at a 9% rate and CREE’s surcharge tax at a 5%. This surcharge will be increased to 6% in 2016, 8% in 2017 and 9% 2018.

10. According to the provisions of Law 1607 of 2012, profits distributed by branches to its head offices from January 1st, 2013, will be deemed as dividends for Colombian tax purposes, and will be subject to the treatment mentioned before.

11. Overall, local companies, branches of foreign companies, permanent establishments of companies or of foreign entities and, in certain special events, companies without a branch in Colombia, are required to file income tax return and income tax for equality – CREE return annually.

12. In general terms, foreign companies without a branch in Colombia are not required to file income tax return, unless, as mentioned previously, the company carries out its activities in the country through a permanent establishment.

13. Foreign companies and entities without branch in Colombia, that have no obligation to file income tax returns, are taxed through withholding income tax. Said withholding is calculated usually on the value of the price, at a rate of thirty-three percent (33%) corresponding to income tax. Certain services of a technological nature have rates equivalent to ten percent (10%) and for computer software licenses, twenty-six point four percent (26.4%).

14. Payments made on interests to entities located abroad from the year 2015 and subsequent years, originated on credits granted for the development of infrastructure programs that have a period of time equal or longer than 9 years, and that are developed under the Law 1508 of 2012, are subject to a special withholding tax of 5%.

15. Payments made to tax heavens which correspond to taxable income to the payee (Colombian source income), as defined by the Government, are subject to the rate of thirty-three percent (33%), regardless of the type of service paid.

16. If payments to tax havens correspond to foreign-source income, they are not subject to withholding tax, and as from taxable year 2014 are deductible from income tax and income tax for equality – CREE provided the taxpayer has the supporting documentation and functional studies of the payee.

17. The Government issued Decree 2193 of 2013 modified by Decree 1966 of 2014, by which it
established a list of 41 countries that are considered tax havens for Colombian tax purposes, including among others, Hong Kong, Cayman Islands, Principality of Monaco, and Republic of Angola.

18. Nevertheless, through the Decree 2095 of 2014, four of the listed tax havens were excluded: Barbados, United Arab Emirates, Monaco and the Republic of Panama, leaving only 37 countries.

19. Additionally, in accordance with paragraph 2 of article 260-7 of the Tax Code (hereinafter “T.C.”), operations performed by income tax and complementary taxpayers with individuals or companies resident or domiciled in a tax haven, are subject to transfer pricing rules, regardless of the existence of a relation between the national payer company and the foreign company beneficiary of the payment located in a tax haven.

20. Now, when the transaction being developed with a unlinked entity for deductibility purposes, is not necessary have a functional study of the payee, the taxpayer needs to have only a certificate issued by the statutory auditor or public accountant, attesting the payee is not a linked entity.

21. In addition of the above, the Tax Authority (Opinion Nº 057300 of 2014) has been considerate in the case of the transactions with a branch whose Head Office is located in a tax haven, the expenses incurred by Colombian taxpayers are subject to the tax havens rules.

22. The Law 1739 of 2014, established the income obtained by foreign corporations entities which cannot be allocated to a branch or permanent establishment in years 2015 – 2018, are subject to the payment of the income tax at the following rates: FY 2015 39%, FY 2016 40%, FY 2017 42% and FY 2018 43%. For the substitution of a foreign investor, the holder has to file an income tax return with the assessment and payment of the tax arisen from the respective transaction, within the month following the closing of the transaction.

23. The Tax Reform issued in 2012 introduced to the Colombian tax system the thin capitalization rule, which provides that the taxpayers may deduct from the income tax and CREE, interest generated from debts, as long as the average amount during the relevant tax year does not exceed the result of multiplying by three (3) the taxpayer's net equity determined as of December 31 of the immediate preceding year.


25. As of 2004, the transfer pricing rules entered into force in Colombia. By virtue of the aforementioned rules and the rules included in the tax reform approved in December of 2012, the taxpayers of income tax and CREE, who perform transactions with foreign related parties and related parties located in free-trade zones, have the obligation to determine their income, costs, deductions, assets and liabilities, according to the arm’s length principle. For this purpose, any of the following methods may be used: comparable uncontrolled price method, resale price method, cost plus method, transactional net margin method and the profit split method. Taxpayers may enter into previous transfer pricing agreements with the Tax Authority, in order to agree on the terms under which they will comply with the obligation of having prices or profit margins as those that would have been established between independent parties.

26. Regarding to formal obligations, the Colombian transfer pricing regimen requires taxpayers to file an annual transfer pricing informative return and file a supporting documentation for each type of operation. These obligations are applicable to taxpayers with a gross equity equal or exceeding one-hundred thousand (100,000) UVTs, or gross income equal to or exceeding sixty-one thousand (61,000) UVTs.

27. Taxpayers of income tax who carry out transactions with natural or legal persons residing or domiciled in tax heavens, are subject to the transfer pricing rules and must comply the above mentioned formal obligations, transfer pricing supporting documentation and informative return.

28. The non-fulfillment of establishing prices and profit margins as would have been done by

11 For purposes of the CREE tax, this rule applies from the 2015 taxable year.
12 UVT: Acronym in Spanish for Tax Value Unit. UVT for year 2015 is COP $28,279
independent parties, constitutes inaccuracy, which is penalized with fines of up to one hundred and sixty percent (160%) of the lower tax or balance payable, or of the higher balance in favor of the taxpayer. In addition, the late filing or the failure to file the return, as well as incurring in errors in the supporting documentation or in the informative return, are susceptible of being penalized with fines and in certain cases, with the rejection of the costs and deductions.

29. Tax law establish a presumptive annual profitability (presumptive income) for each company, calculated on its net equity. If the company shows an ordinary net income (that is, income less costs and deductions) lower than the presumptive income (minimum taxable), or if it shows losses, its net income is calculated based on the presumptive income (minimum taxable). The presumptive income is equivalent to three percent (3%) of its net equity on the last day of the immediately preceding taxable year. This presumptive annual profitability is applicable for income tax purposes as well as for income tax for equality-CREE purposes.

30. Taxpayers may carry forward tax losses (net operating losses), without limitation of time or amount. This special deduction is additional to the depreciation expense that the taxpayers may also deduct. This benefit does not affect the non-taxable profits distributable as dividend to the partners or shareholders of the Company.

Taxation of Individuals

The following are the main applicable aspects:

1. Taxation of individuals in Colombia depends on the source of their income, their nationality and on whether or not they are Colombian residents. According with Law 1607 of 2012, the residence is the physical permanence in the country continuously or discontinuously for more than 183 days over a period of 365 consecutive days.

2. In addition will be considered residents the Nationals that during the corresponding taxable year:
   - Have their spouse or permanent partner not legally divorced or their minor dependent children, with tax residence in the country.
   - Have 50% or more of their income from national sources.
   - Have 50% or more of its assets obtained in the country.
   - Have 50% or more of its goods obtained in the country
   - Be a tax resident of a country described by the Government as a tax haven (please find at the end of the documents the tax haven’s Decree).
   - Having been required by the Colombian tax authorities, cannot prove their status of resident abroad for tax purposes.

If a National meets any of the condition mentioned above and in addition meets one of the following:
   - Have 50% or more of their income on his tax residence country (abroad Colombia).
   - Have 50% or more of its assets abroad Colombia.

He/she will be considered non-resident for 2015.

3. National individuals residing in the country are subject to income tax on their income both of national and foreign source. Foreigners residing in Colombia are subject to income tax in respect to their local source income, and on their foreign source income as of the first day of their first (1st) year of continuous or discontinuous residency in Colombia.

For residents, income tax rates are progressive. The maximum tax rate is thirty-three percent (33%) and is applicable to taxable income in excess of four thousand and one hundred (4,100) UVT. Net income up to one thousand and ninety (1,090) UVT would be subject to an effective rate of nineteen percent (19%).

4. Law 1607 of 2012 introduced two new systems for calculation of income tax for resident individuals: National Alternative Minimum Tax (IMAN) and National Alternative Minimum Tax (IMAS).

IMAN is a mandatory and presumptive determination of the tax basis and tax rate of the income tax; the IMAS is a simplified system for determining the tax, and shall apply only to individuals residing in the country, classified in the category of employee and/or self-employed.

