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Corporate Matters

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.

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 —‘Ltda.’ Failure to include this word in the by-laws shall make the partners responsible in an unlimited and jointly manner in respect to third parties. The number of partners shall not exceed twenty five.

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

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

Capital Stock
Capital stock is represented by quotas. They have to be fully paid at the time of incorporation or every time that there is a capital increase. The assignment of quotas implies a bylaw reform.
Simple Stock Corporations
Concept
Corporate capital structure in which shareholders are liable for up to the sum of their contributions. Its corporate name must be followed by the abbreviation “…S.A.S.” It may be incorporated with one or several associated, through an agreement or unilateral act evidenced in a private document without need of a public deed.

Administrative and Control Functions
The organizational structure of the company and other regulations that rule its operation are freely determined. However, if not indicated in the bylaws, the administrative duties are exercised by: (i) General Shareholders’ Meeting or Sole Shareholder, and (ii) Legal Representative. Each capital share entity 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.

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.

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.

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)1, 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.

Statutory Auditors
It is mandatory to appoint a statutory auditor in branches and stock companies. The other legal entities only require the appointment of a statutory auditor if their gross income exceeds three thousand (3,000) minimum monthly legal wages2 (equivalent to COP $2,213,151,000, approximately USD $753,798) and/or their assets exceed five thousand (5,000) minimum monthly legal wages (equivalent to COP $3,688,585,000 approximately USD $1,256,330).

Entities under surveillance by the Superintendence of Corporations
Pursuant to Decree 4150 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 $12,131,500 approximately USD $7,537,980).2

Registration
1 The legal minimum Monthly Wage in Colombia has been fixed at at COP$737,717 for the period from January 1, 2017 to December 31, 2017.
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3 Average exchange rate used is COP$2.936.
4 Average exchange rate used is COP$2.936.

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 is the instrument to avoid delays in registration process with the Chamber of Commerce in case of homonymy.

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

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

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

Major regulations
- Decree 1735 of 1993 (Basic definitions for exchange effects).
- 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.
- 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).
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- 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).
- 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 responsibility is fundamental in the exchange proceedings conducted by the DIAN, and the Superintendence of Corporations’ arguments in connection with the conditions of how the infringement was committed, will not be considered by the authorities.

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.

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.

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

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.

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. If such investments are made with resources that should not be 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 ($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 channalization 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 through this accounts any of the free market operations.

Foreign market intermediaries
Foreign market intermediaries (FMI) are commercial banks, mortgage banks, financial corporations, commercial financing companies, Financiera Energética Nacional (FEN), Banco de Comercio Exterior de Colombia S.A. (BANCLODEX), 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 or made within a month after the receipt of a payment derived from an obligation entered in by the account holder with an account resident. Due to 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 entry 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 III, 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.

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.

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.

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 air services; f) Juridical 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.

**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)**

Applicable to branches of foreign companies and to all companies incorporated under Colombian law not dedicated to 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, así log as: i) both residents have compensation account and ii) is 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 nonresidents. 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 capital investment dedicated exclusively to provide inherent services of hydrocarbons sector in accordance with Law 9 of 1991, Decrete 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 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, ferro nickel 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. 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, to the sums received in local currency as consequence of internal sales of oil, natural gas or services inherent to the oil sector and for b) 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.

**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, ferro nickel 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 belong 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.

**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 1996 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 real estate securitization process of a property or construction projects, provided that the title is not registered in the RMV.

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 2565 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 RMV (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, 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. The date of origin of foreign capital of portfolio, which does not imply equity interest in the case of intangible assets: from the date of the exchange declaration for international investments.

Regulation of foreign investment in Colombia and the Stock Market, given the objective of 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 sectors, according with what is provided in article 16, Law 9 of 1991, and the Decree 2558 of 1991, belongs to the special exchange regime from the date of the transfer of the certificate of exclusive dedication from 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 are of speculative character.

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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. Readjustment 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.

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 cancellation statement (Form 12).

Cancellation of Foreign Investment caused by Business reorganization (mergers and acquisition processes) is registered presenting the international investments Exchange Statement for Business Reorganization (Form 11A).

The term to present the international investments exchange cancellation statement is twelve (12) months since the operation is completed. This term is renewable. Although the Decree 119 of January 26, 2017 removed this term, the term is still in application until the Central Bank regulates the Decree.

Importations and exportations of goods

Reimbursements or payments of imports 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 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.

Foreign indebtedness

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

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

On the other hand, Colombian residents may grant loans in foreign currency to non-residents and this modality is called active credits since the creditor is a Colombian resident.

From an exchange perspective and for the private sector, the parties may freely agree the terms, interest and, in general, the terms and conditions of the credit.

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

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 passivestore (when the debtor is a resident), return non-formalized investments, imports of financed goods and foreign portfolio investments. However, now a days is 0%.
State Contracts

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

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In general terms, regulations specified in the General Contracting Code of the Public Administration are applicable to government agencies, as provided for in Article 2, Law 88 of 1993. Nonetheless, it should be noted that certain agencies, regardless of their public nature, perform contractual activities at the State, and that not all the contractual 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 State has an interest in the value of 50% of their corporate capital. To become eligible to operate under special regimes, the aforementioned entities are required to remain competitive and operate under monopsonistic or regulated markets.

Both, entities governed by the regime specified in Law 88 of 1993, as amended, and State-owned entities that operate under regimes other than those specified in the General Contracting Code shall apply 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.6

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.

Public procurement and purchases system. The General Contracting Code establishes that the execution of the procedures required to perform governmental contracts, of a non-special nature, shall be executed in accordance with the acquisition plan of the public agency, as determined in the corresponding law. The General Contracting Code, or the respective special regime, shall determine the rules to be applied to the specific contracts governed by such special regimes, with the aim of making the procurement process efficient and effective, as well as providing a regulatory framework.

According to the acquisition plans of each public agency, Colombia Buy Efficient (CCE) Framework Agreements should be used to purchase goods and services with similar features, in order to ensure cost efficiency.

In the event of the execution of the General Contracting Code, or the respective special regime, the public agency must be in writing, but also must be published in the Official Diary. In these cases, the contracts cover all the publication costs.

