

BOGOTA'S

FOREIGN INVESTMENT GUIDE

Invest in Bogota



Bogota's Foreign Investment Guide



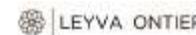
Bogota's Foreign Investment Guide Invest in Bogota

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* The information provided in this guide was based on applicable laws as at November 2019. 2019 Minimum wage: COP 828,116 per month

The Bogota's Foreign Investment Guide was made possible thanks to the joint effort of:



BOGOTA,

A CITY TO

INVEST IN

Bogota is an active and diverse city that has over 8 million inhabitants. It is where Colombia's most important economic activities take place and where its most influential state agencies and companies have their headquarters.

With an average annual growth that is even higher than that of Latin America's, Bogota has become the perfect destination for companies from countries such as the United States, Spain, France, and the United Kingdom that seek out its workforce of over 4.6 million people who are highly qualified and extremely willing to serve.

Located in the heart of Colombia and centrally located between North and South America, Bogota is an investment destination where the challenge of constant progress turns into a great opportunity to undertake profitable, sustainable and high impact business on a growing society.



OUR BOGOTA'S

FOREIGN INVESTMENT

GUIDE

Based on its competitive advantages such as its economic strength, having a convenient geographical location, a favorable business environment and a wide range of human talent, Bogota has become one of the main investment destinations in Latin America and a growing number of international companies have even chosen it as their operational headquarters with a high concentration on exports.

The growing interest of foreign firms in establishing businesses in the city creates a need to develop and update tools that provide reliable information to entrepreneurs and help them in their investment decisions.

That is precisely the objective of Bogota's Foreign Investment Guide, which was developed by Invest in Bogota along with the collaboration of some of the most important law firms in the country. Among other topics, its 14 chapters cover legal information on immigration, labor regimes, foreign exchange, customs, and tax and trade regimes.

With the rise of new technologies, this guide is also transforming and this new edition has a robust web version, where the guide can be easily downloaded and multimedia contents can be accessed. Moreover, the web version will be constantly updated, so those who register on the platform can receive the latest versions available.

We hope that this document is very useful and reflects the city model that we promote at Invest in Bogota: a dynamic capital that is constantly being reinvented and that —with talent as its main pillar of change —wants to establish itself as the world's gateway to Latin America.

Juan Gabriel Pérez, Executive Director of Invest in Bogota



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01



IMMIGRATION SYSTEM

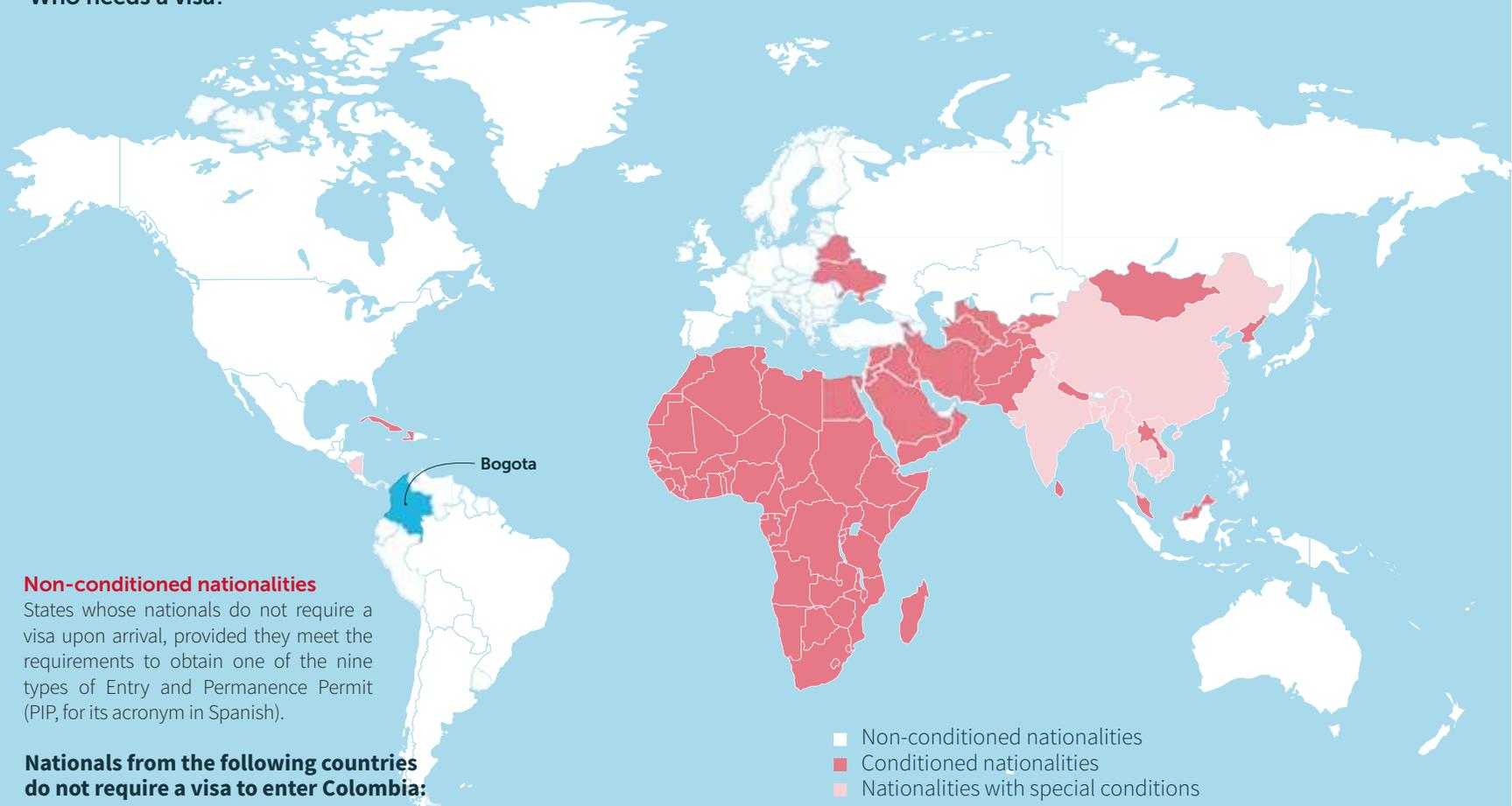


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Who needs a visa?



Non-conditioned nationalities

States whose nationals do not require a visa upon arrival, provided they meet the requirements to obtain one of the nine types of Entry and Permanence Permit (PIP, for its acronym in Spanish).

Nationals from the following countries do not require a visa to enter Colombia:

Albania | Andorra | Antigua and Barbuda | Argentina | Australia | Austria | Azerbaijan | Bahamas | Barbados | Belgium | Belize | Bhutan | Bolivia | Bosnia and Herzegovina | Brazil | Brunei-Darussalam | Bulgaria | Canada | Chile | Costa Rica | Croatia | Cyprus | Czech Republic | Denmark | Dominica | Dominican Republic | Ecuador | El Salvador | Estonia | Fiji | Finland | Former Yugoslav Republic of Macedonia | France | Georgia | Germany | Greece | Grenada | Guatemala | Guyana | Holy See | Honduras | Hungary | Iceland | Indonesia | Ireland | Israel | Italy | Jamaica | Japan | Kazakhstan | Latvia | Liechtenstein | Lithuania | Luxembourg | Malta | Marshall Islands | Mexico | Micronesia |

- Non-conditioned nationalities
- Conditioned nationalities
- Nationalities with special conditions

Moldova | Monaco | Montenegro | New Zealand | Norway | Palau | Panama | Papua New Guinea | Paraguay | Peru | Philippines | Poland | Portugal | Qatar | Republic of Korea | Romania | Russia (Federation of) | Saint Lucia | Saint Kitts and Nevis | Samoa | San Marino | San Vicente and Granadinas | Serbia | Singapore | Slovakia | Slovenia | Solomon Islands | Spain | Surinam | Sweden | Switzerland | The Netherlands | Trinidad and Tobago | Turkey | United Arab Emirates | United Kingdom of Great Britain and Northern Ireland | United States of America | Uruguay | Venezuela

* Source: www.cancilleria.gov.co

What is an entry and permanence permit?

Nationals of non-conditioned countries do not require a visa upon arrival, provided they meet the requirements to obtain an entry and permanence permit (PIP).

These permits are issued to foreigners with non-conditioned nationalities visiting the country for stays of up to 90 days, which may be extended for an additional 90 days (maximum 180 days for each calendar year).

This also applies to foreigners whose nationalities are not conditioned and who wish to obtain a visa directly in the Colombian territory.

What types of PIPs do Colombian immigration authorities handle?

- **PIP 1:** Persons of importance to the country or treaties.
- **PIP 2:** Academics and arts and crafts trainees.
- **PIP 3:** Medical treatments
- **PIP 4:** Legal or administrative proceedings.

- **PIP 5:** Tourism.
- **PIP 6:** Training, commercial or corporate activities, recruitment interviews, academic, cultural, sporting, or scientific events.
- **PIP 7:** Technical visits for 30 days.
- **PIP 8:** Crew members.
- **PIP 9:** Transit.

With the PIP, foreigners are not authorized to:

- Carry out regulated activities.
- Carry out activities other than those declared in the PIP application.
- Receive payments in Colombia.
- Stay more than 180 days in the country, per calendar year.
- Obtain a foreign ID card (cédula de extranjería).
- Enter a work contract in Colombia.
- Enter the country with a conditioned nationality.

What types of visas are there in Colombia?

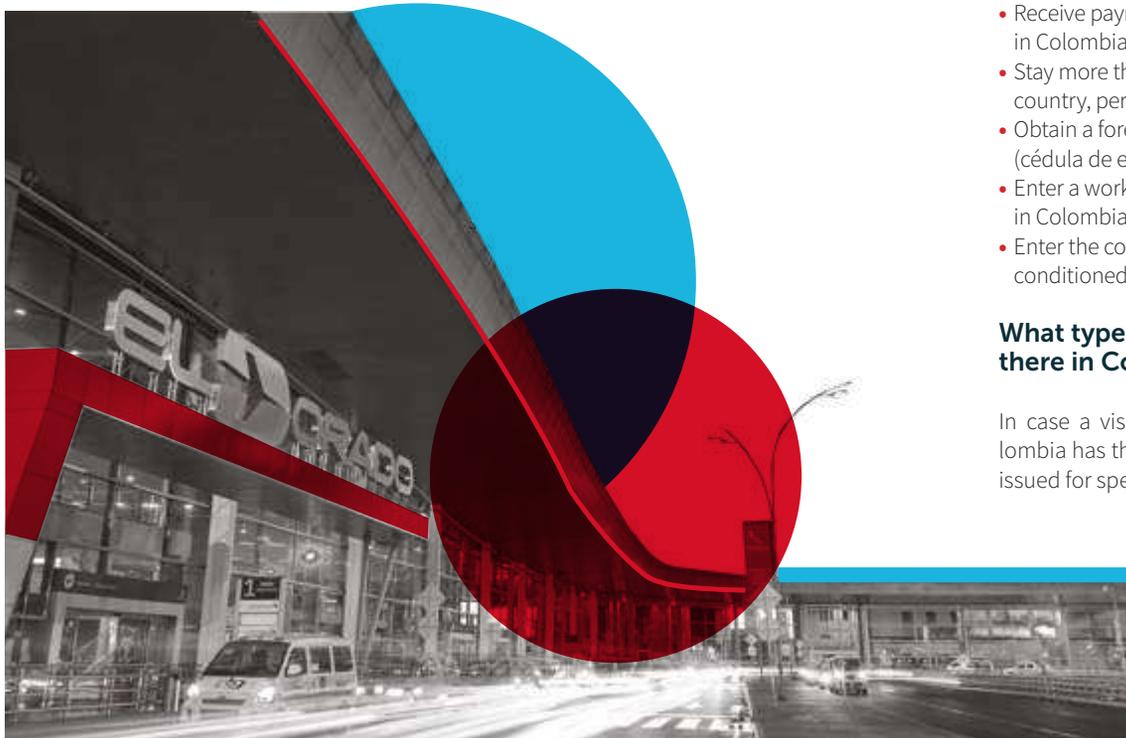
In case a visa is required, Colombia has three types of visas, issued for specific activities.

Visitor (V)

- 📅 Two years maximum
- 📅 Maximum 180 days stay
- 💰 Maximum value: USD 297*

Foreigners wishing to visit the country one or several times or staying temporarily without intending to remain in the country indefinitely.

1. Transit
2. Tourism
3. Business visits
4. Academic exchange or non-formal studies
5. Medical treatments
6. Legal proceedings
7. Crew members
8. Conferences
9. Internships
10. Voluntary work
11. Audiovisual productions
12. Journalistic coverage
13. Provision of temporary services
14. Intracorporate transfers
15. Official or commercial representative of a foreign government
16. Vacation-work program
17. Courtesy



Migrant (M)

 **Maximum validity:** 3 years indefinite (the visa will be granted for a number of years)

 **Maximum time allowed:** same as the visa valid time

 **Maximum value:** USD 282*

Foreigners wishing to enter and remain in the country and wishing to stay in the country in the long term, who do not meet the conditions required for type R visas.

