



# Doing business in Colombia

## A comparative guide

May 2022

# A guide to doing business in Colombia

Deloitte Legal compiled this guide for Legal 500, providing an overview of the laws and regulations on doing business in a variety of jurisdictions. The following country chapter contains the relevant information on the systems of law, the legal forms through which people carry out business, capital requirements, how entities are operated and managed, expansion possibilities, corporate governance, employment law and more.



No.	Question						
<b>A. Legal system and landscape</b>							
1	<p><b>Is the system of law in your jurisdiction based on civil law, common law or something else?</b></p> <p>The applicable system of law in Colombia is based on civil law.</p>						
<b>B. Entity establishment</b>							
2	<p><b>What are the different types of vehicle/legal forms through which people carry on business in your jurisdiction?</b></p> <p>The corporate vehicles used in Colombia to carry out business are set below:</p> <ul style="list-style-type: none"> <li>A. Joint Capital Stock Corporation (in Spanish: Sociedad Anónima)</li> <li>B. Simplified Joint Capital Stock Corporation (in Spanish: Sociedad por acciones simplificada)</li> <li>C. Limited Liability Company (in Spanish: Sociedad de Responsabilidad Limitada)</li> <li>D. Limited partnership issuing shares or simple, (in Spanish: Sociedad en comandita por acciones o simple)</li> <li>E. In addition, foreign business may also incorporate a branch domiciled in the Colombian territory.</li> </ul> <p>Please bear in mind that the most common corporate vehicles correspond to (i) the Simplified Joint Capital Stock Corporation; and (ii) a branch.</p>						
3	<p><b>Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?</b></p> <p>No, permanent activities in Colombia must be performed by a local branch of the foreign company or by incorporating a subsidiary. 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:</p> <ul style="list-style-type: none"> <li>A. Opening within Colombia territory of commercial establishments or business offices.</li> <li>B. Participating as a contractor in the performance of works or rendering of services.</li> <li>C. Participating in any private savings managing activity.</li> <li>D. Carrying out activities related to the extractive industry.</li> <li>E. Obtaining or participating in a government concession.</li> <li>F. The running of its shareholders' meetings, boards of directors, management, or administration.</li> </ul>						
4	<p><b>Are there are any capital requirements to consider when establishing different entity types?</b></p> <p>The general rule is that in Colombia there are no legal requirements regarding the minimum amount of capital that a company must have to operate. Nevertheless, minimum capital requirements are set for companies requiring previous authorization by the Superintendence of Finance including banks, insurance companies, commercial financial companies amongst others.</p>						
5	<p><b>How are the different types of vehicles established in your jurisdiction? And which is the most common entity/branch for investors to utilize?</b></p> <p>As mentioned before, the most common corporate vehicles used for doing business are: (i) the Simplified Joint Capital Stock Corporation; and (ii) the branch. Nevertheless, please note that the Joint Capital Stock Corporation is also used for the development of financial activities. This taking into consideration that only such kind of corporations may perform or offer such services.</p> <p>Now, in regard to the rules that must be followed to incorporate such vehicles please bear in mind the following chart:</p> <table border="1" data-bbox="220 1659 1481 2056"> <tbody> <tr> <td><b>Simplified Joint Capital Stock Corporation</b></td> <td>Is incorporated by means of a contract or unilateral act that is recorded in a private document, registered in the Mercantile Registry of the Chamber of Commerce of the place where the company establishes its main domicile. Said document must include the elements defined in Article 5° of Law 1258 of 2008.</td> </tr> <tr> <td><b>Joint Capital Stock Corporation</b></td> <td>Is incorporated by public deed, which must be registered in the commercial registry of the Chamber of Commerce, with jurisdiction in the place where the company has its main corporate domicile. The public deed must fulfill all the elements included in Article 110 of the Colombian Commercial Code.</td> </tr> <tr> <td><b>Branch</b></td> <td> <p><b>1.</b> The following authenticated and duly legalized documentation<sup>1</sup> must be filed with a notary in the city where the branch is to reside and be domiciled:</p> <ul style="list-style-type: none"> <li>A. Copies of the home office's articles of incorporation;</li> <li>B. Copies of the minutes resolving to establish the branch in Colombia;</li> <li>C. Copies of the company's certificate of existence; and</li> </ul> </td> </tr> </tbody> </table>	<b>Simplified Joint Capital Stock Corporation</b>	Is incorporated by means of a contract or unilateral act that is recorded in a private document, registered in the Mercantile Registry of the Chamber of Commerce of the place where the company establishes its main domicile. Said document must include the elements defined in Article 5° of Law 1258 of 2008.	<b>Joint Capital Stock Corporation</b>	Is incorporated by public deed, which must be registered in the commercial registry of the Chamber of Commerce, with jurisdiction in the place where the company has its main corporate domicile. The public deed must fulfill all the elements included in Article 110 of the Colombian Commercial Code.	<b>Branch</b>	<p><b>1.</b> The following authenticated and duly legalized documentation<sup>1</sup> must be filed with a notary in the city where the branch is to reside and be domiciled:</p> <ul style="list-style-type: none"> <li>A. Copies of the home office's articles of incorporation;</li> <li>B. Copies of the minutes resolving to establish the branch in Colombia;</li> <li>C. Copies of the company's certificate of existence; and</li> </ul>
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	<p><b>D.</b> Copies of the certificate or document evidencing the branch’s legal representative.</p> <p><b>2.</b> Once the decision to incorporate a branch in Colombia is made and the above conditions are fulfilled, the minutes resolving or act decreeing that the foreign company will set up permanent business operations in Colombia must include the following data within its text:</p> <p><b>A.</b> A stipulation as to the type of business activity that the branch will undertake in Colombia, in conformance to Colombian law and the entity’s corporate purpose;</p> <p><b>B.</b> The amount of capital assigned to the branch and its sources;</p> <p><b>C.</b> The choice of domicile;</p> <p><b>D.</b> Time frame in which it will conduct business activities and date when branch will wind up operations in Colombia;</p> <p><b>E.</b> Designation and identity of the branch representative and one or more substitutes representing the branch in its Colombian business activities (this representative is understood to be competent to represent the branch in all activities understood to be within the scope of its corporate purpose for all legal effects); and</p> <p><b>F.</b> Designation and identity of statutory auditor (who shall be an individual with permanent residence in Colombia).</p> <p><b>3.</b> Once the requisite documentation is filed with the notary public these documents must then be filed with the Chamber of Commerce in order to fulfill mercantile registration, as per Commercial Code, art. 484. A fee of incorporation of 0.07% of the company’s tax must be paid before the chamber of commerce</p>
6	<p><b>How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?</b></p> <p>Administrative functions are performed by: (i) general shareholders’ meeting or sole shareholder, and (ii) legal representative. In addition, through the bylaws, the board of directors can be created. The roles and responsibilities assigned to each of the aforementioned actors are determined in the statutes.</p> <p>Notwithstanding the foregoing, the functions of the general shareholders' meeting are the following:</p> <ul style="list-style-type: none"> <li>• Define the economic reservations;</li> <li>• Set the amount of the dividend, as well as the form and terms in which it will be paid;</li> <li>• Order the corresponding actions against administrators, directors, or the statutory auditor;</li> <li>• Freely elect and remove officials whose designation corresponds to them;</li> <li>• Issue new shares;</li> <li>• Order capital reduction;</li> <li>• The others that the law or the statutes indicate, and those that do not correspond to another body.</li> </ul>
7	<p><b>Are there general requirements or restrictions relating to the appointment of (a) authorized representatives/directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?</b></p> <p>Generally, there are no requirements or restrictions related to the appointment of legal representatives/directors or shareholders. In this way, the directors can be Colombians or foreigners, residents or non-residents. Notwithstanding the foregoing, the procedures that have been statutorily defined for the appointment of directors, must be followed.</p> <p>It is important to bear in mind that the above general rule does not apply to cases of financial entities, where there are special rules that legal representatives and shareholders must comply with.</p>
8	<p><b>Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade /commercial agents, resellers and are there any specific rules to be observed?</b></p> <p>It can be entered through all types of joint ventures, including distribution agreements, agency agreements, business collaboration agreements, franchises, and brand licensing, among others.</p>