According with Law 1739 of 2014, also the following conditions must be accomplished for applying the IMAN system:
• Income during the tax year less than two thousand and eight hundred (2.800) UVT.
• Net wealth less than twelve thousand (12.000) UVT.

5. For the purposes of implementing the foregoing, the Government categorized individuals’ providers of services as:

a) Employees: Those whose income in the year should come in a percentage equal to or greater than 80% from the rendering of services directly, or from the performance of an economic activity at the risk of the employer or contractor, i) by labor or legal and regulatory relation, regardless of denomination, and ii) workers who provide services through the exercise of some professions or that provide technical services that do not require the use of specialized materials or equipment or specialized equipment or supplies.

b) Self-employed: Are defined as those whose income in a percentage equal to or greater than 80%, is originated in carrying out the following activities (among other activities): Sports and other activities entertainment; agricultural, forestry and fishing; wholesale or retail; of motor vehicles, accessories and related products; construction; among other activities.

c) Others: Those who are not classified as employees or as self-employed. Under this understanding, the rates would be applied are general withholding tax rates.

Small Business

Pursuant to Law 1429 of 2010, small business\(^\text{13}\) that start their activities as of December 30\(^{\text{th}}\) of 2010, will have the following benefits, as long as the formal and substantial requirements provided under the tax law and it’s implementing regulations are met:

1. A progressive income tax rate, for a period of six years. This progressive rate is not applicable for CREE and its surcharge.

2. Once the six years are over, small business beneficiary that in the previous year would have obtained gross revenues, arisen from their commercial activity, lower than 1.000 UVT, would be entitled to apply the 50% of the income tax rate.

3. A progressive rate for the payroll contributions and other contributions.

Tax incentives

For income tax purposes there are several tax incentives, which have been classified into four categories, namely: (i) revenues that do not constitute income nor capital gain, (ii) special deductions, (iii) exempt income, and (iv) tax credits.

1. Revenues that do not constitute income nor capital gain

- Profits arising from the sale of shares listed in the Colombian Stock Market and owned by the same real beneficiary, are deemed as revenue that does not constitute income nor capital gain, as long as the sale of the shares does not surpass the 10% of the shares of the company listed, during the same taxable year.

- Dividends distributed to shareholders arisen from the calculation of article 49 of T.C. are deemed as revenues that do not constitute income or capital gain.

- The tax value of dividends or interests in shares or social interest, from the distribution of profits or reserves which can be distributed as untaxed to recipient.

- The inflationary component of financial returns.

2. Special deductions (applicable for income tax purposes but not for income tax for equality – CREE – purposes)

- Deduction for investment in scientific, technological development and innovation: 175% deduction of investments made in qualified scientific, technological or technological innovation, as long as it does not surpass the 40% of taxable income, before the value of the investment is subtracted.

- Deduction for investment in environment control and improvement: The amount of investment deducted cannot be higher than

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\(^{13}\) Small business is a business with no more than 50 employees and which total worth does not surpass 5.000 minimum legal wages (COP$322-175.000 MLW for 2015)
20% of the taxable income determined before subtracting the value of investment.

3. Exempt income

- Sale of energy: the profits arisen from the sale of energy generated based on wind resources assessment, biomass or agricultural residues, created by energy production companies, from January 1st, 2003 until January, 2017, are deemed as exempt income pursuant to article 207-1 of the T.C.

- Hotel services: the profits arisen from hotel services rendered in new hotels, remodeled or improved hotels are deemed as exempt income, as long as the hotels were built or refashioned within the next 15 years counting from 2003 on. The profits are exempted for a period of 30 years.

- Financial returns: as long as are related of credits with financial government entities located in countries with which Colombia has been signed a cooperation agreement.

4. Tax credits

- Tax credits for taxes paid abroad: individuals residing in the country and national companies and organizations that are taxpayers of income tax and income tax, who receive income and foreign income subject to income tax in the country of origin, are entitled to deduct from the amount of Colombian income tax, the value of the tax paid abroad, as long as the value don’t exceed the amount of the income tax that the taxpayer would have to paid in Colombia on such income. Furthermore, it should be noted that there is a formula provided by law that has to be applied in order to determine the tax credit.

  In the case of dividends taxed abroad, the discount will be equivalent to the result of multiplying the amount of the dividend for the rate of income tax to which they have been under the utilities that generated is multiplied by the same above formula.

- Value added tax (VAT) paid for the on basic industry, heavy machinery importation: VAT paid to import machinery for the mining, hydrocarbons, heavy chemistry, iron and steel industry, extracted metallurgic, electric power generation and transmission sectors can be treated as tax credit.

  - Two points of the VAT paid for the acquisition or importation of capital goods, including all of the tangible assets that are not usually sold by a company nor are they incorporated to the final goods made or transformed throughout the productive process.

    The tax liability computed after the tax credit is offset cannot be lower than 75% of the presumptive income tax determined before the tax credit is subtracted.

7.2 Income tax for equality (CREE)

1. Law 1607 of 2012, creates the CREE, which is the contribution by which the companies and similar taxpayers of income tax, contributes for the benefit of workers, employment generation and social investment.

2. The income tax for equality-CREE is a tax analogous to the income tax, which taxable event is the obtaining of income that have that availability to increase the net worth of the taxpayer.

3. According with article 20 of Law 1607 of 2012 the taxpayers of this tax are:

   - The companies and entities, and similar, taxpayers of income tax.

   - The companies and foreign entities taxpayers’ fillers of income tax, regarding their Colombian source income received through their branches and PE.

4. Not taxpayers of CREE:

   - The non-profit entities;

   - The companies declared as free trade zones as of December 31, 2012, and those who had filed the application with the respective Committee for Free Trade Zones, as to that date;

   - Users of Free Zones have been qualified or eligible in future, who are subject to the special rate of income tax of 15% under the first paragraph of Article 240-1 of the Tax;
• Those who have not been prescribed by law as taxpayers, such as: individuals, public entities, not taxpayers of income tax;

• Municipalities are not liable to pay tax

5. The payment of this tax, excludes the employer to pay the payroll taxes (ICBF, SENA and POS) for workers who earn less than ten (10) minimum monthly salaries. The contributions made by employers to family compensation corporations will not be privileged by the exemption from payment of contributions.

6. The tax rate is 9%, plus a surcharge.

7. Tax CREE is calculated by an ordinary system (gross income calculated as indicated in article 22 of Law 1607 of 2012 and other regulations), and system of minimum basis, which is a presumptive annual profitability of not less than 3% of the net equity of the taxpayer in the immediately preceding taxable year.

8. Deductions stated in articles 107 and 108 of T.C. are 100% accepted for CREE’s calculation.

9. All especial gross income and the special net income for deductions recovery for the income tax purposes are applies to CREE.

10. For CREE purposes, from taxable year 2015 the thin capitalization rule is applicable. For CREE the tax credit for taxes paid abroad is applied and whose calculation shall be made with the formula provided by law.

11. In the case of dividends taxed abroad, the discount will be equivalent to the result of multiplying the amount of the dividend for the rate of CREE which they have been under the utilities that generated is multiplied by the same above formula. The deduction for tax losses is applicable for CREE.

12. The taxpayers of CREE are considered as self-withholders for CREE’s purposes.

13. It should be noted that a surcharge to the CREE tax was created by Lay 1739 of 2014 for years 2015 to 2018 for the CREE tax taxpayers, on the possession of a net income greater than COP $800,000,000. The rate of this surcharge will be of 5% on 2015, 6% on 2017, 8% on 2017 and 9% on 2018 and will be levied on the net income which exceeds the limit of COP $800,000,000.

7.3 Capital gain tax

1. The following incomes are subject to capital gain tax: the incomes produced from the sale of fixed assets owned by a term not less than two years, profits arising from the liquidation of companies with two or more years of existence, the incomes received over title inheritances, legacies, donations, and any other incomes arising from any legal act between individuals; the profits generated from a divorce process, and all the incomes generated from lotteries, prizes, raffles, gambling and similar.