1. Spouse of a Colombian citizen
2. Parent of an adopted Colombian citizen
3. Mercosur
4. Refugee
5. Worker
6. Entrepreneur
7. Independent
8. Clergy
9. Student
10. Real estate property investor
11. Pensioner
12. Unforceable circumstances

Resident (R)

 **Maximum validity:** indefinite (the visa will be granted for a number of years)

 **Maximum time allowed:** same as the visa valid time

 **Maximum value:** USD 443*

Foreigners who wish to stay indefinitely in the country and meet any of the following conditions.

1. Waiving the Colombian citizenship.
2. Being the parent of a Colombian national.
3. Have held an immigrant visa, under items 1 to 3 above, uninterruptedly for two consecutive years.
4. Have held an immigrant visa, under items 4 to 11 above, uninterruptedly for five consecutive years.
5. Have held a resident visa uninterruptedly for five consecutive years.
6. Major investors.

Through Resolution 6045 of August 2 of 2017, the Colombian Ministry of Foreign Affairs issued new conditions related to visas and rescinded Resolution 5512 of September 4 of 2015.

Visas may include the following permits

- Open work permit: allows performing any legal activity in Colombia.
- Work permit for the specific activity: authorizes working in the above activity upon applying for the visa.
- No work permit.



*The visa fee is established by the Colombian Ministry of Foreign Affairs. Today's exchange rate is USD 1 = COP 3410



Reporting to the Colombian immigration authorities:

Any natural or legal person hiring or admitting a foreigner in any manner, especially under a labor or civil relationship generating benefits, should report the activity's start and end to the Colombian immigration authorities, through the SIRE (Foreigners Information and Report System).

What are the immigration process obligations?



- **Foreign Identification Card (cédula de extranjería):** Its only purpose is identifying foreigners in the Colombian territory, its validity being the same as the visa's.



- **Regulated profession/ activity:** All foreigners engaging in a regulated profession or activity in Colombia should be in possession of a document authorizing them to perform such activities/professions (permit, license, professional card, recognition, or legal concept), issued by a competent entity.



- **Foreign workers registration (RUTE):** Colombian companies are required to register any foreign workers with a work or service contract in Colombia. Venezuelan workers with special permanence permits (PEP) making payments to the Social Security System, and the administrative personnel of embassies or consulates in the country, should also be registered. This should be done within 30 calendar days following contract initiation/termination.

What are the sanctions should they fail to comply with the above?

Colombian immigration authorities stipulate a number of infractions, either minor, moderate, or serious/very serious, applicable to foreigners and companies.

Minor

- Failing to apply for/renew their ID in a timely fashion.
- Exercising a profession, occupation, or task other than that which has been authorized.
- Doing paid work with no authorization.
- Performing activities when an exit document has been issued.
- Not notifying residence or employer changes.

✘ **The sanction may vary from 0.5 to 7 times the monthly minimum wage**

Moderate

- Entering commercial contracts with foreigners without meeting the legal requirements.
- Obtaining a visa simulating some type of contract.
- Not allowing the review of documents.
- Hiring, appointing, admitting to, or enabling a foreigner who doesn't meet the requirements to engage in any of the aforementioned activities.

- Allowing irregular permanence or not timely notifying a hire, admission, or discharge.
- Not paying a hired foreigner and their family's return trip expenses to their country of origin.

✘ **The sanction is equivalent to 8 - 40 times the monthly minimum wage**

Serious/very serious

- Obtaining a visa through fraud or simulation or misleading documents.
- Failure to change their visa or not applying for one when required.
- Performing activities not allowed by the entry permit.
- Non grata persons: complaints.
- Being in possession of fraudulent documents.
- Failure to comply with a deportation resolution in a timely fashion.
- Persons sentenced to prison, the sentence not considering deportation.
- Sex trade.

✘ **The sanction is equivalent to deportation and/or expulsion**



Which are the main immigration surveillance and control bodies?

The Colombian Ministry of Foreign Affairs is the main immigration surveillance and control body. However, there are other surveillance and control entities.

Professional Councils

- Regulate the professional activity to convalidate degrees in certain professions.
- Issue temporary permits and licenses.
- Issue professional cards.
- Control the exercise of the various professions in Colombia.

Ministry of Foreign Affairs

- Issues Colombian visas.
- Manages nationalization processes.

cancilleria.gov.co

Colombian Special Immigration Administrative Unit

- Controls immigration at Colombian borders and ports of entry.
- Issues entry and permanence permits (PIP).
- Issues foreign identification card (cédula de extranjería).
- Sanctions processes.

migracioncolombia.gov.co

Ministry of National Education

- Certify professional titles.

mineducacion.gov.co

Ministry of Labor

- Keep a record of foreign workers with work contracts from a Colombian company.

mintrabajo.gov.co



More information
on this topic



02

FOREIGN DIRECT INVESTMENT PROTECTION

AND INTERNATIONAL
EXCHANGES

BY:  LEYVA ONTIER

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What protection is granted to foreign investments in Colombia?

Protection is granted on four principles established by law:



- **Equal treatment:** The Colombian Constitution establishes that Colombian citizens and foreigners have equal rights and guarantees in accordance with the law. This means that foreign investors will have access to the benefits and guarantees provided by the government to investments made by Colombian citizens.



- **Universality:** The law allows foreign investments in all the economic sectors, except for those explicitly restricted, such as national defense and security, and toxic waste processing and disposal.



- **Automaticity:** In general, in Colombia no screening requirements apply to the investment of foreign capital, meaning that such investments do not require prior authorization, except

for some related sectors such as the financial, mining, and hydrocarbons sectors. Such investments require prior authorization from competent authorities.



- **Stability:** Conditions applicable to investments and profit remittances will not be changed in detriment of the investor. However, such conditions and rights may change in case international reserves become scarce.

How do international investment agreements negotiated by Colombia actually work?

Their purpose is to promote foreign direct investments and guarantee favorable conditions for foreign investors in Colombia. Despite the fact that each agreement has its own conditions and is a separate instrument, in general they all include a standardized set of obligations:



- **National treatment:** Grants investors from other states and their respective investments a treatment that is not less favorable than

that granted under similar conditions to national investors from the benefiting state.



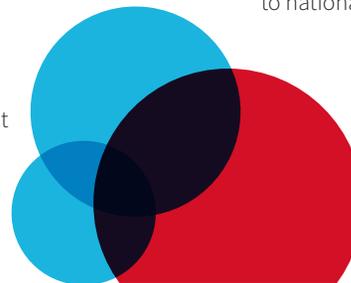
- **Most-favored nation:** Grants investors from other states and their respective investments a treatment not less favorable than that granted under similar conditions to investors from other/ third states.



- **Minimum treatment standard:** Grants foreign investments a minimum level of treatment to foreigners investing in the benefiting country. Such level is established based on international customs and includes two types of obligations:
 - Fair and equitable treatment: Regards non-arbitrary, timely and respectful due process.
 - Full protection and security: A physical protection guarantee afforded to foreign investments, in the same manner that such protection is guaranteed to national investments.



- **Free transfer:** The obligation the benefiting state has to guarantee the foreign investor's freedom to make transfers, new investments or repatriate investments, profits, or revenues generated by said investments.
- 
- **Prohibition of expropriation without proper compensation:** Foreign investments cannot be expropriated, unless such expropriation is made in response to public interests, and provided it is made in a non-discriminatory manner with observance of due process. Should goods be expropriated, a proper, prompt, and effective compensation shall be given. There are two types of expropriations:
 - Direct expropriation: When there is an administrative act according to which the State decides on the expropriation and establishes the respective compensation.
 - Indirect expropriation: There is no administrative act, but an act or an omission by the state affecting the investments to a degree that, in practice, it will become a direct expropriation.



- **Dispute settlement:** An arbitration clause contained in the Bilateral Investment Treaty allowing the investor to have a direct recourse to an international arbitration process, in case an obligation contained in the investment treaty has been defaulted.

Current international investment agreements

Country	Entry into force
Mexico	FTA entered into force since 1995 Amendment Protocol in 2011.
Chile	May 2009
North Triangle	Guatemala: November 2009 El Salvador: February 2010 Honduras: March 2011
EFTA	Switzerland: July 2011 Liechtenstein: July 2011 Norway: September 2014 Iceland: October 2014
Canada	August 2011
United States of America	May 2012
Spain	September 2007
Japan	September 2015
Switzerland	October 2009
Peru	December 2010
China	July 2012
India	July 2012
United Kingdom	October 2014
France	Pending
Israel	Pending

* Source: www.tlc.gov.co



What are the basic concepts of the exchange regime?



Exchange Market Intermediaries (IMC): According to Article 7 of External Resolution No. 1 of May 2018 from the Central Bank's Board of Directors, these are:

- Bank entities
- Financial corporations
- Financing entities
- Financiera de Desarrollo Nacional (FDN)
- Banco de Comercio Exterior de Colombia S.A. - Bancoldex
- Financial cooperatives
- Stock brokers
- Exchange intermediation and special financial service companies
- Companies specializing in deposits and electronic payments



Channeling: According to Article 69 of External Resolution No. 1 of 2018 from the Central Bank's Board of Directors, all foreign currency used to make foreign capital investments in Colombia should be channeled through the IMCs or the compensation accounts. On a monthly basis, Colombian residents should report such activities to the Central Bank and to National Directorate of Taxes and Customs (DIAN).



External loans: Loans between residents or IMCs and nonresidents. These should be channeled through the exchange market.



Compensation accounts:

Foreign currency bank accounts opened by residents in foreign financial entities.



Exchange statement: According to Article 88 of External Resolution No. 1 of May 2018 from the Central Bank's Board of Directors, the minimum information related to exchange activities channeled through the exchange market, provided by residents and nonresidents performing exchange activities and delivered to the Central Bank by the IMCs and the compensation account holders.



International investments:

Include foreign capital investments in the country (foreign investment in Colombia) and Colombian capital investments abroad (Colombian investments abroad).



Foreign capital investor: Natural or legal persons making direct or portfolio foreign investments according to Article 2.17.2.2.1.3 of Decree 1068 of 2015.



Nonresidents: For tax purposes, it includes natural persons not living in the national territory, and legal entities, including nonprofit organizations, that are not domiciled in the national territory.



Residents: Natural persons living in the national territory and public law entities, legal entities, and nonprofit organizations domiciled in Colombia, as well as their branch offices.

What is the exchange market?

The exchange market consists of all foreign currency entering and leaving the country, and it is divided between the exchange market and the free market.

Consists of all foreign currency that has to be mandatorily channeled through the intermediaries authorized for this purpose, or through the compensation mechanism. Foreign currency that, despite not being subject to this obligation, is channeled voluntarily through this mechanism is also part of the exchange market. The following operations have to be mandatorily channeled through the exchange market:

- Import and export of goods.
- External indebtedness operations between residents, and their respective financial costs.
- Foreign capital investments in the country, and their respective yields.

- Colombian capital investments abroad, and their respective yields.
- Financial investments in stocks and in assets abroad, as well as their respective yields, unless such investments are made with foreign currency generated by activities that do not have to be channeled through the exchange market.
- Endorsements and guarantees in foreign currency.
- Operations involving derivatives.

What is considered direct investment?

The following are considered direct investments:

- Acquisition of participations, shares, social quotas, payments representing company capital, or bonds that have to be converted into shares.
- Acquisition of rights or participations in trust deals executed with trust companies

subject to the surveillance of the Colombian Superintendency of Finance whose object is not listed in the conditions established in paragraph B of Article 2.17.2.2.1.2 of Decree 1068 of 2015.

- Acquisition of real estate properties, either directly, under trust deals, or as a result of a real estate securitization or of a construction project.
- Contributions made by the investor through acts or contracts, such as collaboration, concession, administration service, or licensing agreements or those involving technology transfers, provided not representing participation in a company and provided the revenues generated by the investor to the titleholder depend on the company profits.
- Investments additional to the branch offices' assigned capital.
- Investments in private capital funds, as indicated in Book 3 of Part Three of Decree

2555 of 2010 or in norms amending or replacing it.

What is considered portfolio investment?

Investments made in the National Issuers and Securities Registry (RNVE) and participations in collective investment funds and in securities listed in the foreign securities quotation systems.

Loans and operations involving indebtedness will not be considered foreign investment acts.

What is the free or non-regulated market?

It includes operations that do not have to be channeled through the exchange market. Despite these operations not having to be channeled through the exchange market, they may be voluntarily channeled, providing to the IMC or to the Central Bank the minimum information required for service operations, transfers, and other activities.



How are foreign investments registered?

- Investors, their attorneys, or the legal representatives of companies benefiting from the investment should register their international investments before the Central Bank.
- All foreign currency activities from international investments should be channeled through the exchange market.
- When such channeling is made through the IMC, the exchange operation information should correspond to that of the day when the foreign currency is purchased/sold.
- When the channeling is made through compensation accounts, the information should correspond to that of the day when the foreign currency is credited/debited to/from the compensation account.
- Amendments, changes, corrections required due to typing errors, and annulments of exchange statements should be made through the IMC that initially delivered the exchange statement.



Direct investments Registry

- Direct investments in foreign currency will be considered registered automatically with the information provided in the exchange statement.
- Foreign capital direct investments other than those made in foreign currency should be registered at any time with Form No. 11.
- Direct foreign capital investments from corporate reorganization processes (mergers, spinoffs) should be registered at any time with Form No. 11A.