## C. Entity operation

### C1. Governance

9	<p><b>Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.</b></p> <p>Not unless defined on the contrary through the bylaws.</p>
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### C2. Capital

10	<p><b>What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.</b></p> <ul style="list-style-type: none"> <li>• Capitalization.</li> <li>• Capitalization of debt (certain exceptions apply).</li> <li>• Share placement premium.</li> <li>• Issuance of capitalizable bonds.</li> <li>• Loans</li> </ul>
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### C3. Return of proceeds

11	<p><b>What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.</b></p> <p>Each fiscal year or in accordance with the provisions of the statutes, the companies close accounting. Immediately afterward, the general meeting of shareholders must meet, and in said meeting, the dividend of profits must be decreed in case it is presented according to the financial information.</p> <p>It is necessary to consider that the transfer of profits abroad must be carried out by filing a report before the Central Bank. This, given that in Colombia there is an exchange control regime.</p>
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### C4. Shareholder rights

12	<p><b>Are specific voting requirements/percentages required for specific decisions?</b></p> <p>Normally the decisions adopted by the general meeting of shareholders are adopted by simple majority. However, legally the following decisions must have a special quorum:</p> <p>A. Unless a higher decision-making majority is established in the bylaws, the distribution of profits will be approved by the assembly or board of partners with the favorable vote of a plural number of partners representing at least 78% of the shares, quotas or parts, stakeholders represented at the meeting.</p> <p>When the majority provided for in the previous paragraph is not obtained, at least 50% of the net profits or the balance thereof must be distributed, if losses from previous years have to be covered (Article 150, Commercial Code).</p> <p>B. The issuance of ordinary shares be placed without being subject to the right of preference, for which it is necessary the favorable vote of no less than 70% of the shares present at the meeting will be required ((Article 420 - 5, Commercial Code).</p> <p>C. The transformation of a corporation of any nature to Simplified Joint Capital Stock Corporation requires the favorable vote of the 100% of the shareholders that assisted the assembly (Law 1458 of 2008).</p>
13	<p><b>Are shareholders authorized to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?</b></p> <p>Single shareholders cannot issue compulsory orders to the management. All binding decisions must be taken by the shareholders assembly.</p>

## C5. Employment

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**What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?**

Right/Protection	Details														
National Minimum Wage	<p>The minimum wage in Colombia is determined by the Salary and Labor Policies Commission, composed by representatives of employers and employees. In case this Commission does not reach an agreement on this amount, the National Government, by 30 December, will set the monthly minimum wage for the following year.</p> <p>Per Decree 1724 of 15 December 2021, the minimum wage for 2022 is COP 1,000,000 (US\$264).</p>														
Holiday	<p>Employers must grant a paid day-off during religious or civil holidays established by law.</p> <p>In Colombia, the following days are declared as national holidays: 1 January, 10 January, 21 March, 14 April, 15 April, 1 May, 30 May, 20 June, 27 June, 4 July, 20 July, 7 August, 15 August, 17 October, 7 November, 14 November, 8 December, and 25 December.</p>														
Working Hours	<p>Colombian labor law establishes a maximum working schedule of eight daily hours and 48 weekly hours. Recently a new law was issued, establishing a reduction of the working schedule hours to 42 weekly hours, which can be gradually implemented during the next four years (2021 to 2025) by employers.</p> <p>Daytime work goes from 6 a.m. to 9 p.m. while work done between 9 p.m. and 6 a.m. is considered night work and must be compensated by adding a 35% surcharge.</p> <p>There is also special regulation for Companies that require to operate without interruptions, known as successive work shifts, which require an agreement between the employer and the employee to organize successive work shifts that allow the Company to operate all days of the week, not exceeding six hours per day or 36 hours per week. In this case, no night, Sunday, or holiday surcharges will apply.</p> <p>Also, there is a special rule considering a flexible work schedule of 48 hours of work per week, distributed in no more than six days, with one day of mandatory rest. The number of hours worked per day will be no less than four and no more than 10 hours per day.</p> <p>Employees working overtime, on Sundays, holidays, or at night are entitled to:</p> <table border="1"> <thead> <tr> <th>Concept</th> <th>Surcharge/overtime value</th> </tr> </thead> <tbody> <tr> <td>Night work</td> <td>35% surcharge over daytime hour (0.35)</td> </tr> <tr> <td>Sunday or holidays work</td> <td>75% surcharge over daytime hour (0.75)</td> </tr> <tr> <td>Day overtime</td> <td>25% surcharge over daytime hour (1.25)</td> </tr> <tr> <td>Night overtime</td> <td>75% surcharge over daytime hour (1.75)</td> </tr> <tr> <td>Day overtime on Sunday or holidays</td> <td>100% surcharge over daytime hour (2.00)</td> </tr> <tr> <td>Night overtime on Sundays or holidays</td> <td>150% surcharge over daytime hour (2.50)</td> </tr> </tbody> </table>	Concept	Surcharge/overtime value	Night work	35% surcharge over daytime hour (0.35)	Sunday or holidays work	75% surcharge over daytime hour (0.75)	Day overtime	25% surcharge over daytime hour (1.25)	Night overtime	75% surcharge over daytime hour (1.75)	Day overtime on Sunday or holidays	100% surcharge over daytime hour (2.00)	Night overtime on Sundays or holidays	150% surcharge over daytime hour (2.50)
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Rest Periods	<p><b>Resting periods:</b> Employers in Colombia are obliged to grant a weekly day-off for each one of its employees.</p> <p><b>Vacations:</b> Also, employees are entitled to 15 business days of remunerated rest as vacations, for each year of work or proportionally by fraction.</p> <p>The employer is the one who can ultimately decide the date in which vacations are to be enjoyed (with the employee's previous request, or discretionally by its own account).</p> <p>Vacations can also be paid proportionally for the time worked when the employment agreement is terminated (by any cause) and the employee has not completed the year of services.</p> <p>Vacations in Colombia have the following rules:</p>														



