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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:

01. Opening within Colombia territory of commercial establishments or business offices.
02. Participating as contractor in the performance of works or rendering of services.
03. Participating in any private savings managing activity.
04. Carrying out activities related to the extractive industry.
05. Obtaining or participating in a government concession.
06. 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 accompanied with the word —Limited or the abbreviation —‘Lt’d.’. 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 no 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 the parameters of the International Financial Reporting Standards (IFRS) subsidiaries must keep accounting books and their accounting records denominated in Colombian pesos and in the Spanish language.

The main financial information includes the statement of financial position at the end of the fiscal year, income statement of the period, integral income statement, statement of changes in equity for the period, statement of cash flows for the period and statement of financial position.

Every foreign investment made in the company must be duly registered before the Central Bank and must be brought into the country in full compliance with foreign investment and exchange laws.
1.5 Branches of foreign corporations

Pursuant to article 471 of the Colombian Commercial Code, any company that wishes to carry out permanent activities in Colombia has the alternative to incorporate a branch domiciled in Colombian territory.

In respect to the reporting requirements and in compliance with the parameters of the International Financial Reporting Standards (IFRS), branch offices must keep accounting books and their accounting records denominated in Colombian pesos and in the Spanish language.

The main financial information includes the statement of financial position as at end of the fiscal year, income statement of the period, integral income statement, statement of changes in equity for the period, statement of cash flows for the period and statement of financial position.

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 and a legal representative residing in Colombia.

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 wages¹ (equivalent to COP $2,343,726.00, approximately USD $822,071)³ and/or their assets exceed five thousand (5,000) minimum monthly legal wages (equivalent to COP 3,906,210.000 approximately USD $ 1.370.120).

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 $23,437,260.000 approximately USD $8,220,715.53⁴).

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 at COP$781,242 for the period from January 1, 2017 to December 31, 2018.
³. Average exchange rate used is COP$2.851
⁴. Average exchange rate used is COP$2.851
1.8 Registration

The registration on Chamber of Commerce is how the merchant makes public his profile to potential consulting clients' 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 aspects

2.1 Major regulations

- Decree 1735 of 1993 (Basic definitions for exchange effects).
- Resolution 4083, 1999 issued by the Tax and Customs Authority (DIAN), includes the obligations of reporting the exogenous informations quarterly in case of having a compensation account).
- External Resolution No. 8 of 2000 and its amendments (Statute of the Exchange Regime), issued by the Central Bank.
- External Circular DCIN-83 and its amendments (Manual of Exchange Regime), includes among others the exchange forms and the numerals to identify the transactions.
- Decree 1068 of 2015 (Single Regulatory Decree of the Sector of Finance and Public Credit), includes among others, decrees that develop framework laws on exchange regime.
- Resolution 9147, 2006 issued by the Tax and Customs Authority (DIAN), includes the special forms in order to report the exogenous information.
- Resolution 99, 2015 issued by the Tax and Customs Authority (DIAN), includes the specific exchange numerals that must be reported in the exogenous quarterly report.
- Resolutions 10 and 65, 2016 issued by the Tax and Customs Authority (DIAN), which contain changes related to the exogenous reports.
• Decree 119 of 2017 (modifies Decree 1068 of 2015 in relation with the general regime of foreign capital investment in Colombia and Colombian investments abroad and establishes other provisions in matters of foreign exchange).

• Official gazette No. 39 y 41 of November 28, 2017 issued by the Central Bank (modifies DCIN 83 allowing that foreign indebtedness should be paid in local currency).

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 movements performed through compensantion accounts, local transactions, endorsements and foreign guarantees when the secondary transaction is an import or export of goods and 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 from 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 it would not be possible to apply the objective responsibility as such and to penalize the investigated just for the fact that the infraction is committed, 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 responsible or not.

This objective responsability is fundamental in the exchange proceedings conducted by the DIAN, and the Superintendence of Corporations as arguments in connection with the conditions of how the infringement was committed, will not be considered by the authorities.

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. Penalties and exchange administrative procedure are set forth 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 Foreign exchange issues supervised by the Financial Superintendence

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 the operations that must be made through the exchange market, the procedures and penalties derived from infringement of current regulations.

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 Colombian Central Bank 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 transactions which involves Colombian residents as a contracting party and the financial costs inherent to those operations.
- Foreign investments, its reinvestment, and the repatriation of the corresponding profits.
- Colombian investments abroad, its reinvestment, as well as their corresponding profits.
- Financial investments and in assets abroad, unless such investments are made with resources that should not channeled through the exchange market. However, it will be necessary to register them before June 30 of the year after its completion, if their accumulated amount at the end of the previous year is equal or higher than five hundred thousand dollars of the United States of America (US$ 500,000) or its equivalent in other currencies.
- Foreign investments in securities or assets located abroad, unless said investment are 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 the above mentioned operations.

Free Market

The free market is form by all the operations that are not obliged to be conducted 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 accounts abroad and do trough 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 automatically be converted into a “Compensation Account”. Such account will be subjected to the following rules:

- The account must be registered before the Central Bank within a month after the first transaction that has to be conducted through the exchange market is made or within a month after the receipt of a payment derived from an obligation entered in by the account holder with another Colombian resident. 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 transferred to other accounts of the same owner. Conducting operations through compensation accounts on behalf of third parties is prohibited.

- The exchange declarations that the account holders not shall deliver to the Central Bank, including those prevised 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 between them, if such transfer correspond to one of the items, as follows:

- 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.

This does not apply to operations between Colombian branches of foreign companies that belongs to the special exchange regime, bearing in mind that these branches are not qualified to have a compensation account.

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 Exchange regimes

General exchange regime - companies and branches that do not belong to the hydrocarbons and mining sector (do not belong to the Oil&Gas Sector)

Under this regime, Colombian residents cannot pay their obligations (with other residents) in foreign currency. However, there are some exceptions, such as transactions between compensation accounts among residents. 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 pay each other, in foreign currency, the purchase of oil and natural gas produced in the country to companies dedicated to exploration and production of oil and natural gas, as long as: (i) both residents have compensation account and (ii) is not an operation between a company of the general exchange regime with branches of the special exchange regime.

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.

General exchange regime of hydrocarbons and mining sector (Oil&Gas Sector)

Applicable to (i) local companies and local companies with foreign investment dedicated to exploration and exploitation of oil, natural gas, coal, ferronickel or uranium and (ii) local companies and local companies with foreign capital investment dedicated exclusively to provide inherent services of hydrocarbons sector in accordance with Law 9 of 1991, Decree 2058 of 1991 and Decree 1629 of 1997.

Companies of general oil & gas regime are authorized to enter into and pay contracts in foreign currency among themselves (including branches of the special regime with the exclusive dedication certificate) within the country, provided that the respective foreign currency come from
resources obtained in their operation. They are allowed access to the exchange market in order to obtain resources to pay their obligations to non-residents. In fact, they may have settlement accounts, access to foreign debt; their imports are non-reimbursable goods and their exports of goods do not have a refundable nature.

Special Foreign Exchange Regime

Applicable to (i) branches of foreign companies engaged in the exploration and production of coal, natural gas, oil, ferronickel and uranium and (ii) branches that provide services exclusively to the oil sector pursuant to Law 9 of 1991 and Decrees 2058 of 1991 and 1073 of 2015.

Branches that do not have the intention 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 since the filing of said communication.

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, likewise, are not allowed to hold and registry a compensation account. Consequently, they have no access to foreign indebtedness, 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 access 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 branch, b) the sums received in local currency as consequence of 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 includes the contributions in cooperation agreements.

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

In addition, they have no obligation to reimburse to the exchange market the foreign currency from their sales in foreign currency.

2.12 Authorization of payments of internal operations in foreign currency

The following Companies can subscribe and pay agreements in foreign currency between them, inside the country, as long as the foreign currency comes from resources generated in its operation, regardless of whether they belong to the general or special regime of the Oil&Gas sector:

a. Local companies and local companies with foreign investment companies (this includes Colombian companies with foreign investment and branches of foreign companies) who perform exploration and exploitation activities of oil, gas, coal, ferronickel or uranium and,

b. Local companies and local companies with foreign investment dedicated exclusively to provide services inherent to the hydrocarbons sector, including the Colombian companies with foreign investment and the branches of foreign companies.

Notwithstanding the foregoing to the restrictions that have the branches of foreign companies of the Oil&Gas sector that are subject to the special exchange regime.

These branches that belongs to the special Exchange regime must receive or pay

By the other side, the companies that belongs to the general exchange regime, can received or pay through the exchange market intermediaries, their “compensation accounts” or the unregulated market accounts.
2.13 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

i) Participation in a Colombian company, in shares, social quotes, capital contribution or bonds debt certificates dully convertible into shares, provided they are not registered in the National Register of Securities and Issuers (RNVE Spanish abbreviation), or in a quotation system of the exchange values.

ii) The aforementioned investments, made in a Colombian company and registered in the RNVE, when the investor declares that it has been acquired with the intention of staying.

iii) The rights of investments in trust business entered into with fiduciary companies subject to the inspection and supervision of Colombian Financial Superintendence.

iv) Real states located in Colombia, acquired under any title, either directly or through trust business, or as a result of a real estate securitization process of a property or construction projects, provided that the title is not registered in the RNVE.

v) Investment or economic rights as consequence from acts or agreements such as collaboration, management services, licenses, consortia or temporary unions or those involving transfer of technology, when these do not represent an investment in a company and the income or profit that generated the investment depends on the profits of the company.

vi) Investment in the assigned capital and supplementary investment of the assigned capital of a foreign branch registry in the country.

vii) The investment in private equity funds which is dealt with in the third book of the third part of Decree 2555 of 2010 or the rules that modify or replace it.

viii) Intangible assets acquired with the purpose of being used for obtaining economic benefits in the country.

Portfolio Investments

It is considered a Portfolio investment:

i. Securities Subscribed in the RNVE (National Register of Securities), or in the foreign Stock Market;

ii. Shares in collective investment funds;

iii. Shares in programs of tradable securities.

They are of speculative character

Direct Foreign Investment in Colombian Branches

Branches of foreign companies are able to register as Direct Foreign investment the capital that remains in the current account with the Home Office, during the annual term to which their profits correspond. This currency value shall be included in a special account called additional investment to assigned capital and it must be subject to the Foreign exchange which applies to the assigned capital.
Exception of the above, are branches of the hydrocarbons and mining sectors (Oil&Gas sector) subject to the Special Foreign Exchange Regime. In this regime, these branches can account as an additional investment to assigned capital: (i) the availability of foreign currency, and (ii) the capital assets in the form of goods or services. Besides, these branches can have negative balances of additional investment to assigned capital.

**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; 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; f) Supplementary investment to the assigned capital; and g) currencies importation to acquire real state of employees or foreign companies real state.

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

There are different types of registry:

Currencies modality of Foreign Investment - Automatic registration via the presentation of the international investments exchange statement (previously 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.

Other modalities of Foreign Investment - Registry with the presentation of Form No. 11 - International Investments Exchange Statement

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

The term to present the international investments exchange statement in Colombia, is twelve (12) months since the operation is completed. This term is not renewable. Decree 119 of January 26 2017 removed this term and Official Gazzette No. 23, 2017 issued by the Central Bank states that transactions performed before July 2, 2017 must comply with the term of twelve (12) months and that transactions performed after July 2, 2017 do not have the obligation to comply with this term because it was eliminated.