Substitution of direct foreign investments

- Foreign capital direct investment substitutions: Changing the investment titleholders to other nonresident investors,

as well as changes made to the destination or the company receiving the investment. This should be requested by simultaneously submitting Form No. 12.

- The time allowed for the above is 12 months for substitutions made before July 26 of 2017, six months for those made thereafter. This time counts from the date of the operation.

Foreign direct investment cancellation

- Cancellation of foreign capital direct investment: Reduction or full or partial liquidation of an investment previously registered before the Central Bank. This should be requested by delivering Form No. 12.

For additional information on foreign investment registration, please refer to the Central Bank's External Regulatory Circular DCIN83.

Portfolio investment registration

- Foreign capital portfolio investments made by channeling foreign currency are automatically registered upon the information contained in the exchange statement being delivered.
- Foreign capital portfolio investments with no foreign currency channeling are registered with the local securities centralized deposit account annotation.
- Titleholding or portfolio investment composition changes (substitutions) and cancellations will be reported through the Foreign Capital Portfolio Investment Form (IPEXT), in a consolidated manner and without a separate report.

What exchange rights are granted by the registration of foreign investment?

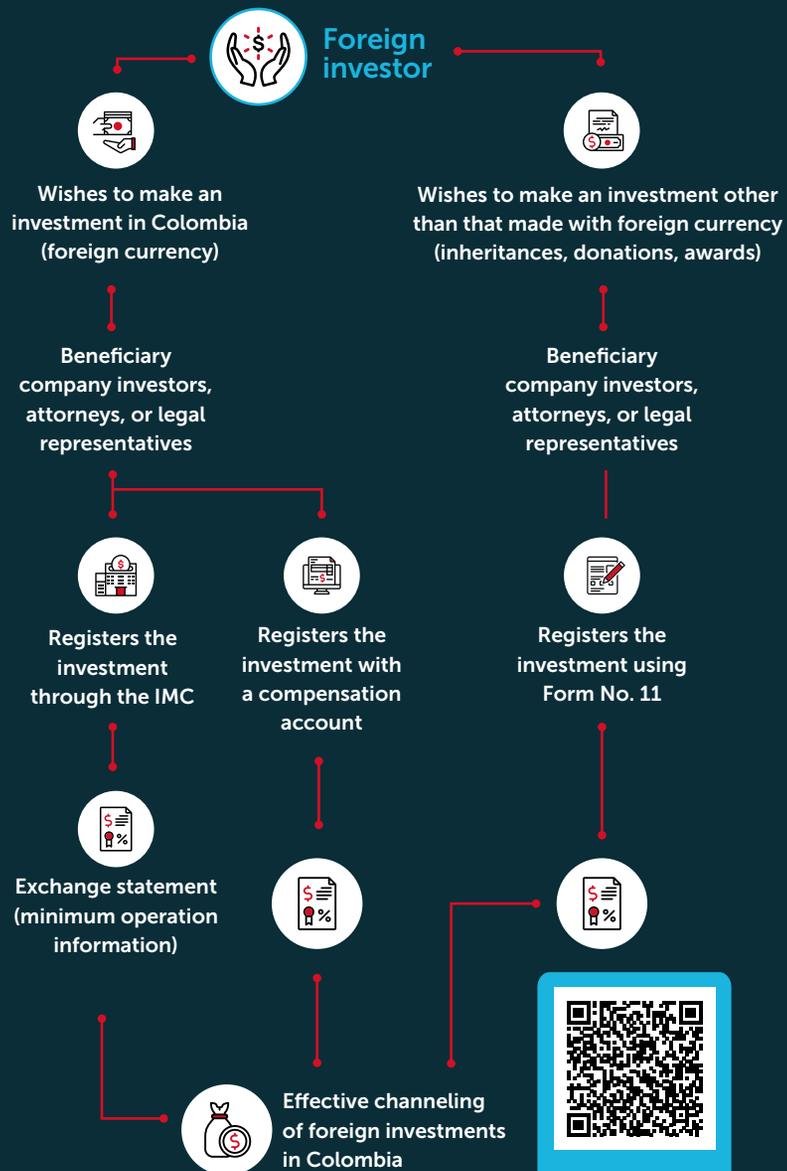
Foreign investments properly registered before the Central Bank afford the following exchange rights to the investor, according to article 2.17.2.2.3.1 of Decree 1068 of 2015:

- Reinvesting profits or withholding in surplus accounts undistributed profits with remittance rights.
- Capitalizing amounts that can be remitted, provided they result from obligations arising from the investment.

- Remitting abroad, in freely convertible currency, verified net profits periodically generated by the investments, based on end-of-year general balance sheets, or based both on these and the act or contract governing the remittance in the case of a direct investment.
- Remitting abroad amounts generated by the sale of the investment in the country, by the company liquidation, or by its capital reduction.



What are the steps for exchange registration?



More information on this topic

03



BUSINESS

C R E A T I O N



BY: Brigard
Urrutia

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What should I know about the process to create a company in Colombia?

The corporate mechanisms applicable to the creation and development of companies in Colombia are supported, among others, by the constitutional right of association, the right to equality, the freedom of enterprise and private initiative.

What types of companies are there?

- Corporation
- Simplified joint-stock company
- Limited Liability Company
- General partnership
- Limited partnership
- Publicly traded partnership

General partnerships, limited partnerships and publicly traded partnerships are uncommon forms of association.



The most common forms used by local and foreign investors are corporations and simplified joint-stock companies, which guarantee their shareholders' limited liability. However, the flexibility of SAS presents significant advantages compared to the other types of associations, including the reduction of transaction costs, achieved with a simple and much more flexible structure.

Which are the main characteristics of the various corporate schemes?

	Stock Corporation (SA)	Limited Liability Company (Ltda.)	Simplified Joint-Stock Company (SAS)
Legal nature	Legal person		
Incorporation	With a public deed. Fees corresponding to 0.3% of the subscribed capital value apply, in addition to a 19% VAT.		With a private document properly signed by the founding shareholders before a public notary. No notary fees apply, however a moderate fee being required to authenticate the signatures.
Registration	The public incorporation deed (SA and SAS) or the private incorporation document (Ltda.) should be registered before the Chamber of Commerce where the company is domiciled. A fee of 0.7% of the subscribed capital value is charged.		
Number of partners	Minimum of 5. There is no maximum number of shareholders. No shareholder may have more than 94.99% of the company's capital stock.	Minimum of 2, maximum of 25. There is no limitation to the participation percentage a single partner may have.	One or more shareholders. There is no limitation to the maximum number of shareholders the company may have.
Capital	The capital is divided into shares of the same value. Upon the company's incorporation the shareholders must subscribe at least 50% of the authorized capital and pay at least 1/3 of the subscribed capital.	The capital is divided into quotas of the same value, which should be fully paid upon the company's incorporation.	The capital is divided into shares that, in general, are freely negotiable.
Company management	The company is managed by the manager and the Board of Directors, consisting of at least three members and appointed by the Assembly.	The company is managed by the partners, who may delegate such faculty to the manager.	The company is managed as decided by the Shareholders Assembly. The company should have a legal representative (who may be the sole shareholder) and may have a Board of Directors or any other body or position.

Which are the differences between the branch offices of national and foreign companies?

	Colombian national company	Foreign branch office
Are the Colombian assets and revenues subject to liens?	Yes	
Are assets and revenues abroad subject to liens?	Yes	No
Are contributions to companies subject to liens?	Yes, unless previous compliance with Article 319 of the Tax Code.	Yes
Are contributions in labor subject to liens?	Yes	
General rules	Profits from the sale of assets in kind as neutral contribution, and shares issued as neutral contributions, cannot offset with fiscal losses or presumptive income surpluses.	Subject to the transference price system.

What steps should I follow to incorporate and register a foreign branch office?

1



Gather the documents

- Make sure that the branch's office name is made available in the Commercial Registry.
- Preparation of a resolution from the parent company's competent body authorizing the creation of the company in Colombia.
- Translation and legalization of seals and documents received from abroad.
- Job acceptance letter from the appointed legal representative, branch office alternate, and/or statutory auditor.
- Copies of the IDs of the legal representative, the branch office alternate, and the statutory auditor.
- Preparation and signature of the public deed before a Notary Public in order to formalize the branch office opening.



Need more information on how to register a branch office of a foreign company?

Action / Document	Implementation costs
Signature of the public deed of the incorporation certificate of the foreign office, the opening resolution and the other documents detailed in the Code of Commerce.	0,3% of the capital allocated to the foreign branch office (notary fees) + 19% of VAT over the notary fees.
Registration before the Chamber of Commerce of the public deed mentioned above.	0,7% of the subscribed capital stock (registration tax) plus the applicable fees according to the company's assets (commercial registration) and COP 41.000 in registration fees.
Requesting and obtaining a Unique Tax Registration (RUT) before the Tax and Customs Administration.	Free
Request a certificate of incorporation and legal representation issued by the Chamber of Commerce.	COP 5,800

2



Company registration before the Chamber of Commerce and paperwork required by the Colombian Tax and Customs Administration (DIAN)

- Preparation of the Chamber of Commerce registration forms.
- Registration of documents before the Chamber of Commerce.
- Issuance of the branch office's Certificate of Existence and Legal Representation.
- Request an appointment with DIAN to update/request the branch office and the legal representatives' Tax Registration (RUT).
- Appear on the indicated day in order to obtain the RUT and the legal representatives' electronic signature and update the branch office's tax identification number.
- Activate the appointed legal representative's electronic signature.

3



Open a bank account in Colombia and register the foreign investment before the Central Bank

- Open the bank account in Colombia.
- Register the foreign investment before the Central Bank.

The estimated time for the fulfilment of these procedures is 5 working days, from the day the documents are submitted before the Chamber of Commerce. The estimated time does not include the opening of the bank account, which depends on the bank.

What steps should I follow to create a commercial company?

1



Gather the documents

- Make sure that the company's name is available at the Commercial Registry.
- Prepare the representation document (when the creation of the company is made through an agent).
- Job acceptance letters by the companies' appointed legal representatives and alternates.
- Copies of the IDs of the legal representatives and alternates.

Implementation costs

Action / Document	Implementation costs
Register before a notary public the corporate bylaws of the main office abroad, the incorporation resolution and the rest of the documents required by the Code of Commerce.	0,3% of the capital allocated to the foreign branch office (notary fees) + 19% of VAT on the notary fees.
Registration of the public deed mentioned above before the Chamber of Commerce.	0,7% of the subscribed capital stock (registration tax) plus the applicable fees according to the company's assets (commercial registration) plus COP 41,000 in registration fees.
Requesting and obtaining a Tax Registration Certificate (RUT, for its acronym in Spanish) from the DIAN.	Free
Request a certificate of incorporation and legal representation issued by the Chamber of Commerce.	COP 5,800

2



Company registration before the Chamber of Commerce and paperwork required by the Colombian Tax and Customs Administration (DIAN)

- Translation and legalization of the official seals and documents that were issued in a different language.
- Preparation of the Chamber of Commerce registration forms.
- Registration of documents before the Chamber of Commerce.
- Issuance of the branch office's Certificate of Incorporation and Legal Representation.
- Request an appointment with DIAN to update/request the branch office and the legal representatives' Tax Registration (RUT).
- Appear on the indicated day in order to obtain the RUT and the legal representatives' electronic signature and update the branch office's tax identification number.
- Activate the appointed legal representatives' electronic signatures.
- Apply for a personal RUT for all the company's administrators before the DIAN.
- Activating the electronic signature of the designated legal representative.
- Issuance by the DIAN of a copy of the company's RUT.
- Registration of the corporate books before the Chamber of Commerce.

3



Open a bank account in Colombia and register the foreign investment before the Central Bank

- Open the bank account in Colombia.
- Register the foreign investment before the Central Bank.

How does the system of parent companies, subsidiary companies, and corporate groups work?

Existence of a control situation

A company is considered subordinated or controlled when its decision-making faculties are subject to the decision of other persons, that is, its parent or controlling company, either directly - in which case it will be called an affiliate - or with the participation of or through the parent company's subordinated companies - in which case it will be called a subsidiary.

An affiliate is a company directly controlled by a parent company. The subsidiary is controlled by the parent company's subordinated companies.

Existence of a corporate group

A corporate group shall be deemed to exist when - in addition to the subordination (control) relationship - there is a unity of purpose and management established by the parent company.

The situation exists should the companies' existence and

activities seek an objective established by the parent or controlling company according to the administrative faculty they have over the group, without prejudice to their own individual development of the corporate object or activity.



More information on this topic

A corporate group is a collection of companies with a relationship of subordination, with a common purpose and management as determined by the parent company.

Obligation to register the corporate group and/or the control situation

Should a corporate group situation exist, the controlling company will make this registration through a private document, which should be registered before the Commercial Registry of the related parties' jurisdiction 30 business days after the group situation comes into being.

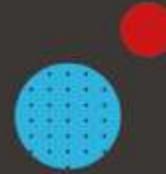


Sanctions for late registrations

Should the above control and/or corporate group registration not have been made within the time allowed, the Superintendence of Companies will declare the relationship situation and will order the registration in the Commercial Registry.