	<ul style="list-style-type: none"> <li>• The employee may request to the employer that half of the vacation period is paid in cash or may accumulate their vacation periods for up to two years.</li> <li>• Employees must take at least six working days per year that cannot be rolled over.</li> <li>• Specialized, technical, executive, management and trust employees may accumulate vacations periods for up to four years.</li> </ul>
Pension rights	<p>Pension subsystem covers old age, disability (not related to work accident or disease) and death.</p> <p>Local regulation indicates that all Colombian inhabitants are mandatory affiliates to the pension social security system.</p> <p>Employees enrolled to Pension Subsystem may choose between two regimes, at their preference, which are (i) the average premium with defined benefit regime (hereinafter “RPM” per its name in Spanish); and (ii) the individual savings with solidarity regime (hereinafter “RAIS” per its name in Spanish). Each one is characterized by:</p> <ul style="list-style-type: none"> <li>• RPM: In this regime the affiliates’ contributions are part of a common fund of public nature, which guarantees the payment of benefits to those who qualify as pensioners. Requirements to obtain an old age pension in this regime are: (i) to contribute until 57 years old (females), and 62 years old (males), and (ii) to contribute 1,300 weeks during their total working lifetime.</li> <li>• RAIS: Composed by a group of entities, in charge of regulations and proceedings through which the private and public resources are destined to pay pensions and benefits. RAIS monetary funding proceed from the contributions made by affiliates and its corresponding yields. To obtain an old age pension in this regime, affiliates can retire at the age they choose, once the balance in their individual savings account allow them to obtain the monthly pension that they pursue, that must be higher than 110% of the current legal monthly minimum wage.</li> </ul> <p>Contributions to pension subsystem are made by both, the employer and the employee for a total of 16% of the employee’s salary monthly base, as follows: employer assumes 12% while the employee assumes 4% of salary monthly base.</p>
Health and Social Security rights	<p>The social security system in Colombia is composed of pension, health and labor risks subsystems, family fund, and other supplementary services defined by Colombian legislation. Enrollment is mandatory for all dependent and independent workers.</p> <ul style="list-style-type: none"> <li>• <b>Health:</b> Social Security System in health aims to regulate the essential public health service and create access conditions for all the residents in Colombia. Local regulation mandates the employer to contribute 8.5% of the employee’s basis for contribution (monthly salary amounts), while the employee assumes the 4%, for a total of 12.5% of the employee’s salary monthly base for the health subsystem.</li> <li>• <b>Labor risks:</b> The purpose of the labor risk subsystem is to prevent, protect, and assist employees from the effect of diseases and accidents that may occur on occasion or because of the work performed. The labor risks subsystem covers death and disability risks. Contributions will be paid fully by the employer and shall depend on the class and degree of risk assigned to the economic activity performed by the employee. If an employer fails to provide the protection with this coverage, the employer will become directly liable for all expenses arising from labor risks as well as subject to sanctions by local authorities.</li> <li>• <b>Payroll contributions:</b> Employers in Colombia are obliged to pay three different types of payroll taxes: <ul style="list-style-type: none"> <li>- Family Fund: contributions to this entity that provides recreation, education, sports, culture, or tourism services and subsidies to the employees – 4% of monthly payroll.</li> <li>- SENA: imposition to contribute to the service rendered by this Nation Apprentice entity called SENA – 2% of monthly payroll.</li> <li>- ICBF: imposition to contribute to the service rendered by the ICBF, national entity that provides different programs of comprehensive care for children and adolescents – 3% of monthly payroll.</li> </ul> </li> </ul> <p>Contributions are calculated as a percentage of the company’s monthly payroll and sum up to 9% of the monthly payroll.</p>

<p>Discrimination</p>	<p>There are generic anti-discrimination laws in Colombia, as there is a fundamental right to equality that prohibits any kind of discrimination based on sex, race, family or nationality, language, religion, or political or philosophical opinion.</p> <p>In labor related matters, there is a principle of “<i>equal work for equal pay</i>” that applies to all employees performing equal functions and responsibilities, who should consequently receive the same or similar compensation.</p> <p>There are also gender anti-discrimination laws prescribing gender equality between men and women and prohibiting any kind of discrimination towards women, and special protection and assistance to pregnant women. Local regulation indicates equality between male and female employees, with the same protection level and guarantees for both. Any distinction by means of the intellectual or material nature of the work between women and men, its forms or retributions, gender or sex is prohibited.</p> <ul style="list-style-type: none"> <li>• To ensure equality in salary or total remuneration, companies must keep records of profile registry and job assignment by sex, function, compensation, and type of labor contract. The Ministry of Labor will conduct special random investigations to verify the Companies’ practices in payment equality.</li> <li>• In addition, the national government has implemented a national program known as <i>Sello Equipares</i>, as a certification for each of the companies that comply with the minimum requirements regarding women’s job inclusion, equality in payment, and equality in working hours, among others.</li> </ul> <p>Also, there is a general mandate prohibiting any form of discrimination based on gender, pregnancy, family origin, age, language, ethnicity, religion, disability, or sexual orientation. However, there is no specific regulation on pay equity related to gender diversity and/or race/ethnicity that has been developed so far.</p> <p>Finally, there is a special legal prohibition to dismiss an employee due to physical or a medical condition, except when the Ministry of Labor authorizes it, whenever such limitation is clearly demonstrated as incompatible and insuperable to exercise the position.</p> <p>If the employee is dismissed due to his/her inability, without the authorization of the labor authority, the employee could be reinstated to his/her position and the employer will be liable to pay a legal indemnity equivalent to 180 days of salary, along with other benefits accrued in accordance with the law.</p>
<p>Maternity Leave/Pay</p>	<p>Pregnant women cannot be dismissed during the pregnancy period or maternity leave and breastfeeding period (18 weeks of maternity leave and breastfeeding period of up to six months after the birth of the child).</p> <p>The social security system in health will cover the paid maternity leave of 18 weeks whenever the employer has fully covered the health contributions of the pregnant employee. If not, the employer must assume the paid maternity leave.</p>
<p>Paternity Leave</p>	<p>Every employed father is entitled to 2 weeks of paid paternity leave, provided he was enrolled and made the contributions to the Health Social Security System during the pregnancy period.</p> <p>The social security system in health will cover the paid paternity leave of two weeks whenever the employer has fully covered the health contributions of the employee. If not, the employer must assume the paid paternity leave.</p>
<p>Shared Parental Leave</p>	<p><b>Shared Parental Leave:</b> Parents may freely distribute among themselves the last six weeks of the mother's leave. This leave, in the case of the mother, is independent of the breastfeeding leave. Parents may choose to distribute these six weeks as they decide to: from six weeks for the father, three weeks for the father and three for the mother, two for the father and four for the mother, one for the father and five to the mother, or none to the father and six to the mother, etc. The first 12 weeks of maternity leave cannot be shared, as well as the first two weeks of the paternity leave.</p> <p><b>Flexible part-time parental leave:</b> Father or mother may choose to exchange a specific time of their maternity or paternity leave, for half-time work. Half-time work will be extended by double the time. As an example, the mother can choose to exchange two weeks of maternity leave for four weeks of half-time work. This Law states that parents cannot exchange the first two weeks of the paternity leave or the first 13 weeks of the maternity leave.</p>