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.

Registry of Foreign investment which does not imply equity interest with the presentation of Form No. 11 - Presentation of the international investments exchange statement

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:

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 called IPEXT “registry of the investment of foreign capital of portfolio”, to the DCIN of the Central Bank, according to section 7.2.2. and 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 foreign individuals request the Central Bank the reclassification of its investment, to national investments, it must simultaneously request the cancellation of the registry of the foreign investment filing Form No. 12. 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 (previous 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

Foreign investment cancellation occurs when there are total or partial cancellations of the foreign investment previously registered before the Central Bank.

Therefore, the process of cancellation will only proceed when there is a previous registry subject to cancellation and when the foreign investor ceases to be the holder of the investment, among others for the following causes:

i. Colombian Company liquidation.

ii. Decrease of the capital, which implies a change in the number of shares or quotas, including that capital assigned to the branches of foreign companies.

iii. Requisition of shares or quotas.

iv. Qualification of resident as national investor.

v. Foreign investor liquidation.

vi. Partial or total termination of acts or contracts with no equity interest.

vii. Termination of fiduciary business signed with trusts.

viii. Total or partial liquidation of private equity funds.

ix. Disposal to residents (adjudication or transfer).

x. Disposal of real estate.

xi. Business reorganization (mergers and acquisition processes).

xii. Cancellation of advances for future capitalizations.

This operation should be requested by the Foreign Investor or its proxy with presentation of the international investments exchange cancelation statement (Form 12).

Cancelation of Foreign investment caused by Business reorganization (mergers and acquisition processes) is registered presenting the international Investments Exchange Statement for Bussines Reorganization (Form 11A).

The term to present the international investments exchange cancelation statement is twelve (12) months since the operation is completed. This term is not renewable. Decree 119 of January 26 2017 modified this term and Official Gazzette No. 23, 2017 issued by the Central Bank states that transactions performed before July 2, 2017 must comply with the term of twelve (12) months and that transactions performed after July 2, 2017 have to register the cancelation no later than six (6) months of the transaction.

Foreign investment substitution

Foreign investment substitution occurs when
the holders of the investment change. First, by other Colombian investors (residents). Second, by other holder of the investment. Likewise when the Colombian company recipient of foreign investment change. Therefore, the substitution procedure will only proceed when there is a previous registration subject to the substitution.

Substitution of Foreign investment caused by Business reorganization (mergers and acquisition processes) is registered presenting the international Investments Exchange Statement for Bussines Reorganization (Form 11A).

The term to present the international investments exchange substitution statement is twelve (12) months since the operation is completed. This term is not renewable. Decree 119 of January 26 2017 modified this term and Official Gazette No. 23, 2017 issued by the Central Bank states that transactions performed before July 2, 2017 must comply with the term of twelve (12) months and that transactions performed after July 2, 2017 have to register the cancelation no later than six (6) months of the transaction.

2.14 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 exchange declaration for import of goods (Previous Form 1) 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 the exchange declaration for exports of goods (previous Form 2).

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.

2.15 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 and local 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.

When the disbursement is made in legal currency, it must be made from the debtor’s account to the commercial bank or the account in local currency of the non-resident creditor which exclusive purpose. The resident debtor must provide to the commercial bank from where the payment was made, and within fifteen (15) business days following the same, the information of the minimum data of the operation (Exchange Form) by concept of external indebtedness.

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.

Foreign indebtedness transactions offsetting and condoning is not permitted. Assets received in lieu of payment is admissible.

2.16 Deposit

Since financial costs become more expensive, the deposit is a mechanism to discourage Colombian residents from obtaining loans in foreign currency. The deposit is a requirement for the disbursement of a foreign passiveloan (when the debtor is a resident), return non-formalized investments, imports of financed goods and foreign portfolio investments. However, nowadays is 0%.
3. State contract

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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<td>Decree 1510 of 2013</td>
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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, nowadays included in Decree 1082 of 2015 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.

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

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5. 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 inabilities and incompatibilities regime legally instituted for all governmental contracting activities.”

6. Except for those contracts which imply either a change of ownership or the enforcement of encumbrances and real easements upon real estate properties, and, in general, for those contracts that pursuant to legal regulations in effect must comply with said formalities.
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.

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 laws, 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

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.

An 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.

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

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).
• Possible criminal liability of public officials and contractors.

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\(^\text{10}\).

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

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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
2.2.1.2.1.5.1 of Decree 1082 of 2015

• 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 issues

4.1 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 this working period can be performed in a flexible period, corresponding to 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) continuous 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 (article 161 of the Colombian Labor Code, modified by article 51 of the Law 789 of 2002).

4.2 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 hour from 6:00 a.m. to 9:00 p.m. has a 25% surcharge (Article 168, Labor Code and Article 25 of Law 789 of 2002).
- One (1) overtime hour between 9:00 p.m. to 6:00 a.m. has a 75% surcharge (Article 168 of the Labor Code).
- Working on night shift, but not under overtime work is remunerated with a surcharge of 35% (Article 179 of the Labor Code).

4.3 Vacation days/ Holidays

Employees are entitled to fifteen (15) working 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 finishes, and the employee has not taken the corresponding vacation period, the Labor Law authorizes the Employer to give a monetary compensation to the Employee that corresponds to the remaining vacation days (Article 1 of the Law 995 of 2005). The right to receive a monetary compensation 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).

Likewise, according to the amendment introduced by the Law 1429 of 2010, the employee and the employer can agree to pay in cash, to the employee, up to half of the vacation days, as long as there is a prior request from the employee.
(numeral 1 of article 189 of the Colombian Labor Code, modified by article 20 of the Law 1429 of 2010).

Finally, the employee can accumulate different vacation periods. The only obligation is to enjoy six (6) continuous working days of vacation days, which are not accumulative. (Articule 190 Labor Code).

Employers and employees can accumulate vacations up to two (2) vacation periods/years for ordinary employees.

Nevertheless, this accumulation can be up to four (4) years, in the case of technical, specialized, trustworthy, management employees, or foreigners who provide their services in different places than the residence place of their relatives.

4.4 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).

4.5 Minimum wage

Every December, the National Government establishes by Decree, the minimum monthly salary for workers that will serve as reference for salary negotiations.

The minimum monthly salary fixed for year 2018 Through Decree No. 2269 of December 30th, 2017 is COP $781.242 (approximately USD $260*).

*Exchange rate of COP $3.000

4.6 Collective Dismissal

Collective Dismissal 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).

4.7 Maternity special protection

To terminate the employment relationship with a pregnant employee, authorization is required by the Colombian Ministry of Labor with prior demonstration, by the employer, of the configuration of a just cause for the dismissal, under penalty of the employer is condemned to the payment of 60 days of salary, plus any compensation or severance that may be required.

This protection shall apply to spouses, permanent companions and / or partners of women in pregnancy or lactation who are not in an employment relationship and who are beneficiaries of their partner under Sentence C-005 of 2017.

4.8 Maternity leave and creation of breast feeding rooms

Laws 1822 and 1823 of 2017 modified the article 236 of the Labor Code and determined that pregnant women are entitle to eighteen (18) weeks of maternity leave. The paternity leave remains in eight (8) working days.

Additionally, the amendments include the creation of breast feeding rooms for allowing breast feeding. Employers with more than 1500 monthly minimum wages of capital or with less than 1500 monthly minimum wages with more
than 50 employees, will have a six (6) month term to create the lactancy family rooms.

Companies with more than 1000 employees will have a two (2) year term to create this rooms (Law 1823 of 2017).

4.9 Legal service bonus

The employer must pay the employees the social benefit determined as a legal service bonus which will correspond to 30 days of salary per year, and will be recognized as follows: the first half up to June 30th and the other half up to the first twenty days of december. Its recognition will be made for all the worked semester or proportionally to the worked time.

4.10 Transportation allowance

Employees earning up to two (2) minimum monthly salaries are entitled to a transportation aid benefit equivalent to COP 88.211 per month (approximately USD $29 11) in 2018 (Decree No. 2270 of 2017).

4.11 Work garments

Employees earning up to two (2) minimum monthly salaries 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 (each four (4) months) (Article 230, Labor Code).

4.12 Severance

Upon expiration of the labor agreement, each employee is entitled to receive an additional payment called severance, which is equivalent to one (1)-month salary for every year of service, and proportionally for any outstanding portion of time (Article 249, Labor Code).

Every year, this payment is deposited in a Private Severance Fund chosen by the employee.

The employer must pay the severance each year before February 15th (i.e. February 14th) (Article 99 of Law 50 of 1990).

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 employee's home, or for college education of the employee or relatives. effects (Article 256, Labor Code).

4.13 Interests on severance

According to Law 52 of 1975, all employers are obliged to pay their employees, legal interest of 12% per annum on the value of the unemployment that each worker has accumulated as of December 31 of each year. These interests are, therefore, of a legal nature and are distinguished from the interest or financial returns that severance funds must recognize their members on the amount of their savings as severance pay.

Likewise, article 1. Law 52 of 1975, states:

“1. As of January 1, 1975, every employer obliged to pay severance to his employees under chapter VII, title VIII, first part of the Labor Code and other concordant provisions, will recognize and pay interest of 12% per year on balances that, on December 31 of each year, or on the dates of retirement of the employee or partial liquidation of layoffs, he has this in his favor by way of severance.

2. The interests of what is dealt with in the previous paragraph must be paid in the month of January of the year following that in which they were caused; or on the date of the worker's retirement or within the month following the partial termination of unemployment, when it occurs before December 31 of the respective annual period, in proportion to the elapsed time of the year.

3. If the employer does not pay the employee the interest here established except in cases of retention authorized by law or agreed by
the parties, the employee shall be paid as compensation and once only an additional value to the interest caused. .. “

On the other hand, article 2 of Regulatory Decree 116 of 1976, provides:

“ART 2. -For effects of article 2 of Law 52 of 1975, employers must inform collectively or individually to their employees about the system used to settle interest and, in addition, together with each payment of these they will give a voucher with the following data:

a) Amount of the severance payments taken as a basis for liquidation;

b) Period that caused the interest, and

c) Value of interest

4.14 Internal Labor rules

Is the set of rules that determine the conditions to which the employer and its employees must subject themselves in the provision of the service.

Any employer who have more than five (5) permanent employees in commercial companies, or more than ten (10) in industrial companies, or more than twenty (20) in agricultural, livestock or forestry, it is required to have an Internal Labor Rules.

4.15 Hygiene and Industrial Safety Regulations

Employers who have ten (10) or more permanent employees at their service must draw up a special hygiene and safety regulation if it is a new establishment.

4.16 Labor committee on Safety and Health at Work (COPASST).

• Any company that has ten (10) or more employees at its service, is obliged to establish a COPASST, whose responsibilities are:

• Participate in promotion, dissemination and information activities on medicine, hygiene and industrial safety.

• Monitor compliance with occupational health programs.

Receive copies of the findings of investigations or inspections carried out by occupational health authorities.

Companies that have less than ten (10) employees in their service have the obligation to appoint an occupational inspector, which have the same obligations of the COPASST.

4.17 Labor Coexistence Committee.

Every company must form a Labor Coexistence Committee, which will have as functions:

• Receive and process the complaints presented describing possible situations of workplace harassment.

• Examine in a confidential manner the specific cases in which a complaint or claim has been made, which could typify conduct or circumstances of workplace harassment within the company.