Without prejudice to the above and according to Law 222 of 1995, the Superintendence of Companies may apply sanctions for up to 200 minimum legal monthly salaries as a result of the obligation default.

04



TAX REGIME

* The information contained in this chapter is based on the regulatory framework of Law 1943 of 2018, the Tax Code and the National Development Plan 2019-2022. It is advisable to revise the online version of the guide to confirm the validity of this information.

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Which taxes should be taken into account in a business model?

Taxes in Colombia are applied at three main levels: national, departmental, and municipal.

Which are the main national taxes?

The income tax, the VAT, the national excise tax, the equity tax, the debit tax (GMF for its Spanish acronym), the fuel tax, the carbon tax, and the stamp tax.

How does the income tax work?

It taxes profits generated by tax-payers' ordinary activities that increase their net worth. Profits not related to ordinary activities are in general subject to the supplementary capital gains tax.

There are revenues that, according to the legal rules and subject to certain requirements, are considered nontaxable income or capital gains, such as profits from the sale of shares listed in the Colombian stock exchange, certain capitalizations, some indemnifications for damages, among others.

Net operational losses (NOLs) may be used to offset the ordinary net income generated during the 12 years following the loss. There are no time limita-

tions for NOLs generated up to 2016. Five years are allowed for excess of presumptive income.

What are the income tax rates?



Free trade zones industrial and services users are generally subject to 20%

How does the Colombian holding companies' regime operate (CHC)?

It applies to Colombian entities and allows for the dividends distributed by foreign companies to a Colombian holding company (CHC) to be tax exempt. Profits from the sale of foreign company shares by a CHC are also tax exempt. The non-resident shareholders of a CHC should not be taxed on: dividends which are paid out of dividends previously received by the CHC from foreign entities, and transfers of CHC's shares on the portion of the value attributable to activities carried out outside Colombia.

To qualify as a CHC, the following requirements should be met:

- Having security holdings, investment or holding of shares or company participations, and/or the administration of such investments as one of its main activities in the bylaws.
- Having at least 10% of the capital of two or more Colombian and/or foreign entities during at least 12 months.
- Having three or more employees and the human and physical resources in Colombia required for its activities.
- Filing an application before the tax authorities.

How does the foreign controlled companies' regime work (ECE)?

This system applies to Colombian residents (individual and companies) directly or indirectly having an interest equal to or greater than 10% on the capital or the profits of a foreign company controlled by Colombians (ECE). In this case, certain revenues obtained by the ECE and which are considered passive income will be immediately taxed at the level of the Colombian resident shareholders, without having to wait for the ECE to distribute their profits in the form of dividends.

How income tax withholdings work?

This is a tax collection mechanism (in some cases such withholding being the final tax) according to which certain persons must withhold some amount from the payments made and remit such amount to the government. The withholding rate depends on the nature of the payment.

- In Colombia, the rate is in general 11% for payment of fees or specialized technical services to entities located in Colombia, 4% for general services, and 2.5% for purchases.
- Certain rates apply to payments made to non-residents: 20% for technical assistance, technical services, and consultancy services, 33% for management and direction, 0%, 5%, 15%, or 20% for interests, and 10% for dividends, among others.

How does the transfer pricing regime works?

Taxpayers (including permanent establishments of non-residents) carrying out operations with foreign related parties, related parties located in Colombian free trade zones, or with persons, companies, or entities located in non-cooperating jurisdictions, with low or no taxes, or with preferential tax systems, will be subject to the transfer pricing regime. For income tax purposes, the taxpayers should establish their ordinary and extraordinary revenues, costs and deductions, as well as their assets and liabilities, taking into account the arm's length principle (i.e. the conditions and compensation should be established according to what would have been agreed with or between independent third parties). The Colombian regulations provide that the taxpayers may use any of the following mechanisms to

establish the price or the profit margin of operations executed between related parties:

- Comparable uncontrolled price
- Resale price
- Cost plus
- Transaction net margin
- Profits split

In order to establish the assets, liabilities, equity, revenues, costs, and expenses of a permanent establishment (including branches of non-residents) during a given taxable year, an attribution study should be prepared according to the arm's length principle, taking into account activities carried out, assets used, risks assumed, and personnel hired by the company through the permanent establishment.

How does the VAT work?

The general VAT rate is 19%. However, there are some differential rates of 0% and 5% for certain products or services. There are some VAT-excluded goods and services.

How does the national excise tax work?

This tax applies on the provision or sale to the end user, or in the import of some goods and services. Such goods and services are in general not subject to the VAT. Rates are between 4% to 16%.



How does the debit tax (GMF) work?

It taxes the withdrawal of resources from checking or savings accounts in any Colombian financial entity, as well as in any Central Bank deposit account. Transfers between checking accounts of the same holder and in the same financial entity, as well as some other financial transactions and certain security market operations, are exempted from this tax.

The GMF rate is 0.4%.

How does the national gasoline and fuel oil tax work?

It applies to the sale, withdrawal, import for own use or for the sale of gasoline and fuel oil on the date of issuance of the respective invoice; on the day of the product's withdrawal in the case of withdrawals made by the producers for their own use, and on the day the imported gasoline or fuel oil clears customs.

The following are the general gasoline and fuel oil tax rates for 2019 (for 2020 the updated amounts have not been issued):

- **Regular gasoline:** \$526.26/gallon
 - **High test gasoline:** \$998.82/gallon
 - **Fuel oil:** \$503.71/gallon
- These rates are adjusted every

year based on the previous year's inflation, with a resolution issued by the DIAN.

How does the national carbon tax work?

It tax the carbon contents of all fossil fuels, including petroleum derivatives and all types of fossil gases used for energy applications, provided they are used for combustion purposes. This tax applies to the sale of fuels within the national territory, withdrawal, imports for its own consumption or for sale.



There is a special rate that considers the CO2 emission factor for each specific fuel, expressed in volume units (kilograms of CO2) per energy unit (terajoules), according to the fuel volume or weight. Following are the rates per unit of fuel for 2019 (for 2020 the updated amounts are pending):

 Fossil fuel	 Rate/unit
Natural gas	COP 32 / cubic meter
Liquefied petroleum gas	COP 104 / gallon
Gasoline	COP 148 / gallon
Kerosene and jet fuel	COP 162 / gallon
Acpm	COP 166 / gallon
Fuel oil	COP 194 / gallon

How does the stamp tax work?

Article 72 of Law 1111 of 2006 determined, as of 2010, the general stamp tax will be 0%. Consequently, this tax currently only applies in very specific cases.

Which are the main departmental taxes?

The main departmental taxes are the registration tax; the excise tax on cigarettes, beer and alcoholics beverages; and the motor vehicles tax.

How does the registration tax work?

Subject to this tax are registrations of documents containing acts, decisions, contracts, or legal deals in which private persons participate or are the beneficiaries of, and which according to the law have to be registered before the respective chambers of commerce or the public instruments registration offices. Rates are up to 1%.

How does the cigarette, beer, and alcoholic beverages excise tax work?

The cigarettes excise tax consists of a 10% ad valorem tax on the sale price (certified by DANE) and a specific component consisting of a fixed value for each 20-unit pack of cigarettes (or proportionally).

The beer excise tax is 48% (20% applies to beer and soda pop mixes). The tax base is the



The tax base is the commercial appraisal annually made by the Ministry of Transportation through a resolution. In Bogota, the rate is between 1.5% and 3.5% of the vehicle commercial value.

Which are the main municipal taxes?

At a municipal level, the main taxes are the industry and commerce tax (ICA), the property tax, the urban delineation tax, and the "plusvalia" tax.

How does the industry and commerce tax work?

This is a municipal tax that applies to all industrial, commercial, or service activities carried out in the jurisdiction of a municipality or district. Such activities may be carried out directly or indirectly by individuals or companies, either permanently or occasionally, in a specific property with a commercial establishment or not.

The tax is calculated based on the taxpayer's revenues in the respective municipal or district jurisdiction. In Bogota, in general they have to be paid every two months, the rates ranging between 0.414% and 0.138% depending on the activity. In the other jurisdictions, the rates range between 0.2% and 1%.

How does the unified land property tax work?

This tax applies to immovable properties. The tax base is usually the cadastral appraisal of the property.

The tax rate in Bogota ranges between 0.2% and 3.3%, applied annually.

How does the urban delineation tax work?

This tax applies to constructions or works for which a construction license has been issued and notified. The rate is in general 3%, over the work or construction's budget.

How does the "plusvalia" tax work?

This is a tax paid by the owners of real estate properties which value has increased due to a decision of the government (e.g., new zoning rules). It ranges between 30% and 50% of the increased value.

retail sale price. In the case of imported beer, the retail sale price is established as the customs value, plus the customs taxes, in addition to a 30% sales margin.

The alcoholic beverages excise tax consists of a 25% ad valorem component for liquors and 20% for wines on the sale price to the public (before taxes and participation, certified by DANE), and a specific component that varies depending on the alcohol contents of each liquor or wine.

How does the motor vehicles tax work?

The vehicles tax applies to the ownership or possession of motor vehicles. It is a departmental tax; however, in Bogota the tax should be paid to the city of Bogota.

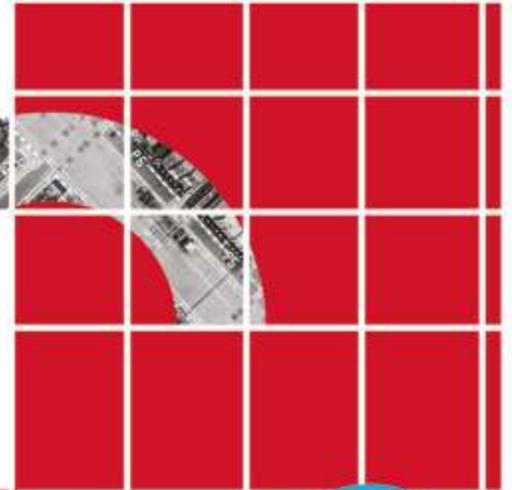
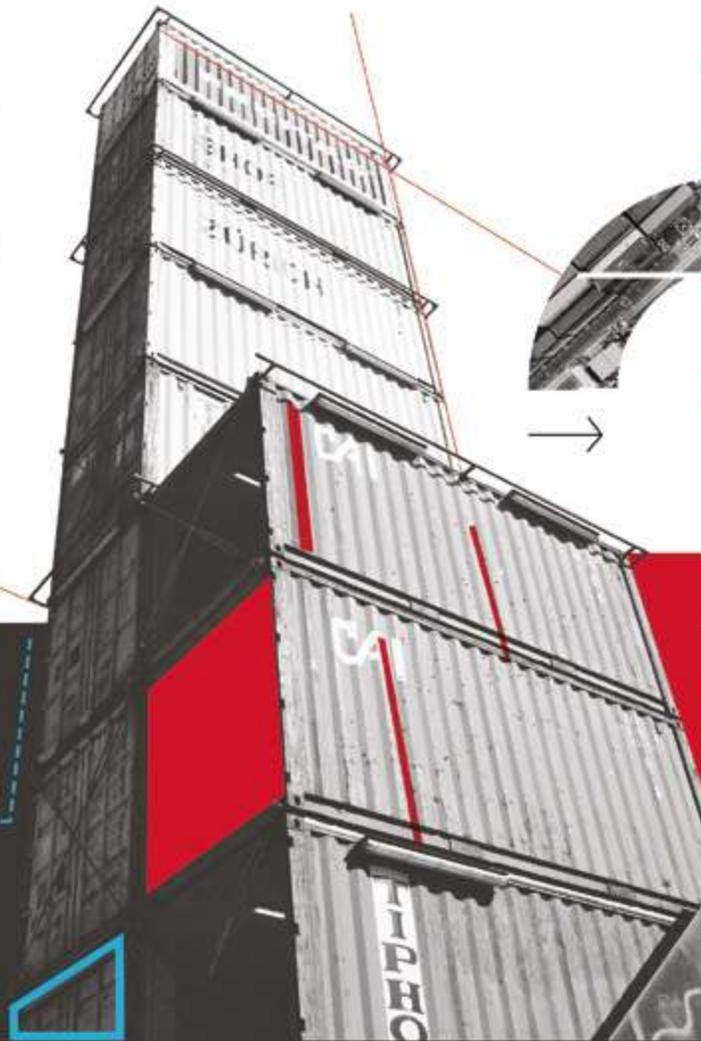




05

CUSTOMS REGIME

AND FREE TRADE
TEATRIES



c



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What should I know about the Colombian customs regime?

Decree 1165 of 2019 contains the Colombian customs regulation regime, which seeks guaranteeing the users' security and facilitates the processes and procedures involved in the customs regime.

With Law 1879 of 2018, Colombia approved the WTO Agreement on Trade Facilitation, which was later approved by the Constitutional Court. The Colombian participation in this agreement involves significant commitments to simplify, modernize, and harmonize the import/export procedures.

The customs regulation harmonization especially reflects on aspects such as the regulation of the International Logistic Distribution Centers and of

the International Trade Companies, as well as on the customs norms, particularly with respect to the characteristics of the seizure and confiscation circumstances and the inclusion of general conditions, such as the statute of limitation applicable to the collection actions contained in the Contentious Administrative and the Administrative Procedural Codes.