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.7

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

It is important to state the fact that public entities, based on the principle of publicity, have the right to participate in the contracting processes, regardless of their public nature, perform contractual activities that fall under special regimes, and on behalf of the third party or mediator, or on behalf of the bidder regardless of the aforementioned, Chambers of Commerce are ruled by Decree 734 of 2012.8

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 Public Registry. The registration in the RUP is a minimum requirement in order to submit an offer within a selection process. Registration is subject to modifications.

Therefore, a bidder who is interested in participating in the consultation processes or to comply with the Colombian Government payments, such as capacity and financial experience and organization conditions.8

Any entity willing to become a contractor for the Colombian Government must be registered in the RUP, except for those specific cases discussed under Law 1150 of 2007.

An articulated review of the State’s entity annual budget and contract value, may determine that public agency contracts only must be in writing, but also must be published in the Official Diary. In these cases, the contracts cover all the publication costs.

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Any entity willing to become a contractor for the Colombian Government must be registered in the RUP, except for those specific cases discussed under Law 1150 of 2007.
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 incompatibilities are called “inabilities or incompatibilities”. Inabilities and incompatibilities may take place before or after the selection process. Once the selection process starts, the incompatibilities and inabilities 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”.

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 can only be established by law. Therefore, the state entities themselves cannot establish inabilities or incompatibilities.

Effects arising from surviving inabilities or incompatibilities:

A. In respect to the Selection Process:
   - Termination of the bidder participation within the selection process;
   - 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-fulfilment 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 of 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. The 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).

- 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:
- 07. Legal capacity.
- 08. Experience levels.
- 09. Financial capacity.
- 10. Bidders’ organization.

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.

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 other 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.

Selection Process

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 receives 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 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 abbreviation selection is another process specified in Law 1150 of 2007, pursuant to which a contract 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 sum 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.10

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

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

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

Direct Contracting

Direct contracting takes place exceptionally, since most of the State contracts are subject to bids or contest procedures. Direct contracting can only occur if there is a legal base that gives rise to that process. Under a direct contracting process, there are more flexible terms than those obtained in bidding processes.

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

The following are the legal bases upon which direct contracting processes are allowed:
- Situations of latent urgency.
- Loan agreements.
- Inter-administrative agreements, inasmuch as any obligation arising from said agreements is directly related to the object of the executing entity, as provided by law or the entity’s own bylaws. Exceptions to inter-administrative agreements include contracts for public works or procurement, trust management agreements and public trusts, whenever public higher-education institutions are the executing party. These contracts may be entered into by said entities, inasmuch as they participate in public biddings or abbreviations selection processes, as specified in items 1 and 2 of the foregoing article.
- In those cases in which the executing party’s regime is other than the one specified in Law 80 of 1993, the execution of the contract will always be subject to the administrative function principles referred to in article 209 of the Colombian Political Constitution; the objective selection duty, and, the inabilities or incompatibilities regime discussed under Law 80 of 1993, except for those cases in which the executing party is a public higher-education institution; if such is the case, the dispositions that must be made in pursuit of the specific contracting rules specified by such entities while observing all applicable regulations arising from the principle of universality and autonomy provided for in article 68 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 with any 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.
- All 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 liability restructuring agreement, as specified in Laws 550 of 1999, and 617 of 2020, as amended and supplemented, inasmuch as the trust management agreements, are amended into by and into 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 be a simplified previous study containing the elements described in article 84 of the Decree.

This type of contracting does not 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.

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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

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.

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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 agreement; 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, who 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.

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.

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.

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 transitarily. 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.
Labor Issues

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 (Part II, Title 1, Chapter 2, Article 2.2.1.2.1.1 of Decree 1072 de 2015).

The employer must request the Authorization to the Ministry of Labor in order to extend service over the ordinary working hours, this authorization must be renewed one (1) time per year.

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 10:00 p.m. has a 25% surcharge (Article 168, Labor Code and Article 25 of Law 789 of 2002). One (1) overtime hour between 10:00 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, modified by Article 26 of Law 789 of 2002) and working on a holiday or Sunday has a 75% surcharge (Article 179, Labor Code). Increases may be simultaneous, that is if one hour of overtime required to the worker is worked on a Sunday or holiday, it would have an overcharge of 100%, 25% for being overtime and 75% for being a Sunday or holiday.

Vacation days/ Holydays
Employees are entitled to fifteen 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).

The Labor Code was modified in this issue by the Law 1429 of 2010. This modification established that the employer and the employee can agree a monetary compensation of the vacation period, as long as the employee requires it and does not exceed the 50% of the vacations (Article 20 of the Law 1429 of 2010).
Finally, the employee can accumulate different vacation period. The only obligation is to enjoy 6 vacation days, which are not accumulative (Article 190 Labor Code).

Employers and employees can accumulate vacations up to 20 vacation periods/years. Nevertheless, this accumulation can be up to four (4) years, when it is about supervisory or management positions.

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 (4) 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).

Minimum wage

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

Severance

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

Every year, this payment is deposited in a Private Severance Fund chosen by the employee. The employee cannot withdraw this severance while the employment agreement is in effect, except if the funds withdrawn are intended to buy or improve the employee’s home, or for college education of the employee or relatives. Effects (Article 256, Labor Code). The employer must pay the severance each year before February 15th (i.e. February 14th) (Article 99 of Law 50 of 1991).

Integral social security system

Each employer has the obligation to enrol employees to the social security entities that the employee voluntarily chooses, to cover all risks that may affect his health or income. The enrollment is mandatory for all dependent and independent workers. As well, the employer shall inform the employee about the paid contributions (Articles 32, Labor Code).

Unemployment benefit

The Solidarity and Promotion of Employment and Protection of the Disabled Fund (FOSFEC) is a mechanism for cover unemployed individuals. This benefit is given for six (6) months or until the individual begins a new labor relationship.

In order to receive this benefit, the individual must have finished its labor relationship for any cause, for contractors have been finished their freelance contracts. It is mandatory to contribute to a family fund for at least one (1) year during the last three (3) years previous to the unemployment condition.