• Listen to the interested parties, and generate spaces for dialogue between them, promoting commitments and formulating improvement plans, all within a confidentiality scenario.

The Labor Coexistence Committee has the obligation to meet (i) ordinarily every three (3) months, and (ii) extraordinarily when there are cases that require its immediate intervention.

4.18 Unemployment benefit

The Solidarity and Employment Promotion and Cessation Protection Fund (initials in Spanish FOSFEC) is a component of the unemployment protection mechanism that seeks to grant benefits to unemployed employees.
This benefit will be granted for up to six (6) months or until the beneficiary is again in an employment relationship.

To access unemployment benefits, employees must have terminated their employment relationship for any reason or, in the case of an independent worker, have terminated their contract to provide services. Additionally, it is mandatory to have contributed to any Compensation Fund for one (1) continuous or discontinuous year in the course of the three (3) years prior to the person being laid off.

4.19 Integral salary system

The integral salary as a way of payment of the employee remuneration, can be agreed between the parties, and consists of a salary that in addition to rewarding ordinary work, compensates in advance the value of benefits, surcharges, such as (i) work night, (ii) extraordinary work, (iii) Sunday, festive, (iv) legal and extralegal bonuses, layoffs and their interests, (v) subsidies and supplies in kind, and in general all payments included in that stipulation, except vacations.

In no case the integral salary may be less than ten (10) minimum legal monthly salaries in force, plus the benefit factor of the Company, which may not be less than 30% of said amount (3 legal monthly minimum salaries in force).

In no case the integral salary may be less than ten (10) minimum legal monthly salaries in force, plus the benefit factor of the Company, which may not be less than 30% of said amount (3 legal monthly minimum salaries in force).

In conclusion, the monthly minimum integral salary can not be less than 13 SMLMV (COP $ 10,156,146 - (USD $ 3,497).

Faced with the payment of contributions to the Social Security and Parafiscal System, these are calculated on 70% of the total integral salary.

4.20 Integral social security system

Each employer has the obligation to enroll its employees to the social security entities that the employee voluntarily chooses. The enrollment is mandatory for all dependent and 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.

The maximum limit on which the contributions to pensions system, and in general to healthcare and labor risks systems is twenty-five (25) minimum monthly legal wages (Article 3 of Decree 510 of 2003). This limit does not apply to contributions for family funds, SENA and ICBF.

4.21 Healthcare

Contributions to the social security entities in charged of 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).

Employer is exempt of its 8.5% healthcare contributions when the employee earns less than ten (10) times the minimum monthly wage (Article 65 of Law 1819 of 2016).

4.22 Pension Regime

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

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

In Colombia there are two (2) pension systems as follows: (i) Medium Premium with Definite Benefit or pay-as-you-go, which is assumed by Colpensiones; (ii) and Individual Saving with Solidarity, which consists on the contributions to a pension fund previously selected by the employee.

Employees enrolled to the General Pension System may choose between the pensions regime they prefer. Once the initial selection is made, they can only change from one regime to another once every five (5) years, counted from the
initial selection. After January 29, 2004, enrolled employees cannot change pension system when ten (10) or more years remain until the age to grant the old age pension is about to be complied (Article 2, Law 797 of 2003).

Employers shall pay the 75% of the total quotation and the employees the 25% (Article 7, Law 797 of 2003). Contribution is equivalent to 16% of the employee’s salary base. Twelve percent (12%) is paid by the employer and four percent (4%) by the employee.

Employees who earn more than four (4) times the minimum monthly wage must pay one percent (1%) extra for the mandatory Solidarity Fund of subsistence (Article 7, Law 797 of 2003). An extra contribution is due whenever the employee earns more than sixteen (16) times the minimum monthly wage of solidarity, as follows:

- 16 to 17 minimum monthly wages: 0.2%
- 17 to 18 minimum monthly wages: 0.4%
- 18 to 19 minimum monthly wages: 0.6%
- 19 to 20 minimum monthly wages: 0.8%
- Over 20 minimum monthly wages: 1%

4.23 Old-Age Pension (OAP)

Average premiums with defined benefits (Public fund - Colpensiones)

In order to have access to the old age pension it is mandatory to be 57 years old women and 62 years old men, as well as having accumulated one thousand two hundred and seventy five (1,275) weeks of contributions to Colpensiones (Colombian Public Entity in charge of pensions) up to the year 2014. In addition, the number of weeks will increase each year in January, until reaching the number of one thousand three hundred (1,300) in 2015 (Article 33, Law 100 of 1993).

The base income for settlement of the old-age pension is the average of the wages on which the member has quoted in the last ten (10) years, exceptionally the average of the whole working life can be taken, if said percentage is higher. The monthly amount for the old-age pension will be 65% of the base income for settlement for one thousand (1,000) weeks.

As of 2005, for every fifty (50) additional weeks to the required minimums, the percentage will increase by 1.5% of the base settlement income, reaching a maximum pension amount between 80 and 70.5% of said income. The total value of the pension may not be greater than eighty (80%) of the base settlement income, nor less than the minimum pension. (Article 10 law 797 of 2003).

Individual Saving (Private funds)

The members of the Individual Saving Regime with Solidarity will be entitled to an old-age pension, at the age they choose, as long as the capital accumulated in their individual savings account allows them to obtain a monthly pension, greater than 110% of the legal monthly minimum salary in effect at the date of issuance of this act, adjusted annually according to the percentage variation of the Consumer Price Index certified by the DANE. For the calculation of said amount, the value of the pension bonus will be taken into account, when it has taken place.

4.24 Disability pension

Disability due to illness – In order to grant a disability pension due to illness, member of the pensions fund must have contributed fifty (50) weeks within the three years immediately preceding the pension structuring date of the illness (Article 39 of Law 1993, modify of article 11 of Law 797).

Disability due to accident – In order to grant a disability pension due to accident, member of the pensions fund must have contributed fifty (50) weeks during the three-years period prior to the occurrence of the event that caused the disability (Article 39 of Law 1993, modify of article 11 of Law 797).

The base contribution for this pension is the average amount of the salaries received in the
prior 10 years. In case disability is presented before 10 years, the fund will take into account the average of the wages corresponding to the period of time the employee was affiliated.

1. The amount of the disability pension will depend on the following situations:

2. When the disability is equal to or exceeds fifty percent (50%) and is lower than sixty-six percent (66%), the amount of the pension will correspond to forty-five percent (45%) corresponding to 500 weeks already contributed plus one point five percent (1.5%) of this income for every fifty (50) additional weeks. (Article 40, Law 100 of 1993, partway regulated of Decree 832 of 1996). If these contributions do not reach 500 weeks, the affiliate will receive the basic amount.

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 to contribute, plus two percent (2%) of for every additional fifty (50) weeks of contributions over the initial eight-hundred (800) weeks, if duly accredited by the applicant (Article 40, literal b, Law 100 of 1993 partway regulated of Decree 832 of 1996).

If contributions do not reach the 800 weeks, the affiliate will only receive the basic amount.

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

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

**Individual Saving (Private funds)**

The same information indicated for the average premium with defined benefits is applicable.

### 4.25 Survivor’s pension

#### Average Premium with defined benefits (Public funds)

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.

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.

The base contribution for this pension is the average amount of the salaries received in the prior 10 years, in case disability is presented before 10 years, the fund will take into account the average of the wages corresponding to the period of time the employee was affiliated.

Survivor’s pension payments will be equivalent to one hundred percent (100%) of the amount payable to the employee at the moment of death.

In the event the employee is affiliated to the system, the payable amount corresponds to the forty five percent (45%) of the base income to contribute, plus a two (2%) per fifty (50) additional weeks to the first five hundred (500), not exceeding the seventy-five percent (75%).

When the affiliated, had already accomplish the minimum requisites the amount of the pension will correspond to eighty percent (80%) of the base income to contribute.
Individual Saving (Private funds)

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

4.26 Labor risks

Contributions will be paid fully 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, as well as be sanctioned by the authorities.

Labor risks system covers death and disability risks.

In case disability corresponds to the loss of fifty percent (50%) up to sixty six percent (66%), the worker will be entitled to receive a pension payment equivalent to sixty percent (60%) of base income to contribute; however, in case of total disability (more than sixty six percent 66%), 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 to contribute (Decree 1295 of 1994). The percentage may increase by 15% when the person needs help from others.

a. In case the affiliate dies because a labor risk happened, the family will receive a survivor pension, as follows:

b. Death of the affiliate, the amount corresponds to seventy-five percent (75%) of the base income.

Death of the affiliate that received a disability pensions, the amount corresponds to once hundred percent (100%) of the base income.

To determine the amount of this pension, the system will not take into account the additional fifteen percent (15%) granted for the third party help (in the disability pension).

4.27 Health and Safety Management System

Every employer is subject to compliance with the rules on occupational health, safety and health at work. It aims to improve working conditions and the environment at work, in addition to health at work, which entails the promotion of maintenance of the physical, mental and social well-being of employees. According to Decree 1443 of 2014, the guidelines to implement the Occupational Health and Safety Management system are defined. Likewise, Resolution 1111 of 2017 regulates the minimum standards of the Occupational Health and Safety Management System. According to the Law 1562 of 2012, the Occupational Health Policy is replaced by the Occupational Health and Safety Management System (initials in Spanish SG-SST) for companies that are obligated to have it, in the same way the name of the committee change to COPASST.

Faced with the application of the aforementioned law, article 1 of Decree 52 of 2017 extends the transition period to replace the Occupational Health Program with the Occupational Health and Safety Management System (initials in Spanish SG-SST) and the rest obligations derived from said law. However, the Decree ordered the substitution of the SG-SST for all public and private employers, contractors, under any form of civil contracts, commercial or administrative contract, solidarity economy and cooperative sector organizations and as companies of temporary services no later than June 1, 2017.

4.28 Law of family day

Law 1857 of 2017 establishes that employers can modify employee’s working hours to facilitate the approach of the employee with members of their family, to meet their duties of protection and accompaniment of their spouse or permanent partner, to their minor children, to the persons of the third age of their family group or to their
relatives within the 3rd degree of consanguinity that requires it; as well as those of your family who are in a situation of disability or dependency.

The same law establishes the National Family Day, which will be on the fifteenth (15th) of May of each year. This option has an opportunity to promote family unity and motivate employers to support decisively the integral development of their employees, with a balanced personal and professional life.

4.29 Foreign employees

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

Foreign employees have the same rights and obligations as local employees, except for diplomatic privileges in certain matters, such as the controls of the authority during their stay in the Country (Constitution of Colombia, Article 100).

The following are the most common visa types for foreigners.

4.30 Visitor visa type “V” (Resolution 6045 of 2017)

The Ministry of Foreign Affairs may grant a “V” type visa to a foreigner who wishes to visit the national territory once or several times, or temporarily remain there without establishing himself, to carry out any of the following activities:

1. Perform direct transit at any of the airports in the national territory and to a third State.

2. Visit the national territory for the purpose of leisure, tourism or cultural interest.

3. Carry out business negotiations, market studies, plans or procedures for direct investment and establishment of a commercial company, negotiation, conclusion of contracts or commercial representation.

4. Participate in an academic exchange program, advance art or craft training, or perform different studies to primary, secondary or higher education undergraduate programs.

5. Attend consultation, intervention or medical treatment or accompany the person attending the consultation, intervention or medical treatment.