In order to provide a greater efficiency to trade operations, the Authorized Economic Operators mechanism has been strengthened to include reliable companies, reducing paperwork and providing some benefits. For this, the government has decided that, as of March 22 of 2020, the Permanent Customs User and the Highly Exporting User mechanisms will be eliminated.

How many free trade agreements does Colombia have?

There are over 15 commercial agreements providing benefits to Colombian products and preferential access to certain foreign markets.

Also, there have been signed agreements with Israel and Panama.

Country	Effective date	Name of the Agreement
Mexico	FTA effective from 1995 Ammendment Protocol since 2011	FTA between the United States of Mexico and the Republic of Colombia
Chile	May 2009	FTA between the Republic of Colombia and the Republic of Chile-Additional protocol to the Agreement of Economic Complementation for an Extended Economic Region between Colombia and Chile (ACE 24), December 6th 1993. Signed in Santiago, Chile, November 27th 2006.
Northern Triangle	Guatemala: November 2009 El Salvador: February 2010 Honduras: March 2010	FTA between the Republic of Colombia and El Salvador, Guatemala and Honduras.
AELC	Switzerland: July 2011 Liechtenstein: July 2011 Norway: September 2014 Island: October 2014	FTA between the Republic of Colombia and the EFTA states.
Canada	August 2011	FTA between the Republic of Colombia and Canada
United States	May 2012	United States-Colombia Trade Promotion Agreement, attached letters and the understanding signed in 2006
Caribbean Community	January 1995	Agreement on Trade, Economic and Technical Cooperation between the Caribbean Community (CARICOM) and the Government of the Republic of Colombia
Mercosur	Effective between Colombia and Argentina: 20 December 2017 Effective between Colombia and Brasil: 20 December 2017 Effective between Colombia and Uruguay: 11 June 2018 Effective between Colombia and Paraguay: 29 January 2019	Acuerdo de Complementación Económica No. 72 Colombia Mercosur (Economic Complementation Agreement)



Country	Effective Date	Name of the Agreement
European Union	July 2013	Trade Agreement between the European Union, Colombia and Perú
United Kingdom	Pending	Trade Agreement between the United Kingdom and the Republic of Colombia
Korea	June 2016	FTA between the Republic of Colombia and the Republic of Korea
Costa Rica	July 2016	Free Trade Agreement between Colombia and Costa Rica
Pacific Alliance	May 2016, effective date of the Additional Protocol of the Framework Agreement	Pacific Alliance
Comunidad Andina de Naciones (CAN)	October 1969	Acuerdo de Integración Subregional Andino (Andean Subregional Integration Agreement)

* Source: www.tlc.gov.co

Will the commercial relationship with the United Kingdom continue after Brexit?

Yes, there is a Continuity Agreement between Colombia and the United Kingdom, aiming to continue with the commercial relationship among the states. Despite the agreement is not yet in effect, an internal procedure is being carried out in order to ratify this Agreement.

How does the imports regime work?

Imports consist of bringing foreign goods into the Colombian

customs territory, which will remain in it either permanently or temporarily according to the specific purpose they were brought into the country. Bringing goods from a free trade zone or from a customs deposit into the Colombian territory is also considered an import. Decree 1165 of 2019 contains various import modes, the most common being:



Ordinary import

The mechanism most used by Colombian importers. The goods are received for their free and indefinite use once all ob-

ligations and formalities have been met.

Its requirements include submittal of import statements, payment of customs duties, prior acceptance of import licenses, authorizations from the competent authorities, and compliance with the customs valuation norms.



Temporary import

Applies to non-permanent imports, not being possible to freely use the imported goods. There are various types of temporary imports, depending on their purpose

- **Short-term temporary import:** Allows importing goods for a specific purpose, resulting in their short-term stay in the country. The maximum time allowed is six months after the goods are received, extendable by the customs authorities for an additional three months. No customs duties have to be paid.
- **Long-term temporary import:** Allows deferring customs duty payments applicable to the imported



capital goods, their parts, and their accessories, for up to five years after having been received, in bimonthly payments.

• Temporary import for active formalization of capital goods:

Allows to temporarily import capital goods and their parts and spare parts, suspending the obligation to pay any customs duties. They should be re-exported within a maximum of six months after having been repaired or conditioned. Their use while being in the country is restricted and limited.



Postal imports and urgent deliveries

With this mechanism, using any means of mail delivery it is possible to import elements arriving through the national

postal service and urgent deliveries, provided their FOB value does not exceed US \$2,000 and requiring a speedy delivery.



Early import statement and early resolutions

The customs regime includes the possibility of submitting import statements at the most 15-day in advance of the arrival of the goods. This mechanism was created in order to facilitate the imports' delivery within an average of 48 hours.

How does the exports regime work?

This mechanism means that the goods will be leaving the

national customs territory for delivery to a foreign country. In addition to those contained in Decree 1165 of 2019, goods leaving a free trade zone or a free deposit will be considered being exported.

Authorized exporter: The person having requested and obtained a favorable risk rating opinion from the DIAN. For this, more than four final export customs statements should have been submitted during the previous year. They will be able to issue origin statements or statements in the invoice, according to the commercial agreement of the country the goods are to be exported to.

What is the Risk Management System?

This is a mechanism that allows an effective control by customs authorities in order to counter smuggling and facilitating international trade. It uses the information of those participating in the logistic chain and that related to payment of and compliance with the tax, customs, and exchange obligations and with the economic solvency obligations applicable to foreign trade operations. Based on this system, among others the tax authority is entitled to:

- Automatically refund income and sales tax balances, according to article 98 of Law 1943 of 2018.
- Provide a special treatment, giving to the person the condition of authorized exporter or authorized economic operator.
- Decide on the obligation to submit the import statement in advance.
- Decide to make documentary or physical customs inspections.
- Issue the customs clearance authorization.
- Decide not to authorize the customs transit.

Export steps:

- 1 Process the Tax Registration document (RUT), as an exporter, before any DIAN or SuperCade office.
- 2 Obtain the customs tariff applicable to the product to be exported.
- 3 Obtain the applicable authorizations.
- 4 Perform the respective customs procedures, including submittal of the shipping authorization application, the entry to the primary zone, the shipment, the shipping certificate, and other elements required for the export.



What are the 'authorized' customs deposits?

These are public or private deposits in which foreign goods are stored and whose legal import processes have not yet been concluded. They may remain there for up to two months and have the following benefits:

- They are an option for companies needing to store their goods without having to purchase or lease real properties.
- They facilitate the foreign trade procedures.
- They improve cash flows upon allowing paying customs duties once the goods have been delivered to the end user.

How do the international logistic distribution centers work?

These are private deposits located in ports, in airports, or in specialized logistic infrastructures that can be used to store various types of products, including national or foreign goods and freely available goods pending conclusion of a temporary im-

port or being transformed and/or assembled, which will be re-shipped, imported, or exported. Their benefits include:

- Foreign goods can be stored during one year from the day they enter the national customs territory, extendable for an additional year.
- The importer will not be required to pay customs duties during the time the goods are stored in such centers.
- Revenues obtained from the sale of foreign goods property of foreign companies or persons not residents in the country and being stored in these centers after having been received from a foreign country will not be subject to the income tax.

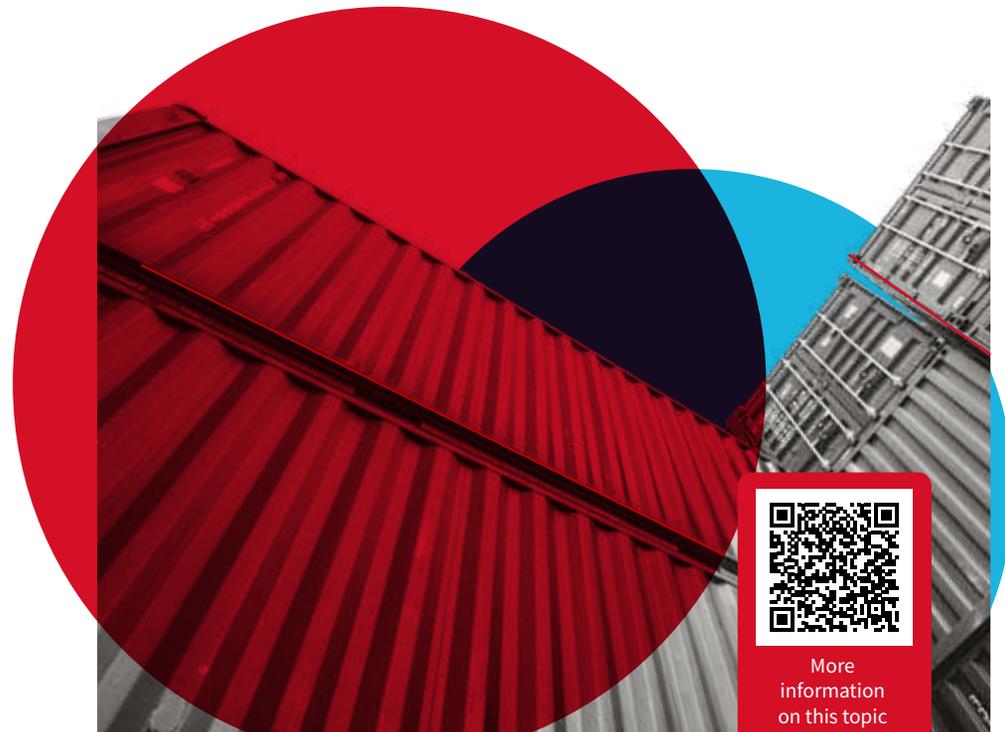
What is an authorized economic operator?

This is a special authorization given by the customs authority to exporters, importers, and customs agencies to facilitate foreign trade operations, considering their recognition as secure and reliable commercial entities. They have the following benefits:

- Consolidated payment of customs duties, sanctions, interests, and rescue values.
- No guaranties required to guarantee compliance with customs obligations.
- Goods are customs cleared in the customs agency facilities.
- Use of special channels and mechanisms for foreign trade activities carried out before the control authorities.
- Reduction in the number of physical inspections and documents for import operations, by DIAN.

How does the Foreign Trade Window operate?

This is the main trade facilitation tool in the country. It manages the users' foreign trade processes before the Government agencies in order to exchange information, suppress procedural redundancies, implement efficient controls, and encourage transparent administrative acts.





006



INCENTIVES
FOR FOREIGN DIRECT
INVESTMENTS

BY:  **ARAÚJO IBARRA**
CONSULTORES EN RECURSOS HUMANOS

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How does the free-trade zone regime work in Colombia?

In Colombia, free-trade zones are defined as limited geographical areas inside the national territory where industrial activities related to goods and services, as well as commercial activities under special customs, foreign trade, and tax norms, are carried out. According to the extra-territoriality principle, goods brought into free-trade zones are not considered inside the national customs territory for the purpose of import/export taxes.

There are various types of free-trade zones according to Colombian regulations:

- Permanent: Those in which multiple industrial or commercial users may be installed.
- Special permanent: Those in which a single industrial user is authorized.
- Offshore permanent: A maritime area declared being a free-trade zone for the development of offshore projects.
- Temporary: A mode created for fairs, seminars, conferences, and exhibitions.



Benefits

- Special income tax rate of 20%.
- No VAT or customs duties applicable to the entry of goods into the country.
- VAT exemption subject to a bimonthly refund from the sale of raw materials, parts, supplies, and finished goods from the national customs territory to industrial users of free-trade zones, or between users of such areas.
- No quotas or other import restrictions are applicable to imports once the goods have cleared the customs duties inside the free-trade zone.
- Possibility of partial processing inside the national customs territory.
- Benefiting from all commercial agreements celebrated by Colombia with other commercial partners.



User certification

Companies interested in qualifying as users of a permanent free trade zone must commit to the following:

 Company real productive fixed assets	 New job creation commitment	 New investment generation commitment
Less than 500 times the current monthly minimum wage	Three direct jobs upon commissioning, two during the following year, and two during the third year	No commitment
Between 501 and 5000 times the current monthly minimum wage	20 direct jobs upon commissioning	1,000 times the current monthly minimum wage within the three years following the qualification
Between 5001 and 30,000 times the current monthly minimum wage	30 direct jobs upon commissioning	5,000 times the current monthly minimum wage within the three years following the qualification
Greater than 30,000 times the current monthly minimum wage	50 direct jobs upon commissioning	11,500 times the current monthly minimum wage within the three years following the qualification

¹Source: Free-trade Zone Law

Once all requirements have been met, the average time required to be qualified as an industrial user is two months.

Once the application has been filed before the Ministry of Trade, Industry and Tourism, the average time required to be qualified as a special permanent free-trade zone is nine months.



What is the mega-investment special regime and how does it work?

This regime is intended for income taxpayers that from January 1st, 2020 to January 1st, 2024 make new investments in the national territory for values equal to or greater than 30 million Tax Value Units in any industrial, commercial, or service activity, with the exception of hydrocarbon evaluation and exploration, generating at least 400 new direct jobs.



Benefits

- A special 27% income tax rate.
- Exclusion from the presumptive taxation scheme.
- Exclusion of the special tax to dividends.
- A special 27% general dividends tax rate.
- Exclusion of the wealth tax.
- Possibility of depreciating assets during a minimum of two years, regardless of the asset service life.
- Possibility of executing tax stability agreements according to which the state will guarantee that the above-mentioned tax benefits will be available during this time.