Integral salary system

Employees whose monthly income is equal or exceeds ten (10) minimum monthly salaries may be chosen to be remunerated through this system (Article 132, Labor Code). This salary system includes the base salary and the fringe benefits, which shall not be less than thirty percent (30%) of the base salary. The resulting amount is equivalent to thirteen (13) minimum monthly salaries. All legal benefits, except vacation, are included within the monthly salary payment (Article 132, Labor Code).

In addition, this type of salary must be agreed by both parties in a written document. For the year 2017 the minimum integral salary is COP $9,595,321 (approximately USD $3,196).

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).

An employer is exempt of its 8.5% healthcare contributions when the employee earns less than ten (10) minimum monthly wage (Article 65 of Law 1819 of 2016).
Doing Business Colombia 2017

• 19 to 20 minimum monthly wages: 0.8%
• Over 20 minimum monthly wages: 1%

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 contribution for this pension is the average amount of the salaries received in the prior 10 years.
The monthly amount for the old age pension will be 65% of the income basis for pension calculation per 1000 weeks. However, since year 2005, for each fifty (50) weeks additional to the minimum required (1000 weeks), the percentage will increase in 1.5% of the base to contribute, reaching a maximum between 80% and 70.5%. Thus, the total value of the monthly pension shall not be superior to the 80% of the base to contribute and non less than a minimum legal salary (Article 10, Law 797 of 2003).

Individual Saving (Private funds)
The member enrolled to this plan may be pensioned at any age provided he/she as long as there is enough capital accumulated in his/her account to obtain a pension of one hundred and ten percent (110%) of the minimum monthly legal wage. Depending on the level of savings the employee has, the system defines the amounts payable. Furthermore, Colombian Labor Law determines three different categories to this system, as follows: (i) defined withdrawal with lifetime income; and (iii) lifetime income defined with an insurance Company.

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).

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 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 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 fourty five percent (45%) of the base income to contribute, plus a two percent (2%) for 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.

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 fail to provide employee with this coverage, the employee 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.
Doing Business Colombia 2017

Temporary work visa / Visa TP-4 for employment agreement (Decree 1067 of 2015 and Resolution 5512 of 2015)

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

According to Decree 1067 of 2015 and Resolution 5512 of 2015, temporary working may be granted to foreign individuals who enter Colombia under employment contracts with Colombian companies.

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

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

Temporary work visa / Visa TP-4 eligibility requirements (Decree 5512 of 2015)

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

Business visa (Decree 1067 of 2015)

Business visas are granted to tradesmen, industrialists, executives and businessespeople wishing to enter Colombia for business purposes. Business visas are granted for a maximum of five (5) years, and authorizes multiple entries, the residence of the visa holder depends on the type of visa granted (Decree 1067 of 2015).

Business visa holders may neither establish their residence in Colombian territory nor earn professional fees or salaries in Colombia. Any breach to said regulations may result in the holder’s deportation and the enforcement of penalties upon his/her sponsor and foreign.

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

Temporary visa – technical assistance permit (Decree 1067 of 2015)

For foreigners who enter the country in order to provide specialized technical assistance, with or without an employment contract to public or private entities. This visa is valid for one hundred eighty (180) days with multiple entries. The foreigners may remain in the country during the validity of the visa. Applications must be submitted before a Colombian consulate official, or forwarded to the Visas Division of the Ministry of Foreign Affairs. Depending on the applicant’s nationality, proceedings may require payment.

Mercosur Visa (Decree 1067 of 2015)

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

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

Temporary resident is granted when: (i) the foreigner is a parent of a Colombian national, (ii) the foreigner is chil of a Colombian national, (iii) the foreigner has held TP-3,4,5 and 7 visa for a minimum of five (5) continuous and uninterrupted years, (iv) the foreign have been head of the TP-10 visa for a minimum continuous and uninterrupted period of three (3) years, (v) the foreign have been head of the TP-15 visa for a minimum of two (2) continuous and uninterrupted years.

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.
Environmental Issues

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.

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 Environmental 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 former are as follows:

01. Hydrocarbons sector: Exploration, exploitation, perforation, transportation, delivery, mobilization of liquid hydrocarbons, and construction of warehouses, oil pipes, or hydrocarbon refineries.
02. Mining sector: Exploitation of coal, construction materials, and metals and gemstones, as well as extraction of other mineral resources.
03. 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.
04. 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.
05. Nuclear energy projects.
06. 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.
07. Construction of railways and expansion of the national railway network.
08. Public works.
09. 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.
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:

01. Environmental license form
02. Plans to support the EIA
03. Estimated operation an investment costs for the project
04. Duty granted power for the respective attorney
05. Payment proof for the service provision and the environmental license
06. ID or existence and legal representation certificate for legal person
07. 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.
08. Copy of the filing document required by the Colombian Institute of Antropology and History (ICAH), demanded for full effects by Law 1183 of 2008.
09. 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 (Guias 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.
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 10% 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 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.

Special charges for the energy industry
According to Law 99 of 1993, which regulations became effective by Decree 1729 of 2002, the electric sector must transfer a percentage of its gross sales according to the following:

01. 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%) to the municipalities where the reservoir is located (for a total of 6%).

02. 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.

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.

“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.
Intellectual Property

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.

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.

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.

International treatments

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

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 graphically 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 1967 (Article 151, Decision 486).
- Priority may be claimed on the basis of a historical first filing of a request in another country, as much 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 is 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 revoked 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 181, 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).

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, on an identical or similar distinctive sign, or one that causes confusion or the risk of associating a third-party company, products or services to the owner’s own company, products or services (Article 192, Decision 486).

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

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

Licenses and Transfers
Transfer of 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).

Definitions of origin

Legal Framework
• Decision 486 (Articles 201 to 224).
• Decreto 2591 of 2000 (Articles 19 to 21).

Definition
As denomination of origin is understood a geographic indication consisting of the denomination of a country, 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 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).

Integrated circuit layout design

Legal Framework
• Decision 486 (Articles 81 to 85).
• Decreto 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 Superintendent of Industry and Commerce (Título 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 licence 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.

