

BUSINESS GUIDE FOR THE SECTOR

Bogota, Oil & Gas Services Hub for the Northern Cone of South America



Invest in  Bogota

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Business Guide for the Sector

Texts and Legal Edition
Posse Herrera & Ruiz Abogados
Araújo Ibarra & Associates

Texts and Sectorial Edition
Invest in Bogota
Campetrol

Graphic Design
www.onatras.com

2011

<http://www.phrlegal.com/>
<http://portal.araujoibarra.com/>
<http://www.campetrol.org/>
<http://www.investinbogota.org/>

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This guide in no way replaces the expert advice required to implement each of the topics analyzed herein. Many issues are highly complex, unforeseen regulatory changes occur and the success of a business venture always depends in part on the legal decisions made at inception.

Prologe

Invest in Bogota is the investment promotion agency for Bogota and Cundinamarca, a public-private partnership, created in 2006, between the Bogota Chamber of Commerce, the Bogota City Government and the Government of Cundinamarca.

In 2009, the World Bank ranked Invest in Bogota as the top non- OECD investment promotion agency in the world.

Since 2009, the agency identified the oil and gas services sector as a top added value priority sector for attracting of foreign investment. This strategy seeks to complement the national government's hydrocarbons sector investment promotion campaign which began in 2004 under the National Agency of Hydrocarbons.

Since 2009, the agency identified the oil and gas services sector as a top added value priority sector attracting foreign investment. This strategy seeks to complement the national government's hydrocarbons sector investment promotion campaign which began in 2004 under the National Agency of Hydrocarbons.

Through the promotion of investment in the oil and gas sector, Invest in Bogota seeks to position Bogota as the new hub in oil services in the northern cone of South America. At the moment, 89% of companies in this sector are installed in Bogota, and the city receives 76% of this sector's operational income.

Working with our network of allies, we are actively positioning this industry in Bogota across the globe. We are also working on the development of specific activities designed to improve the sector's investment climate.

We have encouraged the development of this Business Guide to support and facilitate the work of national and foreign businessmen who require practical guidelines on how to do business in the oil and gas industry.

Finally, I would like to highlight and express our gratitude for the unconditional support given to us by Campetrol and the law firms of Posse Herrera & Ruiz and Araújo Ibarra & Associates, which developed the legal content of the document. The development of this Business Guide would not have been possible without the support of our allies and other organizations that are committed with the development of Bogota and the capital region.

Adriana Suárez, Executive Director, Invest in Bogota.

“Working alongside Invest in Bogota has truly been very refreshing. As a representative of a major international service company, we value local relationships very much and first impressions are very important. Their strength lies with their people and their leadership. Their executives are professional, bilingual, and attentive and work to the highest ethical standards. Invest in Bogota has assisted our organization in understanding the inner workings of doing business, not only in Bogota, but Colombia in general.”

*Carlos Gutierrez, Vice President - Strategic Business Development
- Latin America, Production Services Network U.S. Inc.*





“Lupatech OFS consolidated its presence in Colombia with the acquisition of the local company Hydrocarbon Services, in June 2010. Since then, LOFS has provided multi-services along the national territory, ranging from the drilling to the final completion of wells. This accelerated expansion has been possible thanks to the strategic opening of a commercial center in Bogota, and the support of an operational base in Cota. Thanks to the convenient access to the main roads of the country and its proximity to the El Dorado Airport, LOFS supports its operations and facilitates permanent access to its clients from its main office in Bogota.”

Alvaro Otero, General Manager, Lupatech OFS

Introduction

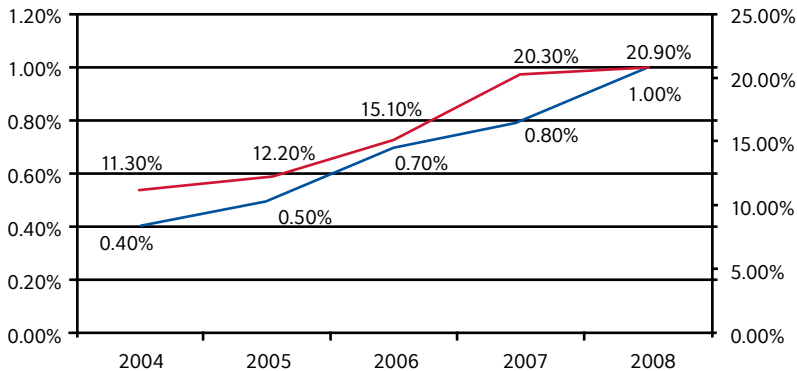
Oil and Gas Service Sector in Colombia

1. Size and Growth of the Oil Goods and Services Sector

The oil goods and services sector in Colombia is a growing industry whose operational revenues reached USD \$2.5 billion in 2008. Between 2004 and 2008, this sector's operating revenues had increased 22%, partly as a result of a series of new security and investment policies, greater dynamism in exploratory activity, increased oil production and the creation of the National Hydrocarbon Agency (ANH) in 2003.

Similarly, the industry rose from 0.4% of GDP to having a 1% share (from 2004 to 2008), also the oil goods and services sector rose from 11.3% of oil sector GDP in 2004 to having a 20.9% share in 2008; it is expected to continue increasing its share due to new opportunities in this sector.¹

Percentage of the Oil Goods and Services Sector in National GDP and GDP by Sector



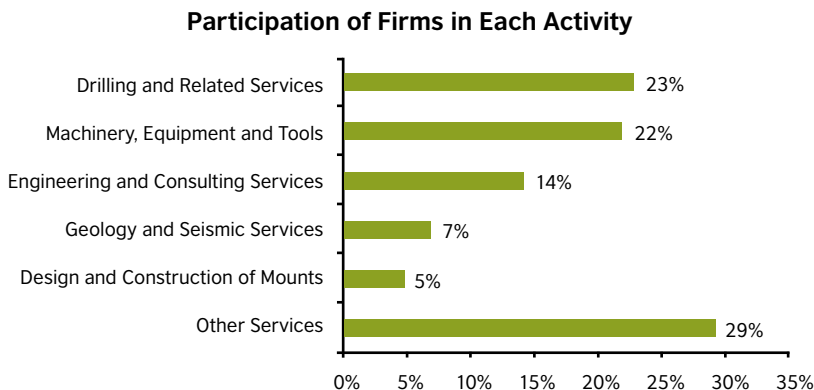
Source: Fedesarrollo, The impact of the oil goods and services sector in the economy.

¹) Calculations: Fedesarrollo based on information from Banrep, DANE and the Superintendent of Companies.

1.1 The Sector's Principal Activities

Colombia's oil goods and services sector is concentrated mainly in drilling-related services, machinery and equipment supply, consulting and engineering services, and geology and seismic services, among others.

23% of operating revenues generated by the goods and services sector correspond to companies offering drilling, completion and workover, while 22% of revenues come from machinery, equipment and tool suppliers².



Source: Calculations by Fedesarrollo, based on information from Supersociedades.

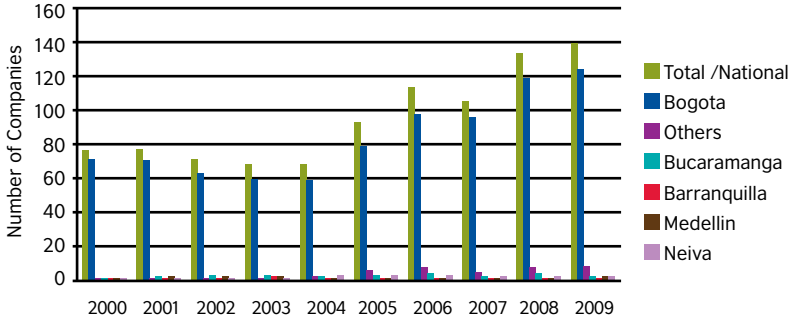
1.2 Companies in the Industry

The regional distribution for 89% of oil service companies is located in Bogotá³, which makes the city the center of business in the country. 76% of the industry's operational income is generated from Bogotá.

2) Description from Fedesarrollo according to economic activity description reported at the Superintendent of Companies.

3) According to registrations at the Superintendent of Companies. Companies that are part of Super-Companies are: i) Its total assets are greater than 30,000 SMMLV, ii) its total revenues exceed 30,000 SMMLV and iii) When companies are not subject to the supervision of another Superintendent.

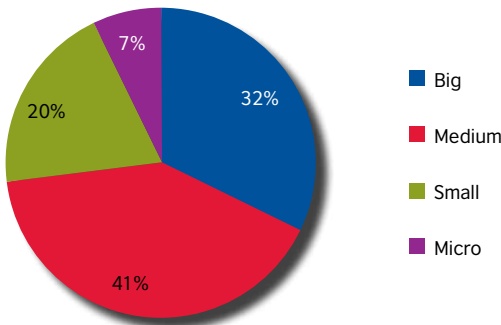
National Concentration



Source: Supersociedades.

Over the past 5 years, more than 200 companies were started for goods and services related to oil and gas industry. Of these companies, 41% are medium-sized companies and 32% are large companies, ranked by value of its assets⁴.

Classification of Companies by Asset Size

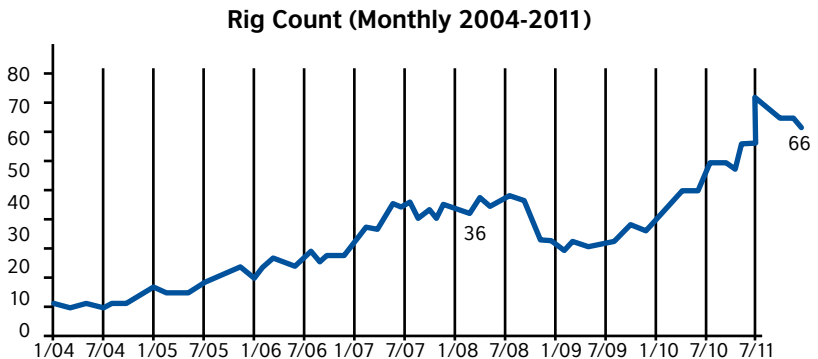


Source: Calculations by Fedesarrollo based on information from Supersociedades.

⁴ Microbusiness: Employees; 1-10, Assets; up to 500 SMMLV. Small: Employees; 11-50, Assets; from 501 to 5,000. Medium: Employees; 51-200, Assets; from 5,001 to 30,000. Large: Employees; >200, Assets; >30,000.