	For the flexible part-time parental leave, there must be an agreement between the employee and the employer.												
Statutory sick pay	<p>If an employee cannot work due to illness or an accident, medical authorization from a Colombian Social Security entity must be obtained for the employee to get paid for these days. The employer pays and directly assumes day one and two of sick leave and from day three onwards, the employer can claim the payment back (as reimbursement) from the social security system as follows:</p> <table border="1"> <thead> <tr> <th>Days of continuous sick leave</th> <th>Amount to be paid (over the employee's salary)</th> <th>Employer's obligation and procedures</th> </tr> </thead> <tbody> <tr> <td>Day 3 to day 90</td> <td>66.66%</td> <td>Paid by the employer directly to the employee and reimbursed by the health entity. The employer must file the medical orders recognizing the sick leave before the health entity (EPS) and carry on the entire reimbursement procedure before each entity. The estimated time for the reimbursement and criteria for the reimbursement depends on each entity.</td> </tr> <tr> <td>Day 91 to 180</td> <td>50%</td> <td>Paid by the employer directly to the employee and reimbursed by the health entity. The employer must file the medical orders recognizing the sick leave before the health entity (EPS) and carry on the entire reimbursement procedure before each entity. The estimated time for the reimbursement and criteria for the reimbursement depends on each entity.</td> </tr> <tr> <td>Day 181 onward</td> <td>50%</td> <td>Paid by the pension entity the employee is affiliated to.</td> </tr> </tbody> </table> <p>For sick leaves originating in labor related accidents or diseases, the labor risks entity assumes the amount from day 1 of the accident or medical diagnosis, and for its full amount (100% salary).</p>	Days of continuous sick leave	Amount to be paid (over the employee's salary)	Employer's obligation and procedures	Day 3 to day 90	66.66%	Paid by the employer directly to the employee and reimbursed by the health entity. The employer must file the medical orders recognizing the sick leave before the health entity (EPS) and carry on the entire reimbursement procedure before each entity. The estimated time for the reimbursement and criteria for the reimbursement depends on each entity.	Day 91 to 180	50%	Paid by the employer directly to the employee and reimbursed by the health entity. The employer must file the medical orders recognizing the sick leave before the health entity (EPS) and carry on the entire reimbursement procedure before each entity. The estimated time for the reimbursement and criteria for the reimbursement depends on each entity.	Day 181 onward	50%	Paid by the pension entity the employee is affiliated to.
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Day 181 onward	50%	Paid by the pension entity the employee is affiliated to.											
Statutory Notice Periods	<p>Statutory notice period for the termination of the employment agreement depends on the type of contract, as explained below:</p> <ul style="list-style-type: none"> <li>• In fixed-term employment agreements, the employer must notify 30 days in advance his/her desire not to renew the contract, otherwise, it is automatically renewed for the same initial term. The same considerations must be given to terminate the agreement for the duration of the work.</li> <li>• In open-ended employment agreements, the employer can terminate the labor contract anytime without having to notify the employee in advance. Employers that unilaterally terminate the employment agreement without just cause must pay legal severance established in local labor regulation.</li> </ul>												
Unfair dismissal	<p>Employers can decide to unilaterally terminate the employment agreement for any other reason that differs from the just causes contemplated in the Colombian Labor Code (Article 62).</p> <p>However, to proceed with the unfair dismissal, the employer must pay an indemnification amount or statutory redundancy payment (in Spanish <i>Indemnización</i>) to the employee, following the rules described next.</p>												
Statutory Indemnification for unfair dismissal	<p>Is calculated depending on the type of contract, the salary, and the employment agreements seniority, as follows:</p> <ul style="list-style-type: none"> <li>• Fixed-term agreements: The indemnification corresponds to the value of the salary corresponding to the time left to fulfill the stipulated term of the contract, not less than 15 days.</li> <li>• Agreement for the duration of the work: In this type of contract, the indemnification corresponds to the time left to complete the work contracted, but not less than 15 days.</li> <li>• Open-ended agreements: In this type of contract, the indemnification amount depends on the seniority and value of the salary earned by the employee at the time of the termination, as follows:</li> </ul> <table border="1"> <thead> <tr> <th>For employees who earn less than 10 legal monthly minimum wages</th> <th>For employees who earn a salary equal to or greater than 10 legal monthly minimum wages:</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> <li>• 30 days of salary for the first year of service.</li> </ul> </td> <td> <ul style="list-style-type: none"> <li>• 20 days of salary for the first year of service.</li> <li>• 15 days of salary, for each additional year to the first and proportionally by fraction.</li> </ul> </td> </tr> </tbody> </table>	For employees who earn less than 10 legal monthly minimum wages	For employees who earn a salary equal to or greater than 10 legal monthly minimum wages:	<ul style="list-style-type: none"> <li>• 30 days of salary for the first year of service.</li> </ul>	<ul style="list-style-type: none"> <li>• 20 days of salary for the first year of service.</li> <li>• 15 days of salary, for each additional year to the first and proportionally by fraction.</li> </ul>								
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<p>15</p>	<p><b>On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?</b></p>																			
<p>In Colombia, employment agreements can be terminated by the following legal causes:</p> <ul style="list-style-type: none"> <li>• The employee's death.</li> <li>• By mutual consent.</li> <li>• By the expiration of the fixed term agreed.</li> <li>• By the termination of the work.</li> </ul>																				

- By liquidation or final closure of the company or establishment.
- Suspension of activities by the employer for more than 120 days.
- By enforced sentence.
- By unilateral decision; and
- Whenever the employee does not return to work once the causes for the suspension of the employment agreement disappear.

Local regulation also contemplates the unilateral termination of employment agreements with or without just cause as follows:

**a. Unilateral termination without cause:**

If the employer dismisses an employee without fair cause, or if the employee resigns for any of the just causes contemplated in the law, the employer will pay the employee a legal severance upon termination, calculated depending on the type of contract, the amount of the salary and the seniority of the employee, explained in point 14.

**b. Unilateral termination with a cause:**

The company can unilaterally terminate the employee's contract with cause, notifying him/her in advance with not less than 15 days (for some specific cases provided by labor law) and taking into account the just causes set forth in the law, which are among others:

- Deception by the employee, through the submission of false certificates for admission or tending to obtain an undue advantage.
- Any act of violence, injury, mistreatment, or serious breach of discipline displayed by the employee in his/her work, against the employer, family members, managers, or coworkers.
- All material damages caused intentionally to buildings, works, machinery, raw materials, instruments, and other objects related to work, and any gross negligence that endangers the safety of people or things.
- Any immoral or criminal act that the employee commits in the workshop, establishment, or place of work or in the performance of their duties.
- Any serious violation of the obligations or special prohibitions established in the labor code, or any serious misconduct qualified as such in collective agreements, arbitration awards, individual contracts, or regulations.
- Disclosure of technical or commercial secrets, or matters of a reserved nature, to the detriment of the company.
- Poor performance relating to the employee's ability and the average performance in similar tasks, if not corrected within a reasonable time despite the employer's request.
- Any other cause stipulated in the Internal Working Regulation, in the individual employment agreements, or any other policy, or guideline that governs the employment relationships with the employee in Colombia.

**c. Termination by mutual agreement:**

Mutual consent terminations in Colombia have the purpose of settling in a total and definitive manner, all eventual differences and any future litigation over uncertain and debatable rights that may arise from the initiation, execution, performance, and termination of the labor relationship between the employer and the employee.

Mutual consent terminations are preceded by the payment of a bonus to the employee, as a settlement amount, aimed at addressing any outstanding obligation that may be due by virtue of the execution, performance, and termination of the employment agreement.

The amount of the settlement bonus is discretionary, but it is recommended to be at least the equivalent to the amount to which the employee would be entitled to if the contract were terminated without just cause.