Utility model

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

Definitions and Entitlements
Any new shape, configuration, or arrangement of components of any device, tool, instrument, mechanism or other object, or any part thereof, which enhances or differentiates the operation, use, or manufacturing of the object incorporating it, or which endows it with any utility, advantage, or technical effect said object previously did not have shall be deemed as a utility model (Article 81, Decision 486).
- Utility models shall be protected by patents (Article 81).
- Protection will be granted for a non-renewable term of ten (10) years. (Article 81).

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.

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.

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 the copyright thereto, except for backup copies.

The licenses and transfer of software must be registered at the National Authority of Copyrights.

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.
Tax Matters

Income tax
Colombian-sourced income and foreign-sourced income
In general terms, the following are deemed as Colombian sourced-income:
01. Transfer or exploitation of tangible and intangible goods located within Colombian territory.
02. Transfer of goods within Colombian territory.
03. Rendering of services within Colombian territory.
04. Rendering of technical services, technical assistance and consulting services, and the undersigning of turn-key contracts, inside and outside Colombia.
05. Earning of profits by Colombian companies.
06. Returns on credits owned in Colombia.

In general terms, foreign-sourced income includes any revenue arising from the transfer or exploitation of tangible and intangible goods located outside of Colombia, and the rendering of 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:
01. Colombian companies and entities are subject to the income tax over their worldwide income. Meanwhile, non-residents are subject to income tax over their Colombian source income obtained directly or by a permanent establishment in Colombia.
02. As consequence of the expedition of the latest tax reform (Law 1819 of 2016) the tax system was modified.
03. As from January 1 of 2017, the CREE tax was eliminated, and the income tax rate for Colombian companies, permanent establishments and foreign companies subject to submit income tax return, is 34%. As from 2018 and following years the income tax rate will be 33%.
04. Also, was created a income tax surcharge for taxable year 2017 at a 6% rate and for taxable year 2018 at a 4% rate, when the taxpayer was income equal or higher than COP $800.000.000 or USD $266.000. Also there will be an advance payment for this surcharge.
05. Free Trade Zone users will be subject to income tax at a 20% rate, as from January 1 of 2017.
06. 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 the Environment or competent authority.
   – New financial agreements for the purchase of real estate for housing.
   – 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.
07. The income obtained by the industrial and commercial enterprises of the State and mixed economy companies of the Departmental, Municipal and District order, in which the State’s share is greater than 90% through which the monopolies of gambling and liquor are execute, will be taxed at a 9% rate.
08. A permanent establishment (hereinafter “PE”) are the fixed place of business located in the country, through which a foreign company, whether corporation or any other foreign entity or individual not resident in Colombia, performs wholly or partially its business activity.
09. The offices from non-resident reinsurance companies will not be considered permanent establishments for tax purposes.
10. Dividends received by foreign entities or non-resident individuals will be subject to taxation at a 5% rate in Colombia.

When the dividends are distributed from the profit, which if it have been distributed to a national company have been taxed, in accordance with the rules of articles 48 and 49 of the Tax Code, will be subject to the general rate of 35% on the value paid or credited into account, in which case the tax indicated in the previous section, will be applied once this tax has been reduced.
11. If dividends are distributed to resident shareholders over profits that have not been taxed by the company, the income tax rate will be 20%, according to the Decreto 567 of 2007.

17. **Foreign companies without a branch**

- As a general rule, all the local companies, branches of foreign companies and permanent establishments, or foreign companies in special events, are liable to file and submit income tax return annually.

18. **Foreign companies without a branch in Colombia**

- 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 permanent establishment.

19. **Foreign companies and entities without a branch in Colombia**

- Foreign companies and entities without a branch in Colombia, are not obliged to file an income tax return; its income are taxed under withholding tax. Some technologic services are levied to a 15% withholding tax rate. If the profits or dividends are distributed to shareholders, it will be taxed under withholding tax. Some companies located in these jurisdictions will not be deductible unless they are subject to withholding tax.

20. **Operations carried out by companies located in jurisdictions subject to transfer pricing regime**

- The operations carried out by companies located in jurisdictions subject to transfer pricing regime, therefore the taxpayer must submit the supporting documentation and the informative return.

21. **In order to complete a substitution of a foreign investor**

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

22. **Thin capitalization rule provides that taxpayers may deduct from the income tax interests generated from debts**

- The thin capitalization rule provides that taxpayers may deduct from the 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 net equity of the taxpayer determined as of December 31 of the immediate prior year.

23. **Law provides the presumptive income rule**

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

24. **Taxpayers may carry forward tax losses**

- 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.

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This benefit does not affect the non-taxable profit to be distributed as dividends to the shareholders of the Company.

**Taxation of Individuals**

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

### Main Aspects

<table>
<thead>
<tr>
<th>Description</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Income Tax Rates</strong></td>
<td>Progressive rates of 0%, 19%, 28% and 33% for residents. Fixed rate of 35% for non-residents.</td>
</tr>
<tr>
<td><strong>Capital Gain Tax Rate</strong></td>
<td>Fixed rate of 10%</td>
</tr>
<tr>
<td><strong>Tax Base</strong></td>
<td>Income and wealth from worldwide source for residents. Income and wealth from national source for non-residents.</td>
</tr>
<tr>
<td><strong>Tax Year</strong></td>
<td>Calendar year (January 1 through December 31)</td>
</tr>
<tr>
<td><strong>Income Tax Return’s Filing Deadline</strong></td>
<td>Between August and October of the year following the tax year, depending on the last two digits of the Tax Identification Number (RUT).</td>
</tr>
<tr>
<td><strong>Tax Identification</strong></td>
<td>All the individuals subject 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.</td>
</tr>
</tbody>
</table>

### Tax Residence

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

  - Stay 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:

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

- **Tax non-residents**:

  - **50% or more of his/her income** is from non-national source.
  - **50% or more of his/her properties** are managed in the country.
  - **50% or more of his/her assets** are understood to be owned in the country.
  - **Have been required by the Tax Authorities for it, but do not prove their condition as residents abroad for tax purposes.**
  - **Have tax residence in a jurisdiction qualified by the National Governments as tax haven.**

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”:

- **50% or more of his/her income** has its source in his/her place of residence.
**Revenues that do not constitute income nor capital gain**

- Profits arising from the sale of shares listed in the Colombian Stock Market and owned by the same real beneficiary, are deemed as revenue that does not constitute income nor capital gain, as long as the sale of the shares does not surpass 10% of the shares of the company listed, during the same taxable year.
- Dividends distributed to shareholders arise 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 unsalated to recipient.
- The inflationary component of financial returns.