What are the income tax exemptions?

Special regime for orange economy companies / creative industries

This is a new exemption included in Article 235-2 of the Tax Code, according to which the income generated by the development of technological value added industries and creative activities will be income tax exempted during seven years.

In addition to the income tax exemption, it also applies to free trade zone users, providing they meet the applicable conditions.

Special regime for agricultural-industrial companies

The income from investments increasing the agricultural sector productivity will be tax exempted during 10 years.

This also applies should a relationship exist with farmers associations or individual groups of farmers, or to solidarity economy entities whose objectives or targets relate to the agricultural sector.

VAT deduction for productive real fixed assets

Those responsible for the payment of the VAT have the possibility to deduct their income

tax and 100% of the VAT paid in the purchase, construction, creation and import of productive real fixed assets, including expenses incurred in associated services required to make those assets fit for use.

Science, technology, and innovation tax benefits

These are deductions, exemptions, and special treatment reducing the taxpayers' obligations. It is an incentive created to promote investment and the development of the country. It includes benefits focused specifically on the development of regions, job creation, the promotion of economic sectors, and environmental protection.

There are two cumulative benefits related to investments made in research, technological development, and innovation:

- Deduction of such investments during the year they were made, the taxable rate is the income tax base.
- Right to deduct, from such tax, 25% of the value invested in such projects.

Incentive to environmental investments

In order to obtain the tax environmental benefits, investors can have recourse to the provisions contained in the Tax Code such as:

- VAT exemption.
- Income tax deductions.

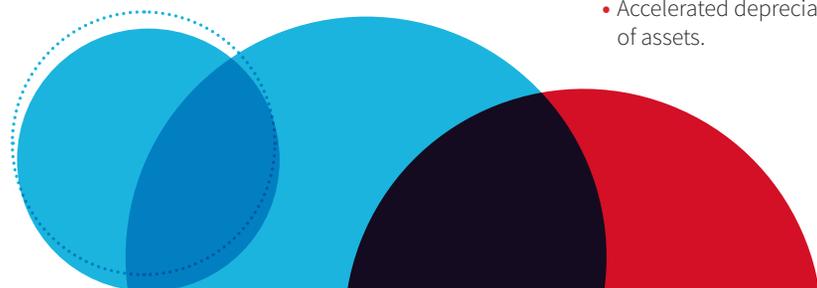
In addition, according to Law 1715 of 2004 regarding non-conventional energy sources and efficient energy management, such as:

- VAT exemption.
- Income tax deductions.
- Customs duty exemption.
- Accelerated depreciation of assets.

Incentives for non-conventional energy sources

The law considers various incentives and instruments for the generation and promotion of non-conventional energy and its efficient management, including the following:

- Special income tax deduction.
- VAT exemption.
- Customs duty exemption.
- Accelerated depreciation of assets.



Which are the incentives for job creation?

200% income tax deduction for employees with disabilities

Title III of Law 1429 of 2010 establishes that companies employing persons that are disabled, displaced or in the process of reintegrating into society will be able to access family compensation funds.

Additionally, Law 361 of 1997 contemplates a deduction on companies' income tax equivalent to 200% of the salary and social security payments disbursed for persons with a degree of disability equal to a loss of at least 25% of their work abilities, during the period for which they applied.

What are the incentives for the import/export of goods and/or services?

VAT reimbursement for service exports

Applies to services provided in the country and exclusively used abroad by companies or persons with no businesses or activities in Colombia. These services are VAT exempted and have a bimonthly refund right.

Special import-export systems - Vallejo Plan

These benefits regard the full or partial exemption of customs duties and VAT, applicable to the import of raw materials, supplies, capital goods, and spare parts for use in the production of goods or in the provision of export services.

The main programs currently included in the Vallejo Plan are:

- Raw materials and supplies.
- Replacement of raw materials.
- Capital goods and spare parts - agricultural-industrial sector.
- Capital and spare parts.
- Capital assets for the export of services.

International logistic distribution centers

Public deposits authorized by the customs authority and located in sea or river ports and in international airports, where goods can be stored, kept, and customized for distribution.

Programs	Types of operations	Decree law 444/67	Benefits	Export commitment
Raw materials	MP	Art. 172	Customs duty and VAT exemption	100%
	MQ - Maquila			Art. 173 b)
	MX - Editorial sector			
Capital goods	BR y RR	Art.173 c)	Customs duty exemption and VAT suspension	70% of production increases
	BK y RR	Art.174	VAT suspension	1.5 times the value of the quota used
Replacement	RP	Art.179	Customs duty and VAT exemption	No export commitment
Services	SS	Decreto 2331/01	Customs duty exemption and VAT suspension	1.5 times the value of the quota used

Revenues earned by foreign companies or natural persons not living in Colombia from the sale of foreign goods stored in international logistic distribution centers are not considered revenues from national sources.

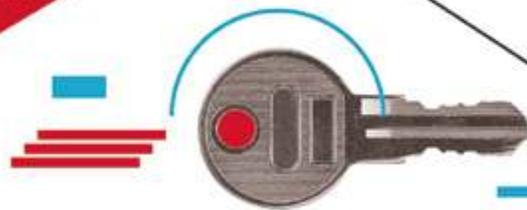




More information
on this topic

07

REAL ESTATE ACQUISITION AND LEASING



BY:  Invest in Bogotá

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Is there a special treatment for foreigners regarding the acquisition and leasing of real estate properties?

In Colombia, the mechanism used for leasing and acquiring real estate properties is the same for Colombian nationals and foreigners. Real estate transactions do not involve any additional taxes or any legal, or financial burdens for foreign investors.

What is the process for the purchase of real estate properties?



1 Preliminary phase - due diligence:

Confirm that the seller is the actual owner of the property and that the property has no defects or limitations that could affect it. Additionally, it is necessary to confirm that the approved use of the urban soil allows for the development of the buyer's economic activities and that the seller has no criminal background, especially in relation to terrorism or asset laundering.



Study of title deeds: Carried out before the property is purchased; it allows the buyer to have certainty on the property's ownership history and the possible burdens that may affect the property.



3 Integrity analysis of previous owners:

Analysis done based on the information available in public and corporate databases, in public listings, in business journals, websites, industry publications, the media, etc. to investigate the background of the sellers and the previous owners of the property.



Land use study: Done to establish the type of use that can be given to the property, i.e. the activities that can be carried out, and the types of construction. This step is required to meet the investor expectations and avoid any type of unforeseeable circumstances possibly affecting the project.



5 Purchase commitment:

It is customary for the parties to make a purchase commitment before the

property purchase agreement is done. This guarantees the performance of a contract that is to be postponed until the parties have taken the necessary legal and administrative steps. It has no cost (unless issued as a public deed before a notary public). An advance payment is made at this time, called "arras" in Spanish.



The agreement should include the following:

- Buyer and seller information.
- Property description and location, describing its boundaries.
- Price and payment terms.
- Date and manner of delivery.
- Date, time, and place where the deed is to be executed.
- Terms for the payment of expenses arising from the contract and its registration.
- Parties' notification addresses.
- Signatures and authentication before a Notary Public.



What should I know about the purchase agreement?

The property purchase agreement should be executed as a public deed before a Notary Public. Usually, the notary officials prepare the public deed draft and submit it to the parties for review.

The applicable cost is approximately 0.3% of the transaction value. Should the parties not reach an agreement on which of them will pay such a cost, the law indicates that it will be shared equally.

In the case of real estate transactions, the ownership is transferred when the purchase public deed is registered before the Public Instruments Registry.

The cost ranges between 0.5% and 1% of the value of the purchase or the property cadastre appraisal (whichever is higher). The so-called registration fees are 0.5% the above-mentioned value, usually paid by the seller.

What should I know regarding the lease agreement?

The urban housing lease agreement is an "agreement according to which two parties make an undertaking, one allowing for the enjoyment of an urban property that will be used for living purposes, in part or in whole, and the other to pay a specific price on such account".

Contract execution can be either verbal or in writing (it is highly recommended that it be done in writing). An agreement between the parties and containing the following essential terms is the only requirement for its formalization:

- Price.
- Property object of the lease:
 - Despite not being required for formalization of the lease agreement it is advisable for the parties to include the following in their agreement:
 - The payment terms.
 - The manner and the date in which the property object of the agreement is to be delivered.
 - Public utility agreements.

- Related aspects or uses.
- Contract duration.
- Designation of the person responsible for the payment of public utilities.

What should I know about real estate trusts?

A trust is a legal agreement according to which a person, called the trustor, transfers the legal ownership of one or more specific properties or assets to another person, called the trustee, the latter undertaking to manage or sell them in order to achieve a certain purpose, in their own benefit or to benefit a third party called the beneficiary.

On the other hand, a real estate property trust is a trust agreement according to which a real estate property is transferred to the trust company for its management and/or the development of a real estate project, in accordance with the instructions contained in the agreement. Subsequently, the trust transfers the completed units to the contract beneficia-

ries. These types of projects usually offer several advantages:

- The real property ownership is transferred to an independent trust, managed by a trust company overseen by the Colombian Superintendency of Finance.
- The independent trust is independent from the owner's and the trust's assets a circumstance that allows for the assets to be used exclusively for the real estate project.
- Being an independent trust, the risk of the project developer's assets being seized is reduced.



How do the municipal regulations work?

In Colombia, municipalities should have the necessary autonomy to establish the legal norms governing their territories, the use of the land, and the protection and defense measures required for the cultural and ecological heritage found in their territories. Consequently, a Territorial Land Use Plan (POT by its Spanish acronym) is required to regulate the development and use of municipal land.

The Territorial Land Use Plan (POT by its Spanish acronym) is a document prepared by the municipal administration containing a number of objectives, guidelines, policies, strategies, programs, acts, and norms established in order to guide and manage the physical development of the territory and land use. However, it has various objectives, of which the most important are:

- Improve the quality of life of those living in the area and benefit the development of the city.
- Provide citizens access to common services (roads, parks, schools, hospitals, etc.).

- Ensure the rational use of the land, guaranteeing environmental sustainability and protecting the region's assets.
- Protect the community against natural hazards.

The territories of the various municipalities and districts are classified as urban, rural, and urban expansion areas. The above classification determines the type of uses that can be given to the land:

- Urban
- Urban expansion
- Rural
- Sub-urban
- Protected

How do urban building licenses work?

A planning permission is an authorization required prior to land urbanization and division, for the construction and demolition of buildings, for the intervention and occupation of the public space, and for the division of land properties.

This authorization is issued by the urban curator or the competent authority, in accordance with the POT norms. It involves various classifications:



- **Urbanization permit:** A prior authorization required to create public and private spaces in one or several land properties located inside the urban area, to construct public roads, and to develop infrastructure and public household utility projects. This type of work aims to adapt these areas for urban purposes in accordance with the POT, providing the various necessary elements, and subdividing them for the subsequent construction of buildings.



- **Partitioning license:** Allows creating public and private spaces in one or several land properties located inside the rural and sub-urban area. It also allows executing the work

required for the roads and the infrastructure required to guarantee the provision of residential services and the use of the resulting land properties in accordance with the respective POT.



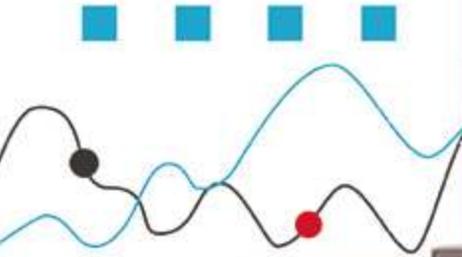
- **Building permit:** A prior authorization required for construction and to develop traffic areas and common areas in one or several land properties, in accordance with the POT, the Special Plans for the Management and Protection of Cultural Heritage Assets, and other applicable norms. These licenses specify uses, floor areas, volumetrics, accessibility, and other technical aspects approved for the respective building.



More information
on this topic

08

LABOR SYSTEM



BY:  Godoy Córdoba

Littler

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How does the labor system work in the Colombian territory?

There is no federal system in Colombia, thus labor norms apply throughout the national territory and are issued by the Colombian Congress. In the public sector case, some conditions apply to some public servants, which however do not apply to private sector companies.

What should I know about the labor system in Colombia?

The norm regulating labor relationships in the private sector is the Work Code (Código Sustantivo del Trabajo or CST by its Spanish acronym), which is divided into two main parts: the first one regulates Individual Workers' Rights and the second regulates issues related to Collective Work Rights.

• Part regulating Individual Workers' Rights:

- General principles
- Individual employment contract
- Probation period
- Employment contracts with special types of workers
- Work and workplace regulations

- Salaries
- Working hours
- Mandatory rest periods
- Common benefits
- Special benefits
- Rules protecting benefits
- Health and safety at work

• Part regulating collective work rights:

- Labor unions
- Collective work conflicts
- Collective labor agreements and labor union agreements

How do employment contracts work?

The CST is the norm that contains the types of employment contracts on which the relationship between the worker and the employer is established. There are two types of employment contracts:

Depending on the type of agreement:

- Verbal contract
- Written contract

Depending on the duration:

- Fixed term
- Indefinite term
- Service provision contract
- Occasional, casual or temporary work contract

Salary

This is an essential element of any employment contract. According to article 23 of the Work Code, it is the remuneration received for the services rendered by the worker. In Colombia there are two types of salaries:

- **Ordinary salary:** A payment remunerating ordinary work. Whenever applicable, some additional elements should be added to this payment, such as overtime, work done during mandatory rest periods, commissions and a percentage of sales if agreed in the contract, customary bonuses, permanent lodging expenses and in general any customary or occasional payment considered a direct remuneration of the employee's work.