2. The capital gain tax will have a rate of 10% for national companies and foreign entities, and all individuals (resident and non-resident). The incomes produced from lotteries, raffles, betting and similar, are subject to a 20% rate.

7.4 Double taxation treaties

Colombia has 4 Double Taxation Treaties currently in force, signed with the following countries:

1. Chile
2. Spain
3. India
4. Switzerland
5. Canada
6. México
7. Portugal
8. Corea
9. Czech Republic (not in force yet)

India Additionally, there is Decision 578 of May 4th, 2004, effective as a mechanism to avoid double taxation and preventing tax evasion between the member countries of the Andean Community of Nations-CAN, meaning, Colombia, Ecuador, Peru and Bolivia.

One of the main objectives of Decision 578,-norm of supranational and preferential application against international regulations-, is to eliminate double taxation of activities between individuals or legal entities domiciled in any of the member countries.

14 Importantly, though the whole procedure was supplied, because a treaty provision shall apply until 2016.
7.5 Relevant aspects of corporate reorganizations

1. As a consequence of the enactment of Law 1607 of 2012, it was introduced a special system regarding to corporate reorganizations, meaning for mergers, spin-offs and contributions in-kind made between national companies and between foreign companies which affect assets located in the country.

2. Until 2012, all merger and spin-off were considered as a transaction not subject to tax in Colombia. With the enactment of the Tax Reform only mergers, spin-offs and investments in companies that meet the requirements established in the tax regulation will not be subject to taxation.

3. Profits generated in mergers and split-off transactions of companies listed on Colombian stock exchange, do not constitute taxable income for its shareholders.

4. If fractional shares arise in the context of mergers and split-off transactions, and they are paid in cash or other species, and payments percentages represent more than 10% of the shares in the resulting company in the case of purchasing transaction, and 1% of organizational transactions, means that partners or shareholders sold their shares, without implying the transaction has been taxed for the company and other shareholders.

5. Certain goods and services are exempt from value added tax, specifically medical services, transportation services (under certain conditions), educational services, interests, public utilities (electric power, water sewage, sanitation, gas), and certain food products, among others.

6. In accordance with the provisions of Law 1607 of 2012, the following are the taxable periods of VAT:

<table>
<thead>
<tr>
<th>Taxpayer</th>
<th>Gross incomes for the previous year</th>
<th>Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major taxpayers</td>
<td>N/A</td>
<td>Every two month</td>
</tr>
<tr>
<td>Corporation / individual</td>
<td>Equal or higher than 92,000 UVTs</td>
<td>Every two month</td>
</tr>
<tr>
<td>Corporation / individual</td>
<td>Lower than 92,000 UVTs, but higher than 26,000 UVTs</td>
<td>Every four month</td>
</tr>
<tr>
<td>Corporation / individual</td>
<td>Lower than 26,000 UVTs</td>
<td>Every year, but paying it every four month</td>
</tr>
</tbody>
</table>

7.6 Value added tax

1. The Value Added Tax (VAT) is a national tax that is levied on the services and the sale and imports of movable tangible goods.

2. The general rate is sixteen percent (16%), rates of zero percent (0%) applicable to certain goods and services, and finally the rate of five percent (5%) which applies to goods such as rice, flour, oil, and for services such as prepaid healthcare, among others.

3. Exports of goods are VAT exempt.

4. Also, the export of services is exempt from VAT as long as: i) the services are rendered from Colombia; ii) the services are used exclusively abroad, and iii) the formal requirements provided in the regulation are met.

7.7 Consumption national tax

1. Act 1607 of 2012, created the consumption national Tax.

2. The taxable event is providing or selling to the final consumer or the importation by the final consumer, of the following services and goods:

   - Mobile phones services
   - Sales of some movable goods, domestic production or imported.
   - The service of the sale of food and beverages prepared in restaurants, cafes, supermarkets, ice cream, fruit, pastry shops and bakeries for consumption on the places, or home-delivered service, sale of food and alcoholic beverages.

3. The applicable tax rates are: Mobil phones services 4%, some vehicles 8% and 16%, service of sale of food and beverages prepared in restaurants, cafes, supermarkets, ice cream, fruit, pastry shops and bakeries 8%.
7.8 Net worth tax

1. The new net worth tax is created by Law 1739 of 2014 for the years 2015, 2016, 2017 and 2018, headed by Individuals and companies that are income tax taxpayers, as well as individuals that do not have a residence within Colombia and companies in relation to their wealth that is possessed directly or indirectly within the country.

2. Furthermore, entities currently being liquidated, or that have signed restructure agreements and individuals that are undergoing a bankruptcy process are exempt from the payment of this tax.

3. The taxable event of the new tax is the possession of wealth (gross equity less debts) equal or greater than COP $1.000 million pesos as of January 1st, 2015.

4. However, the tax must be caused annually for the years 2015, 2016 and 2017 for legal persons and natural persons the same years plus 2018.

5. The taxable base is owned equity at 1 January of each taxable year in which the tax is payable, limited if the tax base determined in years 2016 and 2017 is higher than the one determined in 2015, the tax base will be the 2015 wealth (gross equity less debts) increased in 25% of the inflation of the previous year to the one in which the tax is being paid. If the tax base determined in years 2016 and 2017 is lower than the one determined in 2015, the tax base will be the 2015 wealth (gross equity less debts) diminished in 25% of the inflation of the previous year to the one in which the tax is being paid.

6. The tax rate for individuals for each taxable year is 0.125%, 0.35%, 0.75%, and 1.50% according to the amount of the taxpayer’s equity.

7. The rate of tax for legal entities for tax year 2015 is 0.20%, 0.35%, 0.75%, and 1.15% according taxpayer’s equity.

8. For the tax year 2016 is 0.15%, 0.25%, 0.50% and 1.0%, according taxpayer’s equity.

9. For tax year 2017, the applicable rate is 0.05%, 0.10%, 0.20% and 0.40% according to the taxpayer’s equity.

10. In the case of permanent establishments and branches as taxpayers of the net worth tax, it is possible to assign liabilities to lessen the tax base of the net worth tax, (local tax authority by Opinion No. 62587 of 2014).

7.9 Registration fees

1. The registration tax is generated by the registration of certain acts or contracts, or any other legal instruments required by law to be registered before an Office of Public Instruments Registry or a Chamber of Commerce in Colombia.

2. The taxable basis of registration tax depends on the act, contract or legal business, having value or without value. The amount/value of an act, contract or legal business consists of the value included in the document of the act, contract or legal business (incorporation of companies, capital increases and reductions, property purchases, etc.).

3. In the case of registration of contracts of incorporation, bylaw amendments, or acts involving the increase of the subscribed capital or social capital, the base consists of the total value of the respective contribution, including social capital or capital and paid-in stocks and shares.

4. Registration tax rate is defined within the ranges described below:

   - Acts, contracts or legal operation for a determined value and subject to registration at the office of registration of public instruments, vary from zero point five percent to one percent (0.5% - 1%).

   - Acts, contracts or any other legal operation with determined value, subject to registration before the Chambers of Commerce, other than those involving the constitution and / or the increase in paid-in stocks and shares of companies, will be subject to a rate of zero point three percent zero point seven percent (0.3% - 0.7%).

   - Acts, contracts or any other legal operations for an undetermined sum and subject to registration at the office of registration of public instruments or the Chambers of Commerce, such as appointments of legal representatives or statutory auditors, bylaws
amendments that do not imply the assignment of rights or capital increases, and explanatory deeds, from two to four (2-4) minimum daily legal wages.

5. Documents subject to registration fees are not levied with stamp tax.

6. Registration tax may neither be deducted for income tax nor for income tax for equality – CREE – purposes.

7.10 Levy on financial transactions

1. The levy on financial transactions is a national tax.

2. This tax is assesses at the time of a disposal of funds subject of the financial transaction, at a rate of zero point four percent (0.4%).

3. Pursuant to Law 1430 of 2014, the progressive removal of the levy on financial transaction is established, as follows:
   - FY 2019 0.03%,
   - FY 2020 0.02% and
   - FY 2021 0.01%.