**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 the country and national companies and organizations that are income tax payers, who receive foreign-sourced income subject to income tax in the country of origin, are entitled to deduct from the amount of Colombian income tax liability, the value of the tax paid abroad, as long as the tax paid do not exceeds the amount 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 for the rate of income tax applied over the profits from which the dividends are distributed, is multiplied by the same above formula.
- Value added tax (VAT) paid on basic industry, heavy machinery importation: VAT paid to import machinery for the mining, hydrocarbons, heavy chemistry, iron and steel industry, extracted metallurgical, electric power generation and transmission sectors can be treated as tax credit.
- Two points of the VAT paid for the acquisition or importation of capital goods, including all of the tangible assets that are not usually sold by a company nor are they incorporated to the final goods made or transformed throughout the productive process.
- The tax liability computed after the tax credit is offset cannot be lower than 75% of the presumptive income tax calculated before the tax credit is subtracted.

**Exempt income**

- Those raised for the application of the rules of the Andean Community Agreement – CAN (by its acronym in Spanish).
- Sale of energy: the profits arisen from the sale of energy generated based on wind resources assessment, biomass or agricultural residues, created by energy production companies, from January 1st, 2003 until January 1st, 2017, are deemed as exempt income pursuant to article 207-1 of the T.C.
- Profits from the provision of water transport services with own draft craft.
- Those raised from the usage of cultivation.

**Incentives to investments in hydrocarbons and mining sectors**

Law 1819 of 2016 included incentive 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 offset and deducted according to the rules of article 143-1 of the Tax Code.
2. The amortization of fruitful and fruitless investments is allowed.
3. The Government has the power 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 adquire by private exploitation/colaboration agreements.

**Capital gain tax**

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

01. Invesment in exploration, development and construction of mines, oil or gas fields, and other non-renewable natural resources, can be offset and deducted according to the rules of article 143-1 of the Tax Code.
02. The amortization of fruitful and fruitless investments is allowed.
03. The Government has the power 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 adquire by private exploitation/colaboration agreements.

**Income classification**

Individual’s income tax determination, will depend on each one of the revenue obtained in the development of different activities, which will be classified as “basket” 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 “basket” 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 “basket”.

**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 12 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 its implementing regulations are met:

- A progressive income tax rate, for a period of six years.
- 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.
- 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%)*0.75</td>
</tr>
<tr>
<td>Second year</td>
<td>9%+(GR-9%)*0.75</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>

12 Small business is a business with no more than 50 employees and which total worth does not surpass 3,000 minimum legal wages (COP $680,454 MUV for 2016).
Self-withholding on income tax matters
01. The self-withholding on income tax system is regulated by the Decree 2201 of 2016. It is a new mechanism on withholding that is independent from the withholding tax and self-withholding that existed before the expedition of the Law 1819 of 2016.
02. In that sense both systems will be in force simultaneously.

Double taxation treaties
Colombia has signed several Double Taxation Treaties, with the following countries:
01. Chile
02. Spain
03. India
04. Switzerland
05. Canada
06. Portugal
07. Portugal
08. Korea
09. Czech Republic
10. France
11. United Kingdom

Additionally, there is Decision 578 of 2004, effective as 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, 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.

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.

The CFC can be investment vehicles similar to societies, trust, collective investment funds, and private interest foundations.

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

The CFC chapter includes the rules for the determination of passive incomes, accrual of incomes, expenses and deductions, taxable incomes and other relevant aspects.

Relevant aspects of corporate reorganizations
01. Mergers, spin-offs and investments in companies that meet the requirements established in the tax regulation will not be subject to taxation.
02. Profits generated in merger and spin-off transactions of companies listed on Colombian stock exchange, do not constitute taxable income for its shareholders.
03. If fractional shares arise in the context of mergers and split-off transaction, 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 asquisitions and 1% of organizational mergers and spin-offs, this will imply that some of the partners or shareholders sold their shares.

Value added tax
01. The Value Added Tax (VAT) is a national tax that is levied:
- For the sale of corporeal assets, exceptuating the special cases provided by law.
- The sale or assignment of rights over intangible assets related to intelectual property.
- The render of services in Colombia, or services provided from abroad to be used in Colombia.
- The importation of services and goods.
- The operation or selling of lottery.
02. The general rate nineteen percent (19%). rates of zero percent (0%) apply to certain goods and services, and finally the rate of five percent (5%).
03. Exports of goods are VAT exempt.
04. 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.
05. 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.
06. In accordance with the provisions of Law 1819 of 2016, the following are the VAT taxables:

Consumption national tax
01. The taxable event is providing or selling to the final consumer or the importation by the final consumer, of the following services and goods:
- Mobile phone and internet services.
- The sale or assignment of rights over intangible assets related to intellectual property.
- The service of the sale of food and beverages prepared in restaurants, cafes, supermarket, ice cream, fruit, pastry shops and bakeries for consumption on the places, or home-delivered service, sale of food and alcoholic beverages, under franchise agreements, or any other exploitation of intangibles agreements.
02. The applicable tax rates are:
- Mobile phones services 4%, some vehicles 8% and 16%, service of sale of food and beverages prepared in restaurants, cafes, supermarkets, ice cream, fruit, pastry shops and bakeries 8%.
03. This tax also has the classification of simplified and common regimes provided for VAT purposes.

Registration tax
01. The 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.
02. The taxable base of registration tax depends on the act, contract or legal business, having value or without value. The amount/value of an act, contract or legal business consists of the value included in the document of the act, contract or legal business.

