

EXCHANGE SYSTEM

Overview, relevant concepts, Foreign Investment registration, special exchange system for the oil & gas and mining industries, sanctioning bodies, other entities and regulatory framework.

Customs activities are facilitated by the city's geographic location and access to several roads that facilitate national distribution.

According to DIAN (customs authority) figures, in 2014 more than 1.5 million import operations and more than 3,000 export operations a year have been processed, which represents 50% of imports and 29% of exports in the country³.

Overview

From promulgation of the Constitution of 1991 and Law 9 of 1991, Colombia has allowed free foreign exchange trading between residents and non-residents in the country. However, the Central Bank requires compliance with formalities in order to keep statistics on the entry and exit of foreign exchange in the country.

Relevant Concepts

For a better understanding of the applicable international exchange system in Colombia, some of the most relevant terms on the subject are included.

Exchange market

The market formed by foreign exchange that should be channeled by foreign exchange brokers or clearing accounts.

Free market

The market formed by foreign exchange that cannot be transferred or traded by the exchange market. Foreign exchange that is part of the free market is that received by residents in Colombia by means of transactions that should not be channeled by the exchange market.

Exchange market transactions

The following transactions have to be channeled mandatorily by the exchange market: (i) import and export of goods; (ii) foreign debt transactions; (iii) foreign capital investments in Colombia; (iv) Colombian capital investments abroad; (v) financial investments in securities issued abroad or investments in assets located abroad (unless they are made with free market foreign exchange); (vi) bonds and guarantees in foreign exchange; and (vii) derivatives transactions.

Foreign exchange brokers (IMC)

Entities authorized to channel foreign exchange from: (i) exchange market transactions and (ii) free market transactions that are voluntarily channeled by the exchange market.

Foreign exchange brokers are as follows:

- Commercial and mortgage banks
- Financial corporations
- Commercial financing companies
- National Development Finance Company (FDN as per its acronym in Spanish)
- The Colombian Foreign Trade Bank (Bancoldex as per its acronym in Spanish)
- Financial cooperatives
- Brokerage firms
- Foreign exchange companies and special financial services companies
- Companies specialized in deposits and electronic payments (SEDPES as per its acronym in Spanish)

(External resolution 11 of September 25, 2009 issued by the Central Bank Board of Directors, and External Resolution 8 of 2000).

Exchange declaration

A form issued by the Central Bank that documents and formalizes exchange transactions that must be channeled by the exchange market.

Exchange declarations must be submitted through an IMC if the exchange transaction is made through it or to the Central Bank, electronically, when the transaction is made through clearing accounts.

Clearing accounts

Bank accounts in foreign currency, opened by an individual or legal entity in a financial entity abroad to channel, among others, foreign exchange derived from exchange transactions that must be channeled by the exchange market, internal transactions and free market transactions that are voluntarily handled by means of the exchange market. Clearing accounts must be registered with the Central Bank.

Special Exchange System for Oil & Gas and Mining Industries

Branches of foreign companies engaged in (a) exploration and exploitation of oil, natural gas, coal, ferronickel and uranium, or (b) exclusive provision of services inherent to the oil & gas industry having the pure-play certificate issued by the Ministry of Mines and Energy belong to the special exchange system.

For these branches, foreign investment registration applies as follows:

- Allocated capital or supplementary investment in allocated capital in foreign currency is registered with the Central Bank automatically by submitting to the foreign exchange broker an exchange declaration or the minimum data for foreign investment (former Form 4).
- Allocated capital in forms other than foreign currency shall be registered by submitting Form No. 11 to the Central Bank.
- Supplementary investment in forms other than foreign currency shall be registered by Form 13 "Registration of Supplementary Investment in Allocated Capital and Update of Equity Accounts—Special System Branches."

These branches can only purchase foreign currency in the exchange market to (a)

reimburse the capital amount in case of liquidation of the branch, or (ii) remit abroad the equivalent in foreign currency of the amounts received in Colombian legal tender, for internal sales of oil, natural gas or services inherent in the oil & gas industry.

Failure to comply with regulations with respect to international investments may involve penalties imposed by the Financial Superintendence of Colombia of up to 200% of the amount of a proven exchange infringement.

Sanctioning Bodies

The following authorities are responsible for foreign exchange control and sanctioning:

The **Superintendence of Companies**, in case of the following operations:

- Foreign investment
- Foreign debt for working capital acquired by companies in general

The **Internal Revenue and Customs Service** (DIAN as per its acronym in Spanish), in case of:

- Foreign trade operations
- Foreign debt arising from foreign trade operations
- Bonds and guarantees
- Financial derivatives
- Clearing accounts
- Residual competence

Other Related Entities

Central Bank

The primary entity in charge of issuing regulations on exchange issues and of conducting procedures related to registration of exchange transactions.

Go to: www.banrep.gov.co

Financial Superintendence

Administrative agency responsible for overseeing the provision of public credit services. It acts as a control and regulatory entity of foreign exchange brokers.

Go to: www.superfinanciera.gov.co

Colombian Foreign Trade Bank (Bancoldex)

Broker in the exchange market, which is a legal credit establishment related to the Colombian Ministry of Commerce, Industry and Tourism (Article 21 of Law 7 of 1991). It is a second-tier bank. Its main purpose is to finance working capital and fixed assets needs of viable projects or companies of all sizes and in all sectors of the Colombian economy, except for agriculture.

Go to: www.bancoldex.com

Applicable Legal Framework

- Constitution of 1991 (Articles 150, 189, 371, 372 and 373)
- Law 9 of 1991 (Article 15)
- Law 31 of 1992 (Article 59)
- Decree 1068 of 2015
- Decree 119 of 2017
- Decree 2245 of 2011
- DCIN Circular 83

Go to: www.senado.gov.co

External Regulatory Circular DCIN 83 (as amended): www.banrep.gov.co, External Resolution 8 of 2000 issued by the Central Bank Board of Directors (as amended): www.banrep.gov.co