1.3 Increased Activity Drives the Demand for Services

Drilling rigs are an important indicator of the dynamism of oil service activity. In Colombia, the number of active rigs⁵ increased substantially from 13 in December of 2004 to 54 in the same month in 2010.⁶



Source: International Rig Count, Baker Hughes.

Sector imports have increased significantly in the last 4 years. The oil service companies increased imports from USD \$100 million to nearly USD \$600 million between 2004 and 2009.⁷ Among the main imported goods are:

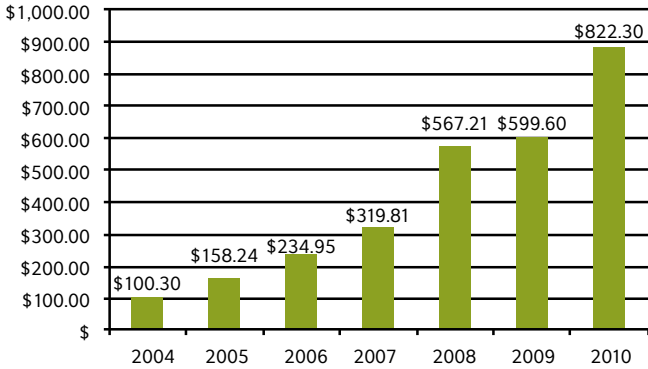
- Machinery for grading and excavation (subheading 8431439000)
- Liquid pumps (subheading 8413919000)
- Air pumps (subheading 8414901000)
- Tools and parts (subheading 8207192100)
- Electric motors and generators (subheading 8501312000)
- Tubing for extraction (subheading 7304220000)

5) Active Drills: Those that demand a significant amount of supplies and services and don't include a cable tool rig, small trucks and drills without permits. Coiled tubing drills and workover used to drill new wells are included. Source: Baker Hughes.

6) The graph shows the number of drills available for the last month of each year.

7) Dirección de Impuestos y Aduanas Nacionales de Colombia, DIAN. Cálculos Campetrol.

Imports: Goods and Oil Services



Source: Dirección de Impuestos y Aduanas Nacionales, DIAN.

2. Oil Drilling Activity in Colombia

The growth of the oil services industry is due in large part to the dynamism in oil exploration and production in Colombia.

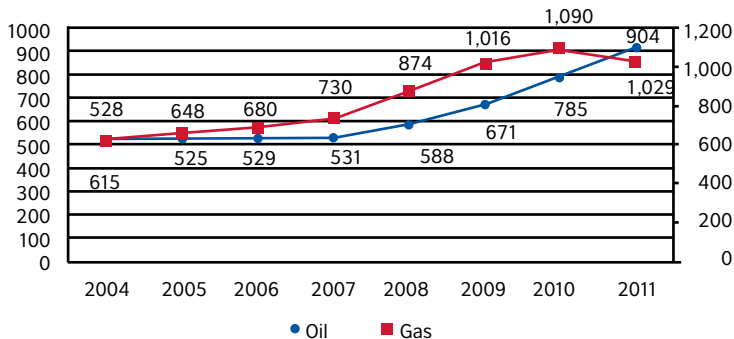
Our country has 23 basins of which 16 are located in areas onshore and 7 offshore. The most important oilfield for national production is located in the Eastern Plains and represents 69% of production in that year.



2.1 Increased Hydrocarbon Production in Colombia

Oil and gas production increased 49% and 77% respectively over the last 6 years, partly due to good management by the National Hydrocarbon Agency (ANH), and the country's good business climate. Crude oil production in 2010 reached 785 KBPD; until May of 2011, the average was 927 KBPD.

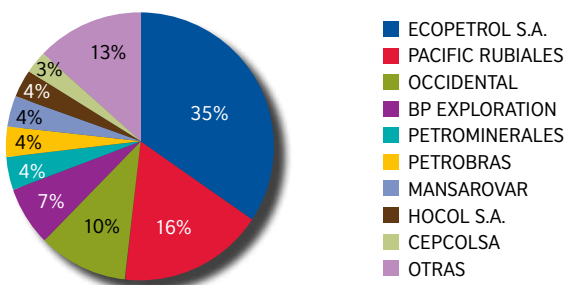
Domestic Production of Hydrocarbons



Source: Agencia Nacional de Hidrocarburos, ANH, BP Statistical Review of World Energy – June 2011.

Ecopetrol S.A. leads the total oil production in Colombia, with a 35% share, according to figures released in 2010. Other companies like Occidental de Colombia, BP Exploration Colombia and Pacific Rubiales Energy have an important participation in Colombia’s hydrocarbon sector⁸.

Participation in Oil Production (2011-I)



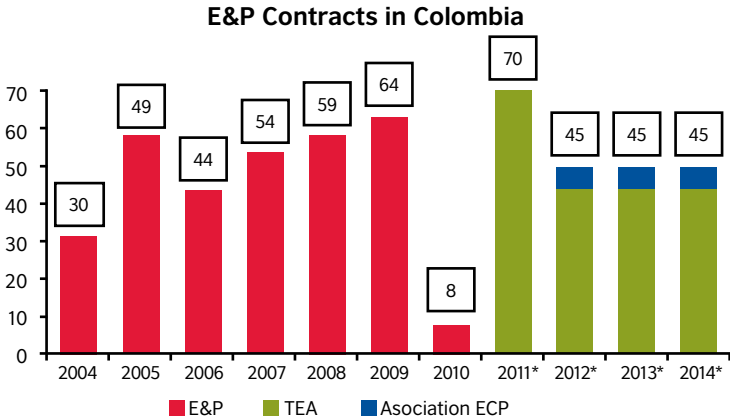
Source: Ministerio de Minas y Energía. Note: BP Exploration, now Equion.

⁸ BP Exploration, now Equion.

⁹ Agencia Nacional de Hidrocarburos, ANH.

2.2 Growth of Exploration Activity

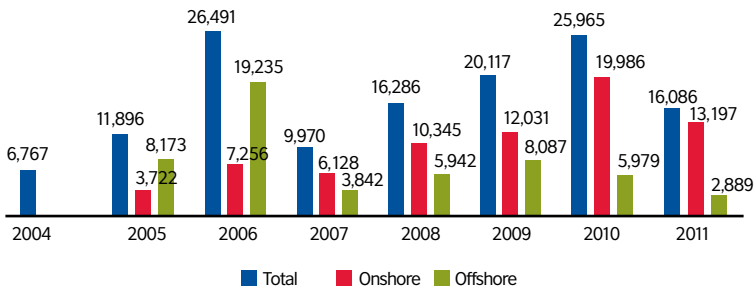
The number of contracts for E&P doubled between 2004 and 2009, additionally 8 contracts were signed in 2010 without taking into account the allocations made in the Open Round 2010 in which 78 blocks were awarded: 68 E&P contracts and 10 TEA contracts⁹.



*Projection. Source: Agencia Nacional de Hidrocarburos y Ministerio de Minas y Energía.

Similarly, seismic acquisition quadrupled, from 6,767 km in 2004 to 25,965 km of 2D seismic equivalent between 2004 and 2010¹⁰.

Evolution of Seismic Acquisition



Fuente: Agencia Nacional de Hidrocarburos, ANH.

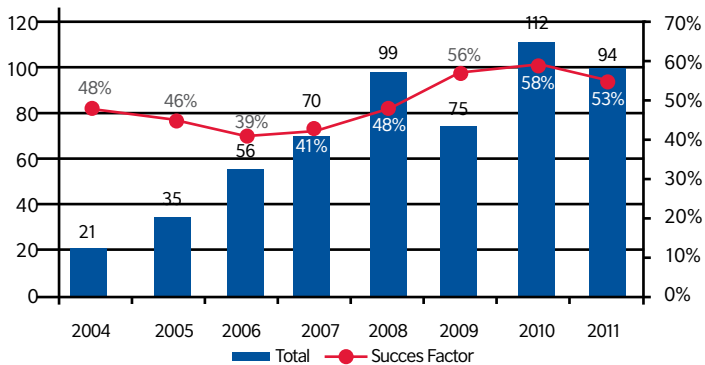
Drilling activity has also increased at an average annual rate of 36% to 112 exploratory wells drilled in 2010¹¹.

9) Agencia Nacional de Hidrocarburos, ANH.

10) Agencia Nacional de Hidrocarburos, ANH.

11) Ibid.

Exploratory Drilling Evolution

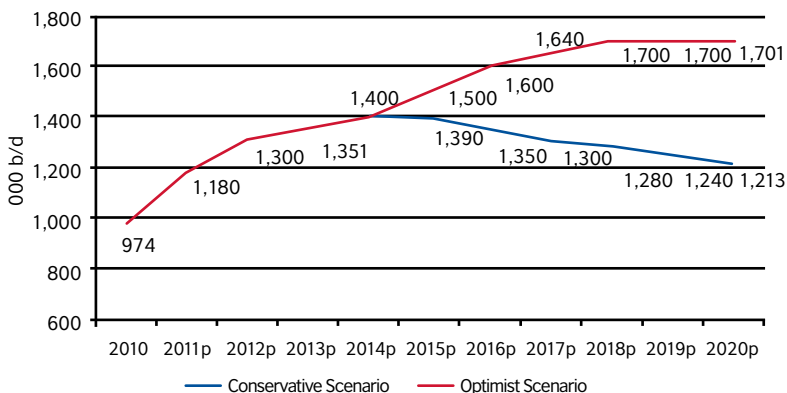


Source: ANH.

3. Hydrocarbon Sector Projections

Development prospects for sustained growth since 2004 will continue over the coming years. According to recent estimates by the National Hydrocarbon Agency (ANH), for the year 2020, the country will be producing about 1.7 MBOED in an optimistic scenario, in which a significant percentage will come from fields currently under development as well as mature fields¹².

Petroleum Production



Source: Agencia Nacional de Hidrocarburos, ANH.

12) Agencia Nacional de Hidrocarburos, ANH.

As for the production of gas, 1,350 MPCD will be produced by 2014, according to the Ministry of Mines and Energy.

Ecopetrol's tentative plan for the coming years is a clear sign of such projections. The estimated investment in oil services is a total of USD \$80.3 billion for the 2011 to 2020 period, in which investment will be concentrated mainly in exploration and production¹³. Similarly, 76 new blocks were awarded during the last Open Round Colombia 2010. This is another factor that will increase industry and services activity associated with this for the next few years.