Main Exemptions

1. Saving account withdrawals not exceeding three-hundred fifty (350) UVTs.

2. Withdrawals made from savings accounts, electronic deposits or prepaid cards open do not exceeding 350 UVT monthly.

3. Loan disbursements through account payments or issuance of checks by credit institutions or other financial entities.

4. Cashier’s checks issued against the applicant’s loan or savings account in the same financial institution.

5. Transfers between savings and checking accounts of the same holder in same financial institution.

6. National treasury operations performed directly or through executing organizations.

7. Financial transactions carried out with social security funds for healthcare, pensions and professional risks.

8. Purchase and sale operations in foreign currencies by exchange market brokers through deposit accounts at the Colombian Central Bank, or any checking account.

9. Offset operations with banking institutions.

10. Offset and settlement operations via offset and settlement systems managed by authorized entities.

11. Credit Disbursements of payment to savings or checking account, or by issuing checks, that are performed by companies subject to the supervision of the Superintendence of Corporations, whose main purpose is to make loans, as long as the payment is made to the debtor.

12. The withdrawals made from electronic savings account or savings accounts managed by banks or credit unions supervised by the Superintendence of Banks or by the Superintendence of Solidarity Economics.

13. The provision of resources for carrying out operations or discount factoring portfolio held by mutual funds, pension trusts or companies whose main purpose is to conduct such operations.

7.11 Industry and commerce tax

1. This is a municipal and district tax applicable to any operating and non-operating income of individuals or entities performing industrial or commercial activities, or rendering services in any Colombian municipality or special district. Certain exceptions are applicable to sales of fixed assets and exports.

2. Each municipality or district can define its own applicable tax rate, as long as such rate falls within the following ranges provided by Law:
   - In Bogotá: 0.2% - 3%
   - Other municipalities and districts (industrial activities): 0.2% - 0.7%
   - Other municipalities and districts (commercial activities): 0.2% - 1%
3. The Industry and Commerce Tax paid throughout the fiscal year is fully (100%) deductible for income tax purposes.

7.12 Property tax

1. This is a municipal and district tax applicable to any real estate property located in the corresponding municipality or district. Tax rate is based on the formal valuation of the taxpayer’s real estate property.

2. Each municipality or district can define its own applicable tax rate.

3. These tax rates were increased by Law 1450 of 2011 and currently may vary from zero point five percent to one point six percent (0.5% - 1.6%) of the property value, as valuated in terms of economic status and destination of the property.

4. The increase on the property tax rates would be implemented progressively: for year 2012 the minimum tax rate would be of zero point three percent (0.3%), for year 2013 the minimum tax rate would be of zero point four percent (0.4%), and for year 2014 the minimum tax rate would be of zero point five (0.5%).

5. The Property Tax paid throughout the fiscal year is fully (100%) deductible for income tax purposes.

7.13 Transfer pricing rules

Generalities

Pursuant to transfer pricing regime in force, taxpayers subject to income tax, permanent establishments of non-resident natural persons or legal entities or foreign entities and the branches and agencies of foreign companies (hereinafter, “permanent establishment”) who carry out transactions with foreign related parties, related parties located in free-trade zones, or natural or legal persons located, resident or domiciled in tax havens (hereinafter, “persons domiciled in tax havens”), are required to determine for income tax purposes their ordinary and extraordinary income, costs, deductions, assets and liabilities, considering for those transactions the “Arm’s Length Principle”.

It is noteworthy that in cases of business restructuring, the redeployment of functions, assets and risks, between taxpayers and their related parties located abroad, must be compensated in compliance with the arm’s length principle.

Application of transfer pricing rules generates two formal duties by taxpayers: i) filing of the transfer pricing informative return, and ii) preparation and presentation of the transfer pricing supporting documentation; however, the thresholds to comply with these duties are different, as follows:

Transfer Pricing Informative Return

Taxpayers who are subject to income tax and permanent establishments, who perform transactions with foreign related parties or related parties located in free-trade zones, and who on the last day of the fiscal year or taxable period report a gross equity equal or higher than 100.000 UVTs (COP 2,827,900,000), or gross income equal or higher than 61,000 UVTs (COP 1,725,019,000), are required by law to file a transfer pricing informative return.

Similarly, Colombian taxpayers who are subject to income tax and permanent establishments, who perform transactions with persons domiciled in tax havens, are required by law to file a transfer pricing informative return regarding the aforementioned transactions, even though their gross equity or gross income are lower than the aforesaid thresholds.

Transfer Pricing Supporting Documentation

Taxpayers subject to income tax and permanent establishments who are required by law to file a transfer pricing informative return and which carried out transactions with related parties domiciled abroad or located in free-trade zones that exceed 61,000 UVT (COP 1,725,019,000), must prepare and file a transfer pricing supporting documentation for those transactions carried out with related parties located abroad or in free-trade-zones which total accumulated amount in the fiscal year, by type of transaction, exceeds 32,000 UVT (COP 904,928,000).

On the other hand, taxpayers and permanent establishments who perform transactions with persons domiciled in tax havens, have the obligation to prepare and file a supporting documentation regarding those transactions, when the total accumulated amount in the fiscal year of those transactions exceeds 10,000 UVT (COP 282,790,000).

Additionally, taxpayers that performed payments to persons domiciled in tax havens must prepare a
description of the functions, assets and risks involved in the transactions of the persons domiciled in tax havens, in order to demonstrate the compliance with the arm’s length principle, unless the taxpayer can prove that the person domiciled in tax havens is not a related party.

Report on the attribution of profits to permanent establishments

On the other hand, for purposes of determining the assets, liabilities, capital, income, costs and expenses attributable to a permanent establishment, it must prepare a report that demonstrate the compliance with the arm’s length principle, taking into account the functions performed, assets used, risks assumed and personnel involved, that generated its income.

Penalization Regime

AS in the case of the rest of the penalization regimes applicable to tax returns, the applicable regime to the transfer pricing informative returns penalizes the same events, as follows:

Transfer Pricing Informative Return

- Penalty for late filing

If the informative return is filed within the 15 calendar days after the deadline, the penalty’s calculation should be made on daily basis. After 15 days calendar of delay, the penalty’s calculation should be made on monthly basis.

<table>
<thead>
<tr>
<th>Penalty for each calendar day of delay</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>UVT</td>
<td>50</td>
</tr>
<tr>
<td>COP</td>
<td>1,413,950</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Penalty’s cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>UVT</td>
</tr>
<tr>
<td>COP</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Penalty for each month or fraction of month delay</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>UVT</td>
<td>800</td>
</tr>
<tr>
<td>COP</td>
<td>22,623,200</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Penalty’s cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>UVT</td>
</tr>
<tr>
<td>COP</td>
</tr>
</tbody>
</table>

If the aggregated amount of the transactions subject to transfer pricing rules, do not exceed the amount of 80,000 UVT (COP 2,262,320,000), the penalties are lower, as follows:

<table>
<thead>
<tr>
<th>Penalty for each calendar day of delay</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>UVT</td>
<td>10</td>
</tr>
<tr>
<td>COP</td>
<td>282,790</td>
</tr>
</tbody>
</table>
• Penalty for omission of information related to transactions performed with natural or legal persons residing or domiciled in tax havens:

<table>
<thead>
<tr>
<th>Penalty’s calculation</th>
<th>2.6% of the amount of the transactions omitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Penalty’s amount cap</td>
<td>(UVT ) 6,000</td>
</tr>
<tr>
<td>Penalty’s amount cap</td>
<td>(COP) 169,674,000</td>
</tr>
</tbody>
</table>

Transfer Pricing Supporting Documentation

• Penalty for late filing

If the supporting documentation is filed within the 15 calendar days after the deadline, the penalty’s calculation should be made on daily basis. After 15 calendar days of delay, the penalty’s calculation should be made on monthly basis:

<table>
<thead>
<tr>
<th>Penalty for each calendar day of delay</th>
<th>Penalty’s amount cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>UVT</td>
<td>75</td>
</tr>
<tr>
<td>COP</td>
<td>2,120,925</td>
</tr>
<tr>
<td>Penalty for each month or fraction of month of delay</td>
<td>Penalty’s amount cap</td>
</tr>
<tr>
<td>UVT</td>
<td>1,200</td>
</tr>
<tr>
<td>COP</td>
<td>33,934,800</td>
</tr>
<tr>
<td>Penalty’s amount cap</td>
<td></td>
</tr>
<tr>
<td>UVT</td>
<td>14,400</td>
</tr>
<tr>
<td>COP</td>
<td>407,217,600</td>
</tr>
</tbody>
</table>