For the purpose of tax for the sale of intangibles agreements, or any other exploitation of intangibles agreements.
03. In the case of registration of contracts of incorporation, 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.
04. Registration tax rate is defined within the ranges described below:
- Acts, contracts or legal operation for a determined value and subject to registration at the office of registration of public instruments, vary from zero point five percent to one percent (0.5% - 1%).
- Acts, contracts or any other legal operation with determined value, subject to registration before the Chambers of Commerce, other than those involving the constitution and/or the increase in paid in stocks and shares of companies, will be subject to a rate of zero point three percent zero point seven percent (0.3% - 0.7%).
- Acts, contracts or any other legal operations for an unspecified sum and subject to registration at the office of registration of public instruments or the Chambers of Commerce, such as appointments of legal representatives or statutory auditors, bylaw amendments that do not imply the assignment of rights or capital increases, and exaplanatory deeds, from two to four (2-4) minimum daily legal wages.
05. Documents subject to stamp tax do not levy registration tax.

<table>
<thead>
<tr>
<th>Taxpayer</th>
<th>Gross incomes for the previous year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Major taxpayers</td>
<td>Equal or higher than 92,000 UVT</td>
</tr>
<tr>
<td>Corporation / individual</td>
<td>Lower than 92,000 UVT and higher than 26,000 UVT</td>
</tr>
</tbody>
</table>

| Period | Every two months | Every two months | Every four months |
Levy on financial transactions

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

02. 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%).

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

Main Exemptions

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

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

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

04. Cashier’s checks issued against the debtor. whose main purpose is to make loans, managed by the Superintendence of Corporations, companies subject to the supervision of the Superintendence of Corporations, or any brokers through deposit accounts at social security funds for healthcare, organizations.

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

06. National treasury operations performed by authorized entities.

07. Cashier's checks issued against the debtor, whose main purpose is to make loans, managed by authorized entities.

08. Purchase and sale operations in transfer between savings and checking accounts, electronic deposits or prepaid cards open do not exceeding 350 UVTs monthly.

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

Industry and commerce tax

01. This is a municipal and district tax applicable to any opening 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.

02. 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 at, 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 commercial establishment open to the public or at points of sale, it will be understood to be carried out in the municipality where the activity is located.

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

Property tax

01. 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 official valuation of the taxpayer’s real estate property.
Transfer Pricing Supporting Documentation

Taxpayers subject to income tax and permanent establishments who are required by law to file a transfer pricing informative return and which carried out transactions with related parties domiciled abroad or located in free-trade zones that exceed 61,000 UVT (COP 1,814,933,000), must prepare and file a transfer pricing supporting documentation for those transactions carried out with related parties located abroad or in free-trade zones which total accumulated amount in the fiscal year, by type of transaction, exceeds 52,000 UVT (COP 952,096,000).

On the other hand, taxpayers and permanent establishments which 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 297,59,000).

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

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 transfer pricing policies between companies to the same economic group like global transfer pricing policies, and account the functions performed, assets used, risks assumed and personnel involved, that generated its income.

Penalty 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 0.12% of the total value of transactions subject to the Transfer Pricing regime but the penalty cannot exceed 313 UVT.

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.

When the missing data corresponds 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 omit 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.

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 omit total or partial information in the informative return.

When the missing data correspond to other information required in the informative return, the penalty should be 1% of the net income reported in the tax return of the same fiscal period or the last one presented by the taxpayer.

When is not possible to establish the base for the penalty, the penalty should be 1% of the gross equity reported in the tax return of the same fiscal period or the last one presented by the taxpayer. The penalty cannot exceed 6,000 UVT.

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 not present the informative return cannot invoke it later to reduce their tax liabilities.

When the informative return is not presented within the established term to give response to the requirement for declarate, there will be placed to the imposition a penalty equivalent to 4% of the total value of the transactions subject to the regime of prices of transfer made during the fiscal year, but the penalty cannot exceed the sum equivalent to 20,000 UVT.
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 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 0.9% of the net income reported in the tax return of the same fiscal period or the last one filed by the taxpayer.

If there are no income, the sanction shall correspond to 0.9% of the gross equity reported in the tax 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 25,000 UVT.

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

The penalty by not present supporting documentation prescribed 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 with those transactions will not be deemed as deductible and the following penalty shall apply:

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

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

When 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 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 sanction 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.

When, subsequent to the notice of the special requirement or the statement of objections, according to each case, the taxpayer correct supporting documentation by charging 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.

Supporting documentation 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 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.
Foreign Trade and Customs Issues

**Tariff benefits**

Regional, bilateral and multilateral agreements executed by Colombia:

Colombia is part of various significant commercial agreements with different countries around the world.

In respect of the countries of Latin America, there is one with the Andean Community of Nations – CAN for its initials in Spanish (Colombia, Ecuador, Peru and Bolivia); the group of nations formerly called TLC-G3 (Colombia, Mexico and Venezuela) and currently called TLC-G2 (Colombia and Mexico), according to the protocol modifications made in July of 2011 enter into force in August of that year, and modify the name of the treaty, and added articles to reduce tariff applicable to different goods and origin.

The CAN-MERCOSUR Free Trade in 2004 with Brazil, Argentina, Uruguay and Paraguay.

The Colombia - Chile Free Trade Agreement (2009), The North Triangle (TN-CA) Free Trade Agreement (El Salvador, Guatemala and Honduras; 2010); The partial Scope Agreement with Venezuela, that became effective on October 19, 2012; The Agreement on Trade, Economic and Technical Cooperation between the Caribbean Community (CARICOM) and Colombia that was subscribed on July the 24th, 1994 and approved by the Decree 2891, 1994; Also the economic complementation agreement between Colombia and Cuba, subscribed on 2000 and approved on July 10th, 2001; The Free Trade Agreement

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
• On March 7, 2016, the National Government enacted the new Customs Code, Decree 390, throughout which a new customs regulation was established.
• With the new regulation, the Government seeks to implement the clearance process in 48 hours after the arrival of the goods, situation that means a giant step in the objective to facilitate the foreign trade process.
• The new regulation was constructed under the risk management system, which works on the base of the user’s profile. Under this scenario, the new Decree, has as a prior objectives “to control and facilitate”.
• The new customs regulation would be gradually implemented. Currently, there are parts of it that are already being applied since it came into force. The other part that is not currently being implemented, it would depend of its final regulation and implementation throughout the technological system.