13) Business Monitor International con base en información de Ecopetrol.



“Energeticos is part of the Wood Group multinational company; it went from being a small engineering company of 110 people to employing over 654 people in the past 6 years. It is now one of the major companies providing engineering services, purchasing and projects for the oil sector in Colombia. With the development of new technologies, procedures and a work culture different to those of other companies, it successfully services markets such as Africa, USA, Ecuador, Peru, Brazil and Colombia from its central office in **Bogota.**”

Peter King, General Manager, Energeticos

1. Incorporation of a Company

It is possible to establish a company in a period of one to two weeks in Bogota. In the following section we describe the alternatives available to a national or foreign investor as well the procedures required to incorporate a company in Bogota.

1.1 Corporate Alternatives

In order to carry out permanent activities or businesses¹⁴ in Colombia an investor must incorporate a commercial company or a branch of a foreign company which will operate locally.

Typically, investors in the oil and gas sector establish branches of foreign companies in Bogota in order to qualify for the special exchange regime described in Section 3.4 of this guide.

It is important to highlight that if no permanent activities or businesses are carried out in Colombia, it is not mandatory to act through a locally established branch or a corporation.

1.1.1 Commercial Companies

The type of company most widely used in Colombia is the simplified stock corporation, also known by its acronym in Spanish as a S.A.S corporation (Sociedad de Acciones Simplificadas). It presents advantages with respect other corporate alternatives, such as the following:

- (i) It can be incorporated by a single shareholder.
- (ii) Shareholder responsibility is limited to contributions, even with respect to tax and labor obligations acquired by the company, except in cases of fraud.
- (iii) A board of directors is optional and statutory auditors are only mandatory when the value of the company's gross assets as of December 31st of the immediately preceding year reaches or exceeds five thousand (5,000) monthly minimum wages (Col\$2,575,000,000, approximately US\$1,329,443.00) and revenues exceed three thousand (3,000) monthly minimum wages (Col\$1,545,000,000, approximately US\$797,666.00).

¹⁴ Article 474 The Colombian Code of Commerce considers the following to be permanent activities or businesses: (i) open commercial establishments or business offices; (ii) act as a contractor performing works or rendering services; (iii) participate in activities related to the management, use or investment of private savings funds; (iv) operate any extracting industry or any related lines of services; (v) obtain a state concession or participate in its exploitation, and (vi) [the operation of certain funds in Colombia.

(iv) If a single shareholder company, that shareholder can exercise the functions of both shareholder general meeting and legal representative.

(v) The assigned capital can be paid in within a two (2) year period following incorporation.

(vi) The company's incorporation as well as any amendments to its by-laws can be effected through a private document instead of a public deed.

(vii) Issue various types of shares, such as preferential shares, shares with preferential dividends without voting rights, shares with fixed annual dividends and any other lawful form of shares.

(viii) There are no minimum dividends to be distributed, as is the case with types of corporations.

Notwithstanding the previous advantages, it is important to take into account that shares issued by a simplified stock corporation cannot be publicly traded.

Despite the clear predominance that simplified stock corporations have acquired in Colombia, we present a brief comparison of the other types of corporate entities available, which may be better suited for certain business ventures.

Chart 1.1 Comparison Between Business Types

A. Limited Liability Corporations	
Number of shareholders / shares	Requires at least 2 partners and a maximum of 25.
Liability	The company is liable for up to the amount of the capital contributed by the partners. Partners cannot be liable for debt incurred by the corporation with the exception of sums due for labor or tax obligations, for which they are jointly liable with the company.
Capital	All of the shares must be paid in at the moment of incorporation.
Assignment of shares	The sale or transfer of shares requires an amendment to the bylaws of the company. Once the decision is made, it must be legalized by a public deed duly registered with the relevant chamber of commerce.
Reserves	The legal reserve for a limited liability company is equivalent to 10% of annual net profits up to an amount equal to 50% of subscribed capital.
Foreign exchange	Any investment made with private money, in cash is automatically registered with the national bank by filing a declaration of a foreign exchange transaction with a bank.
Liability in regards to tax regulation and authorities	The partners are jointly liable with the corporation before the tax authorities for not paying taxes in proportion to their participations during the time they are partners.
Fiscal auditor	Not required unless (i) the gross asset value is equal to or greater than 5000 monthly minimum wages ¹⁵ or (ii) the gross income from the previous year is equivalent to or greater than 3000 legal monthly minimum wages ¹⁶ .



15) Ibid.

16) Three thousand (3,000) are equal to Col\$1,606,800,000 and in dollars to an exchange rate of Col\$1,800 is approximately US\$892,670.

A. Limited Liability Corporations	
Remittance of dividends / profits	If a foreign investment is duly registered before the national bank, the investor has the right to freely remit profits if such profits are supported by financial statements.
Board of directors	The company is not required to have a board of directors. It is optional.
Regulatory supervision	These corporations are regulated by the superintendence of corporations only if the amount of their assets or income is equal to or greater than 30,000 legal monthly minimum wages ¹⁷ . The scope of regulation is generally related to financial concerns and requires the company to submit the annual financial statements to the corporation's superintendence. Additionally, certain statutory amendments require prior authorization from the superintendence.
Refund of capital	The investor has the right to freely remit invested capital when the corporation is liquidated or when capital is reduced if certain rules were complied with and if the foreign investment has been registered with the national bank.
Dissolution caused by accounting results (when capital is reduced below 50% of the share capital)	The corrective measures must be taken within six (6) months from the time the grounds for the dissolution is known.

17) Ibid.

↑

B. Publicly Owned Corporations	
Number of shareholders / shares	At least 5 shareholders, none of which can have 95% or more of the capital of the company.
Liability	The company is liable only to the extent of its capital. Shareholders cannot be liable for any debt unless a security interest was granted or the shareholder has not complied with the obligation to pay the subscribed capital.
Capital	At the time of the incorporation, the shareholders must pay at least 50% of authorized capital, and at least 1 / 3 of the subscribed capital. The remaining 2 / 3 must be paid within one year.
Assignment of shares	The sale or transfer of shares is unrestricted and does not require an amendment to the bylaws. The transfer of shares may be made by endorsement of certificates and registration in the share registry.
Reserves	The legal reserve is equal to 10% of annual net profit up to an amount equal to 50% of subscribed capital.
Foreign exchange	Any investment made with private money, in cash is automatically registered with the national bank by filing a declaration of a foreign exchange with a bank.
Liability in regards to tax regulation and authorities	With the exception of fraud or harm to others, the shareholders are not liable for the corporation's taxes.
Fiscal auditor	Required.
Remittance of dividends/profits	If a foreign investment is duly registered before the national bank, the investor has the right to freely remit profits if such profits are supported by financial statements.

↓

B. Publicly Owned Corporations	
Board of directors	The corporation is required to have a board of directors.
Regulatory supervision	These corporations are regulated by the superintendence of corporations only if the amount of their assets or income is equal to or greater than 30,000 legal monthly minimum wages ¹⁸ . The scope of regulation is generally related to financial concerns and requires the company to submit the annual financial statements to the corporation's superintendence. Additionally, certain statutory amendments require prior authorization from the superintendence.
Refund of capital	The investor has the right to freely remit invested capital when the corporation is liquidated or when capital is reduced if certain rules were complied with and if the foreign investment has been registered with the national bank.
Dissolution caused by accounting results (when capital is reduced below 50% of the share capital)	The corrective measures must be taken within six (6) months from the time the grounds for the dissolution is known.

↑

C. Simplified Publicly Owned Corporations	
Number of shareholders / shares	Any number of shareholders.
Liability	The company is responsible only up to the amount of its capital. Shareholders cannot be liable for any debt. Shareholders are jointly and severally liable only when the company is used as a vehicle to violate the law or to cause harm to others.
Capital	The subscription and payment of capital will be made under the conditions, rates and terms established by the shareholders. The term for payment of the shares cannot exceed 2 years.
Assignment of shares	In principle, shares are freely transferable and transfer does not require an amendment to the bylaws. The transfer can be made by endorsement of certificates and registration in the share registry of actions. The transfer of shares may be limited to 10 years and may be subject to approval by the shareholders or other corporate bodies or there may be a preemptive right.
Reserves	No legal reserve is required.
Foreign exchange	Any investment made in cash through a transfer or deposit of funds is automatically registered with the national bank by filing a foreign exchange transaction declaration with a registered bank.
Liability in regards to tax regulation and authorities	With the exception of fraud or harm to others, the shareholders are not liable for the corporation's taxes.
Fiscal auditor	Not required unless (i) the gross asset value is equal to or greater than 5000 monthly minimum wages or (ii) the gross income of the previous year is equivalent to or greater than 3000 legal monthly minimum wages.

↓

C. Simplified Publicly Owned Corporations	
Remittance of dividends / profits	If a foreign investment is duly registered before the national bank, the investor has the right to freely remit profits if such profits are supported by financial statements.
Board of directors	The company is not required to have a board of directors. It is optional.
Regulatory supervision	These corporations are regulated by the superintendence of corporations only if the amount of their assets or income is equal to or greater than 30,000 legal monthly minimum wages ¹⁹ . The scope of regulation is generally related to financial concerns and requires the company to submit the annual financial statements to the corporation's superintendence. Additionally, certain statutory amendments require prior authorization from the superintendence.
Refund of capital	The investor has the right to freely remit invested capital when the corporation is liquidated or when capital is reduced if certain rules were complied with and if the foreign investment has been registered with the national bank.
Dissolution caused by accounting results (when capital is reduced below 50% of the share capital)	The corrective measures must be taken within eighteen (18) months from the time the grounds for the dissolution is known.

↑

D. Branches Of Foreign Corporations	
Number of shareholders / shares	Not applicable.
Liability	The parent company is liable for its activities in Colombia. Consequently, if the capital of the branch is insufficient, the parent company can be held responsible.
Capital	Once the branch is established, all of the assigned capital must be paid in. The additional capital can be allocated through additional investment.
Assignment of shares	Not applicable.
Reserves	No legal reserve is required.
Foreign exchange	Any investment made with private money, in cash is automatically registered with the national bank by filing out a declaration of a foreign exchange transaction with a bank. The parent company must submit additional funds as an “additional investment”, which also must be registered with the national bank.
Liability in regards to tax regulation and authorities	The parent company and its subsidiary have unlimited joint liability for the tax obligations of the corporation.
Fiscal auditor	Required.
Remittance of dividends / profits	If a foreign investment is duly registered before the national bank, the investor has the right to freely remit profits if such profits are supported by financial statements.
Board of directors	Not applicable.
Regulatory supervision	Not applicable since 2008.