The signature of a settlement agreement is made before a judge or as a private transaction between the parties with *res-judicata* effects; this is as if the agreement were a final decision not subject to appeal.

**Dismissal motivation:**

In any case of the termination of the agreement, whether with or without cause, the party that unilaterally terminates the employment agreement must express to the other, at the termination, the cause or reason for termination. Subsequently, different grounds or reasons cannot be validly invoked.

In case of termination of the contract without cause, the employer must state to the employee the reason for the termination. If the dismissal is with cause, the employer must also express the cause or reason for the termination.

Local regulations do not, however, indicate any formality that requires that the dismissal must be made in writing. Common practice is to support the termination in writing for evidentiary purposes.

**Collective dismissal:**

Dismissal is considered collective when, within six months, the employer unilaterally terminates a certain percentage of employment contracts, as follows:

Number of employees in the company	Percentage of terminated employees
11 - 50	30%
51-100	20%
101 - 200	15%
201 -500	9%
501 – 1,000	7%
More than 1000	5%

In case of collective dismissal, the employer must request prior authorization from the Ministry of Labor explaining the reasons and providing justifications; simultaneously, the employer must communicate, in writing, to the employees about such request. The Ministry of Labor must respond within two months.

Once authorization is obtained, the employer shall pay the affected employees the legal compensation (Indemnification) that would correspond to them for dismissal without just cause.

16 **Does your jurisdiction have a system of employee representation/participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?**

The employees in Colombia are entitled (by constitutional right) to form Unions, claim the employers and negotiate with them the unionized employee’s labor conditions. Unions in Colombia are not a common practice. Not every company in the country has unions. They are most common and strong in companies in the Oil & Gas, Finance and Construction industry.

## C6. Anti-corruption/bribery/money laundering/supply chain

17 **Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?**

- A. All the Companies subject to the supervision or control exercised by the Superintendency of Corporations that have obtained total Income or had assets equal to or greater than 40,000 minimum wages (US\$9,920,608) must comply with the SAGRILAFT regime, which is designed to prevent money laundering and terrorist financing.
- B. In accordance with Circular 100-000016 of 2020, companies compelled to the SAGRILAFT regime must, among other things:
  - Have a fully trained SAGRILAFT Compliance Officer
  - Standardized procedure for the knowledge of suppliers and clients, which allows determining the origin of their assets and their final beneficiaries.
  - Internal manual for the prevention of money laundering and financing terrorism.
  - Carry out courses or conferences with a minimum frequency of one year, in which employees are made aware of the measures adopted by the Company to prevent money laundering and terrorist financing.

In addition to the above, all the Companies subject to the supervision or control exercised by the Superintendency of Corporations that have: **(i)** carried out International Business or Transactions of any nature, with foreigners equal to or greater than 100 minimum wages (US\$24,801); and **(ii)** as of 31 December of the immediately preceding year, have obtained Total Income or have Total Assets equal to or greater than 30,000 minimum wages (US\$7,440,456), must comply with the PTEE regulation, to avoid, identify and evaluate risks of Transnational Bribery.

18 **What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?**

To our knowledge, there is no duty to report economic crimes.

19 **How is money laundering and terrorist financing regulated in your jurisdiction?**

It is regulated through different norms and dispositions, please find below the most relevant norms to this date:

- A. Law 1121 of 2006.
- B. Circular 100-000016 of 2020.
- C. Law 1186 of 2009.
- D. Decree 1736 de 2020.
- E. Decree 1068 de 2015, Articles 2.14.2 and subsequent.

20 **Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?**

None that we know of in our area of expertise.

## C7. Compliance

21	<p><b>Please describe the requirements to prepare, audit, approve and disclose annual accounts/annual financial statements in your jurisdiction.</b></p> <p>A. According to Article 19, all sorts of corporations and branches must keep accounts of all their daily operations and in accordance with legal requirement. In terms of the reporting requirements and compliance with the parameters of the International Financial Reporting Standards (IFRS), corporations must keep accounting books and their accounting records denominated in Colombian pesos and in the Spanish language.</p> <p>B. The main financial information includes the statement of financial position at the end of the fiscal year, the 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.</p> <p>C. 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 3,000 minimum monthly legal wages<sup>1</sup> (equivalent to COP\$2,343,726,000, approximately US\$822,071)<sup>2</sup> and/or their assets exceed 5,000 minimum monthly legal wages (equivalent to COP 3,906,210,000 approximately US\$1,370,120).</p>
22	<p><b>Please detail any corporate/company secretarial annual compliance requirements.</b></p> <p>A. Ordinary annual meeting of shareholders</p> <p>B. Renewal of commercial registration.</p> <p>C. Filing of financial statements before the corresponding Chamber of Commerce. If the corporation is under the inspection and surveillance of the Superintendency of Corporations, the financial statements must be filed with said entity.</p>
23	<p><b>Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?</b></p> <p>Every ordinary meeting, must evacuate the following steps according to the law:</p> <p>A. Quorum verification.</p> <p>B. Election and appointment of the President and Secretary of the meeting.</p> <p>C. Consideration and approval of the agenda.</p> <p>D. Reading and approval of the management report performed by the legal representative. Such a report must be referred to the economic and financial situation of the company,</p> <p>E. Considerations of the basic general purpose financial statements of the corresponding fiscal year</p> <p>F. Considerations in regard to the distribution of profits.</p> <p>G. Reading and approval of the minutes of the meeting.</p>
24	<p><b>Are there any reporting/notification/disclosure requirements on beneficial ownership/ultimate beneficial owners (“UBO”) of entities? If yes, please briefly describe these requirements.</b></p> <p>DIAN Resolution 164 of 2021 brings the obligation to submit information on the natural person as the final beneficiary of companies in Colombia through the DIAN's Single Final Beneficiary Registry tool - RUB.</p> <p>This obligation must be fulfilled through the tool provided for it on the DIAN page (muisca). In accordance with this resolution, entities that have obtained their RUT before 15 January 2022, will have until 30 September 2022, to comply with this resolution. Entities that have obtained the RUT after this date will have a period of two months from obtaining it to upload the information.</p> <p>The following entities must comply with this obligation:</p> <p>A. For-profit or non-profit national companies and entities, including those whose shares are registered or listed on one or more stock exchanges.</p> <p>B. Permanent establishments.</p> <p>C. Structures without legal status or similar, in any of the following cases:</p> <p>D. Those created or managed in Colombia.</p> <p>E. Those governed by Colombian standards.</p> <p>F. Those whose fiduciary or similar or equivalent position is a national legal person or a natural person who is a tax resident in Colombia.</p>

<sup>1</sup> The Legal Minimum Monthly Wage in Colombia has been fixed at COP\$781,242 for the period from 1 January 2017 to 31 December 2018.