- **Integral salary:** A remuneration that, in addition to the ordinary salary comprises employee benefits, severance payments and their interests, service bonuses, extraordinary bonuses, subsidies, additional payments for night shifts, extraordinary, or holiday and Sunday work payments, in-kind payments, and in general everything included in this category, except for holidays.

Salary exception agreements: The employers and the employees may explicitly agree that some cash payments will not be considered salary, such as meals, accommodations, clothing, and extraordinary bonuses.



Per diem: Expenses incurred should the worker have to travel to a location other than their original work location. They include travel expenses, meals, and related expenses.

Social benefits

Payments the employer is required to make to workers, in addition to salaries. They cannot be waived or negotiated below the values indicated by the law. They are the following:

- **Severance subsidy:** A benefit paid by the employer, which is deposited to a severance fund selected by the employee. Interests accrue on such deposits. The benefit paid by the employer is equivalent to one month of salary for every year of work or proportionally thereof.

- **Severance interests:** The amount the employer pays the worker equivalent to 1%/month of the applicable severance, calculated from January 1 to December 31 of each year.

- **Service bonus:** Equivalent to 15 days of salary, paid by the employer to the worker twice every year. Calculated every six months, it is paid proportionally to the time worked.

- **Shoes and work clothing:** An in-kind payment the employer makes to the worker every four months, to purchase the proper clothing and shoes required for the work. Employees earning less than two minimum salaries are entitled to this subsidy.

- **Transportation subsidy:** Paid to workers earning less than two minimum legal salaries.

Working Hours

Time during which an employee dedicates his/her effort, skills, and competences to the work they were hired for. The CST regulates working hours as follows:

- **Ordinary:** Working hours agreed between the employer and the worker. In the absence of a collective agreement, they are the maximum legal working hours.

- **Maximum legal working hours:** 8 hours a day, 48 hours a week. There are some exceptions, such as supplementary or overtime work, according to which the additional effort by the worker is remunerated. Overtime compensation is paid for each hour in excess of the ordinary shift, as follows:





- **Day work:** work carried out between 6 AM and 9 PM.



- **Night work:** work carried out between 9 PM and 6 AM.

The following table shows the rate of such additional payments:

Type of overtime	% Extra-Payment
Night	35% over the day work value
Additional day of work	25% over the ordinary daily pay
Additional night of work	75% over the ordinary daily pay

* Source: Work Code (Código Sustantivo del Trabajo)

How does the probationary period work?

Its purpose is for the employer and the employee to familiarize themselves with their qualities and conditions during a specific period of time and to assess the convenience of continuing with the labor relationship. In no case will this time exceed two months.

During this time, which should be agreed to in writing, either party may terminate the work contract without advance notice and without any compensation.

How do social security and non-fiscal payments work?

Social security consists of a number of institutions, norms, and procedures implemented for the progressive realization of programs and plans the State and society have developed in order to improve the life quality of the population. They aim to protect people from contingencies that affect their economic capacity and health, with the aim to ensure the individuals' well-being and their integration in their community.

In order to be entitled to the benefits of the social security system, affiliation and contributions are required.

- General Pensions System
- General Health System
- General Labor Risks System

Non-fiscal payments are payments some companies have to make to certain entities for every worker they have hired. Their purpose is financing the government social activities.

- 4% to the compensation fund or the family subsidy fund

- 3% to the Colombian Family Welfare Institute (ICBF)
- 2% to the National Learning Service (SENA)

What is the cost of an employee with a minimum salary in Colombia?

Concept	%	Amount (COP)
Minimum salary (articles 145 to 148 of the CST)		\$828,116
Transportation subsidy (Law 1 of 1963)		\$97,032
Health (Article 204 of Law 100 of 1993)	8.5 %	\$70,390
Pension (Book I of Law 100 of 1993)	12 %	\$99,374
ARL (Level I) (Decree 1295 of 1994)	0.52 %	\$4306
Non-fiscal (Decree 923 of 2017)	9 %	\$74,530
Bonus (Articles 306 to 308 of the CST)	8.33 %	\$77,065
Severance (Articles 249 to 258 of the CST)	8.33 %	\$77,065
Severance interests (Law 52 of 1975)	12 % (on severance values)	\$9248
Vacation (Articles 186 to 192 of the CST)	4.17 %	\$34,532
Personal elements (Article 230 of the CST)	5 %	\$41,406
Total		\$1,413,064

* Source: Work Code (Código Sustantivo del Trabajo)



What types of leaves of absence are there?

- **Maternity leave:** 18 paid weeks around childbirth.
- **Paternity leave:** Eight working-days paid leave. The Health Provider Entity (EPS) the worker is affiliated to makes this payment.
- **Household emergency:** There is no specific definition of what this is; however, common sense dictates that it is a serious circumstance affecting the worker's family circle. No norm regulates the length of this type of leave.
- **Mourning license:** Created by Law 1282 of 2009, it grants the worker five business days of paid leave of absence, should

a member of their close family group passes away.

- **Other licenses:** Include the worker peers' funeral, performance of official duties (such as acting as a trial juror), time off during an election day and time off work for union duties.

How can an employee be justifiably dismissed?

1. Identify the justified reason.
2. Obtain sufficient evidence demonstrating the employee's fault.
3. Notify the worker so that they may present the evidence required in their defense.
4. Receive the worker's evidence, evaluate it, and decide accordingly.

5. Should the decision be to dismiss the worker, deliver the dismissal letter, clearly indicating the reason.
6. When the employee's job falls under the "stability protection" category, the employer must request an authorization from the work inspector.
7. Terminate the work contract and pay the applicable salaries and benefits.

How do collective rights work?

Labor unions are associations comprised of a minimum of 25 workers from public or private companies, grouped together to defend social, economic, and professional interests related to their work.

They can be:

- Enterprise unions
- Industrial unions
- Craft unions
- General unions

All labor unions are entitled to freely prepare their bylaws, which should be filed before the Ministry of Work.

- **Legal rights of labor union members:** Defined in article 405 of the CST, this gives certain workers the right to not be dismissed, be subject to worse work conditions, or be transferred to other areas of the same company or to a different municipality without a justified reason previously accepted by a labor court.

- **Collective bargaining:** A process of negotiation between the employer and a labor union. It starts with a formal petition, previously approved by the labor union assembly. A circumstantial jurisdiction is established once the bargaining process starts, meaning that, until the collective conflict is resolved, the workers having

submitted the petition or being part of the labor union cannot be dismissed unless for justified reasons that have been verified by a court.

How does outsourcing or intermediation operate in Colombia?

• Simple intermediaries:

Employer representatives hiring services to perform work for and on behalf of the employer. There are two types of intermediation:

- Simply getting two parties in contact for them to execute the work contract.
- Grouping together or coordinating work that uses the facilities, equipment, machinery, tools, or other work elements from the employer, for their own benefit and for ordinary, inherent, or related activities. In this type of intermediation, the workers are subordinated to the intermediary on behalf of the employer.

• Employment agencies:

Entities created in order to facilitate job-hunting in the public or private sector. This type of intermediation is allowed by Law 50 of 1990, regulated by Decrees 3115 of 1997 and 722 of 2013.

• Independent contractor:

When the owner or beneficiary of a project hires a third party (an independent contractor) to perform the work or provide a service for a specific price, assuming all risks, working with its own means and with technical and directive freedom and autonomy. The following elements should be demonstrated:

- The contractor has technical and directive autonomy, which means they are responsible for the workers, both an managerial and contractual levels.

- The contractor assumes the risks of the service being provided.
- The contractor performs the work with their own means, including their own personnel.



09



INTELLECTUAL PROPERTY

BY: GÓMEZ-PINZÓN
DESDE 1991

WATCH THE VIDEO



What is protected by intellectual property rights?

All creations produced by the human intellect. Such protection is provided by special regulations that grant the respective owner with the rights of exclusive use.

Intellectual property is divided into two main categories:

- Industrial
- Copyrights

What is protected by industrial property?

Industrial property protects intellectual creations such as inventions, utility models, industrial designs, and trademarks, among others. Industrial property rights are recognized through its registration. In Colombia, the registration of intellectual creations is carried out through the Superintendence of Industry and Commerce (SIC, Superintendencia de Industria y Comercio), the authority responsible for industrial property issues.

Industrial property rights are land rights only applicable in Colombia.

In Colombia, industrial property is controlled by two regulations:

- Supranational Regulation: the Andean regulation, notably Decision 486 of the year 2000.
- The Internal legislation: the SIC memo, the 2011 Law 1455 through which the Protocol Concerning the Madrid Agreement Regarding the International Registration of Brands and its Regulations, the 2012 Decree 19, the Commerce Code, the Criminal Code, among other applicable regulations were approved in Colombia.

What is protected by the distinctive signs?

Distinctive signs are representations used by businesspeople in their commercial activities in order to identify themselves and the products and/or services offered by them. They also serve to differentiate themselves from competitors. They may include brands, commercial slogans, trade names, business logos, and geographical indications.

Brands

Signs used to distinguish products or services in the market, which are susceptible to graphic

representation. They may consist of various types:

According to their perception capability:

- Nominative brand: consists of letters, numbers, and words.
- Figurative brand: composed only of a logo that cannot be pronounced.
- Mixed brand: composed of a nominal element and a logo, or a nominal brand written with special calligraphy.
- 3-D brand: which has the three dimensions (width, height, and length).
- Scented brand: protects a specific aroma.
- Sound brand: composed of a sound.
- Color brand: composed of a color delimited by a shape.

According to their function:

- Trade brand: indicates a specific business origin.
 - Collective brand: identifies products or services of a collective.
 - Certification brand: identifies the quality or the special characteristics.
- According to its recognition:
- Common brand: receives no special consumer recognition.
 - Notary brand: receives special recognition amongst its consumers.



Commercial slogans

Signs composed of a word, phrase, or caption that are used to complement a brand. Their main purpose is to act as a reminder. To be registered, they should comply with the same requirements as brands.

Trade names

Distinctive signs identifying an entrepreneur in the market with respect to their competitors. As opposed to the brand or the commercial slogan, they do not identify a product or a service but the entrepreneur commercializing or producing them.

Business logos

Signs that identify a commercial establishment which, when seen from the outside, help consumers to physically identify it. The Business logo rights are acquired and maintained with their use in the market.

Geographical indications

Provide protection to the geographical origin of certain products that have special characteristics and are recognized by consumers. Two types of geographical indications can be protected in Colombia:

- Indication of origin: an expression, image, or sign

What rights does the brand owner have after registration?

- 10-year brand protection, renewable every 10 years.
- Exclusive use of the brand and its commercial exploitation related to the brand's products and/ or services.
- Preventing third parties from using or exploiting the distinctive sign without authorization.

which helps to recall and name a specific location.

- Designation of origin: a geographical indication used to name a product from a specific geographical area. The product's quality, reputation, and other characteristics are derived exclusively from the geographical environment.

What are new creations and how do they operate?

Refers to creations of the human being that provide solu-



tions to technical problems and can be protected by invention patents or utility model patents. In addition, all products created by human beings, whose differentiating element is their external appearance, can be protected by industrial designs.

Invention patents

Industrial property rights that allow its holder to prevent third parties from reproducing the patented element (products or processes). Patents grant an exclusion right that arises from an agreement between the State and the applicant, provided it meets some requirements:

- Novelty: there is nothing similar.
- Inventive level: the differences with existing technologies are not obvious.
- Industrial application: can be used or reproduced in an industry.

An invention patent provides protection during 20 years from the day the patent application is filed before the Superintendence of Industry and Trade, after it is approved by such entity.

Utility model patents

Protect products allowing for a better or different operation, utilization, or fabrication of the product and provide some new advantages.

They should meet the following two requirements:

- Novelty: there is nothing similar and the differences with previous technologies give it a technical or improved advantage.
- Industrial use: it can be used or reproduced in an industry.

Utility model patents provide protection for a period of 10 years from the date the application is submitted to the SIC.

Rights granted by the patent:

Prevent third parties from manufacturing, using, or importing the product or procedure covered by the patent.

In order for an invention patent or utility model patent to continue operating during their term of duration (20 and 10 years respectively), the annual maintenance charges must be paid.

Industrial designs

According to Decision 486 of 2000, an industrial design is the particular appearance of a product that results from the formation of a number of lines or color combinations, or by any external two-dimensional or three-dimensional shapes, outline, texture, or material, without changing the aim of product.

Industrial designs should meet the following requirement:

- Novelty: there is nothing similar.

Rights granted by an industrial design

An industrial design registration is valid for 10 years from the day the application is filed with the SIC.

How do the priority claims of brands, patents, and industrial designs work?

The priority system is established in article 4 of the 1883 Paris Agreement and is included in the Andean legislation in Article 9 of Decision 486. Priority rights allow the protection of the industrial property rights in various countries, keeping the first application submission date.

Industrial property rights are negotiable and transferable through various forms, such as sales contracts, hand overs, license agreements and the royalties that come with them.