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D. Branches Of Foreign Corporations	
Refund of capital	The investor has the right to freely remit invested capital when the corporation is liquidated or when capital is reduced if certain rules were complied with and if the foreign investment has been registered with the national bank.
Dissolution caused by accounting results (when capital is reduced below 50% of the share capital)	The corrective measures must be taken within eighteen (18) months from the time the grounds for the dissolution is known.

1.1.2 Procedures to Establish a Corporation

Incorporation must be accomplished through a public deed, except in the case of simplified stock corporations. In the following chart we present a brief description of the steps required to establish a corporation.

Chart 1.2. Establishment of a Company

Procedure
Record articles of incorporation in a public deed. In case of S.A.S, only a private document containing the articles of incorporation with notarized signatures is required
Duration / 1-2 days
Estimated costs as of the publication of this Guide
2.7 pesos of each 1,000 pesos (US\$ 0.50) of the capital amount of the company + 16% VAT. A notary fee is also applicable.

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↑
Procedure
Registration before the Chamber of Commerce
Duration / 2-3 days ²⁰
Estimated costs as of the publication of this Guide
<ul style="list-style-type: none"> • Cost of commercial registry calculated according to value of the company's assets and applicable tariffs expressed in minimum wages. • Registry tax equivalent to 0.7% of the capital amount of the company. • Registry form: Col\$3,700, approximately (US\$ 1.89). • Books and records inscription: Col\$ 9,300 (US\$ 5.16) • Inscription fees of each book: Col\$ 9,300 (US\$ 5.16).

Procedure
Registration with the National Agency of Taxes and Customs (DIAN). Receive Unitary Tax Registration Number (RUT) ²¹
Duration / 1-2 days
Estimated costs as of the publication of this Guide
No cost.

Procedure
Open bank account
Duration / 1 day
Estimated costs as of the publication of this Guide
No cost.



20) Note: This time period may be extended in the event that the Chamber of Commerce has comments on the constitutive documents.

21) In accordance with Circular 000038 of August 23, 2011 issued by the DIAN, the DIAN may issue a provisional RUT during the period the respective bank account is being opened within a thirty (30) day period following request.

Procedure
Obtain Tax Identification Number (NIT) from the DIAN
Duration / 1 day
Estimated costs as of the publication of this Guide
No cost.

Procedure
Purchase and registration of the company's books and records with the Chamber of Commerce
Duration / 1 day
Estimated costs as of the publication of this Guide
US\$ 10 (US\$ 3.00 per book).

Procedure
When foreign funds are sent from abroad, a declaration of foreign exchange of international investments (Format No. 4) must be filed with the National Bank
Duration / 1 day
Estimated costs as of the publication of this Guide
No cost.

When an investor is not present in Colombia to carry out the previous procedures, he must appoint a local proxy²² to carry them out for him. Certain procedures require the interested party to personally appear before a Colombian notary. Therefore, the requirements for each step should be verified in advance.

22) A person may grant another party the power to carry out the procedures to incorporate a company with the respective authorities through a power of attorney. The signatures of the parties granting the power of attorney must be authenticated before a notary to be validated. When a power of attorney is granted outside Colombia it must be apostilled in order to be valid.

1.1.3 Branch of a Foreign Company

To carry out permanent activities in Colombia foreign investors also have the option of creating a Colombian branch of a foreign company. A branch is perceived in Colombia as an extension of its parent company, which means that it is not considered as an independent legal entity. The branch does not have shareholders or partners different from parent company, but it does have its own assigned capital, administrators and statutory auditors.

The following tables describe the documents required to create a branch of a foreign company (Table 1.3); the procedure to create it (Table 1.4), and the procedure to legalize foreign documents (Table 1.5).

Chart 1.3. Documents Required Creating a Branch of a Foreign Company

Documents
Authentic copy of the articles of incorporation of the foreign corporation.
Authentic copy of the good standing certificate or other document showing that the foreign corporation exists.
Authentic copy of the document or resolution issued by the foreign corporation approving the establishment of a Colombian branch of the company is agreed. Such document must contain the following: <ul style="list-style-type: none"> • Name of the branch. • The businesses it plans to develop, which is providing technical services for the exploration and production of oil and gas. • Amount of assigned capital. • The principal place of business of the branch. • The duration of the branch and the causes of termination. • Appointment of legal representative. • Appointment of statutory auditor, which must permanently reside in Colombia.

Chart 1.4. Procedure to Incorporate a Branch of a Foreign Company

Procedure
Public deed
Duration / 1-2 days
Approximate cost (at the time of publication of this Guide)
2.7 for each Col\$1,000 (US\$ 0.50) of the capital amount of the company + 16% VAT. An additional fee for notary expenses is also applicable.

Procedure
Registration with the Chamber of Commerce
Duration / 2-3 days ²³
Approximate cost (at the time of publication of this Guide)
<ul style="list-style-type: none"> • Individual cost of the commercial registry in proportion to the company's assets • Registry tax: equivalent to 0.7% of the capital amount of the company. • Registry format: Col\$3,700, approximately (US\$ 1.89).

Procedure
Registration with the National Agency of Taxes and Customs (DIAN) and a Unitary Tax Registration Number (RUT) ²⁴
Duration / 1 day
Approximate cost (at the time of publication of this Guide)
No cost.

Procedure
Open bank account
Duration / 1 day
Approximate cost (at the time of publication of this Guide)
No cost.

23) Note: If the Chamber of Commerce has any comments it may take longer.

24) See footnote No. 7.

Procedure
Obtain a Tax Identification Number (NIT) with the DIAN
Duration / 1 day
Approximate cost (at the time of publication of this Guide)
No cost.

Procedure
When foreign funds are sent from abroad, a declaration of foreign exchange of international investments (Format No. 4) must be filed before the National Bank
Duration / 1 day
Approximate cost (at the time of publication of this Guide)
No cost.

Table 1.4. Procedure to Legalize Foreign Documents

N.º	Information from Country Members of the Hague Convention ²⁵	Information from NON-Country Members of the Hague Convention ²⁶
1	Apostille the documents.	Notarize the documents before a public notary.
2	Documents not considered public documents must be notarized in advance.	Legalize the documents at a Colombian Consulate located in the country of origin.
3	Translation of the documents, including the apostille documents, by an official translator.	Certify the signature of the Consulate with the Colombian Ministry of Foreign Relations.
4	Certify the signature of the translator with the Colombian Ministry of Foreign Relations.	Translation of the documents, including the apostille and the notarial seals, through an official translator.
5		Certify the signature of the translator before the Colombian Ministry of Foreign Relations.

25) Agreement of October 5, 1961 which replaces the requirement to legalize foreign public documents. Please refer to the following website for a list of signatories to the Hague Convention: http://www.hcch.net/index_es.php?act=conventions.status&cid=41

26) Ibid.

1.1.4 Association Schemes - Joint Ventures

It is common in the oil and gas service sector for two companies to associate through joint ventures to develop a business or to jointly offer equipment or services to the market.

When a joint venture pursues a business deal with state companies or entities the law requires that they must be structured either as a joint venture or as a consortium, which are defined by law as:

Consortium. Association agreement through which two or more people jointly present the same offer for the award, execution and performance of a contract, remaining jointly and severally liable with respect to all the obligations under the contract.

Joint venture. Under this particular type of association contract defined under Law 80 of 1993, when two or more people jointly present the same offer for the award, execution and performance of a contract. The difference with the consortium is that in the event that a fee or penalty is imposed by the competent governmental agency, it only affects the non-complying party in accordance with its participation in the venture.

Even though Law 80 of 1993 does not require any formalities to create such associations, the National Hydrocarbons Agency (“ANH”) does require a private agreement between the parties involved which must indicate whether it is a consortium or a joint venture, and in the latter case, provide a description of the participation of its members.

The members of the consortium or a joint venture must appoint a person that for all effects and a purpose represents them and they must also set the ground rules and liabilities among them.

In addition, consortia or joint ventures must also obtain a Unitary Tax Registration Number (RUT) and a tax identification number (NIT) from the DIAN.

1.1.5 Participation Account Agreement

Another form of joint venture is the participation account agreement, or more commonly known as silent partnerships in common law jurisdictions, defined and regulated in the commercial regime.

Under this type of joint ventures two or more entities take an interest in one or more commercial operations, but only one of them executes it (the managing partner) under its name and personal credit. The managing partner is accountable to the silent partners, who usually provide capital, and the profit is divided in the agreed proportion.

Under such an agreement the silent partners' participation in the business is not publicly known and their responsibility is limited to the value of their contribution, unless they themselves reveal or authorize the managing partner to reveal their identity to third parties, at which point they become jointly and severally liable.

In the context of oil and gas services the contributions made by the silent partners can vary from technical services to tools, used by the managing partner in the joint venture.

1.1.6 Corporate Aspects to Consider when Contracting with the National Hydrocarbons Agency-ANH

In broad terms the ANH's main objective is to administer the hydrocarbon resources of the Nation. To carry out such purpose the ANH must contract with local and foreign services providers those services included in its "mission objectives"²⁷. In relation to these types of contracts it is important to bear in mind the following:

a) **Previous incorporation of a branch.** In order to participate in bidding rounds for this type of contract or to register with the ANH Service Providers Directory, foreign entities without a branch in Colombia must show proof of existence through documents issued within ninety (90) calendar days of the delivery date of the contract offer or bid.

b) **Legal, technical and financial capacities.** It is common for the ANH to require minimum legal, financial and technical capabilities to award a contract. These are included in the terms of reference for each bidding round or contract process. Branches as well as subsidiaries can certify their capabilities through the corresponding parent company or controlling party.