<sup>2</sup> Average exchange rate used is COP\$2,851

	<p>G. Foreign legal entities and structures without legal status or similar whose value of the assets located in Colombia represent more than 50% of the total value of the assets owned according to their financial statements.</p> <p>The following will be considered as final beneficiaries:</p> <p>A. Natural persons who, acting individually or jointly, own, directly, or indirectly, 5% or more of the capital or voting rights of the legal person, and/or benefit from 5% or more of the assets, yields or profits of the legal entity.</p> <p>B. The natural person who, acting individually or jointly, exercises control over the legal person.</p> <p>C. Lastly, and as a residual criterion, it is established in Article 631-5 of the E.T. that when no natural person is identified, the natural person who holds the position of the legal representative must be identified, unless there is a natural person who holds greater authority in relation to the management or direction functions of the legal person.</p>
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## C8. Tax

25	<p><b>What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?</b></p> <p>The principal taxes that affect the companies in Colombia are the corporate income tax, the value-added tax (VAT), industry and commerce tax, and payroll taxes. Nevertheless, there are other relevant taxes, such as stamp tax, real estate tax, and others.</p> <p>The companies are levied with corporate income tax regarding the Colombian and foreign sourced income. On the other hand, the non-residents are levied over the Colombian sourced income only.</p> <p>The corporate income tax rate is 35% from 2022 and onward. The same rate would apply to branches of foreign entities.</p>
26	<p><b>Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g., tax holidays, incentive regimes, employee schemes, or other?)</b></p> <p>Colombia offers different tax benefits for investors that are established in Colombia, as well as incentives for specific activities. The most important ones are the science and technology incentive that may apply to the corporate income tax, a special regime for mega-investment higher than US\$300,000,000 approximately as well as certain employment requirements (between 250 and 400). Also, there are certain tax credits (productive fixed assets), special deductions, and exempt incomes for certain special activities.</p>
27	<p><b>Are there any impediments/tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?</b></p> <p>Dividends received by foreign entities or non-resident individuals will be subject to taxation at a 10% rate in Colombia.</p> <p>When the dividends correspond to profits, that if it had been distributed to a national company will have been taxed (according to what is stated in local regulation), they will be subject to the general rate established in Article 240 of Tax Code (35% for 2022), on the paid value; the tax indicated previously (10%) will be applied once this tax has been reduced.</p>
28	<p><b>Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?</b></p> <p>The value-added tax (VAT) is a national tax that levies:</p> <ul style="list-style-type: none"> <li>• The sale of corporeal assets, except for the special cases provided by law.</li> <li>• The sale or assignment of rights over intangible assets related to intellectual property.</li> <li>• The render of services in Colombia or services provided abroad to be used in Colombia.</li> <li>• The importation of services and goods.</li> <li>• Operating or selling lotteries or gambling, except those operated exclusively through the internet.</li> </ul> <p>The general tax rate is 19%; however, the rates of 0% and 5%, apply to certain goods and services.</p> <p>Additionally, there is a consumption tax. The taxable event is providing or selling to the final consumer, or the importation by the final consumer, of certain specific goods and services (i.e., restaurants).</p> <p>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.</p> <p>Finally, there is a levy on financial transactions. This tax is assessed at the time of disposal of funds subject to the financial transaction system, at a rate of 0.4%.</p>

## C9. M&A

29	<p><b>Are there any public takeover rules?</b></p>
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	<p>There are no rules controlling company takeover, therefore this is subject to the negotiation of the parties or hostile takeover processes.</p>
<p>30</p>	<p><b>Is there a merger control regime and is it mandatory/how does it broadly work?</b></p> <p><b>A. Superintendence of Corporations</b>          For company law purposes, the Superintendence of Corporations control merger operations, and those companies that are under their surveillance of some that fall into this requirement for specific legal requirement must request previous authorization before this authority after the merger is approved by the general assemblies of the merging companies. Once the merge is authorized, then it can be completed and registered before the mercantile registrar.</p> <p>Companies not surveilled or without any specific requirements are understood to be authorized generally by the Superintendence and can merge without previous authorization.</p> <p><b>B. Superintendence of Industry and Commerce:</b>          On the other hand, for matters of antitrust regulation, the Superintendence of Industry and Commerce (“SIC”) is the authority in charge of authorizing economic integrations among competitors. In regard to this matter, we highlight the following summary:</p> <p>A. The integrations correspond to any agreement in which two or more independent parties, enter business operations of a merger, consolidation, acquisition of control or any other corporate, or contractual figure, for the purpose of ceasing to compete within the market to which they belong and instead, start developing activities together. Likewise, it is noted that integrations can be horizontal when they are carried out between agents that carry out the same economic activity; or vertical, when they are carried out by actors who, despite not carrying out the same economic activity, are part of the same value chain of a product or service.</p> <p>B. That said, we must specify that not all business integrations are subject to prior control by the SIC. On the contrary, only those operations in which their participants have obtained assets or income greater than 60,000 minimum wages, either jointly or separately, will be under the scrutiny of the authority. In this way, two elements must be present for it to be necessary to carry out some kind of procedure before the SIC:</p> <p>a. Objective element: the companies involved in the operation carry out the same economic activity; or despite the fact that the same economic activity is not carried out, they are in the same value chain.</p> <p>b. Subjective Element: the participating, joint, or selected companies considered, have obtained during the fiscal year prior to the projected operation, operating income, or assets greater than 60,000 minimum wages.</p> <p>However, in the event that both elements are fulfilled, it must be determined whether the procedure to be carried out before the SIC corresponds to a simple notification, or if, on the contrary, it will be necessary to request the prior authorization of said entity prior to the signing of the contract for the sale of assets. To determine the above, the following rules must be taken into account (Resolution 2751 of 2021):</p> <ul style="list-style-type: none"> <li>• It must be notified when the companies involved together have a share of less than 20% of the market involved.</li> <li>• The pre-evaluation must be requested when the participating companies have joint participation of more than 20%.</li> </ul>
<p>31</p>	<p><b>Is there an obligation to negotiate in good faith?</b></p> <p>Yes, following Article 871 of the Colombian Commerce Code, contracts must be executed in good faith and therefore must be complied with not only following its specific agreement but also with those duties that correspond to its nature.</p> <p>This good faith under Article 863 is also required in pre-contractual negotiations, otherwise, indemnifications may be in place.</p>
<p>32</p>	<p><b>What protections do employees benefit from when their employer is being acquired, for example, are there employee and/or employee representatives’ information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?</b></p> <p>In mergers and other types of acquisition, employees involved in the operation will have to be transferred. Depending on the operation, the following alternatives may apply:</p> <ul style="list-style-type: none"> <li>• Employer’s substitution</li> <li>• Assignment of employment agreements,</li> <li>• Termination and re-hiring.</li> </ul> <p>Employer’s substitution and assignment of employment agreements guarantee that labor conditions and seniority are to be maintained for the transferred employees.</p>