If the aggregated amount of the transactions subject to transfer pricing, does not exceed the amount of 80,000 UVT (COP 2,262,320,000), the penalties are lower, as follows:

<table>
<thead>
<tr>
<th>Penalty for each calendar day of delay</th>
<th>Penalty’s amount cap</th>
</tr>
</thead>
<tbody>
<tr>
<td>UVT</td>
<td>15</td>
</tr>
<tr>
<td>COP</td>
<td>424,185</td>
</tr>
<tr>
<td>Penalty for each month or fraction of month of delay</td>
<td>Penalty’s amount cap</td>
</tr>
<tr>
<td>UVT</td>
<td>225</td>
</tr>
<tr>
<td>COP</td>
<td>6,362,775</td>
</tr>
<tr>
<td>Penalty for each calendar day of delay</td>
<td>Penalty’s amount cap</td>
</tr>
<tr>
<td>UVT</td>
<td>250</td>
</tr>
<tr>
<td>COP</td>
<td>7,069,750</td>
</tr>
<tr>
<td>Penalty’s amount cap</td>
<td></td>
</tr>
<tr>
<td>UVT</td>
<td>3,000</td>
</tr>
<tr>
<td>COP</td>
<td>84,837,000</td>
</tr>
</tbody>
</table>

If the supporting documentation includes inconsistencies such as errors, information which content does not correspond to the required by law or information that does not allow the verification of the transfer pricing rules compliance, the penalty that shall apply is the following:

<table>
<thead>
<tr>
<th>Penalty’s calculation</th>
<th>1% of the amount of the transactions subject to amend</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxpayers that perform transactions with foreign related parties which accumulated amount exceeds 80,000 UVT</td>
<td>Penalty’s amount cap</td>
</tr>
<tr>
<td>(UVT )</td>
<td>3,800</td>
</tr>
<tr>
<td>Penalty’s amount cap</td>
<td>(COP) 107,460,000</td>
</tr>
<tr>
<td>Taxpayers that perform transactions with foreign related parties which accumulated amount does not exceed 80,000 UVT</td>
<td>Penalty’s amount cap</td>
</tr>
<tr>
<td>(UVT )</td>
<td>800</td>
</tr>
<tr>
<td>Penalty’s amount cap</td>
<td>(COP) 22,623,200</td>
</tr>
</tbody>
</table>

• Penalty for omission of information

If the taxpayer omits information in the supporting documentation, regarding the transactions subject to the transfer pricing regime, the deductions and costs related with those transactions will not be deemed as deductible and the following penalty shall apply:

<table>
<thead>
<tr>
<th>Penalty’s calculation</th>
<th>2% of the amount of the transactions omitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxpayers that perform transactions with foreign related parties which accumulated amount exceeds 80,000 UVT</td>
<td>Penalty’s amount cap</td>
</tr>
<tr>
<td>(UVT )</td>
<td>5,000</td>
</tr>
<tr>
<td>Penalty’s amount cap</td>
<td>(COP) 141,395,000</td>
</tr>
<tr>
<td>Taxpayers that perform transactions with foreign related parties which accumulated amount does not exceed 80,000 UVT</td>
<td>Penalty’s amount cap</td>
</tr>
<tr>
<td>(UVT )</td>
<td>1,400</td>
</tr>
<tr>
<td>Penalty’s amount cap</td>
<td>(COP) 39,590,600</td>
</tr>
</tbody>
</table>

• Penalty for omission of information related to transactions performed with natural or foreign persons residing or domiciled in tax havens:

<table>
<thead>
<tr>
<th>Penalty’s calculation</th>
<th>4% of the amount of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxpayers that perform transactions with foreign related parties which accumulated amount exceeds 80,000 UVT</td>
<td>Penalty’s amount cap</td>
</tr>
<tr>
<td>(UVT )</td>
<td>5,000</td>
</tr>
<tr>
<td>Penalty’s amount cap</td>
<td>(COP) 141,395,000</td>
</tr>
<tr>
<td>Taxpayers that perform transactions with foreign related parties which accumulated amount does not exceed 80,000 UVT</td>
<td>Penalty’s amount cap</td>
</tr>
<tr>
<td>(UVT )</td>
<td>1,400</td>
</tr>
<tr>
<td>Penalty’s amount cap</td>
<td>(COP) 39,590,600</td>
</tr>
</tbody>
</table>

• Penalty for inconsistencies
<table>
<thead>
<tr>
<th>Penalty's amount cap</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>(UVT)</td>
<td>10,000</td>
</tr>
<tr>
<td>(COP)</td>
<td>282,790,000</td>
</tr>
</tbody>
</table>
8. Foreign Trade and Customs Issues

Colombia is in a privileged position to have access to international markets, through trade and tariff preference agreements that guarantee better conditions of access to Colombian products.

8.1 Tariff benefits

Regional, bilateral and multilateral agreements executed by Colombia:

Colombia is party to various significant commercial agreements with different countries around the world, including the Andean Community of Nations (Colombia, Ecuador, Peru and Bolivia); the group of nations formerly called TLC-G3 (Colombia, Mexico and Venezuela) and currently called TLC-G2 (Colombia and México, after Venezuela’s departure in April, 2006), according to the protocol modifications made in July of 2011 enter into force in August of that year, and modify the name of the treaty, and added articles to reduce tariff applicable to different goods and origin.

The CAN-MERCOSUR Free Trade in 2004 with Brasil, Argentina, Uruguay and Paraguay, the Colombia-Chile FTA (2009); the North Triangle (TN-CA) the Free Trade Agreement (“FTA”) (El Salvador, Guatemala and Honduras; 2010), and the FTA with Canada signed in 2008, in force from August 15 of 2011.

Trough Decree 993, became effective on May 15 of 2012 the FTA with United States, subscribed on Washington, on November 22 of 2006.

On the other hand, on October 19 of 2012, became effective the agreement of partial scope with Venezuela, which incorporates the tariff benefits that the countries had before the retirement of Venezuela from the CAN.

Likewise, is in effect, the AELC-EFTA (Iceland, Norway, Switzerland, Liechtenstein) subscribed on November 25 of 2008, approved by the Law 1372 of January 7 of 2010 and in effect since the first of July of 2011, it must be noted that Switzerland ratified it on October 29 of 2009 and Liechtenstein on November 26 of 2009.

With the purpose to provide favorable conditions to foreign investors, Colombia has entered into several Agreements on Reciprocal Promotion and Protection of Investments (ARPPIs) with Peru (2003- in force), Spain (2007- in force), Switzerland (2006-in force), China (2012- in force), India (2012 – inforce), United Kingdom (2011). In parallel, have been signed Double Taxation Agreements (DTAs) under the Andean (Decision 578, full force, 2004), Spain (2005 – in force), with Switzerland (2007), Chile (2007 – in force), with Canada (approved by Law 1459 of 2011), with Mexico (2014) and
Portugal; this last one was presented in 2013 before Congress and in the same year entered in the four debate in Congress for approval, therefore, its input in effect even becomes indefinite. To all this, finally, are added the investment chapters of FTAs into force with the U.S., Chile, TN-CA, Canada, Mexico and Chile.

On November 8 of 2014, through Decree 2247 enacted, entered into force the Free Trade Agreement with European Union, that besides of getting to a Market of more than 500 million consumers, it sets benefits in customs matters like duty relief or tariff reduction.

In the same way, on June 6 of 2014, Colombia subscribed with Chile, Mexico and Peru the Pacific Alliance, which has more than 30 countries as observers. With this agreement where created a regional integration mechanism, which the national government has cataloged as the most important in the entire history of the Latin America.

By Law 1746 were approved the Pacific Alliance Additional Protocol, and currently the agreement is subject of Constitutional review.