27) Among the contracts that are part of its mission are the following:

a) Knowledge Promotion contracts, which are intended as follows:

- Development of institutional policies regarding the exploration and production of hydrocarbons.
- Preparation of studies related to assessing and updating the country's hydrocarbon potential.
- Design new contractual types related to hydrocarbon exploration and production.
- Environmental studies related to the management of resources of the ANH's.
- Generation and structuring new exploration opportunities
- Seismic Studies
- Consulting activities related to the purpose of the ANH.

b) Contracts relating to the promotion of integrated management of areas and hydrocarbon reserves, among which are those related to:

- Promotion activities.
- Organization of institutional events.
- Assistance to oil and gas companies interested in exploration and production of hydrocarbons.
- Management of technological and technical information required by the ANH to comply with its purpose, and
- Procurement of goods and services to comply with its purpose.

“With its main management office based in Buenos Aires, Argentina, Estrella International Services Ltd. is a group of companies which provides services to the natural resource industry in Latin America. Thanks to the potential we have seen in Colombia, we are building the main rig maintenance base in the Tibitoc industrial park located in **Tocancipá, Cundinamarca**. From there we will provide the best service with the latest technology and take advantage of the proximity to our clients and access to other regions of the country.”
Javier Arango, Business Development, Estrella



2. Tax Regime

Principal taxes in Colombia taxes are the income tax, the value added tax (VAT), the stamp tax, a tax over financial transactions, and the Municipal Industry and Commerce Tax (ICA).

2.1 Income Tax

As of [2008], the income tax for corporations and other legal entities is thirty three percent (33%).

Foreign companies rendering services in Colombia that are not considered residents for tax purposes must nevertheless pay withholding taxes for the total amount of taxes payable for any services rendered. Any payments made abroad rent of equipment to non-residents has a withholding tax rate of 33% and those related to technical assistance and services rendered to non-residents have a withholding tax rate of 10%.

Some of the expenses deductible from income tax in Colombia, are the following:

- 100% of the quantity paid for industry and commerce, for promotional signs and posters, the property taxes paid during corresponding year, in each case as long as they are all directly related with the taxpayer's economic activity.
- 25% of the taxes paid over financial transactions can be deducted, regardless of their relationship to the taxpayer's economic activity. In 2012 the applicable discount rate will be 25%.

2.2 Value Added Tax (VAT)

Sales, services and imports are subject to VAT. The general VAT rate is sixteen percent (16%). The general rate is subject to exceptions with respect to specific goods or services in accordance with applicable tax regulations.

The general rate for services rendered to the oil and gas sector is 16% and the taxable base is the value of the service. However, drilling, repair, coating and cementing of wells, as well as construction and repair of flow-lines and pipelines is considered real estate construction for tax purposes. In such cases, VAT applies only over the portion of the income related to the service provider's profit and not over the total value of the service. When the profit value is not differentiated, the VAT applies over the whole service.

A service provider may not deduct VAT from costs and expenses incurred for real estate construction. Therefore, VAT is generated over the value of the service provider's profit and only taxes over administrative sales may be deducted.

Leasing services for movable goods have a special taxable base, which is determined by dividing the cost of the leased goods by 1800 and deducting such amount from the daily lease payment.

In each production or commercialization stage it is possible to deduct the taxes already paid in the previous stage.

2.3 Levy over Financial Transactions

Any transaction involving the disposition or transfer of (i) funds deposited in savings or checking accounts, or deposits of any nature, (ii) funds deposited in the National Bank (Banco de la República), and (iii) drawing of cashier's checks, is subject to a levy over financial transactions calculated at a rate of zero point four percent (0.4%) over the relevant amount of the disposition or transfer. Monthly movements in savings accounts in amounts less than Col\$8,796,000 (approximately US\$4,887) are exempt from this levy.

2.4 Municipal Commercial Tax

Gross income of entities whose corporate purpose includes commercial or industrial activities or the provision of services, are taxable at the municipal level with ICA. ICA rates range between zero point four one four (0.414%) and one point one zero four (1.104%), in accordance with the activity being conducted within the relevant municipal jurisdiction.

The oil and gas sector is an important source of tax revenue for the municipalities located in remote areas of the country. Operators usually demand that service providers show proof of the ICA payments generated in each municipality where the operations are carried out.



“Topen is an oil and mining services company, which in the last five years has grown more than 400% thanks to its innovative mentality in engineering techniques and technologies. Also due to its skilled human resource, Topen’s Bogota based office services clients from Peru, Panama, and five Colombian regions”.

Luis E. Polanco, General Manager, Topen

3. Foreign Trade

3.1 Imports

Import procedures are regulated by the National Agency of Taxes and Customs (DIAN).

Imports can be carried out through various alternatives, as follows:

Ordinary import: This is the most widely used alternative. Through it importers receive goods which they may freely dispose of once the corresponding tariffs have been paid and the product nationalized. Obligations include filing an import declaration, paying tariffs, including VAT, and obtaining a definite release order from the DIAN. The goods are appraised following the methods established in the GAAT Accord. Import declarations expire after a period of three (3) years.

Temporary imports for active termination: This alternative allows a temporary import with suspended tariffs of capital goods meant to be re-exported after being submitted for repairs or overhauls during a period of no longer than six (6) months. This term may be extended for an additional six (6) month period. The sale of such goods is subject to restrictions.

Temporary import for industrial processing: This mechanism allows the temporary importation of raw materials and goods for transformation, manufacturing or industrial processing by an Altex²⁸ authorized by the DIAN. The sale of such goods is subject to restrictions.

International leasing: Pursuant to this type of financing operation it is possible to finance, the temporary import of capital goods on a long-term basis. Under this scheme, a foreign company leases an asset to a Colombian resident in exchange for periodic rental payments.

Oil and gas service companies acting through the special exchange regime are not authorized to enter into this type of contracts because any related payment would have to be channeled through the foreign exchange market. The special regime prevents such companies from accessing the foreign exchange market to wire funds abroad for such purposes.

²⁸ Corporations labeled by the local tax authorities as Altex or large exporters (Altamente Exportadores) have tax benefits such as (i) use of depository facilities in order to conduct industrial alteration processes over goods, which allows the importation of raw materials and inputs and the deferral of custom duties and VAT; (ii) consolidation of all shipments for the same product in one single export form; (iii) avoidance of the actual inspection of goods in transit in the country, whether for import or export, and (iv) to become a permanent customs user.

3.2 Exports –Special Regimes

Colombian regulations allow for several legal mechanisms that offer advantages to exporters.

Plan Vallejo: This is an export facility available upon request by any manufacturer, exporter or merchant to introduce raw materials and inputs with total or partial exemption for customs duties and VAT.

Temporary Imports for re-exportation: This is an alternative available for goods that are imported into the Colombia with the purpose of being subsequently re-exported within a set period of time without being altered, other than depreciation. Under such alternative, neither VAT nor customs duties accrue over such goods. If the goods in question are not exported within the set period of time, then they will be deemed imported into the country. In such event, payment of import taxes and duties will be required. There are two kinds of this type of imports; as follows:

a) **Short Term:** This alternative applies when the goods are imported to meet a specific need that justifies their brief stay in the country. The maximum import term is six (6) months, extendable to three (3) months, and exceptionally for three additional (3) months, subject to DIAN approval. Under this alternative, tariffs are permanently suspended unless the goods remain in Colombia.

b) **Long Term:** This temporary import alternative applies to the import of capital goods, spare-parts and accessories as long as they constitute a single shipment. The maximum period is five (5) years. Tariffs can be deferred into biannual payments, which shall be paid during the duration of time the goods are in Colombia.

Service providers acting through branches of foreign companies are considered permanent users of the temporary import regime for re-exportation. Generally, branches temporarily import equipment such as drills and down-hole tools which are recorded in the accounting books as a higher value of the branches' supplemental investment of the allocated capital. Once the tools or equipment are used such companies re-export them and register the accounting movement as a lower value of the branches' supplemental investment of the allocated capital.

3.3 Free Trade Zones

Free trade zones are special-purpose areas within Colombia created to promote the industrialization and trade of goods and services in such areas. Any individual or entity intending to operate within the confines of these areas must request prior authorization from the local tax authorities. Once this permit is granted, the investor will enjoy the following benefits:

Tax Benefits:

- Income tax at a rate of 15% (subject to certain exceptions);
- Customs duties will not accrue for goods introduced and consumed within the free trade zone;
- Goods transformed, manufactured or stored in free trade zones are exempted from VAT;

Foreign Exchange Benefits:

- The possibility of maintaining currencies in deposits or bank accounts in local or foreign banks;
- General access to local credit.

Oil and gas service providers can use free trade zones to optimize their inventory taxes before they are nationalized, or to facilitate imports and re-exportations of tools as described above.



“Indequipos is a multinational company with 18 years of experience in the oil sector. Our business center is based in Bogota, and we lead operations in other cities of Colombia. Indequipos provides products and services in the areas of machinery, artificial lift, systems, process, compression and automatization with the highest quality standards.”

Indequipos

4. Foreign Investment in Colombia and Exchange Regime

The fundamental principle of foreign investment regulation in Colombia is non-discrimination of the foreign investors in relation to national investors (and vice-versa). Foreign investment is permitted in all economic sectors except for (i) national defense industry, and (ii) the processing or disposal of hazardous waste not produced in Colombia. In addition, there are limitations applicable to the oil and gas and the financial sectors.

There are two (2) types of foreign investment: foreign direct investment and portfolio foreign investment. Foreign direct investment is defined as the equity or asset contribution made to the capital of local companies. Foreign direct investment may take the form of the import of freely convertible currencies for the purchase of capital quotas or shares issued by local companies.

4.1 Rights of Foreign Investors

With few exceptions, foreign direct investment is registered automatically at the National Bank by presenting the corresponding foreign exchange declaration at a local financial entity or bank.

Registration of a foreign investment grants the investor the legal right to remit earnings and other yields such as dividends received from the investment abroad. Additional rights include:

- Reinvestment of profit, if the investor so wishes.
- Capitalization of the investment earnings.
- Remittance of the investment earnings or of the remaining foreign funds if a company is liquidated.

The previous exchange rights cannot be denied except as a result of temporary measures adopted by the National Bank or the government when the country's international reserves are reduced to less than three (3) months of imports, which has not occurred since the market was liberalized in 1991.

4.2 Foreign Investment Registration Procedures

As mentioned before, the registration of foreign investments is done automatically by presenting the foreign exchange declaration of foreign investment (Format 4) as follows:

- With the National Bank through an authorized intermediary or a checking account abroad known as a compensation account.
- By the foreign investor, an attorney or by whoever represents its interests.