During 2016, four trade rulings were rendered through Decree 390, as follows:

- Valuation
- Legal Ruling N° 41 of 2016
- Legal Ruling N° 42 of 2016
- Legal Ruling N° 64 of 2016

• Permanent Regimes
  - Import for consumption: Importer receives the goods for his free disposal within the country, once he has completed several customs procedures, including payment of all applicable customs duties (tariffs and VAT).
  - Import with franchise.
  - Import in fulfillment of warranty.
  - Re-import by passive perfecting.

• Suspensive Regimes
  - Temporal Admission for Re-export in the same condition: this regime allows the introduction to the national territory with tariff and tax exception, total or partial.
  - The suspension will be total for a period of 12 months, and an additional 6 months upon authorization, which means that the goods will entry to the country without paying customs taxes.
  - For heavy machinery for basic industries, the maximum period will be 5 years, and in this case the customs taxes would be pay deferred.
  - These commodities are in restricted disposition.
  - Temporal Admission for active perfecting.

• Special Regimes
  - Temporary import of assets under a Leasing Agreement.
  - Import for postal traffic and urgent remittances.
  - Urgent deliveries.
  - Travelers.
  - For transformation, development and processing processes (“Plan Valley”)

Exports Regime
Exportation of goods from the National territory by the customs territory with destination to the rest of the world or a free trade zone is now a simple, quick procedure in Colombia, since most goods need no special permits, and the exportations procedure is performed via an online technology tool called MUISCA (acronym in Spanish for Single Model for Automated Revenue, Service and Control), a system designed and controlled by the Colombian Taxes and Customs Authority (DIAN).
The average export times for goods vary from one (1) to three (3) days, counted as of the filing date of the Shipping Permit for the goods to be exported in the automated system referred to above.

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

Currently, the main export procedures are:
- Final exportation in a single shipment: exit of national goods from the national territory to be used or consumed elsewhere outside the country of outside a Free Trade Zone.
- Final exportation for outward processing: is a temporary exit of national goods from the Colombian territory to be transform or repair in a Free Trade Zone or outside the national territory and then be reimported afterwards.
- Temporary export for reimportation in the same condition: is the temporary exit of national goods for a specific purpose outside the national territory that must return without any modification.
- Reexportation: it consist of a definitive exit of goods from the national territory; the goods were imported throughout a temporary import or transformation regimen.
- Reshipment: is the goods exit from the national territory coming from the exterior that were stored and have not been legally abandoned nor imported by any regimen.
- Export though postal traffic and urgent remittances: shipments that leave the Colombian territory through official mails office and urgent remittances that do not exceed USD 5,000.
- Export of samples without commercial value: it the exit of goods without a commercial value. The FOB value of the goods may not exceed USD 10,000.
- Traveler's temporary exports: Accompanied traveler's goods that leave the country and return in the same condition without any tax payment.
- Household exportation: customs treatment of resident's household that leave the national territory to establish a permanent residency outside Colombia.
- Special Exportation Programs: it consists of a commercial agreement between an abroad resident who buys national raw materials, consumables or containers from a Colombian resident and delivers it to a Colombian producer who manufactures and exports the already processed materials following the abroad resident instructions.
- Import regime:
  - Imports of goods in Colombia can be carried out in various ways, depending on the fiscal treatment or use to be given to the goods, including payment of all applicable customs duties (tariffs and VAT).
  - Franchise Import: Imports made though a commercial or legal agreement with total or partial tax exemption.
  - Re-import by passive perfecting: goods are imported by a temporary regimen for repair or transformation proposes. There a tax causation whenever the goods reenter the national territory.
  - Re-importation in the same Condition: goods that were exported temporarily or that have a free disposal treatment are imported without tax payments if there was not a transformation abroad.
  - Import in fulfillment of warranty: importation of goods without paying customs taxes whenever it is in fulfillment of a buyer's or maker's warranty.
  - Short Term Temporary Importation for Re-exportation in the Same Condition: Importation with suspension of customs duties for certain goods that, at the end of a six (6) month period extended for 6 more, must be exported in the same condition as they came into Colombia's National customs territory.
  - Long Term Temporary Importation for Re-exportation in the Same Condition: Importation with a maximum stay term of five (5) years. Customs duties are deferred in semi-annual payments, in amounts proportional to the time of permanency of the goods in in Colombian territory.
  - Temporary Import for active improvement: this regimen consist of the importation of goods temporarily for repair proposes without tax causation.
  - Temporary Importation under Special Import-Export Systems (commonly known as “Plan Vallejo”): This modality of importation allows the receipt of raw materials, with total or partial suspension of customs duties, destined to be used in the production of exportable goods, as well as machinery and equipment for the exportation of agricultural goods or services.
  - Importation of agricultural goods or any of its components of the following cases:
    - Forth method: deductive method.
    - Fifth method: reconstructed value method.
    - Sixth method: final instance method.
  - Customs Valuation:
    - Is the customs procedure established though the Customs Valuation Agreement of the World Trade Organization (WTO), that is use to determine the customs value of the imported goods.
  - There are six different methods do determine the custom value of goods, as follows:
    - First method - Transaction Value: Customs of FOB value would be determine by the real price of the goods shown in the invoice. This value, considering the correspondent adjustments mentioned in article 8th of the agreement, is the transaction value. This method is the most used one.
    - Franchise Import: Imports made though a commercial or legal agreement with total or partial tax exemption.
    - Re-import by passive perfecting: goods are imported by a temporary regimen for repair or transformation proposes. There a tax causation whenever the goods reenter the national territory.
    - Re-importation in the same Condition: goods that were exported temporarily or that have a free disposal treatment are imported without tax payments if there was not a transformation abroad.
    - Import in fulfillment of warranty: importation of goods without paying customs taxes whenever it is in fulfillment of a buyer's or maker's warranty.
    - Short Term Temporary Importation for Re-exportation in the Same Condition: Importation with suspension of customs duties for certain goods that, at the end of a six (6) month period extended for 6 more, must be exported in the same condition as they came into Colombia's National customs territory.
    - Long Term Temporary Importation for Re-exportation in the Same Condition: Importation with a maximum stay term of five (5) years. Customs duties are deferred in semi-annual payments, in amounts proportional to the time of permanency of the goods in in Colombian territory.
    - Temporary Import for active improvement: this regimen consist of the importation of goods temporarily for repair proposes without tax causation.
    - Temporary Importation under Special Import-Export Systems (commonly known as “Plan Vallejo”): This modality of importation allows the receipt of raw materials, with total or partial suspension of customs duties, destined to be used in the production of exportable goods, as well as machinery and equipment for the exportation of agricultural goods or services.
    - About this special system, the national government issued Resolution/Legal Ruling N° 1649 of 2016 that came into force on October 2016. This new regulation develops the special systems under the following regimes:
      - Direct: in which the person who imports the raw materials, capital goods or spare parts, produces the good directly and finally exports the terminated good or service without the intervention of a third party.
      - Indirect: in which the person who imports raw materials or capital goods or spare parts is not the one who produces the terminated good directly nor exports the final goods or service.
    - Importation for transformation proposes: entry of goods that are going to go through a transformation processes previously authorized. Taxes do not apply, there is not causation.
  - Postal traffic and urgent remittances: incoming portal traffic shipments that not exceed USD 2,000.
  - Express deliveries: delivery directly for during disaster strikes.
  - Travelers: accompanied baggage without tax payments up to a certain quantity.
  - Household: customs treatment for non-resident household, to accomplish residence.
  - Diplomatic regime: importation of goods though diplomatic missions and consular posts authorized by the Colombian government.
  - Customs Valuation:
    Is the customs procedure established though the Customs Valuation Agreement of the World Trade Organization (WTO), that is use to determine the customs value of the imported goods.
  - There are six different methods do determine the custom value of goods, as follows:
    - First method - Transaction Value: Customs of FOB value would be determine by the real price of the goods shown in the invoice. This value, considering the correspondent adjustments mentioned in article 8th of the agreement, is the transaction value. This method is the most used one.
    - In this case, the price that would be paid is the final value of the goods paid by the seller or for his benefit that includes all the payments made around the sale of the goods imported.
    - The remaining methods:
      - Whenever it is not possible to determine a transaction value or cases whenever the transaction value is not accepted for price distortion reasons, the agreement establishes another five methods that may be use for the same accomplishment:
        - Second method: transaction value of identical goods.
        - Third method: transaction value of similar goods.
        - Forth method: inductive method.
        - Fifth method: reconstructed value method.
        - Sixth method: final instance method.
  - Currently, any doubt about the declared value goods or any of its components of the following cases:
    - i. If goods appear to be underpriced, according to the indicators specified in the DIAN’s Risk Administration System.
    - ii. If goods appear to be overtly underpriced, indicating a possible fraud, as provided for in item 3 of article 54, Community Regulations, as adopted by Resolution 846 of the Andean Community of Nations.
    - iii. If any reasonable doubt arises in regard to the value declared before customs authorities, on the basis of any submitted document or any other objective and quantifiable information.