8.2 Foreign trade in Colombia

In order to centralize the various administrative procedures related to obtaining previous permits of import (health, approvals, technical regulations), import or export licenses, certificates of origin and registration of technology import contracts or export of services that are processed through the Single Foreign Trade Window – VUCE (for its initials in Spanish), managed by National Tax And Customs Authority as established the Decree 4176 of 2011 including part of its mission to manage the registration of technology import contracts. Further the task of setting the origin criteria and issue the certification of the origin of Colombian products destined for export.

User of the foreign trade service must register previously as importers, as importers of goods or exporters of services, in the Single Tax Register (RUT) at the Colombian Taxes and Customs Authority (DIAN).

Exports Regime

Exportation of goods from the National customs territory with destination to the rest of the world or a free trade zone is now a simple, quick procedure in Colombia, since most goods need no special permits, and the exportations procedure is performed via an online technology tool called MUISCA (acronym in Spanish for Single Model for Automated Revenue, Service and Control), a system designed and controlled by the Colombian Taxes and Customs Authority (DIAN).

The average export times for goods vary from one (1) to three (3) days, counted as of the filing date of the Shipping Permit for the goods to be exported in the automated system referred to above.

Currently, the National Government is promoting the Simultaneous Inspection program by which public entities involved in the inspection of goods (Custom officials and antinarcotics police, among others) which enter or exit the country, must see to it that the inspection process is carried out in coordinated and simultaneous fashion, thus reducing user costs and optimizing time cycles across the logistics chain.

Import regime

Imports of goods in Colombia can be carried out in various ways, depending on the fiscal treatment or use to be given to the goods object of the importation procedure. Below you will find the most widely used modalities of importation in Colombia:

- **Ordinary Importation:** Importer receives the goods for his free disposal within the country, once he has completed several customs procedures, including payment of all applicable customs duties (tariffs and VAT).

- **Short Term Temporary Importation for Re-exportation in the Same Condition:** Importation with suspension of customs duties for certain goods that, at the end of a six (6) month period extended for 6 more, must be exported in the same condition as they came into Colombia’s National customs territory.

- **Long Term Temporary Importation for Re-exportation in the Same Condition:** Importation with a maximum stay term of five (5) years. Customs duties are deferred in semi-annual payments, in amounts proportional to the time the imported goods stay in Colombian territory.

- **Temporary Importation under Special Import-Export Systems (commonly known as “Plan Vallejo”):** This modality of importation allows the receipt of raw
materials, with total or partial suspension of customs duties, destined to be used in the production of exportable goods, as well as machinery and equipment for the exportation of agricultural goods or services.

- **Other modalities of importation used in Colombia include the following:**

  - Import with franchise.
  - Re-import by passive perfecting.
  - Re-import in the same condition.
  - Import in fulfillment of warranty.
  - Temporary import for re-export in the same condition.
  - Temporary import for active perfecting.
  - Temporary import for active perfecting of capital goods.
  - Temporary import in performance of special import-export systems.
  - Temporary import for industrial processing.
  - Import for transformation or assembly.
  - Import for postal traffic and urgent remittances.
  - Urgent deliveries.
  - Travelers.

According to their modality of importation, imported goods will become of the importer’s free or restricted disposal. Except for the “travelers” modality, all importation modalities will be subject to customs impositions applicable to ordinary imports.

The importer is responsible for selecting the modality of importation applicable to the imported goods, based on the nature and conditions of the importation operation.

It should be noted that, pursuant to regulations specified in Decree 111 of 2010, official prices, indicators and estimates that were defined through administrative acts by the customs authorities, to be used as control mechanisms applicable to FOB prices declared for imported goods whenever disputes on the goods value were to arise, were effectively eliminated.

Instead, any doubt about the declared value of any imported good or component thereof by a customs official shall only be admitted in any of the following cases:

i) If goods appear to be underpriced, according to the indicators specified in the DIAN’s Risk Administration System.

ii) If goods appear to be overtly underpriced, indicating a possible fraud, as provided for in item 3 of article 54, Community Regulations, as adopted by Resolution 846 of the Andean Community of Nations.

iii) If any reasonable doubt arises in regard to the value declared before customs authorities, on the basis of any submitted document or any other objective and quantifiable information.

### Customs Duties

Through Decree 4927 of 2011, the new tariff of customs, which aims to adapt to the changes made to the NANDINA by the harmonized system complying with the recommendations made by the World Customs Organization (WCO) and approved by Resolution 846 of the Andean Community of Nations was adopted.

Customs duties that cause the importation of goods into the country, are a percentage (tariff rates and sales tax), which is applied to the customs value of the goods.

Currently there are several rates both of the customs tariffs and of the value added tax that depend on the relevant goods. Please find below some of them:

- **Customs Tariffs:** 0%, 5%, 10%, 15%, and 20%
- **VAT:** 16%, 5% and 0%.

The customs tariff rates are set forth in Decree 4927 of 2011 containing the Customs Tariff and the VAT rates in the Tax Code.
In the tax reform release at the end of 2012 national consumption tax was created for importing vehicles and other transport modes, which would be taxed at the tax rate of 8% or 16% of its value if the importer is the final consumer.

The National Government through the Decrees 4114, 4115 of 2010 reduced the percentage of 400 rate tariffs of 7000 that currently exist, reducing the tariff rate from 12.2% to 8.3% on average.

Under Decree 1755 of 2013 the national government decreases to 0% over the 3000 tariff subheadings of products referred to in the tariff Decree, this benefit will be valid for 2 years from August 2013.

**Taxable Base**

The taxable base on which the customs tariffs are applied is the customs value of the goods, which must be determined pursuant to the methodology established in the Value Agreement of the World Trade Organization and Decision 571 of the Andean Community of Nations.

The taxable base on which the value added tax is calculated will be the same as the one taken into consideration to calculate the customs tariff, added with the value of this tax.

**Supporting Documents of the import declaration**

The filer of declaration has the obligation to obtain, prior to the presentation and acceptance of the declaration and to keep for a period of five (5) years counted as of that date, the original of the following documents that he must make available to the customs authority whenever the latter may require it:

- Import registration or license covering the imported goods, if necessary.
- Commercial invoice, if necessary.
- Transport document.
- Certificate of origin, where required for tariff waiver purposes.
- Health certificate and other documents required by special regulations, if necessary.
- Packing list, if necessary.
- Power of attorney, where there is no customs endorsement, and declaration of importation is filed by a customs intermediation company.
- The Andean declaration of value, plus any supporting documents, if necessary.

**Customs clearance authorization**

Upon fulfillment of the legal requirements, the customs authority authorizes the disposal of the goods to the interested party through the customs clearance authorization in the import declaration; therefore, the goods will remain freely or restrictedly available, depending on the import modality to which the goods were submitted.

**Previous Permits**

Most of the tariff categories of the harmonized system do not require approval of registration or license prior to the import by the Ministry of Trade, Industry and Tourism.

Nevertheless, the import registration with the Ministry of Trade, Industry and Tourism will be mandatory exclusively for imports of freely imported goods that need the requirement, permit or authorization.

As requirement, permit or authorization is understood, the previous processes required by the competent authorities for the approval of the requests of import registration of:

- Fishing resources.
- Private security and surveillance equipment.
- Radioactive isotopes and materials.
- Garments of exclusive use by Colombia’s Armed Forces.
- Hydrocarbons and fuel.
- And, any product subject to:
  - Health controls intended to preserve human, vegetable and animal health.
  - Compliance with technical bylaws.
  - Emissions certificate for dynamic testing.
- Car homologation.
- Quantitative restrictions (quotas).
- Controls which ensure environmental protection based on international treaties, agreements, or protocols.

Likewise, approval of a previous license is required for the following types of imports:

- Those requesting tariff exemptions.
- Those covering used defective, repaired, reconstructed, refurbished, substandard, remanufactured, or leftover goods.
- Those using the annual licensing system (mining and oil sector).

**Customs Procedures**

Through the Law 1609 of 2013, was issued under the Customs Act, which should hold the national government to amend the customs regime, which aims to facilitate the development and expedite FTA trade operations outside.

However, the process for the import of goods into the country is very easy and expeditious, since it is carried out through an Internet-based technological tool called MUISCA (Single Automated Model of Income, Services and Control) designed and controlled by the National Tax and Customs Direction (DIAN).