The terms and conditions for registration vary depending on whether it refers to a direct foreign investment or a portfolio investment.

For supplemental investments in the assigned capital of oil and gas sector branches, which are subject to the special regime, registration is completed by presenting a request within the six (6) months following the closing of the accounting period pertaining to that investment, as determined by the National Bank.

It is possible to obtain an extension to register the investment for three (3) additional months.

Registration Update. Such registration must be annually updated, each June 30, by presenting a format to the National Bank informing the amount of foreign capital for the previous year.

Registration Cancellation. Cancellation of the registration must be requested before the National Bank in the following cases:

- Sale of the investment in the country.
- Partial or total liquidation of the investment, reduction of the capital, re-acquirement of stock or sale of real estate.

The divesting foreign investor that disposed of its investment must present its income statements along with the liquidation and payment of the tax generated as a result of such a transaction.

4.3 Special Regime for the Oil and Gas Industry

Resolution 8 of 2000 issued by the National Bank established a special foreign exchange regime for local companies with foreign capital that carry out exploration and production activities for oil, natural gas, coal, ferronickel, uranium and those companies exclusively dedicated to rendering services within the hydrocarbons sector²⁹ (hereafter “Oil and Gas Branches”). The main features of the special regime are as follows:

4.3.1 Payments in Foreign Currency

Oil and Gas Branches can execute and make payments on contracts between them in a foreign currency, even within Colombia, provided that the funds are generated by their operations.

4.3.2 Expenses Abroad and within Colombia

Oil and Gas Branches cannot acquire foreign currencies in the foreign exchange market. Therefore, such entities cannot acquire loans in foreign currencies (although the parent company can and then transfer the funds to the branch as a supplemental allocation of capital). If Oil and Gas Branches have to pay any expenses in Colombian pesos they have to first obtain those funds from the parent company and then convert them to pesos.

29) Companies are considered as oil and gas services companies, which provide full-time one or more of the services listed below:

1. Geology, geophysics, geochemistry, which includes gathering information, processing and interpretation of results leading to the discovery of oil by means of methods such as seismic, basin synthesis studies, magnetometry, gravimetry, photogeology satellite positioning remote sensing, biostratigraphy, acquisition of subsurface geological information and mapping.
2. Oil drilling, which includes activities such as supply of equipment for drilling and testing, drilling as such, drilling fluids, making, processing, and the interpretation of records, hearts, cementing, perforating, fishing services, service well managing, provision of equipment for cementing and well stimulation.
3. Hydrocarbon production, which includes activities such as termination (completion) of wells, pressure testing and production workover, stimulation (acidification, formation fracturing, packaging), design, installation and maintenance of facilities, production (separate tanks, heaters, gathering lines), design, operation and maintenance of production such as mechanical pumping, hydraulic electro-submergible pumping, pumping, gas lift and works to wells, after completion (cleaning, repairs) design, construction, operation and maintenance of pipelines.
4. Reservoir engineering, which includes activities such as the study and evaluation of hydrocarbon deposits, analysis and control of production, enhanced oil recovery, maximum production rates, petrophysical and petrochemical analysis of rocks and fluids.
5. Other, which may include activities such as administration, operation and maintenance of oil fields, inspecting equipment, pipes and other items used in drilling and production of hydrocarbons, environmental protection and industrial safety in relation to oil spills, pollution and fire. In connection with the services outlined above, it may provide the supply and maintenance of equipment, components and tools.

The Ministry of Mines and Energy, can assimilate other services listed above particular relevance or similarity with them, according to the specialized and exclusive technology to be applied in the hydrocarbon sector.

4.3.3 Certification before the Ministry of Energy and Mines

To become eligible for the special exchange regime, Oil and Gas Branches must first obtain a certificate from the Ministry of Energy and Mines verifying that they are exclusively dedicated to such sector. The activities mentioned above must be documented in the entity's social purpose in order to benefit from this regime.

The companies that do not wish to benefit from the special exchange regime must so notify the National Bank and they will be excluded from such regulations for a period of 10 years, as of the notice date. As a result, all exchange operations carried out would be subject to the common foreign exchange regulations.

4.3.4 Reimbursement of Foreign Exchange

Oil and Gas Branches are not compelled to return any profits to Colombia obtained from their operations. However, they must reimburse currency needed to cover in expenses in pesos to the foreign exchange market.

4.4 Legal Stability Agreements

Law 963 of 2005, regulated by Decree 2950 of 2005 established the possibility for private investors to enter into legal stability contracts. These agreements are entered into with the respective ministry in charge of the investment's target sector. The purpose of these agreements is to promote fresh foreign or local investments in certain business areas such as tourism, mining, oil, energy and infrastructure.

These agreements have the purpose of guaranteeing the application of a stable legal framework for the investor. To be able to execute such contracts the interested party must comply with the following:

- a) Make new investments in Colombia or increase old ones for an amount equal or higher than 7500 monthly minimum wages³⁰ in oil and gas, construction and electricity generation activities, among others.
- b) Make a payment to the Nation of a premium ranging from zero point five percent (0.5%) and one percent (1%) of the amount to be invested.

30) 7500 Monthly Minimum Wages are equal to Col\$4,017,000,000 and in dollars to an exchange rate of Col\$1,800 is approximately US\$1,800.

Investors interested in this type of agreement must file an application along with a feasibility study relating to the investment to be made. Any such request shall be revised and approved by an official committee established as per Decree 2950 of 2005 for such purpose. A breach of any of these obligations by the investor (e.g. breach of investment or premium payment) will result in early termination of the agreement.

Legal stability agreements may not contravene mandatory provisions of local or international law. Once the parties execute a stability agreement, and it is evaluated and approved by the relevant committee it must be registered with the National Planning Department (Departamento de Planeación Nacional).



5. Labor Regulations

We now present the principal aspects of the labor regulations in Colombia which any corporation has to take into account in its labor relationships, as well as some particularities applicable to the oil and gas industry.

5.1 Employment Agreements

5.1.1 Definition

The Labor Code defines an employment agreement as a contract by which a person is legally bound to provide a service to a person or entity in a continuous manner in exchange for remuneration.

In accordance with the previous definition, both case law and legal doctrine concur in affirming that the existence of an employment agreement requires the following elements to be present: (i) the service must be rendered directly (ii) subordination (iii) remuneration in exchange for the service (salary).

5.1.2 Formal Requirements

An employment agreement does not require particular formalities or special conditions. The employment agreement is presumed to exist if the three (3) elements described above are present, regardless of how it is defined by the parties. The employment agreement may be written or verbal.

5.1.3 Term (Type of Contracts)

Employment agreements may be classified in four types according to its duration: (i) fixed term (ii) indefinite term (iii) for a term equal to the works performed, or (iv) accidental or temporary.

Fixed Term Contract. Said contracts must be agreed to in writing by the parties and the term may not exceed three (3) years, but may be extended indefinitely. If the contract has a term that is less than one (1) year, the parties must agree the term and they can extend it for the same term or for shorter terms. As of the third extension and there on, the extensions may not be less than a year. The employer may terminate the contract notifying the employee within one (1) month prior to the termination, if there is no notification in said term, the contract is extended automatically.

Indefinite Term Contract or Simple Employment Agreement. Every contract when the parties do not agree on a specific term, or the term cannot be inferred by the type of service to be provided are presumed to be indefinite term contracts. All contracts, except for those by which the nature of the service require something different are considered as an Indefinite Term Contracts.

For a Term Equal to that of the Works that are Being Performed by the Employee. These contracts are those that are determined by the term of the service that is being provided by the employee. Said contract has to be a written agreement, and the work that will be performed must be described clearly in the contract. If it is not clearly defined, the term of the works will be impossible to determine and therefore, it will be considered as an Indefinite Term Contract.

Temporary Employment agreement. These contracts are used for sporadic, accidental or temporal works, which are not within the normal business of the employer, and they may only have a term less than one (1) month.

5.1.4 Trial Period

This is the term in which the employer may evaluate the performance of an employee in the specific job that he or she was hired for, and the employee evaluates the convenience of the job conditions. During this period, which must be agreed in writing by the parties, either the employer or the employee may terminate the contract without giving notice and without having to pay any kind of any additional compensation. The trial period may be agreed by the parties but it may not exceed more than two (2) months.

5.2 Salary

The principal direct remuneration for services provided by an employee to an employer defined as a salary and there are two types of salaries:

5.2.1 Ordinary Salary

The basic remuneration agreed to between the parties, either in cash or in kind, plus any remuneration that the employee receives for night shifts, overtime, commissions or travel expenses, as well as compensation for work during holidays. The employer has to pay the benefits or other compensations that are established by law, union agreements and any

other benefits given freely by the employer. The parties may decide freely the amount of the salary but it may never be less than the minimum wage³¹.

5.2.2 Integral Salary

This type of salary, not only compensates ordinary work, but also pays in advance certain other benefits such as night shifts, exceptional shifts and holidays, as well as additional legal and non legal compensation, except for vacation. This type of salary must be agreed to by the parties in writing and the only employees that can have it are those that earn more than thirteen (13) minimum wages.

5.3 Employers Obligations under Colombia Law

The execution of an employment agreement obligates the employer to pay social security for the employee, as well as other legal benefits as follows: Cesantias (Unemployment fund), interest over the Cesantias, vacation time, additional legal compensation, transportation allowance and uniform allowance.

The employer must make payments for health insurance, pension and occupational risk insurance.

In addition to the foregoing, the employer must pay a percentage of “parafiscal” charges such as SENA (National Apprenticeship Service), ICBF (Colombian Family Welfare Institute) and family compensation funds. Such payments are calculated according to the salary.

31) The legal minimum wage for 2011 is COP\$ 535.600.

Chart 5.1. Summary of Labor Economic Obligations

Labor Economic Obligations	
Benefit	Salary
Employer that is Obligated	Any employer.
Description	Compensation for services rendered by an employee. Employees that earn more than 13 minimum wages may agree to receive an integral salary, said salary pays in advance certain benefits such as night shifts, exceptional shifts and holidays, as well as additional legal and non-legal compensation, except for vacations, social security and “parafiscal” charges.
How to Figure out the Amount Payable	The minimum wage is defined by the national government ³² .