6. Perform administrative and/or judicial proceedings before entities or authorities in Colombia.

7. Work in Colombian jurisdictional waters as a boat crew member or on an offshore platform.

8. Participate in the event as a lecturer, speaker, artist, athlete, jury, contestant or logistic staff

9. Perform practice or internship.

10. Volunteer in development cooperation projects or in the promotion and protection of human rights.

11. Perform audiovisual production or digital content.

12. Carry out newspaper coverage or remain temporarily as a foreign media correspondent.

13. Provide temporary services to a natural or legal person in Colombia.

14. To occupy a position in a Colombian office of a company with presence abroad, by virtue of intra-corporate personnel transfer.

15. To come as a foreign government official or commercial representative of a foreign government, on a mission that does not imply accreditation before the Colombian government.
16. Visit the national territory under vacation-work programs agreed by Colombia with other States through current treaties.

The visa type "V" valid for up to 2 years may be granted taking into account the activity proposed by the foreigner in Colombia.

4.31 Migrant visa type “M”

The foreigner who wishes to enter and/or remain in the national territory with the intention of establishing himself, and does not meet the conditions to apply for an “R” type visa according to Article 21, may request an “M” type visa.

1. Be a permanent spouse or partner of a Colombian national (a).

2. Being the father or son of a Colombian national by adoption.

3. Be a national of one of the States Parties to the “Agreement on Residence for nationals of the States Parties of Mercosur, Bolivia and Chile”.

4. Be recognized as a refugee in Colombia according to current regulations.

5. Have permanent employment in Colombia or long-term employment, by virtue of an employment relationship or hiring of service provision with a natural or legal person domiciled in Colombia.

6. To have constituted or acquired participation in the share capital of the commercial company in the minimum amounts established in the requirements chapter.

7. Have qualification or expertise to practice a profession independently, and the financial conditions provided in the requirements chapter to do so.

8. To come to the national territory as religious, missionary or religious in formation, of
a church or religious confession, duly recognized by the Colombian State.

9. Be admitted or enrolled in primary, secondary or secondary education, or higher education program in undergraduate educational institution in Colombia.

10. Having registered direct foreign investment in Colombia for real estate in the minimum amounts established in the requirements chapter.

11. Receive pension for retirement or retirement, or receive periodic income from a creditable legal source, in the amounts provided in the requirements chapter.

The visa type “M” will be valid for 3 years. When the duration of the contract or of the studies is less than three years, the visa type “M” may have a lower validity.

4.32 Resident visa type “R”

The foreigner who wishes to enter and / or remain in the national territory to establish himself permanently or to fix his domicile in Colombia, may request a visa type “R” if its satisfied any of the following conditions:

1. Having been a Colombian national, he has renounced this nationality.

2. Is the father or mother of a Colombian national by birth.

3. Has remained in the national territory continuously and uninterruptedly for two (2) years as the main holder of type “M” visa.

4. Has remained in the national territory continuously and uninterrupted for five (5) years in any of the following conditions:

a) As the main holder of visa type “M”

b) As beneficiary of type “R” visa.

5. Has registered with the department of international changes of the Bank of the Republic, or with the agency that takes its place, direct foreign investment in the minimum amounts established in the requirements chapter.

The residence time authorized in the national territory to the holder of the type “R” visa will be equal to the time of validity of the same.

The “R” type visa has an open work permit and allows its holder to carry out any legal activity in the national territory.

4.33 Report System of Foreigners in Colombia (Resolution 714 of 2015)- in Spanish SIRE

Migración Colombia, designed this system in order to have a record of the foreigners that come to Colombia and have a link or labor relation with a Company.

This action, eliminated the former registries book “libro de registros” of the Companies.

If Companies do not make the report, economic sanctions can be applied, 0 up to 7 minimum wages.
5. Environmental Issues

5.1 Legal framework

The Colombian Code of Renewable Resources (CRR) was enacted in 1974, and has been complemented thereinafter by various Decrees which provide for the protection of the country’s environment. The latters were all subject of compilation by the Unique Decree 1076 of 2015, which includes the entire environmental and sustainable system regulation.

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 Decree 1076 of 2015, contains 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 National Authority for Environonmental Licenses (ANLA), 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 National Authority for Environmental Licenses (ANLA) has exclusive jurisdiction to grant or deny environmental licenses for the specific issues identified in article 2.2.2.3.2.2 of Decree 1076 of 2015. In addition, Regional Autonomous as well as Sustainable Development Corporations, Large Urban Centers and other environmental authorities created by Law 768 of 2002, are empowered to grant or deny licenses for activities listed in the mentioned article of the referenced decree, whenever such activities take place inside their jurisdiction. In general terms, activities that require an environmental license to be executed are defined by articles 2.2.2.3.2.2 and 2.2.2.3.2.3 of Decree 1076 of 2015. The formers are as follows:

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.


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. To obtain an environmental license, the interested party must present to the competent authority an environmental diagnosis of alternatives (when it is appropriate), as well as the respective Environmental Effect Investigation (EIA). These documents must be complemented by the following information:

1. Environmental license form
2. Plans to support the EIA
3. Estimated operation and investment costs for the project
4. Duly granted power for the respective attorney
5. Payment proof for the service provision and the environmental license assessment.
6. ID or existence and legal representation certificate for legal person.
7. Ministry of Interior certificate informing about the presence of ethnic communities and collective territories in the area where the project is going to take place.
8. Copy of the filing document required by the Colombian Institute of Antropology and History (ICANH), demanded for full effects by Law 1185 of 2008.
9. Form approved by the competent authority for the preliminary verification of the environmental license request documentation.

Is important to bear in mind that no project nor civil work 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 1076 of 2015, the Environmental Authority 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 located (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.
INTELLECTUAL PROPERTY
6. Intellectual Property

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


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 is 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 names 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's 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).

Definition 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-sourced income and foreign-sourced income

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

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

On the other hand, foreign-sourced income includes any revenue arising from the transfer or exploitation of tangible and intangible goods located outside Colombia, and rendering services abroad. Furthermore, income generated from certain foreign loans is not deemed as local-sourced income.

Taxation applicable to Corporations and Entities in Colombia

Main considerations are:

1. Colombian companies and entities are subject to income tax over their worldwide income. Meanwhile, non-residents are subject to income tax over their Colombian-sourced income, obtained directly or by a permanent establishment in Colombia.

2. As a consequence of the expedition of the latest tax reform, (Law 1819 of 2016) the tax system was modified.

3. As from January 1 of 2017, the CREE tax was eliminated; and the income tax rate for Colombian companies, permanent establishments and foreign companies obliged to submit income tax return, was established in 34% for 2017, and 33% from 2018 and following.

4. Additionally, it was created an income tax surcharge at a 6% rate for taxable year 2017, and for taxable year 2018 at a 4% rate, applicable when the taxpayer's income equals or exceeds COP $800,000,000 or USD $266,000; furthermore, it was established an advance payment for the surcharge.

5. Free Trade Zone users will be subject to income tax at a 20% rate, as from January 1 of 2017.

6. Law 1819 of 2016 eliminated some exempt income, therefore the following revenue will be subject to income tax at a 9% rate, for the term for which the exempt income treatment was granted:
• Hotel services rendered through new hotels or remodeled hotels.
• Ecotourism service certified by the Ministry of Environment or the competent authority.
• New leasing agreements over housing real estate.
• Revenue obtained from new late yield crops in cacao, rubber, oil palm, citrus, and fruit trees, which will be determined by the Ministry of Agriculture and Rural Development.

7. Similarly, income obtained by the industrial and commercial state companies, and Departmental, Municipal or District order mixed economy companies, in which the State’s shares exceed 90%, and through which the monopolies of gambling and liquor are executed, will be taxed at a 9% rate.

8. A Permanent Establishment (hereinafter “PE”), is understood as a fixed place of business located in the country, through which a foreign company, whether a corporation or any other foreign entity or non-resident individual, performs whole or part of its business activity.

9. Also, when an individual different from an independent agent, acts on behalf a foreign company, and regularly exercises powers which allows it to conclude legal acts or contracts for the Company, it will be understood as a PE.

10. Offices from non-resident reinsurance companies will not be considered as PE for tax purposes.12

11. Dividends received by foreign entities or non-resident individuals will be subject to taxation at a 5% rate in Colombia.

When the dividends correspond to profits, that if it had been distributed to a national company will have been taxed13, they will be subject to the general rate of 35% on the paid value; the tax indicated in the previous paragraph will be applied once this tax has been reduced.

12. If dividends are distributed to resident shareholders over profits that have not been taxed at the corporate level, the income will be taxed at a progressive rate from 0 to 10%.

When the dividends correspond to profits, that if it had been distributed to a national company will have been levied, they will be taxed at a 35% rate, and an additional 5% rate once reduced the 35% rate.

13. Dividends are defined by Law 1819 of 2016 as:

• Any distribution of benefits, in money or kind, to partners, shareholders, among other similar, except for the capital decrease and the paid-in capital.
• The transfer of profits to entities abroad, that are perceived by permanent establishments or branches.

14. In general, all local companies, branches of foreign companies and PE, or foreign companies in special events, are liable to file and submit income tax return annually.

15. Foreign companies without a branch in Colombia are not required to file an income tax return, unless the company carries out its activities in the country through a PE.

16. Foreign companies and entities without a branch in Colombia are not obliged to file an income tax return; however, its income is taxed under withholding tax. Some technologic services are levied at a 15%

13. in accordance with the rules of articles 48 and 49 of the Tax Code.
withholding tax rate; for software royalties, the withholding tax will be 26.4%.

17. Payments made to foreign companies due to interests, as from 2017, will be subject to a 15% withholding tax rate. If the credits are granted for an 8-year term and are invested in Infrastructure projects under the scheme of Public Private Partnerships under the law 1508 of 2012, the rate will be 5%.

18. Law 1819 of 2016 modified the reference to tax havens, for the concepts of non-cooperative jurisdictions, low or none tax jurisdictions and preferential tax regimes.

The criteria that the Colombian Government will use in order to classify the non-cooperative jurisdictions and the low or none taxation jurisdictions will be:

- Low tax rates or the lack of them.

- Lack of the effective exchange of information.

- Lack of the requirement of physical presence or the development of substantial economic activity.

19. Payments made to these jurisdictions, which constitute taxable income in Colombia for its beneficiary, will be subject to the highest withholding tax rate applicable.

20. Payments made to companies located in these jurisdictions will not be deductible, unless they were subject to withholding tax.

21. Operations carried out with companies located in these jurisdictions must be subject to transfer pricing regime, therefore the taxpayer must submit the supporting documentation report, and the informative return.

22. In order to complete a substitution of a foreign investor, it has to file an income tax return with the assessment and payment of the tax liability raised from the respective transaction, within the following month after the closing date of the transaction.

23. The thin capitalization rule provides that taxpayers may deduct from their income tax, interests 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 from the immediate prior year.

24. Law provides the presumptive income rule, under which it is understood that the profit-earning capacity of the taxpayers corresponds as minimum to the 3.5% of its net equity possessed as of December 31 from each period. The income tax will be determined under the presumptive income tax system or under the regular system, depending on the higher one.

25. Taxpayers may carry forward tax losses (net operating losses), with their net taxable income, within the following 12 taxable periods, regardless the presumptive income excess. The shareholders cannot offset or deduct the tax losses against their own net income.