The average time for the import of a good may take from one (1) to three (3) days counted as of the acceptance of the import declaration through the MUISCA system.

Currently, the national government is promoting the program of Simultaneous Inspection, whereby public entities that participate in the inspection process of goods that enter or leave the country must guarantee that the same is made in a simultaneous and coordinated way avoiding additional costs to the users and optimizing the times in the logistics chain.

Transactions in excess of USD $1,000 FOB value must be made through a Customs Agent, who must be authorized by the DIAN to act on behalf of importers and exporters. However, the customs regulations permits some importers and exporters to act directly if the FOB value is lower than the one indicated or in the case of individuals or legal persons who are classified, recognized and registered as Permanent Customs Users (UAP, for its initials in Spanish), Highly Exporter Users (ALTEX), imports made by diplomats or international organizations, goods imported through Postal Traffic, Travelers, among others.

All shipments that enter the country must be sent to deposit warehouses where they will be under customs controls until their import process is completed. Also, they may be sent to a Free Trade Zone, where they may remain indefinitely.

Goods may remain in deposit for a maximum of one (1) month from the date of arrival of the goods to the country, while the customs shipment is made. This initial period may be extended for one additional month but, after the expiration of this extension, the goods will be declared abandoned by the Customs authorities, in which case they will become the property of the Nation.

### 8.3 Free trade zones

On December 30, 2005, the Colombian government enacted Law 1004, whereby the Free Trade Zone Regime was modified mainly in respect of its investment incentives.

This Law establishes that the purpose of these zones is to be an instrument for the generation of employment and attraction of new capital investments, serving as a development zone through the promotion of competitiveness of the regions where they are located. These are spaces within the national territory intended, in addition to the development of highly productive and competitive industrial processes, promotion of generation of scale economies and —simplification of procedures for the trade of goods and services, in order to facilitate their sale.

In addition, the Law establishes four types of free trade zone users:

1. **User Operators**: Legal entities authorized to manage, supervise, promote and develop free trade zones, as well as to qualify other types of users.

2. **Industrial users of goods**: Legal entities installed within the perimeter of a free trade zone authorized to produce, transform or assemble goods through the processing of raw materials or semi-finished goods.
3. **Industrial users of services**: Legal entities authorized to perform the following activities within the perimeter of a free trade zone: logistics, transportation, handling, distribution, packaging, labeling, and other production- and merchandising-related services; also, any service inherent to telecommunications, data capturing systems, tourism, information technology, scientific and technological research, healthcare, auditing, consulting, and brokerage.

4. **Commercial users**: Legal entities authorized to perform marketing, merchandising, and warehousing activities and others, within the perimeter of any free trade zone.

With the expedition of the Decree 2682 from 2014, was set the possibility to declare the existence of offshore permanents Free Trade Zones for activities related to the oil and gas industry, namely, technical evaluation, the exploration and production of hydrocarbons, logistics, compression, and the transformation and liquefaction of gas related to hydrocarbons offshore.

**Tax Benefits derived from the free zone regime**

**Income Tax**: Law 1004 of 2005 established an income tax rate of 15% on the taxable income for operator and industrial users of goods and services, at a difference from the 33% that rules for the rest of the residents of the country. Now, with the 1607 Act, 2012, states that are subject to income tax for Equity (CREE in Spanish) legal persons requesting a one-business free trade zone dated after January 1, 2013 or industrial users or services installed in a new permanent free trade zone i.e. that request its declaration from January 1, 2013. The income tax for Equity (CREE) legal persons is 8%, however this rate will be of 9% for the years 2013, 2014 and 2015).

With the last Tax reform, Law 1739 from 2014 was created the “Surtax from Income Tax for Equity”. With the creation of this tax, the industrial or services users installed in a free trade zone that currently are being subject of income tax for Equity (CREE), will be subject of Surtax from Income Tax for Equity (according with article 21, Law 1739 from 2014, and article 20, Law 1607 from 2012).

An income tax rate of 25% is applicable to commercial users.

**Value Added Tax**: Purchases of raw materials, parts, supplies and finished goods to suppliers located in other geographical region of Colombia are exempt from the value added tax. However, to become eligible for such an exemption, transactions shall be any of those specified as part of the user’s corporate purpose. Additionally, the VAT exemption is extensive to transactions between free trade zone users.

**Foreign Trade Benefits**

1. The delivery of goods from abroad into free trade zones is not deemed as an import, and, therefore, is exempt from custom taxes (customs duty and VAT) while the goods remain in the free trade zone. Taxes are only caused when the goods are further introduced into the Colombian territory.

2. Any kind of goods of foreign origin may be stored indefinitely in the free trade zones in Colombia.

3. The delivery of goods to users of the free trade zones will be authorized by the user operator without having to go through any restrictive procedure implemented by Colombian customs at warehouses located outside the perimeter of the free trade zones.

4. Quick and simplified delivery procedures.

5. Consequently, custom taxes will be caused exclusively for goods bound to the Colombian market, and only until such goods are permanently withdrawn from the free trade zone. In contrast, all goods which are stored in Colombian free trade zones and are bound to other countries are exempt from custom taxes.

8. **8.4 VAT benefits from imports of machinery and equipment**

The Colombian Foreign Trade Regime specifies multiple alternatives to promote industrialization in the country, including benefits to any person or entity who imports machinery and equipment. Below you will find a brief description of each of said alternatives:
Ordinary Import of industrial machinery not produced in the country by Highly Exporter Users

Ordinary importation of industrial machinery not produced within the country by a legal entity recognized by the Colombian National Taxes and Customs Authority (DIAN) as a Highly Exporter User (ALTEX, for its acronym in Spanish) is exempt from value added tax. Industrial machinery is defined as that which transforms raw materials into finished products.

For their recognition as Highly Exporter Users (ALTEX), legal entities must prove that the value of their total exports represents at least 30% of their total sales during the twelve months prior to the filing of the request.

Additionally, importers are required to obtain a certificate from the Colombian Ministry of Commerce, Industry and Tourism by which imported goods are classified as industrial machinery produced abroad and are imported with the purpose of transforming raw materials into finished products.

Temporary Imports of Heavy Machinery for Basic Industries

The imports of heavy machinery for basic industries, understood as the mining, hydrocarbon, heavy chemical, iron and steel, metallurgy extraction, generation and transmission of electric power, and obtaining purification and conduction of hydrogen oxide, are not subject to value added tax.

Entities carrying out temporary imports of heavy machinery for basic industries must be granted a certificate by the Director’s Office of the Colombian Ministry of Commerce, Industry and Tourism, whereby imported goods are classified as foreign heavy machinery for basic industries.

At the end of the specified period for the temporary import, and if the heavy machinery is going to remain in Colombia, the VAT will then be applied, unless the equipment is to be further reexported.

Imports of Equipment and Elements for the Protection of the Environment

Imports of equipment and items intended to be used in the following activities will be exempt from value added tax:

- Construction, installation and monitoring of control systems, and environmental monitoring.
- Recycling and processing of waste and debris.
- Purification and treatment of waste waters, atmospheric emissions or solid residues under river recovery programs or basic sanitation efforts intended to improve environmental conditions.
- Execution of projects or activities that are deemed as exporters of carbon emission certificates, and which help to decrease emissions of greenhouse gases.

In order to obtain this benefit, it is necessary that the Ministry of the Environment, Housing and Territorial Development issues a certificate to the effect that the goods meet the environmental protection objectives that are being shown.

8.5 Authorized Economic Operator (AEO)

Decree 3568 of September 27, 2011, regulates all matters relating to the AEO in Colombia.

The authorized economic operator is a natural or legal person trusted to be part of the international trade supply chain, and subject to compliance with requirements, is approved as such by the National Tax and Customs Authority.

The authorization granted as allowed using AEO benefits in the country and in other countries with which Colombia signed mutual recognition agreements.

Be authorized as an AEO has multiple benefits, the trust gives the authorization is not only nationally but internationally. The major benefits are:

- Recognition of the quality in other countries
- Recognition as a safe and reliable operator in the supply chain.
- Assigning an operations officer from each authority that will provide support in their operations
- Fewer physical survey and inspection by all control authorities
• Reduce the amount of comprehensive guarantees lodged with the National Tax and Customs Authority.