Labor Economic Obligations	
Benefit	Transport allowance
Employer that is Obligated	Any employer.
Description	A fixed amount that the government determinates each year in order to cover transportation costs ³³ .
How to Figure out the Amount Payable	Paid only to employees that earn less than two (2) monthly minimum wages ³⁴ .



32) The monthly minimum wage for 2011 in Colombia is \$535.600. The monthly minimum integral wage for 2011 is \$6'962.800.

33) Currently is \$63.600.

34) Two monthly minimum legal wages amount to \$1'071.200.



Labor Economic Obligations	
Benefit	Uniform
Employer that is Obligated	Every employer with more than one (1) permanent employee.
Description	An amount that the employer has to pay and the employee must use for shoes and appropriate clothes for the service being provided. It is payable three times a year (30th of April, 31st of August and 20th of December).
How to Figure out the Amount Payable	Paid only to employees that earn less than two (2) monthly minimum wages, and only if they have rendered their services for at least three (3) months.

Labor Economic Obligations	
Benefit	Cesantía
Employer that is Obligated	Any employer.
Description	One month salary paid for each year of services. Every 31st of December the employer must calculate the amount payable, and pay into the cesantias fund by February 14th. This is an additional compensation that the employer is obligated to pay that is equal to 8.33% a month.
How to Figure out the Amount Payable	It is calculated using the last monthly salary received, provided there have been no changes in the last three months, in which case the calculation considers the average from January 1 of that year. If there is a variable salary (ordinary and extraordinary) the calculation must be made based on the average from January 1 of that year, for the last year of service or at any time served if it is lower. This is not payable for those that earn an integral salary.





Labor Economic Obligations	
Benefit	Interest over Cesantía
Employer that is Obligated	Any employer.
Description	A percentage equal to 12% over the consolidated amount of cesantias until December 31st of each year. It needs to be given directly to the employee before January 31st. This is an additional 1% a month for the employer.
How to Figure out the Amount Payable	12% over the consolidated amount of cesantias until December 31st. This is not payable for those that earn an integral salary.

Labor Economic Obligations	
Benefit	Additional Legal Compensations
Employer that is Obligated	Every corporation that has a permanent business. With a capital greater than col\$200,000.
Description	Any person that works for a whole semester, or proportionally, gets fifteen (15) daily salaries, that are payable on the first fifteen (15) days of June and the first twenty (20) days of December. This is an additional 8.33% a month for the employer.
How to Figure out the Amount Payable	Average the salary the employee has earned during the semester or fraction thereof and then calculate fifteen (15) days. This is not payable for those that earn an integral salary.



Labor Economic Obligations	
Benefit	Vacations
Employer that is Obligated	Any employer.
Description	<p>Who has worked for one (1) full year will be entitled to fifteen (15) consecutive days of leave with pay for each year of service and proportionately for a fraction.</p> <p>Compensation in cash:</p> <ul style="list-style-type: none"> • Vacations may be compensated in cash when requested by the employee. • When the contract is terminated and the employee had not enjoyed the vacation period, or the fraction thereof. <p>This is an additional 4.17% a month cost for the employer.</p>
How to Figure out the Amount Payable	<p>The fixed salary plus the variable average of the amount earned for the last year. This does not include the value of extra shifts, nor mandatory rest days.</p> <p>This is payable for those that earn an integral salary.</p>

Labor Economic Obligations	
Benefit	Parafiscal Charges
Employer that is Obligated	Any employer.
Description	<p>During the first ten days of each month, employers must pay 9% of the monthly salary.</p> <p>This sum is distributed as follows:</p> <ul style="list-style-type: none"> • 2% national learning service (SENA). • 3% to the Colombian family welfare institute (ICBF). • 4% to the family compensation fund.
How to Figure out the Amount Payable	<p>The monthly salary received by the employee.</p> <p>This is payable for those that earn an integral salary.</p> <p>This applies to employers regardless of the agreed salary to the worker.</p> <p>The employer pays the entire contribution</p>

5.4 Working Hours

5.4.1 Ordinary Working Hours

In Colombia, an ordinary workday is equal to forty-eight (48) hours a week that can be distributed either from Monday to Friday or from Monday to Saturday. The ordinary workday in Colombia is an eight (8) hour shift from Monday to Saturday.

The period in between six in the morning (6:00 a.m.) and ten at night (10:00 p.m.) is considered the day shift. If an employee is required to work after this hours, said time must be paid with an overcharge of thirty five percent (35%).

Each hour exceeding the ordinary workday must be paid as overtime. If the service is rendered during the day shift the hours must be paid with an overcharge of twenty-five percent (25%), and if it is a night shift, or on holiday the overcharge will be seventy-five (75%). These amounts are calculated considering the ordinary salary and the hours in each work day. Overtime may not exceed two (2) hours a day or twelve (12) hours a week.

In addition, the parties may agree on a forced rest day on Saturdays and it will be considered as a Sunday for all legal effects.

5.4.2 Flexible Workdays

The parties may agree on shifts every day of the week, however, they may not exceed thirty-six (36) weekly hours.

They may also agree that the shifts will be flexible, so that a week is completed with forty-eight (48) hours, divided into more than six days, and the number of hours can be divided in to the whole week with a minimum of four hours a day and a maximum of ten (10) hours per day. In such event, there shall be no charge for overtime, when they do not exceed forty-eight (48) weekly hours and the services are rendered in day shifts.

They can also agree on a day shift that will be flexible, if added within six (6) days are equal to forty-eight hours a week. The hours must be distributed between minimum four (4) hours and maximum ten (10) hours a day. If they do not exceed forty-eight weekly hours, there will be no overtime.

5.4.3 Responsibility and Direction Employees

The employers are not obligated to pay overtime to said employees.

5.5 Administrative Obligations

Employees in Colombia are required to comply with specific regulations and authorizations, please find below a short list of those obligations.

5.5.1 Internal Work Regulation

It is defined as the body of regulations that are obligatory during the period that the services are being rendered for the employer.

Any employer that is a commercial corporation and that has more than five (5) permanent employees is obligated to establish an Internal Work Regulation, as well as employers that own more than ten (10) commercial businesses or more than twenty (20) businesses in the agricultural, livestock or forestry industries.

5.5.2 Authorization to Work Overtime

Any employer that employed a worker that is required to work overtime needs to get an authorization before the Ministry of Social Protection.

5.5.3 Registration for High Risk Corporations

Companies that are considered Class IV and V established in Decree-law No. 1295 de 1994 Article 28 as well as Decree 1607 of 2002 are considered companies with high risk activities for their workers and are obligated to register the company as such before the Ministry of Social Protection.

5.6 Industrial Safety and Health in the Work Place

5.6.1 General Obligations

Every employer needs to provide a workplace that is safe and healthy for all employees. The employer must coordinate health checkups and have policies regarding hygiene and safety in order to protect the life, health and morality of the employees, according to regulations in force at the time.

5.6.2 Industrial Safety and Hygiene Regulation

Employers that have more than ten (10) permanent employees working for them are required to draft an Industrial Safety and Hygiene Regulation and present it to the National Office of Health and Industrial Hygiene of the Ministry of Labor, (today before the labor section of the respective Regional Direction of Labor) within three (3) months after the date that the labor code was in force, or within the next three (3) months of initiating activities, if a new company.

5.6.3 Industrial Health Program

Every employer must create an Industrial Health Program and make sure that the employees are complying with the program.

The program must comply with the following four (4) elements:

- a) Preventive Medicine Activities.
- b) Industrial Medicine Activities.
- c) Industrial Safety and Health Activities.
- d) Operation of a Joint Committee on Industrial Health.

In addition to their own HSE policies, oil and gas service companies usually must also adopt those of the operators where the corresponding services take place.

5.6.4 Joint Committee on Industrial Health

Companies that have more than ten (10) employees are required to establish a Joint Committee on Industrial Health, Hygiene and Industrial Safety. The responsibilities that this committee will have are as follows:

- a) Participate in the promotion and dissemination of health, industrial hygiene and safety norms.
- b) Monitor compliance with industrial health programs.
- c) Maintain copies of any findings within an investigation or inspection conducted by industrial health authorities.

5.7 Incentives to Hiring

Law 1429 of 2010, also known as the first employment law, established tax incentives for new and previously incorporated companies that generate new jobs. Subject to a series of conditions contained in such law, this legislation is aimed at promoting the hiring of employees under 28 years old that sustain a family, displaced, reintegrated and handicapped individuals, women over 40 years old that have been unemployed for the previous 12 months and new employees earning less than 1.5 of the minimum wage³⁵.

35) See footnote No. 3.

A Company showing an increase in its payroll and in the health care contributions in relation with the previous years, shall, among other benefits, obtain a tax deduction when determining the income tax, proportional to the parafiscal contributions made to the SENA (National Apprenticeship Service), to the ICBF (Colombian Family Welfare Institute), the family compensation funds, the Fosyga solidarity account and the Minimum Guaranty Pension Fund.

5.8 Immigration Issues

Colombia does not require a tourist visa for many countries. However, a visa is required if the objective of the visit is to invest, work or do business in Colombia.

The following Table explains the most common types of Visas:

Business Visa	
When the objective of the visit to Colombia is to carry out business for the traveler or on behalf of a company.	
Duration and Amount of Entries	Valid for 4 years. Multiple entries.
Cost (USD)	170

Investor Resident Visa	
For foreign investors.	
Duration and Amount of Entries	No expiration date.
Cost (USD)	475

Temporal Work Visa	
For those that are hired by a company or a person.	
Duration and Amount of Entries	Up to 2 years.
Cost (USD)	205

Tourist Visa or Tourist Permit	
For those that come to Colombia for tourism.	
Duration and Amount of Entries	Up to six (6) months.
Cost (USD)	50





Temporal Visitor Visa or Temporal Visitor Permit	
Activities that are not work related, such as business meetings.	
Duration and Amount of Entries	Up to six (6) months.
Cost (USD)	105

Technical Visitor Visa or Technical Visitor Permit	
For when urgent services are to be rendered in Colombia.	
Duration and Amount of Entries	The visa for up to 6 months, the Permit up to 30 days that can be extended by 15 more days.
Cost (USD)	105

For professionals entering the country for a short period of time who are not going to be covered by mandatory insurance, we suggest obtaining an insurance policy before entering the country with full global coverage, especially when visiting oil field operations. The corresponding policy must cover at least all expenses or costs derived from occupational hazards and evacuation from the area where the services will be rendered.