This benefit does not affect the non-taxable profit to be distributed as dividends to the Company’s shareholders.
**Individuals' Taxation**

The following are the main aspects applicable to individuals in Colombia:

1. **Main Aspects:**

| Income Tax Rates         | - Progressive rates of 0%, 19%, 28% and 33% for residents.  
                           | - Fixed rate of 35% for non residents.               |
|--------------------------|----------------------------------------------------------|
| Capital Gain Tax Rate    | Fixed rate of 10%.                                       |
| Tax Base                 | - Income and wealth from worldwide source for residents. |
|                          | - Income and wealth from national source for non residents. |
| Tax Year                 | Calendar year (January 1st through December 31st)       |
| Income Tax Return's Filing Deadline | Between August and October of the year following the tax year, depending on the last two (2) digits of the Tax Identification Number (NIT). |
| Tax Identification       | All the individuals obliged to submit the Income Tax Return in Colombia, will have to apply for the Registro Único Tributario (hereinafter RUT), which will allow the Tax Authorities to identify, locate and classify the individuals as taxpayers. Additionally, through the RUT it will be assigned a Tax Identification Number (hereinafter NIT), to each individual. |

2. **Tax Residence:**

For tax purposes in Colombia, the individuals (Colombians or foreigners) who fulfill the following condition, will be considered as “Residents”:

Staying continuously or discontinuously in Colombia for more than 183 calendar days (including entrance and exit days of the country), during any period of 365 consecutive calendar days. When the continuous or discontinuous stay in the country falls on more than one tax year or period, the individual will be considered as resident as of the second tax year or period.

In the case of **Colombian** nationals who have not fulfilled the above condition, the law establishes additional conditions, which will have to be analyzed during the relevant tax year, to define the tax residence:

a. His/her spouse or permanent partner not legally separated or dependant children under the age of 18, have tax residence in the country.

b. 50% or more of his/her income are from national source.

c. 50% or more of his/her properties are managed in the country.

d. 50% or more of his/her assets are understood to be owned in the country.

e. Have been required by the Tax Authorities
for it, but do not prove their condition as residents abroad for tax purposes.

f. Have tax residence in a jurisdiction qualified by the National Governments as tax heaven.

Notwithstanding the foregoing, those Colombians who do not fulfill the physical stay condition in the country, and who having fulfilled one of the requirements of literals A to F, additionally fulfill one of the following conditions, will be considered as "Tax-non residents":

a. 50% or more of his/her income has its source in his/her place of residence.

b. 50% or more of his/her assets are located in his/her place of residence.

3. Income Subject to Tax in Colombia

Resident individuals are subject to income tax in the country, in regards to their income both national and foreign source (worldwide source income) and to their wealth owned both inside and outside Colombia; non residents pay taxes over their income from national source, and their wealth owned in Colombia.

Where the production activity of income had place, which not necessarily coincides with the place where that income was paid. In this sense, the compensation paid abroad as remuneration for the services rendered in Colombian territory, will be considered as income from national source, notwithstanding the individual's tax residence status.

4. Income classification:

Individual's income tax determination, will depend on the different type of revenue obtained as a result of the performance of different activities, which will be classified as "baskets" and are grouped as follows: i) labor income; ii) pensions income; iii) capital income; iv) non-labor income; and v) dividends.

According to the above, individuals will have to compute the “baskets” independently every tax year. Thus, a special calculation is proposed for each “basket” type, limiting the simultaneous recognition of costs, expenses, benefits, exempt income, non-taxable income, and deductions between the different “baskets”.

5. Payment in Shares to Employees:

It was introduced within the tax law, an express rule regarding the tax treatment of payment in shares to the employees, indicating the effects both for the workers and for the company.

Small Business

Pursuant to Law 1429 of 2010, small business that start their activities as of December 30th 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.

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.

Law 1819 of 2016 provides that those companies that were granted these benefits can keep them...
under the following conditions:

- The progressive income tax benefit will be extended to shareholders.
- 2017 onwards taxpayers must determine their income tax liability according to the following table:

<table>
<thead>
<tr>
<th>Year</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>First year</td>
<td>9%+(GR-9%)*0</td>
</tr>
<tr>
<td>Second year</td>
<td>9%+(GR-9%)*0</td>
</tr>
<tr>
<td>Third year</td>
<td>9%+(GR-9%)*0.25</td>
</tr>
<tr>
<td>Fourth year</td>
<td>9%+(GR-9%)*0.50</td>
</tr>
<tr>
<td>Fifth year</td>
<td>9%+(GR-9%)*0.75</td>
</tr>
<tr>
<td>Sixth year onwards</td>
<td>GR (general rate)</td>
</tr>
</tbody>
</table>

2. **Tax credits**

- Special tax credit for investment in scientific, technological development and innovation, which is granted for those investments that met the requirements provided in the CONPES 3838 of 2015 or the respective authorization granted by the National Council of Tax Benefits in Science and Technology. The taxpayer can discount from its income tax due 25% of the amount invested in those projects.

- Special tax credit for investment in environment control and improvement: The taxpayer can discount from its income tax due 25% of the amount invested in those projects.

- Tax credits for taxes paid abroad: individuals residing in national territory, and national companies or organizations obligated to pay income tax in Colombia, who receive foreign-sourced income levied in their country of origin, are entitled to deduct the value of the tax paid abroad, from their local income tax liability. This will be possible, as long as the tax paid does not exceed the amount of income tax that the taxpayer would have to pay 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 compute 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, by the income tax rate applied over the profits from which the dividends are distributed.

**Tax incentives**

For income tax purposes, there are several tax incentives, which could be 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.

Within these incentives, the following can be highlighted:

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 revenues that do not constitute income nor capital gain, as long as the sale of the shares does not surpass 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.

14. Small business is a business with no more than 50 employees and which total worth does not surpass 5,000 minimum legal wages (COP $689,454 MLW for 2016)
- Value added tax (VAT) paid on basic industry heavy machinery importation. VAT paid to import machinery for 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 credits cannot be lower than 75% of the presumptive income tax calculated before the tax credit is subtracted.

3. **Exempt income**

- Those raised from the application of the rules of the Andean Community Agreement – CAN (by its acronym in Spanish).

- Profits from river transportation services with small craft.

- Those raised from the usage of new cultivations.

7.2 **Incentive to investments in hydrocarbons and mining sectors**

Law 1819 of 2016 introduced incentives to increase investment in hydrocarbons and mining activities, such as:

1. Investment in exploration, development and construction of mines, oil or gas fields, and other non-renewable natural resources, can be offseted and deducted according to the rules established in article 143-1 of the Tax Code.

2. The Government has powers to issue fiscal reimbursement certificates (CERT by its acronym in Spanish) in order to incentive the investment in the exploration for hydrocarbon and mining activities. The covered activities are those related to finding new fields, the extension of fields and the incorporation of proved recoverable reserves.

Beneficiaries will be those with property over the exploitation rights, or those with rights acquired by private exploitation/collaboration agreements.

7.3 **Capital gain tax**

1. The following revenues are subject to capital gain tax in Colombia:

   a. Income from the sale of fixed assets owned from a term not less than two years;

   b. Profits arising from the liquidation of companies with two or more years of existence;

   c. Income received over title inheritances, legacies, donations, and any other income arising from any legal act between individuals;

   d. Profits generated from a divorce;

   e. All income generated from lotteries, prizes, raffles, gambling and similar.

2. Capital gain tax rate is 10% for national companies and foreign entities, and all individuals (resident and non-resident). However, the revenues produced from
lotteries, raffles, betting and similar, are subject to a 20% rate.

### 7.4 Self-withholding on income tax matters

1. The self-withholding on income tax system is regulated by the Decree 2201 of 2016, as a new mechanism of withholding that is independent from the withholding tax and self-withholding tax existing before the expedition of Law 1819 of 2016.

2. In that sense, both systems will be in force simultaneously.

Colombia has signed several Double Taxation Treaties, with the following countries:

### 7.5 Double taxation treaties

1. Chile
2. Spain
3. India
4. Switzerland
5. Canada
6. Mexico
7. Portugal
8. Korea
9. Czech Republic
10. France
11. United Kingdom
12. United Arab Emirates
13. Italy\(^{15}\)

Additionally, Decision 578 of 2004 issued by the Andean authority is a mechanism to avoid double taxation and preventing tax evasion between the member countries of the Andean Community of Nations-CAN: Colombia, Ecuador, Peru and Bolivia.

One of the main intentions of Decision 578, as a 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.

### 7.6 Controlled Foreign Companies rules (CFC)

Law 1819 of 2016 incorporated in the Colombian tax legislation CFC rules. It is understood by CFC, those companies that meet the following requirements:

- The control must be under one or more entities or individuals with its residence in Colombia.
- It must be fulfilled the subordination and economic conditions set forth in article 260-1 of the Tax Code.
- The CFC must not have its residence in Colombia.

CFC could be characterized as investment vehicles similar to societies, trusts, collective investment funds, or private interest foundations.

In case the CFC is located in a non-cooperating jurisdiction, low or none taxation jurisdictions, or under preferential tax regimes, the subordination will be presumed.

\(^{15}\) The DTAs subscribed with France, United Kingdom, United Arab Emirates and Italy are currently not in force.
The CFC chapter includes the rules for the determination of passive incomes, accrual of incomes, expenses and deductions, taxable incomes and other relevant aspects.

### 7.7 Relevant aspects of corporate reorganizations

1. Mergers, spin-offs and investments in companies that meet the requirements established in the tax regulation will not be subject to taxation.

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

3. If fractional shares arise in the context of mergers and split-off transactions, and those shares are paid in cash or in kind (different from shares), and those payments represent more than 10% of the shares in the resulting company in the case merger and spin-off acquisitions and 1% of organizational mergers and spin-offs, this will imply that some of the partners or shareholders sold their shares.

### 7.8 Value added tax

1. The Value Added Tax (VAT) is a national tax that levies:
   - The sale of corporeal assets, except for the special cases provided by law.
   - The sale or assignment of rights over intangible assets related to intellectual property.
   - The render of services in Colombia, or services provided abroad to be used in Colombia.
   - The importation of services and goods.
   - Operating or selling lotteries or gambling, except for those operated exclusively through internet.

2. The general tax rate is nineteen percent (19%); however, the rates of zero percent (0%) and five percent (5%), apply to certain goods and services.

3. Exports of goods are VAT exempt.

4. 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.

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 1819 of 2016, the following are the VAT taxable periods:

<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 months</td>
</tr>
<tr>
<td>Corporation / individual</td>
<td>Equal or higher than 92.000 UVT</td>
<td>Every two months</td>
</tr>
<tr>
<td>Corporation / individual</td>
<td>Lower than 92.000 UVT and higher than 26.000 UVT</td>
<td>Every four months</td>
</tr>
</tbody>
</table>
7.9 Consumption national tax

1. The taxable event is providing or selling to the final consumer, or the importation by the final consumer, of following services and goods:
   - Mobile phone and internet services.
   - Sales of some movable goods, domestic production or imported, such as vehicles.
   - Sale of vehicles considered as fixed assets for its seller, when the sale is made on behalf a third party.