## C10. Foreign direct investment

33	<p><b>Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and/or approvals required for corporate acquisitions.</b></p> <p>Foreign investment is allowed in Colombian companies only with limitations on toxic waste management and defense purposes. Foreign investment into Colombia does not require to be previously authorized, instead must be registered before the Colombian Central bank. Please refer to its procedures in our answer 34 below.</p>
34	<p><b>Does your jurisdiction have any exchange control requirements?</b></p> <p>Yes, please see our summary below:</p> <p><b>Foreign exchange regulations</b> 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.</p> <p>The rules applicable to 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.</p> <p><b>Controlled exchange market</b> According to the Exchange Code, the following operations must be channeled through the exchange market:</p> <ul style="list-style-type: none"> <li>• Importation and exportation of goods.</li> <li>• Foreign indebtedness transactions, which involve Colombian residents as a contracting party and the financial costs inherent to those operations.</li> <li>• Foreign investments, their reinvestment and the repatriation of the corresponding profits.</li> <li>• Colombian investments abroad, its reinvestment, as well as their corresponding profits.</li> <li>• Financial investments and in assets abroad, unless such investments are made with resources that should not be channeled through the exchange market. However, it will be necessary to register them before 30 June of the year after its completion, if their accumulated amount at the end of the previous year is equal to or higher than US\$500,000 or its equivalent in other currencies.</li> <li>• Foreign investments in securities or assets located abroad, unless said investments are made with funds that do not have to be channeled through the exchange market.</li> <li>• Securities and guarantees in foreign currency.</li> <li>• Derivative operations</li> </ul> <p>The above-mentioned operations must be made through a foreign market intermediary and/or through a compensation account. Nevertheless, the Central Bank may establish through general regulation, special exceptions to the mandatory canalization of the above-mentioned operations.</p> <p><b>Free market</b> The free market is formed by all the operations that are not obliged to be conducted through the foreign exchange market, for example, the service payments, and foreign currency transfers regarding donations.</p> <p>Under this scenario, Exchange residents can constitute deposits on bank accounts abroad and do through these accounts any of the free market operations.</p> <p><b>Foreign market intermediaries</b> Foreign market intermediaries (FMI) are commercial banks, mortgage banks, financial corporations, commercial financing companies, Financiera Energética Nacional (FEN), Banco de Comercio Exterior de Colombia S.A. (BANCOLDEX), financial cooperatives, stockbroker companies, and foreign exchange agents.</p> <p><b>Compensation accounts</b> 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</p>

operations that are required to be channeled through the exchange market, the account will automatically be converted into a —“Compensation account”. Such account will be subjected to the following rules:

- The account must be registered before the Central Bank within a month after the first transaction that has to be conducted through the exchange market is made or within a month after the receipt of a payment derived from an obligation entered in by the account holder with another Colombian resident. Due on Form No. 10 “Compensation account registry”.
- Every month the holder of the account must report the consolidated movement of the operations carried out through it, to the Central Bank through the Webpage of said entity through Form No. 10 “Compensation Account movements”.
- In addition, the transactions made through the account that are the competence of the DIAN shall be reported quarterly to the mentioned entity in accordance with the last digit of its tax identification number (NIT).
- The foreign currency deposited to the compensation account may be sold only to exchange market intermediaries, other holders of settlement accounts, or be used to pay foreign currency operations that require or not to be channeled through the foreign exchange market or wire transferred to other accounts of the same owner. Conducting operations through compensation accounts on behalf of third parties is prohibited.
- The exchange declarations that the account holders not shall deliver to the Central Bank, including those prevised in point 8.4.1 of chapter 8 of the DCIN 83, which presents incomplete or wrongful information in the space of the compensation account code, date, number of exchange form, will not generate an exchange infringement, in those cases, the holder will be able to modify in any moment the information and shall keep the forms with the respective supports without requiring to send them to IMC or DCIN.

**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 corresponds 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 belong 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 its officials; c) Multilateral organizations and its officials; d) Public or private entities that are carrying out international technical cooperation programs with the National Government for amounts effectively disbursed by foreign cooperation organizations; e) International transportation agencies, travel and tourism agencies, deposits and bonded warehouses and entities that provide port and airport services; f) fiduciary companies in performance of trusts or as a 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 an oil refinery, and purchase fuel for ships and aircraft intended for international trips.
- Residents in Colombia can pay each other, in foreign currency, the purchase of oil and natural gas produced in the country to companies dedicated to exploration and production of oil and natural gas, as long as (i) both residents have compensation accounts and (ii) is not an operation between a company of the general exchange regime with branches of the special exchange regime.

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

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

- Applicable to (i) local companies and local companies with foreign investment dedicated to exploration and exploitation of oil, natural gas, coal, ferronickel, or uranium and (ii) local companies and local companies with foreign capital investment dedicated exclusively to providing inherent services of hydrocarbons sector in accordance with Law 9 of 1991, Decree 2058 of 1991 and Decree 1629 of 1997.
- Companies of the 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 comes 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 and access to foreign debt; their imports are non-reimbursable goods and their exports of goods do not have a refundable nature.

**Special Foreign Exchange Regime**

- Applicable to (i) branches of foreign companies engaged in the exploration and production of coal, natural gas, oil, ferronickel, and uranium and (ii) branches that provide services exclusively to the oil sector pursuant to Law 9 of 1991 and Decrees 2058 of 1991 and 1073 of 2015.
- Branches that do not have the intention to be part of the special regime must notify this fact to the Central Bank by means of written communication and would be excluded from it for 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 outlined below, likewise, are not allowed to hold and register a compensation account. Consequently, they have no access to foreign indebtedness, their imports of goods are not reimbursable (they do not generate payment obligations abroad) and their exports of goods do not have a refundable nature.
- Nevertheless, with a prior certificate from the statutory auditor, they are allowed to access the exchange market in order to issue abroad the following sums: a) The return of the capital investment in case of liquidation of the branch, b) the sums received in local currency as a consequence of internal sales of oil, natural gas or services inherent to the oil sector and for c) refund the currencies required to meet expenses in local currency. For this effect, expenses include contributions to 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:

- Local companies and local companies with foreign investment companies (this includes Colombian companies with foreign investment and branches of foreign companies) who perform exploration and exploitation activities of oil, gas, coal, ferronickel, or uranium and,
- Local companies and local companies with foreign investment dedicated exclusively to providing 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 in the Oil & Gas sector are subject to the special exchange regime.

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

On the other side, the companies that belong to the general exchange regime can receive 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 activities related to the processing and disposal of toxic, hazardous, or radioactive waste produced abroad.

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

### Foreign investment categories

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

#### Direct Foreign Investment

- 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 a quotation system of the exchange values.
- The aforementioned investments are made in a Colombian company and registered in the RNVE when the investor declares that it has been acquired with the intention of staying.
- The rights of investments in trust business entered into with fiduciary companies subject to the inspection and supervision of Colombian Financial Superintendence.
- Real states located in Colombia, acquired under any title, either directly or through trust business, or as a result of a real estate securitization process of a property or construction projects, provided that the title is not registered in the RNVE.
- Investment or economic rights as a consequence of 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.
- Investment in the assigned capital and supplementary investment of the assigned capital of a foreign branch registry in the country.
- The investment in private equity funds which is dealt with in the third book of the third part of Decree 2555 of 2010 or the rules that modify or replace it.
- Intangible assets acquired to be used for obtaining economic benefits in the country.

#### Portfolio Investments

It is considered a Portfolio investment:

- i. Securities subscribed in the RNVE (National Register of Securities), or 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 for 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 for 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) In-kind contributions consisting of intangibles such as technological contributions, trademarks, patents, etc.;
- d) Funds in local currency entitled to be remitted abroad such as the principal and interest of foreign credit, sums due corresponding to reimbursable imports, profits entitled to remittance, and royalties derived from duly registered contracts;
- e) Funds in local currency arising from local credit operations entered into the credit institutions, intended for the acquisition of shares made through the stock market,
- f) Supplementary investment to the assigned capital;
- g) Currencies importation to acquire the real state of employees or foreign companies' real state.