5.9 Special Labor Regulation for the Oil and Gas

5.9.1 Salaries for the Oil and Gas Industry

According to Decree 284 of 1957, companies that perform exploration, production, transportation or refining of oil or gas are required, in the case of activities that are core businesses, to extend to independent contractors workers the same wages and benefits due to their own employees. [in accordance with the laws, agreements, collective agreements and arbitral awards.]

With that in mind, when companies in the oil and gas industry contract operators they must match the same wages and benefits as their competitors in the sector.

Decree 3164 of 2003 defines what activities are from the core business of the oil and gas industry triggering the obligations described above:

- a) Geological, geophysical, geodetic surveying for the exploration and evaluation of hydrocarbon deposits.
- b) The operation of drilling oil wells from the initiation of drilling to completion or abandonment of the well.
- c) The operation and workover of the well.
- d) The technical operation of closing and abandoning a well that has been used for the production of hydrocarbons, including fluid injection for secondary recovery, waste water injection wells, or any other required for the management and development of the field.
- e) The operation of the systems of collection, separation, treatment, storage and transfer of hydrocarbons.
- f) The operation of the pumping system and pipes leading to oil and gas storage tanks, and from there to points of delivery or refining.
- g) The operation of artificial lift facilities and facilities of secondary and tertiary recovery of oil and gas.
- h) The operation of thermal, electrical, chemical systems that make it easier to allow pumping of oil and gas in an economic stable manner.
- i) The construction, control, operation and technical maintenance of equipment and process units with the characteristic of oil refining.
- j) The construction, operation and technical maintenance of pipes, tanks and pumps for transportation of crude oil, intermediate products and finished products from refineries.
- k) It is understood that the environmental remediation activities that are performed as a result of damages caused by malicious acts, are not part of the core business of the oil and gas industry.

Please note that in the industry most major operating companies have standard regimes with extralegal benefits that are extended to employees of contractors.

5.9.2 Information Required by the Ministry of Social Protection

According to Decree 1348 of 1961, any company that performs activities in the oil and gas industry, including technical service providers must provide the following information to the Ministry of Social Protection before the first of March:

- a) A list of employees, specifying position, nationality, term of stay in Colombia if foreigners, marital status, name and nationality of the spouse, salary and frequency of payment;
- b) The number of employees in the company, divided into groups of nationals and foreigners, scoring for foreign nationality, length of stay in Colombia and other conditions mentioned in the preceding;
- c) A list of contractors with the specifications set forth in paragraphs a) and b), and a summary of the terms and conditions of those contracts;
- d) Value of fees and salaries paid to foreign contractors and employees;
- e) Value of fees and salaries paid to Colombian contractors and employees;
- f) Declaration of the foreign exchange rate used for the payment of fees and salaries paid in foreign currencies.
- g) Approval is required from the Ministry of Mines and Energy to grant the authorization referred to paragraph 2 of Article 18 of Law 10 of 1961 and the execution of the agreements stated therein. The Ministry will evaluate the specialized personnel in the branch or branches of the oil and gas industry.



6. Types of Contracts in the Oil and Gas Industry

6.1 Contracts with the National Hydrocarbons Agency - ANH, Ecopetrol and with Private Operators

6.1.1 Contracts with the ANH

In accordance with Article 76 of the procurement statute (Law 80 of 1993), contracts for exploration and production of hydrocarbons, as well as those related to commercialization and other commercial and industrial activities of state agencies such as the ANH, are governed by their internal regulations.

The National Hydrocarbons Agency is responsible for administering the hydrocarbon reserves owned by the Nation and for managing and executing new contracts for exploration and production of hydrocarbons (“E&P Contract”) and technical evaluation contracts (“TEA”). In order to manage these reserves the ANH can enter into “specific purpose contracts” with oil services providers³⁶.

Because this guide is aimed primarily at companies seeking to invest in the oil services industry and not exploration and production activities contracts or participations in contracts already awarded, such contracts are not discussed herein regulated by (i) the Agreement 008 of 2004 of the Board of Directors of the ANH in those contracts awarded directly (a process that is currently suspended), and (ii) by the respective terms of reference issued in each bidding round conducted by the ANH.

The ANH specific purpose contracts govern the planning, selection, conclusion, execution and settlement stages by Agreement 01 of 2009 of the ANH. The subject matter of such specific purpose contracts are the following:

36) Definitions of specific purpose contracts can be found in in previous footnote number 7.

a) Knowledge promotion contracts:

- Develop institutional policies regarding exploration and production of hydrocarbons.
- Present studies related to assessing and updating the country's hydrocarbon potential.
- Design new contractual models for hydrocarbon exploration and production.
- Prepare environmental studies related to mission of the ANH
- Generate and structure of new exploration opportunities
- Seismic Studies
- Improve of consulting activities related to the ANH's mission.

b) Contracts linked to the promotion of the integral management of areas and reserves of hydrocarbons, including those related to:

- Advertising activities.
- Organization of institutional events for issues relevant to specific purpose contracts.
- Assistance to oil companies interested in exploration and production projects of hydrocarbons.
- Management of technological and technical information required by the ANH for special purpose contracts, and
- Procurement of goods and services for the development of activities regarding to special purpose contracts.

The regulations for specific purpose contracts are as follows:

Potential Parties. According to this regime a person or a corporation, national or foreign, who is legally able to and can meet the technical, economic and legal requirements required by the ANH may be a party in such contracts. Said corporations or persons may also be a part of a joint venture, associations and or partnerships in other corporations with a temporary single purpose, if the term of the corporation is more than the term of the contract plus one year.

Minimum Elements. The verification of the technical, economic and legal capabilities in a competitive process called “knowledge promotion contracts”, is conducted by the ANH's Supplier Directory. On the other hand, verification of these elements for “Contracts related to the promotion of areas and the comprehensive management of hydrocarbon reserves” is conducted by the employees in charge of the hiring process. Considering that today there is no Supplier Directory, the requirements for such contracts will be those listed in the respective Public Invitation.

Once the Supplier Directory is adopted, the Technical Sub director of the ANH will determine the minimum requirements to participate.

Types of Procedures and Selection Processes to Grant Contracts.

For “knowledge promotion contracts” the selection process may be an “Open or Closed Invitation to Render an Offer” depending on whether it is a contract for “knowledge promotion” or “related to the promotion of areas and the comprehensive management of hydrocarbon reserves”. In principle, the former is awarded through an open invitation and the latter by a closed invitation inviting only those who are part of the Supplier Directory.

However, because ANH currently does not maintain the directory, all processes are conducted through an “Open or Closed Invitation to Render an Offer.”

It is important to note that not all public bid processes are competitive because some contracts do not require multiple offers to enter into the contract.

Special Rules Applicable to Joint Ventures. If interested in being part of a Joint Venture, the legal representatives of the parties must sign and submit a letter of intent.

6.1.2 Contracts with Ecopetrol

Ecopetrol SA (hereinafter “Ecopetrol”) is a company partly owned by the government and partly owned by the private sector. It is supervised by the Ministry of Mines and Energy under a special contractual regime. Ecopetrol has a Contracting Code which was updated on December 7, 2007³⁷ which states the rules and procedures of the selection processes as well as the execution of the contracts with this company. Even though the Contracting Code governs the Ecopetrol’s contractual activities, each contracting competitive bid will be governed by the rules of the terms of reference of each process.

Types of Contracts. According to the Contracting Code issued by Ecopetrol, there are different types of procedures to execute contracts: (i) Direct selection, (ii) Closed complete process and (iii) Open complete process. The difference between the second type of process and the third is that the closed competitive process is aimed at participants previously identified by Ecopetrol and the open competitive process is for any Colombian or foreign company that meets the requirements set forth in the terms of reference of each process.

37) http://portal.ecopetrol.com.co/documentos/38390_ECP-DIJ-M-002_Manual_de_Contratati%C3%B3n.pdf

Service for Potential Suppliers. Ecopetrol has a special customer service line for potential suppliers of goods and services called Servilinea, which can be accessed via email (servilinea@ecopetrol.com.co) or phone in Bogota 234 5000 option 0, 2 and for the rest of the country 01 8000-9184 18. In order to access the complete portfolio of goods and services through Servilinea suppliers must make an appointment with an employee from the Suppliers Direction of Ecopetrol “DAB” (area in charge of procurement and contracting in Ecopetrol).

6.1.3 Contracts with Private Operators

Each operator has its own policies, procedures and minutes for contracts. This is why commercial law applies to the will of the parties.

Some of said operators, such as Pacific Rubiales Energy³⁸ and Petrobras³⁹, have a registration of potential suppliers, in which interested companies must be registered.

6.2 Limitation of Liability in Colombia

Given that a significant proportion of oil service providers are foreign companies that are familiar with the common law legal system and business practices and in said system it is common practice to establish in contracts the limitation of any kind of responsibility in specific clauses. This may be illegal in Colombia.

Under Colombian law it is not possible to limit or exonerate someone's responsibility for damages caused as a result of gross negligence or willful misconduct.

Therefore oil and gas service companies must be aware that under Colombian law it is not possible to limit their responsibility when causing a damage to a client or third party as a result of gross negligence or willful misconduct, including blow-out events in the reservoir or the well.

38) <http://www.pacificrubiales.com.co/proveedores/docs/BPWebSite.asp>

39) <http://www.petrobras.com.br/pt/canal-fornecedor/>



7. Environmental Regulation

In general the exploration and production of hydrocarbons requires an environmental license under Colombian law.

The operator of the block must request and obtain such license and permits and not the companies that provide oil and gas related services.

Companies that render services to oil and gas companies will be contractually and legally obligated to comply with environmental regulations and abide by the terms and conditions of the environmental license of the projects.

Also, companies that render services to oil and gas companies may be liable for environmental damages even when not the holder of the license or environmental permits. Law 1333 of 2009 establishes the following as environmental offenses: (i) any act or omission which violates environmental regulations, (ii) violations of administrative act issued by the competent environmental authority; and (iii) detriment to the environment, with the same conditions as the tort provisions of the Code Civil.

Therefore, it is important that service providers strictly comply with the obligations stated under the environmental license and / or relevant environmental permits.

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CÁMARA COLOMBIANA DE SERVICIOS PETROLEROS

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Notes:

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