2. For this purpose, the applicable tax rates are: Mobile phone 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%.

3. This tax also has the classification of simplified and common regimes provided for VAT purposes.

7.10 Registration tax

1. Registration tax is due on 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 base of registration tax depends on the act, contract or legal business, valuable or without value. The amount/value of an act, contract or legal business consists on 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 incorporation contracts, by law 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 will be defined by each Department within the ranges described below:
   - Acts, contracts or legal operations 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 unspecified sum, and subject to registration at the office of registration of public instruments or the Chamber 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 stamp tax do not levy registration tax.

7.11 Levy on financial transactions

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

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

3. In virtue of the Law 1819 of 2016 the levy on financial transactions has been catalogued as a permanent tax.

**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.

**7.12 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. For purposes of determining which municipality will be entitled to claim the payment of this tax, the following rules must be applied:

**Industrial activity:** At the city where the factory is located, and it is understood that the commercialization of products manufactured is the culmination of the industrial activity and therefore does not cause the tax as a commercial activity itself.

**Commercial activity:** The following rules must be applied:

- If the activity is carried out in a commercial establishment open to the public or at points of sale, it will be understood to be carried out in the municipality where they are located.
• If the activity is carried out in a municipality where there is no commercial establishment or points of sale, the activity will be understood in the municipality where the sale is agreed. Therefore, the tax is accrued in the jurisdiction of the municipality where the price is agreed and the good is sold.

• Direct sales to the consumer through mail, catalogs, online purchases, telemarketing and electronic sales will be understood as taxed in the municipality that corresponds to the place of dispatch of the merchandise.

• In the activity of investors, the income will be taxed in the municipality or district where the company holds the investments.

**Service activity:** The income will be taxed in the city where the service is rendered, except in the following cases:

• In the transport activity revenue will be taxed in the municipality or district from which the good, merchandise or person is remitted.

• In cable and Internet services by subscription and fixed telephony, the income is understood to be received in the municipality in which the subscriber of the service is located, according to the place informed in the respective contract.

• In the mobile cellphone service, mobile navigation and data service, the income is understood to be received in the main address of the user who registers at the time of signing the contract or in the update document. The mobile phone companies must keep a record of income broken down by each municipality or district, according to the rule established here. The value of revenues whose jurisdiction can not be established will be distributed proportionally in the total of municipalities according to their share of the income already distributed.

3. The Industry and Commerce Tax paid throughout the fiscal year is fully (100%) deductible for income tax purposes.

### 7.13 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.

### 7.14 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 entities located, resident or domiciled in non-cooperating jurisdictions with low or no taxation or preferential tax regimes (hereinafter, “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.

According to the new provisions of the tax reform (law 1819 to 2016), the taxpayers subject to present the transfer pricing documentation must include a “Master File” with the relevant global information of the multinational group it belongs to. The specific content for this report is stated in the Regulatory Decree 2120 of 2017 in accordance with the OECD recommendations.

Likewise, and with effect from the fiscal year 2016, the controlling entities or parent companies domiciled in Colombia should prepare a “Country -by- Country Report” (CbCR) which will have information regarding the global allocation of revenues and taxes paid by each of the entities that make up the multinational group with certain indicators relating to their economic activity at a global level.

The amounts that determine the obligation to comply with the formal transfer pricing duties are:

**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 3,315 million), or gross income equal or higher than 61,000 UVTs (COP 2,022 million), 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 such transactions, regardless their gross equity or gross income are lower than the aforesaid thresholds.

**Transfer Pricing Supporting Documentation**

Taxpayers who, in accordance with the aforementioned, comply with the assumptions to be subject to submit the Transfer Pricing Informative Return, are required to prepare and submit the Transfer Pricing Supporting Documentation, for those types of operation whose accumulated amounts in the fiscal period are greater than or equal to the equivalent of 45,000 UVT (COP 1,492 million) 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 331,560 million).

Taxpayers who carry out expense operations with related parties located in tax havens must prepare the documentation to demonstrate the details of the functions, assets, risks and
costs and expenses incurred in carrying out the activities that generated the aforementioned payments, unless such payments are treated as non-deductible income tax and complementary.

Additionally, when the segmentation of the financial statements by type of operation is necessary for the purposes of comparability, such information must be reviewed and certified by the Statutory Auditor or Public Accountant and signed by the Legal Representative and must be attached to the supporting documentation.

Likewise, when the analyzed part is that from abroad, said certification may be subscribed by the equivalent of Fiscal Auditor or Public Accountant or also by an External Auditor.

Master File

Master file is a report that should provide a view to the tax authorities about operations between companies to the same economic group like global transfer pricing policies regarding with the development, property of intangibles and financial activities; the global assignment of revenue and the economics subsidiaries activities of the group; among others.

In this sense, the minimum aspects established by the Regulatory Decree 2120 of 2017 that should be included in the Master File are the following:

- Organizational structure of the group
- Group business description
- Intangibles description of the group
  (Property, maintenance, protection)
- List of intercompany financial activities
- Financial and tax position
- Intercompany services agreements descriptions
- Description of main geographic markets
- Functional analysis of the main contributions to the value chain of the group entities
- Summary of corporate restructurings, acquisitions and spin-offs
- Advance price agreements (APAs) with the group entities

It is important to highlight that, in Colombia the Master File must be submitted by all the taxpayers who are subject to file a Transfer Pricing Supporting Documentation and belong to a Multinational Group, starting on fiscal year 2017.

This duty can be filed in English, notwithstanding the Tax Authority demands its official sworn translation, which might be filled within the next 20 business days after the formal request.

Country by Country Report

The annual statement called Country-by-Country report (CbCR) includes key elements of the financial statements of each of the entities belonging to multinational groups regardless of jurisdiction.

Therefore, the Country by country report will provide to the tax authority information of the total revenue of the entity and its related parties, earnings before taxes, taxes generated and paid, equity, retained earnings, number of employees, tangible assets value, among others.

It is important to mention that the Country by country applies exclusively to those multinational companies with combined revenues of USD 810 million or its equivalent in a local currency in a particular jurisdiction. In the specific case of Colombia, it will be mandatory for those
multinationals with local headquarter with revenues exceeding 81.000.000 U.V. T (equivalent for 2016 to COP 2,4 trillion, and for 2017 equals COP 2,5 trillion) according to law 1819 of 2016.

**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 5 calendar days after the deadline, the penalty’s calculation should be 0.02% of the total value of transactions subject to the Transfer Pricing regime but the penalty cannot exceed 313 UVT (COP 10,3 million).

On the other hand, after the 5 calendar days following the deadline the penalty should be 0.1% of the total value of transactions subject to the Transfer Pricing regime for each month or fraction of calendar month of delay in the presentation of the informative return. However, these cannot be superior to the amount equivalent to 1.250 UVT (COP 41,4 million).

It is important to take into account that the total penalty amount for this item cannot exceed 15.000 UVT (COP 497,3 million).

- **Penalty for inconsistency**

It is understood as inconsistency in the informative return, the data and amounts included containing errors or when they do not match with the Supporting Documentation or with the accounting and support documentation. In addition, the penalty’s calculation should be as follows:

When the informative return contains inconsistencies regarding one or more transactions subject to the Transfer Pricing regimen, will result in a penalty of 0.6% of the total amount of the transaction analyzed. The penalty amount cannot exceed 2.280 UVT (COP 75,5 million).

- **Penalty for omission of information**

If taxpayers omit total or partial information in the informative return regarding the transactions with related parties, will result in a penalty equivalent to:

1.3% of the amount of the transaction that omits total or partial information in the informative return.

When the missing data correspond to other information required in the informative return different from the amount of the transaction, the penalty will be 1.3% of the amount of the transaction that omits total or partial information.

When is not possible to establish the base for the penalty, this will be 1% of the net income reported in the tax return of the same fiscal period or the last one presented by the taxpayer.

If there are no income, the penalty will correspond to 1% of the gross equity reported in the tax return of the same fiscal period or the last one presented by the taxpayer.

It is important to note that the penalty cannot exceed the amount equivalent to 3.000 UVT (COP 99,4 million). However, in the case of taxpayers whose transactions subject to the transfer pricing regime within the fiscal year of the informative return record an amount lower than 80.000 UVT,
the penalty cannot exceed 1,000 UVT (COP 33,1 million).

Additionally, relief of costs and deductions coming from the missing data transactions will operate. Note that, if the taxpayer rectifies the omission prior to the notification of settlement of revision does not apply the penalty due to ignorance.

- Penalty for omission of information concerning operations with persons located, residents or domiciled in tax havens, besides the relief of costs and deductions, in these operations will apply the following:

2.6% of the amount for which the total or partial information was omitted.

When the missing data does not correspond to the amount of the transaction but the other information required in the informative return, the penalty will be 2.6% of the amount of the missing data transaction.

When it is not possible to establish the base for the transaction, the penalty should be 1% of the net income reported in the tax return by the same year or the last fiscal year presented by the taxpayer.

If there is not net income, the penalty will be 1% of the gross equity reported in the tax return of the same fiscal period or the last one presented by the taxpayer. This penalty cannot exceed 6,000 UVT (COP 198,9 million).

- Penalty for non-submission of the Informative Return

Those who fail to comply with the obligation to submit the informative return when an obligation is will be housed by the tax administration, to submit the informative return at the end of 1 month. The taxpayer that does not present the informative return cannot invoke it later as test in its please and this will issued against the taxpayer.

When the informative return is not presented within the established term to give response to the requirement for declare, there will be place to the imposition of a penalty equivalent to 4% of the total value of the transactions subject to the transfer pricing regime made during the fiscal year, but the penalty cannot exceed the sum equivalent to 20,000 UVT (COP 663,1 million).

- Reduced penalty in relation to the informative return:

The taxpayer can voluntarily correct the informative return and pay himself the penalties above, reduced by 50% prior the notification of the statement of charges or special requirements, according to each case.

The informative return may be voluntarily corrected by the taxpayer within the same term of correction of tax declarations established in article 588 form the Tax Statute, counted from the expiration of the deadline to submit the informative return.

The payment of the penalty for not filing prescribes in the term of 5 years from the expiration of the deadline to declare.

Transfer Pricing Supporting Documentation

- Penalty for late filing

Presenting the supporting documentation within the 5 calendar days following to the expiration term, will give place to a penalty of 0.05% from the total value of the transactions subject to filing, this penalty cannot exceed the sum equivalent to 417 UVT (COP 13,8 million).

The untimely submission of supporting documentation, after 5 calendar days from the expiration of the deadline, will result in a penalty of 0.2% from the total value of the transactions subject to filing, for each month or fraction of calendar month of delay. However, this penalty cannot exceed the amount equivalent to 1,667
UVT (COP 552 million). The total penalty shall not exceed the amount equivalent to 20,000 UVT (COP 6631 million).

- Penalty for inconsistencies

If the supporting documentation includes inconsistencies such as errors, information that 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 1% of the amount of the transactions whose information is inconsistent.

When it is not possible establish the base for the penalty, this will correspond to 0.5% of the total value of the transactions consigned in the informative return. If it is not possible to establish the base, taking into account the information contained in the informative return, the penalty shall correspond to 0.5% of the net income reported in the tax return of the same fiscal period or the last one presented by the taxpayer.

If there is no income, the penalty shall correspond to 0.5% of the gross equity reported in the tax return of the same fiscal period or the last one filed by the taxpayer.

The penalty designated in this paragraph cannot exceed the sum equivalent to 5000 UVT (COP 1657 million).