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

There are different types of registries:

- **Currencies modality of foreign investment** - Automatic registration via the presentation of the international investments exchange statement (previously Form No. 4). This type of registration is applicable to the foreign currency remitted to Colombia for direct and portfolio investment, provided that the operation is performed through the exchange market.
- **Other modalities of foreign investment** - Registry with the presentation of Form No. 11 –International Investments Exchange Statement. This type of registration is applicable for investments under the modality of sums entitled to remittance, whether it refers to direct or portfolio investment.

The term to present the international investments exchange statement in Colombia is 12 months after the operation is completed. This term is not renewable. Decree 119 of 26 January 2017 removed this term and Official Gazette No. 23, 2017, issued by the

Central Bank states that transactions performed before 2 July 2017 must comply with the term of 12 months, and those transactions performed after 2 July 2017 do not have the obligation to comply with this term because it was eliminated.

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

- **Registry of foreign investment which does not imply equity interest with the presentation of Form No. 11** - Presentation of the international investments exchange statement. This type of registration applies to the following:
  - a) Investment in autonomous equities,
  - b) Acquisition of real estate goods,
  - c) Investment in kind (tangible and intangible assets) and acts or contracts that do not grant any participation in the capital of a company,
  - d) Acquisition of shares through the stock market with local currency funds resulting from local credit operations, as well as the supplementary investment to the assigned capital that is part of a special exchange regime.

**Other types:**

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

The registry has to be made in the following month of the investment by the fulfillment of the form called IPEXT “registry of the investment of foreign capital of portfolio”, to the DCIN of the Central Bank, according to section 7.2.2. and 1 of annex 5 of DCIN 83, about an administrator of IMC quality, of administrator without IMC quality, or the centralized local deposit of values, respectively.

The registration must be made during the following month after the investment performance, counted as:

- Autonomous equities and real estate: from the date of the exchange declaration for international investments.
- In-kind contributions (tangible and intangible goods): from the date of nationalization or customs clearance of ordinary non-reimbursable ordinary imports; the date when temporary imports become ordinary; the date of the form of movement of goods in free trade zones (entry of goods) issued by the operator user and, the date they are accounted for in the case of intangible assets.
- Acts or contracts without participation in the capital: from the date of the exchange declaration for international investments in case that foreign currency is channeled through the exchange market and in modalities other than foreign currency said term will be counted as of the date that the contribution is accounted for.
- Supplementary investment to the assigned capital for branches of the special exchange regime: from the date of the annual closing of the financial statements as of 31 December.
- When foreign individuals request the Central Bank the reclassification of its investment to national investments, it must simultaneously request the cancellation of the registry of the foreign investment filing Form No. 12. The date of the cancellation will be the date of the application for qualification as a national investor.

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

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

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

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

- a. Inform that fact to the DCIN of the Central Bank by written communication accompanied by the certification.
- b. Modify the exchange numerals of the general regime used initially in the exchange declarations for international investments (previous Form No. 4).
- c. In the event that the branch has presented or transmitted the form No. 15 “patrimonial conciliation – companies and branches of the general regime” accordingly with the dates established in this circular, has to send the DCIN of BR a Form No. 13 “Registry of supplementary investment to the assigned capital and updating of patrimonial accounts – branches of the special regime” duly completed. The supplementary investment will be understood as registered with the date of submission of Form No. 15. When the branches of foreign companies operate under the special regime and lately do not obtain the renewal of the exclusive dedication certificate issued by the Mining and Energy Ministry, shall inform the change of regime by written communication addressed to the DCIN of the BR accompanied by the certification.

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



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

#### **Foreign investment cancellation**

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

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

- i. Colombian Company liquidation.
- ii. Decrease of the capital, which implies a change in the number of shares or quotas, including that capital assigned to the branches of foreign companies.
- iii. Reacquisition of shares or quotas.
- iv. Qualification of resident as national investor.
- v. Foreign investor liquidation.
- vi. Partial or total termination of acts or contracts with no equity interest.
- vii. Termination of fiduciary business signed with trusts.
- viii. Total or partial liquidation of private equity funds.
- ix. Disposal to residents (adjudication or transfer).
- x. Disposal of real estate.
- xi. Business reorganization (mergers and acquisition processes).
- xii. Cancellation of advances for future capitalizations.

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

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

The term to present the international investments exchange cancelation statement is no later than six months after the transaction.

#### **Foreign investment substitution**

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

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

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

#### **Importations and exportations of goods**

Reimbursements or payments of importations of goods shall be channeled through the foreign exchange market. Reimbursements will be paid up once the exchange declaration for import of goods (previous Form 1) is duly filled-out and processed.

On the other hand, and in general terms, residents in the country shall channel through the exchange market the foreign currency from their exports of goods, including those that they receive directly in cash, either in the case of refund for exports or those that are received as advance payment for future exports of goods (prior to the shipment of the goods). The reimbursement must be made through the exchange declaration for exports of goods (previous Form 2).

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

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

**Foreign indebtedness**

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

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

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

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

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

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

**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 passive loan (when the debtor is a resident), return non-formalized investments, imports of financed goods and foreign portfolio investments. However, nowadays it is 0%.

## D. Entity closure

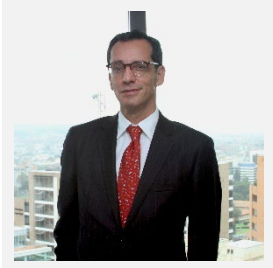
35 **What are the most common ways to wind up/liquidate/dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.**

Liquidation of companies or branches is ruled by Colombian Commercial Code. The main steps are:

The first step is to prepare the minute of the shareholder assembly and the acceptances letter of the liquidators. In which:
(i) Dissolve the company,
(ii) Enter into liquidation status, and
(iii) Appoint a liquidator and a substitute
Registry of the minutes before the Chamber of Commerce
File notifications of the liquidation status to the tax authority, maximum 10 days after the registration
File notifications of the liquidation status to general creditors, by means of a newspaper ad
File notifications of the liquidation status to creditors of the company, with a letter addressed to each of them delivered by certified mail (courier)
Update the Tax ID of the company before the Tax Authority
Notification before the Superintendence of Companies
Drafting of the Inventory of assets by the liquidator. Detailed list of assets, liabilities, and priority of payments must be included. Assets will allow the liquidator to pay all the external and internal liabilities
The liquidator must terminate all the commercial relations and agreements of the Company. Only the commercial relations that are necessary to close the company must continue in force
The liquidator must obtain a certificate of good standing in case there is/was judicial or administrative proceedings against the Company before the UGPP (per its acronym in Spanish), entity in charge of the surveillance of the correct payment of social security contributions or entities from the social security system
Final Liquidation Account detailing liabilities or assets remaining and the conditions under which they will be distributed to shareholders
Call to meeting five business days prior to the shareholders' meeting
The shareholders must approve the report and the Final Liquidation Account prepared by the liquidator, by means of a shareholder assembly minute
Registry of minutes of the final liquidation before the Chamber of Commerce. This registration generates the cancelation of the commercial register and the end of the company for corporate purposes
<b>Post-liquidation phase</b>
Deliver the remnants to its shareholders as return of foreign investment

	The foreign investment registration before the Central Bank must be cancelled
	Good standing for tax matters. In this phase, tax refunds may be requested before the Tax Authority, if applicable
	Filing of the income tax return of the corresponding FY (fraction of year or period)
	Cancellation of the Tax ID of the liquidated company
	Cancellation of the bank accounts
	Cancellation of the foreign investor Tax ID.

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# Deloitte.

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