The main prerequisites to apply for authorization as AEO are:

• Colombia resident or foreign companies are established in Colombia for at least 3 years

• Enrolled in the tax registration and have current records

• Not have been sanctioned by supervisory authorities in 5 years and have not been enforceable sanctions

• Payment of the day customs duties, exchange rate and tax.
9. Conflict resolution

9.1 Traditional legal system structure

The Colombian National Constitution provides that the administration of justice in Colombia is the responsibility of the Constitutional Court, the Supreme Court of Justice, the Council of State, the Superior Council of the Judicature, the Prosecutor General of the Nation, the various courts and judges in the various jurisdictions, and the military criminal system.

The jurisdiction in Colombia, according to the Constitution itself, contemplates four jurisdictions, which make up the legal system in Colombia; these are the ordinary jurisdiction, the administrative law jurisdiction, the constitutional jurisdiction and the special jurisdiction.

**Constitutional Jurisdiction**

The Constitutional Court is the maximum Court of this jurisdiction, consisting of nine judges, who have knowledge on various specialties of the Law, elected by the Senate.

The Court, as the head of the Constitutional jurisdiction, rules exclusively on matters of constitutionality of the laws which analysis is entrusted to it by the Constitution and establishes, in its capacity as authorize interpreter, the jurisprudential rules on the scope of the rules contained in the Colombian Political Constitution.

Additionally, it decides finally on the rulings of the writs for protection of constitutional rights (an appeal for protection whereby citizens request the protection of their fundamental rights in the light of aggressions by authorities).

**Ordinary Jurisdiction**

The Supreme Court of Justice is the maximum Court of the Ordinary Jurisdiction and consists of 23 judges, elected by the Court itself, from lists prepared by the Superior Council of the Judicature, for periods of eight years.

The Ordinary Jurisdiction or Justice, set forth in article 234 of the Constitution, covers and takes care of all those legal conflicts that arise on subjects such civil, family, criminal, labor and commercial law, and is directed, nationally, by the Supreme Court of Justice, at a department or district level by the so called Superior Courts of the Judicial District, and at the level of the judicial Circuits and municipalities by the different courts of the circuit and municipal courts. The Supreme Court, in turn, is organized in five divisions.
Administrative Law Jurisdiction

The Council of State consists of four divisions, made up in total by twenty-seven Councilmen, elected by the Council itself, from lists prepared by the Superior Council of the Judicature, for individual periods of eight years. These divisions are: Court at Large, Government Court, Consultation and Civil Service Court and the Administrative Law Court, the latter consisting of five sections.

It is the highest body of the Administrative Law Jurisdiction, and passes final ruling on processes that involve the State and private parties, or processes that involve two State Entities; in addition, performs a consultative function, since it is the entity to which the Government must resort to before making certain decision, not to ask authorization, but to find out its advice, ruling or opinion on certain matters. Additionally, it hears actions of nullity against regulations that are contrary to the provisions of the Law.

Special Jurisdictions

The Constitution contemplates two types of special jurisdictions which consist in the jurisdiction of peace and the jurisdiction that indigenous people have.

Special Organizations

These are special because they were contemplated as new under the Constitution of 1991, and their major characteristics are their administrative and budget autonomy, such as the case of the General Prosecutor’s Office and the Superior Council of the Judicature.

9.2 Average length of a process

In our country, it may be considered, according to data from the World Bank, that a process tried by the ordinary justice may take approximately 1,346 days (3 and a half years, approximately) to be finally resolved.

On the other hand, a process brought before the administrative law jurisdiction may take 1,106.65 days to be resolved (Restrepo Medina, Manuel Alberto, “Dimension and Causality of the congestion in the Administrative Law jurisdiction”).

9.3 Alternative conflict resolution mechanisms

These are mechanisms created by the Law that can be used by citizens to settle their conflicts, different from the above described ordinary justice.

Under this understanding, people may resort to the Alternative Mechanisms for Conflict Resolution (A.M.C.R.) to settle their conflicts without having to go through the traditional court processes.

The alternative mechanisms for conflict resolution may be classified into auto-composition and hetero-composition.

The auto-composition mechanisms are those in which the people decide on which will be the decision that they will give to their own conflict.

The hetero-composition are those in which the people allow that a third party decides on the way to resolve their conflicts.

In Colombia the auto-composition mechanisms are the direct settlement, conciliation and mediation. And the hetero-composition are arbitration and amicable composition.

Direct Settlement

It is a mechanism whereby two or more people negotiate by themselves the resolution of their controversy or prevent a future conflict without the participation by a third party. The agreement reached by the parties is set forth in a settlement agreement. In this respect, it is an agreement that is signed after both parties have reached an agreements on the events or rights subject to settlement, thus ending the conflict in which they were involved, out of court.

Conciliation

The conciliation is an alternative mechanism for conflict resolution, of an auto-composition nature, whereby two or more people try to resolve their conflicts or differences with the help of a third party,
who cannot be connected the conflict, who is called the conciliator.

Mediation

By means of this mechanism, a third party, called “mediator”, with no special capacity, at a difference from the conciliator, not connected to the problem, intervenes between the people who are in a conflict in order to listen to them, learn about their interests and facilitate a path through which equitable solutions may be found for the participants in the controversy.

Arbitration

By means of this mechanism, the parties involved in a conflict that can be the subject of compromise, refer the solution to an Arbitration Court, which is given the transitory power of administering justice, issuing a decision called arbitration award. This procedure takes place in the arbitration centers empowered by the law to install and assist the arbitration courts that are in charge of deciding the conflicts between the parties.

Among its advantages is the expediency, economy, efficacy, reserve and appropriateness. The decision adopted is identical to a court ruling and may be subject to the filing of appeals, such as the extraordinary annulment recourse. This mechanism is reached in three ways: a) it may be established by the Law; b) by the existence of an arbitration clause set forth in an agreement; or c) by a commitment agreed subsequently to the occurrence of the conflict. The process may last from 9 months to one year.

Amicable composition

It is an AMCR whereby an impartial third party, called amicable compounder, makes the decision on a conflict by virtue of a mandate that has been granted to him by the people involved in the same. It is a contractual procedure, in which private parties exercise the state duty to settle a conflict of interest generating a derogation of the state jurisdiction, for the case in particular. Amicable compounders, in principle, do not exercise a state judicial duty, at a difference from arbitrators, as provided directly by the Political Constitution.

9.4 ICSID

The ICSID, or International Center for Settlement of Investment Disputes (“CIADI” in Spanish) is established by the Convention on Settlement of Investment Disputes between the States and Nationals of Other States.

According to the provisions of the Convention, the ICSID provides services for the conciliation and arbitration of differences on the subject of investment between Contracting States and nationals of other Contracting States.

It is important to bear in mind that the treaties for protection and promotion of investments, in their different modalities, seek to facilitate the flow of investments between the states that execute them, and thus each Contracting State agrees to promote and protect, in its territory, the investments made by the investors from the other Contracting State.

In this context, treaties establish some mechanisms, to be undertaken by the investors, when they consider that the State receiving their investments has infringed the respective treaty, which results in the possibility that the investors choose to file an action against the receiving State, either before the local courts of that state or at international arbitration courts.

The foregoing enables investors to resort to international arbitration at the International Center for Settlement of Investment Disputes (ICSID). Said arbitration institution, an instrumentality of the World Bank, was created by virtue of the Convention of Washington of 1965, of which Colombia forms a part.

In order to access international arbitration, under an investment treaty applicable, it is necessary to comply with a series of basic requirements. On the compliance of these requirements, depends that the respective arbitration courts may hear and rule on the claims filed by investors.
The Arbitration and Conciliation Center ("CAC", for its initials in Spanish) of the Chamber of Commerce of Bogota, signed an alliance with the International Center for Settlement of Investment Disputes (ICSID) which empowers us to carry out conciliations and arbitrations related to investment.

This agreement empowers the CAC to carry out investment arbitration processes under the ICSID Convention and makes it another ally of the Center recognized around the world for investment related arbitrations, under the Center’s Convention.
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