- Penalty for non-presentation of supporting documentation

When the taxpayer does not present the supporting documentation being in the obligation to, will have a penalty of:

4% of the total value of the transactions with related parties respect of which did not submit supporting documentation. When it is not possible to establish the base, the penalty will be 1% of the total value of the transactions listed in the informative return. If it is not possible to establish the base taking into account the information contained in the informative return, the penalty shall correspond to 1% of net income reported in the tax return of the same fiscal period or the last one reported by the taxpayer.

If there is no income, the sanction shall correspond to 1% of the gross equity reported in the informative return of the same fiscal period or the last one filed by the taxpayer.

The penalty indicated in this paragraph shall not exceed the amount equivalent to 25000 UVT (COP 8289 million).

Additionally, relief of costs and deductions coming from the missing data transactions will operate.

Anyway, if the taxpayer presents supporting documentation prior to notification of the settlement of revision, there is no place to apply the penalty by relief of costs and deductions.

The penalty for not present supporting documentation prescribes in the term 5 years from the expiration of the time limit to submit the supporting documentation.

- 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 to those transactions will not be deemed as deductible and the following penalties shall apply:

2% of the sum for which omitted total or partial information in the supporting documentation.

When the omission does not correspond to the amount of the operation, but to the other information required in the supporting documentation, the sanction shall be 2% of the value of the transaction with respect to which information was not provided.

When it is not possible to establish the base, the sanction shall correspond to 1% of the total
value of the transactions listed in the informative return.

If it is not possible to establish the base taking into account the information contained in the informative return, the penalty shall correspond to 1% of net income reported in the tax return of the same fiscal period or the last return filed by the taxpayer.

If there is no income, the penalty shall correspond to 1% of the gross equity reported in the tax return of the same fiscal period or the last one filed by the taxpayer.

The sanction designated in this paragraph does not exceed the sum equivalent to 5,000 UVT (COP 165.7 million).

In the case of taxpayers whose transactions that are subject to documentation, in taxable period or year concerning the supporting documentation, have an amount lower than the equivalent to 80,000 UVT (COP 2,652 million), the penalty may not exceed the amount equivalent to 1,400 UVT (COP 46.4 million).

Additionally, relief of costs and deductions coming from the missing data transactions will operate.

Anyway, if the taxpayer presents supporting documentation prior to notification of the settlement of revision, there is no place to apply the penalty by relief of costs and deductions.

- Penalty for omission of information concerning operations with persons located, residents or domiciled in tax havens, besides the ignorance of costs and deductions, in these operations will apply the following:

  4% of the total value of transactions with persons located, resident or domiciled in tax havens, which did not submit supporting documentation.

  When it is not possible to establish the base, the penalty shall be 2% of the total value of the transactions listed in the information return.

  If it is not possible to establish the base taking into account the information contained in the informative return, the sanction shall be 2% of net income reported in the tax return of the same fiscal period or the last one filed by the taxpayer.

  If there is no income, the penalty shall be 2% of the gross equity reported in the tax return of the same fiscal period or the last one filed by the taxpayer.

  The sanction designated in this paragraph does not exceed the sum equivalent to 10,000 UVT (COP 331.5 million).

- Reduced penalty in relation to supporting documentation

The penalties above will be reduced by 50% of the amount specified in the statement of objections or in the special requirement, according to each case, if the taxpayer before the notification of the resolution that imposed the penalty or the official settlement of review corrects the inconsistencies or omissions.

According to the previous, the taxpayer shall provide to the dependency that knows the research an acceptance of the reduced sanction memorial, which should demonstrate that the omission was remedied, as well as payment or agreement of payment.

- Penalty by correction of supporting documentation

When the taxpayer corrects supporting documentation, modifying: (i) the price or profit margin; (ii) the methods used to determine the price or profit margin; (iii) comparability analysis, or (iv) range, there is place to a penalty of 1% of the total value of the corrected transactions but the penalty cannot exceed the amount equivalent
to 5,000 UVT (COP 165.7 million).

When, subsequent to the notice of the special requirement or the statement of objections, according to each case, the taxpayer corrects supporting documentation by changing the price or profit margin, the methods used to determine the price or profit margin, the comparability analysis, or the range, there is a penalty of 4% of the total value of the corrected transactions but the penalty cannot exceed the amount equivalent to 20,000 UVT (COP 663.1 million).

The taxpayer may voluntarily correct supporting documentation within the same term of correction of tax declarations established in article 588 from the Tax Statute, counted from the expiration of the deadline to submit the supporting documentation.

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. Foreign Trade and Customs Issues

8.1 Tariff benefits

Colombia has a privileged access to international markets; Agreements have been signed with tariff preferences and Free Trade Agreements, which guarantee better conditions of access and export of goods and services.

Regional, bilateral and multilateral agreements executed by Colombia:

Colombia is part of various significant commercial agreements with different countries around the world, such as:

- Andean Community of Nations - CAN (for its initials in Spanish) that include Colombia, Ecuador, Peru and Bolivia.
- FTA-G2 with Mexico
- Agreement of Economic Complementation between the countries of the CAN and those of MERCOSUR (Brazil, Argentina, Uruguay and Paraguay).
- Free Trade Agreement (FTA) Colombia-Chile (2009).
- Free Trade Agreement with the Northern Triangle (TN-CA: El Salvador, Guatemala, Honduras).
- Partial Scope Agreement on trade and economic and technical cooperation between the Caribbean Community (CARICOM) and Colombia.
- Economic Complementation Agreement (ACE) between Colombia and Cuba.
- Free Trade Agreement (FTA) between Colombia and Costa Rica.
- Framework Agreement for the Pacific Alliance together with Chile, Mexico and Peru.
- FTA with Canada signed in 2008, effective as of August 15, 2011.
- FTA with Canada signed in 2008 and that became effective as of August 15, 2011.
- FTA with the United States signed in Washington on November 22, 2006, which entered into force on May 15, 2012 through Decree 993.
- FTA with the European Union.
• EFTA - EFTA (Iceland, Norway, Switzerland and Liechtenstein).

• Free Trade Agreement with the Republic of South Korea.

With the purpose of providing 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 – in force), United Kingdom (2011).

**Tariff Exemptions**

By means of Decree 272 of February 13, 2018, the national government established a tariff rate of 0% for the importation of 3,650 products classified in the tariff subheadings mentioned therein and that had no national production.

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), through which the different administrative entities (21 in total) may share information and the users carry out the authorization formalities, licenses or the pre approvals demanded for import and export operations including part of its mission to manage the registration of technology import contracts.

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).

**New Customs Regulation**

The Government issued Decree 390 of March 7, 2016, as amended by Decree 349 of February 20, 2018, through which a new customs regulation was established.

With it, the Government is aiming to facilitate customs operations, in harmony with the adoption of the Trade Facilitation Agreement of the WTO, with the issuance of Law 1879 of January 9, 2018.

This regulation was conceived under the risk management system, in which the user’s background will be determinant for the authority to exercise greater or lesser control over them.

Much of the regulation will only become effective until November 2019, when the customs authority implements the computer system that will support the application of customs procedures.

During this period, Decree 2685 of 1999, which is the current customs statute, will continue.

The others have already entered into force.

During 2016, several regulations of the new regulation were issued, which contain customs actions that do not require a computer system, including the following:
**Legal Ruling N° 41 of 2016**
- Warranties
- Advanced rulings
- Previews inspection
- International logistics distribution centers
- Reshipments

**Legal Ruling N° 42 of 2016**
- Appraisal for Deposit entries of goods
- Goods exit.
- Shortage of goods in enables deposits and storages
- Term of missing goods location.

**Legal Ruling N° 64 of 2016**
- Administrative and customs matter proceedings

**Legal Ruling N° 72 of 2016**
- Authorized exporter
- Authorized exporter requirements and conditions
- Affidavit of origin
- Non preferential origin regulations
- No n preferential origin verifications.
- Presentation of the Value Declaration

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**Imports**

The import regime is the content of Decree 2685 of 1999, until the month of November of the year 2019.

Some of the modalities by which goods can be imported into the country are the following:

**Ordinary import:** It is that by which the goods are freely available within the country, prior to the payment of customs duties (tariff and VAT) that have to be settled.

**Import with Franchise:** It is the one carried out by virtue of a treaty, agreement or law and that enjoy total or partial exemption of customs taxes (tariff and VAT).

**Importation in fulfillment of Guarantee:** Importation without the payment of customs taxes, of goods that enter the country in fulfillment of a guarantee of the manufacturer or buyer.

**Temporary import for re-export in the same state - short term:** By which goods enter the country without paying customs duties and can remain in the country for a term of six months, extendable for an equal term.

**Temporary import for re-export in the same state - long term:** By which the merchandise can remain in the country for a term of five years, paying the customs taxes in semi-annual form and proportional to the time of permanence of the goods in the country.
Temporary importation for inward processing: modality that allows the temporary importation of merchandise for repair or conditioning, with suspension of customs taxes.

Temporary import in development of special import and export systems, better known as “Plan Vallejo”: Through which you can import raw materials with exemption or suspension of customs duties, for the production of goods that are exported and machinery and equipment for export of agricultural goods or for the export of services.

The Plan Vallejo can be developed under the following modalities:

Direct: Understood as one in which the natural or legal person who imports the raw materials or inputs, capital goods, intermediate goods or spare parts, directly performs the production and export of the good or service.

Indirect: That in which the natural or legal person that imports the raw materials or inputs, capital goods, intermediate goods or spare parts, is not the one that directly performs the production and export of the good or service.

Import for Transformation or Assembly: entry of goods that are going to be subjected to transformation processes or assembly duly authorized. They are not subject to the payment of customs taxes.

Postal Traffic and Urgent Shipments: it is the income of mailings, parcels and urgent shipments that do not exceed USD $ 2000 and its weight does not exceed 50 kg.

Urgent deliveries: direct delivery to the user of certain goods that must be used for events such as catastrophes, disasters or pressing situations.

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 and quick procedure in Colombia, since most goods need no special permits, and the exportations procedure is performed online.

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.

Currently, the main export procedures are:

a. **Definitive Exportation**: It is the exit of national or nationalized merchandise from the national customs territory for its definitive use or consumption in another country or in a free zone. It can be presented with definitive data or provisional data.

b. **Re-boarding**: It is the exit of the country from goods coming from abroad, which must be sent back abroad due to the impossibility of being nationalized.

c. **Export by postal traffic and urgent shipments**: It is the delivery of correspondence, shipments that leave the national territory through the official postal network and urgent shipments, provided that their value does not exceed (US $ 2,000) and require quick delivery to the recipient.
d. **Temporary Exports**: it is the exit of goods to be subjected to transformation, processing or repair abroad or in a free zone, and must be reimported.

e. **Exportation of Samples without Commercial Value**: It is the exit of goods declared as "samples without commercial value", with an annual quota of USD $ 10,000 per company.

**Customs Valuation**

Customs valuation is the customs procedure established in the WTO Value Agreement as well as CAN Decision 571 and Resolution 1684 and Decree 390 of 2016, which is used to determine the customs value of the imported goods.