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Doing Business Colombia 2017

Previous Permits
Most of the tariff categories of the products of the harmonized system do not require approval of registration or a previous 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 into 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 Colombians’ Armed Forces.
• Hydrocarbons and fuel.
• And, any product subject to:
  – Health controls intended to preserve human, vegetable and animal health.
  – Compliance with technical bylaws.
  – Emission 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 applied 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 customs 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 2012; national consumption tax was created for importing vehicles and other transport modes, which would be taxed at the tax rate of 4% or 10% 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
Through the Law 1609 of 2013, was issued under the Customs Act, which should hold the national government to amend the customs regime, which has as one of its objectives to facilitate foreign trade operations.

The process for the import of goods into the country is very easy and expeditious, since it is carried out through an Internet-based technological tool designed and controlled by the National Tax and Customs Direction (DIAN).

Transactions in excess of USD $10,000 FOB value must be made through a Customs Agent, who must be authorized by the DIAN to act on behalf of importers and exporters.

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

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

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

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 regime:

Free Trade Zone Users:

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

02. Industrial users of goods: Legal entities included 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.

03. 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.

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

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.

Tax Benefits derived from the free zone regime
Income Tax: Law 1819 of 2016 “Tax Reform” modified the income tax rate from 19% 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

01. 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.

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

03. The delivery of goods to users of the free trade zone 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.

04. Quick and simplified delivery procedures.

05. 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.

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 Columbian 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.

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

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

The New Customs Code (Decree 390 from 2016) set 4 years transition period from its coming into force for Permanent Customs Users (UAP, for its initials in Spanish), Highly Exporter Users (ALTEX) to be finished.

During that period, both UAP and ALTEX that would like to apply for AEO, may request that qualification voluntarily, following the legal requests.
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 Judiciary, 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 Judiciary, 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 as civil, family, criminal, labor and commercial law, and is directed, nationally, by the Supreme Court of Justice; at a departmental 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 Judiciary, 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 Judiciary.

Average length of a process
In our country, it can 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 Albertu, “Dimension and Causality of the congestion in the Administrative Law Jurisdiction”).

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.

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.

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.

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.

By means of this mechanism, the parties involved in the conflict come to agree subsequently to the occurrence of the conflict. The process may last from 9 months to one year.

Constitutional Conciliation
The Constitutional Conciliation (A.M.C.R. for its initials in Spanish) of the Supreme Council of the Judicature, for individual periods of eight years.

Constitutional conciliation 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.

ICSIAD
The ICSID, or International Center for Settlement of Investment Disputes (“CIADI” in Spanish) 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 disputes 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), which was established in 1966, and which Colombia is a member of.

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

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Personal data Protection

What personal data is?
Personal data are all the information that can be associate 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.

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.

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.
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 Superintendency 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 benefits obtained, recidivism, negative, obstruction, reluctance and other actions that result from non-compliance with the processing of personal data.

The penalties which you can incur for non-compliance are as follows:

<table>
<thead>
<tr>
<th>Sanctions (Art. 23 Law 1581/ 2012)</th>
<th>Type of fine</th>
<th>Value / Time of the fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Personal ans Institutional</td>
<td>For the equivalent of 2,000 SMMIV at the time of imposition of the sanction. The fines may be successive as long as the breach that originated them subsists.</td>
<td></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>
<td></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>
<td></td>
</tr>
<tr>
<td>Immediate and definitive closure of the operation involving the processing of sensitive data</td>
<td>Permanent closing</td>
<td></td>
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</tbody>
</table>

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.

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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