There are six different methods do determine the custom value of goods, as follows:

- **Method 1**: Transaction Value
- **Method 2**: Transaction value of identical merchandise
- **Method 3**: Transaction value of similar goods
- **Method 4**: Deductive method
- **Method 5**: Reconstructed value method
- **Method 6**: Method of last resort

Currently, value disputes on imported goods fall on the declared value or on any of the elements that make up its customs value, in the case of:

f. Prices considered low, in accordance with the indicators of the Risk Management System of the DIAN.

g. Doubts about declared customs value, based on the documents presented or on other objective and quantifiable data.

h. Adjustments to customs value for payment of royalties related to imported goods.

i. Price control for imports of fibers, yarns, fabrics, clothing and footwear.

**Previous Permits**

Most of the tariff categories of the products of the harmonized system do not require approval of registration or a previews import license 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 taking in consideration what Decree 925 of 2013, circular letter N° 21 of 2015 and amending circular letter N° 009 of 2016, established.

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 would be required (entry of goods to the national territory authorization from a Free Trade Zone or abroad that may not be imported freely) as follows:

- 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).

**Supporting Documents of the import declaration**

The importer 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**

Is the way the customs authority leaves the goods for free disposal, after the fulfillment of the legal requirements that may be apply to each transaction or after a warranty has been given.

Under the new customs regulation, upon fulfillment of the legal requirements, the customs authority authorizes the disposal of the goods to the interested party through the customs clearance authorization.

**Customs Duties**

The custom taxes caused by importation of goods to the national territory, comprise a percentage (custom tariff and VAT) that is applied to the FOB value of the goods, considering its ad valorem value.

Throughout Decree 2153 of 2016, 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 the text single of the nomenclature common of the countries members of the agreement of Cartagena (NANDINA) through the 812 decision of CAN was adopted.

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%, 3%, 5%, 10%, 15%, 20%, 30%, 35%...
- VAT: 19%, 5% exempt and 0% excluded.

The customs tariff rates are set forth in Decree 2153 of 2016 containing the Customs Tariff and the VAT rates in the Tax Code.

In the tax reform release at the end of 2011; 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.
**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.

**Customs Procedures**

Importers and exporters can directly carry out import and export operations, without prejudice to the use of a customs agency.

All shipments entering the country must be sent to authorized warehouses, where they will be under customs control as long as the import process is carried out, unless this process is carried out at the place of entry. They can also be sent to a Free Zone, where they can remain indefinitely.

The goods can remain in deposit for a maximum of one (1) month from the date of arrival of the merchandise to the country, while the customs clearance is made. This initial period can be extended for one month, but after the expiration of that extension, the merchandise will be declared abandoned in favor of the Nation, in which case they will become the property of it.

**8.3 Free trade zones**

On December 30, 2005, the Colombian government enacted Law 1004, whereby the Free Trade Zone Regime was modified.

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.

Looking for a united regulation, the national government issued Decree 2147 on December 2016, modifying the Free Trade Zone regimen:

**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.

**Tax Benefits derived from the Free Trade Zones Regime**

Decree 2147 established a chapter exclusively to Free Trade Zones offshore (created through Decree 2682 of 2014) 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.

**Income Tax:** Law 1819 of 2016 "Tax Reform" modified the income tax rate from 15% to 20%
on the taxable income for operator and industrial users of goods and services, at a difference from the 34% applied to the rest of the national territory.

An income tax rate of 34% 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 produced and/or are stored in Colombian free trade zones going to abroad are exempt from custom taxes, because that transaction is considered as an exportation.

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, the latter 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 National Environmental Licensing Agency (ANLA for its initials in Spanish) issues a certificate to the effect that the goods meet the environmental protection objectives that are being shown.

**Import of equipment and elements for projects of Non-conventional Energy Sources (FNCE for its initials in spanish)**

The National Government, through the issuance of Law 1715 of 2014, established the exclusion benefit of VAT and Tariff, in the importation of equipment, machinery and necessary elements for FNCE projects.

These projects are related to energy generation by means, solar, wind, thermodynamic, among others.

In order to access these benefits, it is necessary that the Mining and Energy Planning Unit (UPME for its initials in Spanish) and the National Environmental Licensing Agency (ANLA for its initials in spanish) issue approval and certification of the project's endorsement in order to access the aforementioned benefits, among others.

**Import of equipment and elements for Efficient Energy Generation (GEE for its initials in spanish) projects**

Like the aforementioned, these projects seek that the consumption of energy is not simply reduced by the consumer, but that it is used, in efficient processes of management, generation and consumption of energy.

These projects must also be aligned with the current and applicable regulations, by entities such as the Mining and Energy Planning Unit (UPME), and the National Agency for Environmental Licenses (ANLA), and at the same time be in line with the established goals for this type of project.

**8.5 Authorized Economic Operator (AEO)**

By the Decree 3568 of September 27, 2011, modified by the Decree 1894, 2015, regulated by the Resolution 00015 from February 17 from 2016 and Resolution 000067 of 2016 (AEO importers), were established the Authorized Economic Operator (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.

Being 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.

Decree 390 of 2016 established a term of 4 years of validity for companies qualified as Permanent Customs Users (UAP) and Highly Exporting Users (ALTEX), which expire in March of the year 2020.

During that period, both UAP and ALTEX that would like to apply for AEO, may request that qualification voluntarily, following the legal requests.
9. Conflict resolution

9.1 Deloitte’s strategy to resolve disputes against the Colombian Tax Authority and against Judicial Authorities

The litigation team of Deloitte has the finality to defend our clients interests when these are tax, custom and foreign exchange issues, which are been discussed against the Colombian Tax Authorities and against Judicial Authorities.

Our policy is focused in evaluate all the possible solutions of the client disputes, and to search a strategy which permits that the last choice of advocacy would be to present a legal claim against the Colombian Court.

In these line, our litigation team provides the following services:

- To elaborate a technical evaluation to search the best strategy to solve the clients dispute. We always present our clients not only all the alternatives they have, but also we present the succeed rate of each dispute.

- To elaborate the writs and the appeals that would be necessary to guarantee a optima advocacy.

- To evaluate and analyze all the legal evidence to support the client’s argumentation.

- To arranged and participate with the client in meetings against all the Colombian Authorities when it is necessary, to try to solve the disputes in a short term.

9.2 Attention to the processes against the Colombian Tax Authority

Our litigation team is specialist in the following legal issues:

- National Taxes, in which we found the Income Tax, the Value Added Tax and others.

- Territorial taxes; the industry and commerce Tax, the public lighting Tax and other taxes.

- Transfer pricing regulation, in which we found the application of the determinations methods of the profit margin and penalties.

- Determination processes of custom taxes; custom classification, and penalties for breach the custom legal obligations, and other taxes and penalties.

Deloitte litigation team provide the service of support and assist our clients in his responses of special summons, and information summons, and with the elaboration of the appeals against the administrative acts where the Colombian Tax Authority determine major taxes and impose penalties.

9.3 Attention to the legal processes against the Colombian Court

Once the dispute transcends the instance against the Colombian Tax Authority, our team provide all the support to our clients to present a legal claim against the Colombian Judicial Court.
Because the issues theme, all our processes are being advanced in the Administrative Jurisdiction.

In these opportunity our support includes:

- The definition of the best strategy in order to favor the client interest.
- The preparation of the legal evidence, which is going to be presented in the legal processes.
- We support the client in hearings and others legal proceedings.

9.4 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.

9.5 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”).

9.6 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.

**9.7 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.
10. Personal data protection

10.1 What personal data is?

Personal data are all the information that can be associated with a natural person to identify it. There are different types of personal data depending on their nature, such as identification, socioeconomic, location and other data that can be associated with a person. In addition to this classification personal data may be public, semi-private, private or sensitive.

10.2 Scope of application

The principles and provisions contained in Law 1581/2012, shall apply to personal data recorded in any database that maybe processed by public or private entities.

10.3 Authorization of the holder

In the processing of personal information, the authorization of the holder must be requested at the latest at the time of data collection.

10.4 Which entity monitors compliance of the Data Protection Regime?

The National Government through Law 1581 of 2012, in its article 19 designated as the authority in charge of the supervision and control of the Data Protection Regime, to the Superintendence of Industry and Commerce - SIC, who through the Personal Data Protection Delegate is responsible for ensuring that the processing of personal data is in accordance with the principles, rights, guarantees and procedures provided for in Law 1581 of 2012.

Likewise, once the SIC establishes that the person responsible for the processing of personal data has incurred in any breach of the provisions of Law 1581 of 2012 has the power to adopt measures or impose corresponding sanctions. The SIC will assess the extent of the damage, the benefit obtained, recidivism, negative, obstruction, reluctance and other actions that result from non-compliance with the processing of personal data.
The penalties in which you can incur for non-compliance are as follows:

<table>
<thead>
<tr>
<th>Sanctions (Art. 23 Law 1581/ 2012)</th>
<th>Value / Time of the fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of fine</td>
<td></td>
</tr>
<tr>
<td>Personal ans institutional</td>
<td>For the equivalent of 2,000 SMMLV at the time of imposition of the sanction.* The fines may be successive as long as the breach that originated them subsists.</td>
</tr>
<tr>
<td>Suspension of Treatment-Related Activities</td>
<td>Up to a term of six (6) months*The act of suspension shall indicate the corrective measures to be adopted</td>
</tr>
<tr>
<td>Temporary closure of operations related to the Treatment once the term of suspension has elapsed without corrective measures ordered by the Superintendency of Industry and Commerce.</td>
<td>Time estimated by the Superintendency of Industry and Commerce.</td>
</tr>
<tr>
<td>Immediate and definitive closure of the operation involving the processing of sensitive data</td>
<td>Permanent closing</td>
</tr>
</tbody>
</table>

10.5 What is the National Database Registry –RNBD?

The RNBD is the public directory of databases with personal information subject to treatment operating in the country.

The Government regulated in chapter 26 of the Decree 1074 of 2015, the minimum information that the RNBD must contain, along with the terms and conditions under which the databases must be registered.

In addition to the External Circular No. 2 of the Superintendency of Industry and Commerce, the management and instructions for the persons responsible for the processing of personal data (legal entities of a private nature registered in Chambers of Commerce and Companies of Mixed Economy) ). In order to register the databases in the RNBD system before November 8, 2016.

Finally, through Decree 1759 of 2016, the Ministry of Commerce, Industry and Tourism amended article 2.2.2.26.3.1 of Decree 1074 of 2015 “The registration of the databases in the National Registry of Databases will be carried out in the following deadlines:

“A) Treatment Officers, legal entities of a private nature and mixed economy companies registered in the chambers of commerce of the country, shall make said registration no later than June 30, 2017, in accordance with the instructions which for the purpose imparts the Superintendency of Industry and Commerce.

B) Treatment Officers, natural persons, entities of public nature other than mixed economy companies and private legal entities that are not registered in the chambers of commerce, must register their databases in the National Register of Bases of Data no later than June 30, 2018, in accordance with the instructions given for such purposes by the Superintendency of Industry and Commerce”.

The penalties of article 23 of Law 1581 of 2012 apply only to persons of a private nature. In the
event of a breach by a public authority, the SIC will refer the action to the Office of the Attorney General, who will advance the respective investigation.

10.6 What is the National Database Registry –RNBD?

The Accountability principle states that when an entity collects and processes personal data, it must be responsible for the effective enforcement of measures that implement the principles of privacy and data protection.

In this sense, the controller must have an Integral Program for the Management of Personal Data, and with all the documentation to demonstrate to the Superintendency of Industry and Commerce the implementation of the adequate and effective measures of compliance with the obligations of Law 1581 of 2012 and its regulatory decrees.
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