- Hand overs: An agreement should be made whereby the parties agree on the hand over. However the document should be registered with the SIC in order for it to be opposable to third parties.
- Licenses: With a license, the holder authorizes another person, called the licensee, to lawfully use such industrial property rights according to the terms stated.
- Charges and forced sales: An industrial property asset is a movable property that comprises the company

assets, so that it can be used as collateral to support obligations, and if necessary, can be seized and auctioned by court order.

How does the regulation of industrial or business secret work?

Business secret include all the information that is secret. Hence, information that has not been disclosed or that is not generally known or easily accessible by third parties, that can be used in com-

mercial activities and that gives a competitive advantage over its competitors.

The requirements are that:

- The information must be secret.
- The information must have some commercial value, as it is secret.
- Reasonable steps have been taken to keep such information as secret.

The owner of the industrial or business secret will be protected against the disclosure, ac-



quisition or use of the secret in a manner contrary to fair trade practices by third parties.

Industrial or corporate secrets have no duration determined by the law, their duration is determined by meeting the requirements already mentioned. They are protected by Decision 486 of 2000 from the Andean Community Commission and by Law 256 of 1996, among others.

How do copyright and associated rights work?

The copyright protects all original creations (understanding as original when the author has print his personal stamp) of an artistic, literary, or scientific nature which may be disclosed or distributed in any way. The work is protected from its creation. According to Decision 351 of 2000, the author can only be a natural person and there may be several types of work:

- Original: no adaptations or changes were made to other work already created.

- Derived: the result of a change made to pre-existing work.
- In collaboration: where two or more people produce the work at their own initiative and risk.
- Collective: done by several authors, through initiative and guidance of a natural or legal person who coordinates, disseminates, and publishes it under his or her name.

Rights granted to the authors and the rights holders

- **Moral rights:** they protect the author's personal interests on the work. Therefore, they are rights that cannot be sold, waived and are perpetual rights. The Colombian legislation includes the following: paternity right, integrity right, authors right, modification right, and withdrawal right.
- **Patrimonial rights:** through these, the author or rights

holder can authorize or prohibit third parties from exploiting their work. The Colombian legislation includes the following: reproduction, public communication, distribution, and transformation. They may be transferable through different modalities, by cause of death or due to a legal provision. Among the different forms of transmission of patrimonial rights, there are two that may be of interest: contract for the hand over of economic rights and commissioned work.

The term of protection for natural persons is the author's life plus 80 years after his or her death (Article 21 of Law 23 of 1982). For legal persons, the term of protection is 70 years as of the end of the calendar year of the first authorized work publication.

How do rights granted to performers and phonographic producers —and related rights— work?

The performing artists and phonographic producers are the holders of related rights since they are responsible for distributing certain types of work. The rights granted to performers and phonographic producers are:

- The performing artists may authorize or prohibit their interpretations from being publicly transmitted live, authorize or prohibit the recordings of their work, and may receive a fee if their work is broadcast publicly.
- The phonographic producers may authorize or prohibit the reproduction and distribution of their records, and receive a fee for the use of their records.



More
information
on this topic

10



PUBLIC PROCUREMENT REGIME

BY: CREMADES & CALVO-SOTELO
ABOGADOS

WATCH THE VIDEO



In Colombia the regulatory framework for public procurement is fairly stable. Its purpose is to include best purchasing practices, providing technology access to selection processes, and measures required to prevent corruption. In order to identify the best propositions, for most of the selection processes, the Colombian legal scheme considers the following:

- Enabling requirements that allow to determine what are the best proposals in order to continue with the process.
- Specific requirements that can be classified in order to rate the proposals.

Who are the parties in a state contract?

- The contracting State entity.
- The contractor, who may be a natural person (national or foreigner), a legal person (national or foreign) or a combination of the above, under cooperation agreements

which in Colombia are called consortiums or joint ventures.

How are consortiums and joint ventures created?

Law 80 of 1993 takes into account the corporate reality, based on which two or more persons join efforts to participate together on a specific project, without this entailing to create a new legal person. Two mechanisms are explicitly recognized, whereby two or more people can jointly submit a proposal for the award, execution, and performance of an agreement, being jointly and severally liable for all obligations arising from both the proposal and the agreement.

All members will be affected by all acts, facts, and omissions. However, there are differences regarding the liability levels:

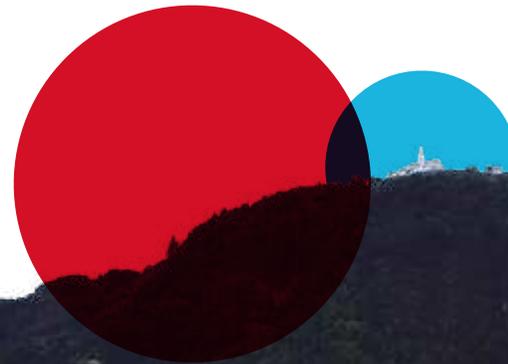
- Consortiums: All members are jointly and severally liable for breaches and damages brought to third parties.
- Joint ventures: The members are liable depending on their participation, no individual member is jointly or severally liable for the others' acts according to their participation.

Does the general state contracting regime apply to all state entities?

Even though state entities have to comply with Law 80 of 1993

and Law 1150 of 2007 in their contractual activities, the law excludes some of them from their application in what is known as the special state contracting regime. Under this special regime, state entities may apply different rules to their contractual activities, as contained in the norm that created the special regime and in their contracting manuals.

The special regime applies to some specific entities and sectors indicated by the law, such as public household utility services, the energy sector, the state social entities, telecommunications, the Central Bank, higher education, Ecopetrol, and others.



What does the state contracting regime say with regards to foreigners?

- State entities should provide national treatment to the goods and services of other states where there are already commercial agreements applicable to contracting processes, to the goods and services, for which there is national treatment for reciprocity, and to the services of the Andean Community of Nations (CAN).
- In Colombia, all selection processes are international to the extent that foreigners are allowed to participate directly, even though they do not have a branch office or an affiliate in the country.
- State entities must verify the evaluation requirements and the persons' representation in Colombian territory, regardless of being domiciled in the country or not, since those who do not have it should demonstrate that they have an attorney domiciled in the country.

- All public documents submitted by foreign natural or legal persons in the contracting processes should be duly apostilled or legalized, according to their country of origin. The documents must be translated by a Colombian licensed translator in the case that there are documents that need accreditation and are written in a language other than the Spanish language.

What are the inability and incompatibility regimes?

Inabilities are circumstances that prevent a person from executing a contract, for legal or constitutional reasons.

Incompatibilities are limitations related to the execution of an agreement that involves a specific entity.

These inabilities and incompatibilities include various types of prohibitions, applicable to both public servants and private persons. Their purpose is to provide transparency, objectivity, and fairness to public contracting.

Upon being limitations related to contracting with state entities, they should be explicitly defined by the law and should not be extensively interpreted.

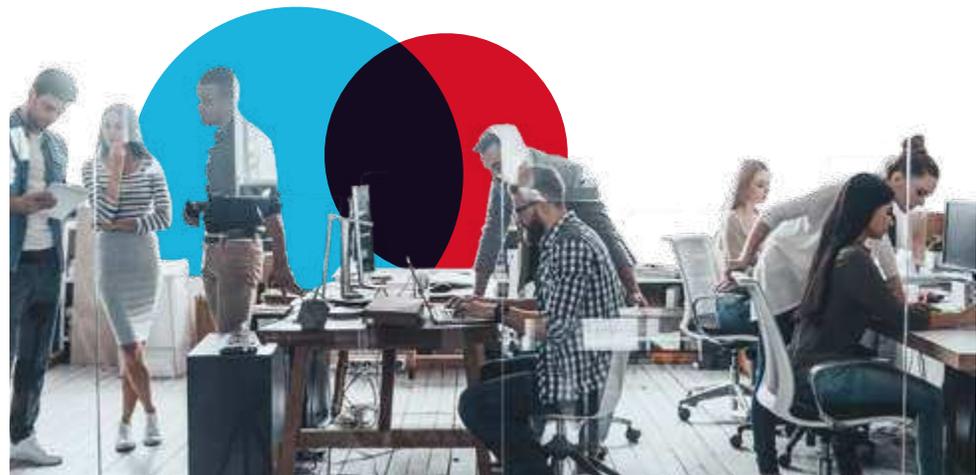
What is the Unique Proponents Registry (RUP)?

This is the mechanism through which those interested in participating in the state contracting processes include in a public registry the information related to the company, to its financial aspects, and to its experience, so that the state entities will be able to verify the legal, financial, and organizational capacity and the experience of all proponents submitting proposals under a contracting process.

- All national or foreign natural or legal persons, domiciled in the country and wishing

to participate in state contracting processes and seeking a contract award should have a valid RUP.

- The RUP is processed through the Chamber of Commerce with jurisdiction in the proponent's main domicile.
- According to the law, participants should annually renew this registration before the fifth business day of April, otherwise they risk their registration is declared void.
- Foreign natural or legal persons with no domicile in the country are not required to have the RUP. However, they should submit their legal, financial, and organizational documents in order to meet requirements contained in the tender documents.



In which cases is the RUP registration not required?

- Direct contracts.
- Contracts for the provision of health services.
- Contracts whose values do not exceed 10% of the lower value of the public entity (lower value).
- The sale of state properties.
- Contracts for the acquisition of products from or to be used for agricultural purposes offered by legally established product pools.
- Contracts from industrial and commercial state entities and from mixed economy companies.
- Concession agreements of any type.
- For natural or legal persons not domiciled in the country.

What are the modalities for the selection of a contractor?

The purpose of all state contracting processes is identifying the most favorable offer. Accordingly, and in order to guarantee the principles of freedom, equality, transparency, free competition, and objective selection, in Colombia there are various types of selection processes:

- **Public tender:** A public process carried out by a state entity that allows all those being able to meet requirements related to their legal, organizational, financial capacity and their experience, and any other selection criteria, to present their respective offer and participate in the selection process in equal conditions.
- **Abbreviated selection:** An objective selection process used in cases in which—due to the characteristics of

the contractual object, the contracting circumstances, the value, or the destination of the goods, work, or service—simplified processes are available in order to guarantee the contractual selection process efficiency. It is only available in some specific cases.

- **Merit selection process:** Used for processes in which the professional capacities of those developing the project should have a higher weighting than the price of the services provided.
- **Direct contracting:** This type of process does not require a public call and contractors do not need to have RUPs. In that order, state entities can enter into contracts without the need for a competitive selection process, thereby saving time in the acquisition of goods and services. This modality is only applicable in some specific cases.
- **Minimum amount contracting:** This type of process can be undertaken when the value of the contract is equal or less than 10% of the lesser

amount of the contracting entity. This modality includes an expeditious and special procedure.

State contracts are personal, therefore once they have been celebrated, they cannot be transferred without a prior authorization from the contracting entity.

Is there a digital platform for monitoring the contractual processes?

All state entities must publish their contracting processes in the Electronic Public Contracting System (SECOP), so that everyone is informed and can participate, as well as make comments.

The SECOP I and the SECOP II currently exist. The former is the platform in which public entities publish information related to their selection processes, its purpose being to publish the information related to all state contracting processes. The latter is transactional and allows for online management of all contracting processes, the respective entities and the suppliers interacting electronically.



A Colombian state virtual shop can be found within the SECOP. It is an electronic transactional trade platform allowing the buyers to manage their contracting process transactions upon acquiring goods and services through Price Framework Agreements, goods and services under Demand Aggregation Contracts, and goods according to the Large Surfaces Minimum Value mechanism.

What are the elements of the state contract?

A state contract is a bilateral written act in which public resources are compromised. It is a law applicable to the contracting parties, consequently being the main document governing their contractual relationship. According to article 32 of Law 80 of 1993, state contracts are all obligation-generating legal acts performed by the entities mentioned in this document and considered in the private law or in special norms, or arising from the exercise of free will.

- **Term and execution time:**

Term means the total contractual term, which includes the execution and liquidation phases for the contracts requiring them. The execution time is the contractual execution time, which is part of the contractual term.

- **Increases:** Except for concessions and other public-private association forms, the norm indicates that state contracts will not contain value increases in excess of 50% of their initial value.

- **Guaranties:** Their purpose is covering any possible risk. In Colombia, these guaranties are required from the proponents and the company which is awarded the contract.

Proponents participating in a selection process should deliver a performance bond, in general its value being 10% of the proposal value. To cover possible risks, the proponents and the contractors may opt for any of the following: an insurance policy, a mercantile trust, or a bank letter of indemnity.

Natural or legal foreign persons not domiciled or not hav-

ing branch offices in the country will be able to deliver standby letters of credit issued abroad.

- **Exceptional powers:** Powers granted to the state entity in order for the latter to fulfill its duties in the best possible way, or prevent and control any possible damages, ensuring the continuity in the provision of the service.

These are required in the following cases:

- Contracts whose aim is to carry out an activity involving antitrust state activities.
- The provision of public services.
- The exploitation of, and concessions related to, state goods.
- Work contracts.

- **Fines:** Their purpose is to force the contractor to comply with its obligations by means of pecuniary sanctions in case of delays or partial breaches.

The penalty clause is a type of fine and a contractual regulation mechanism that forces the parties to comply with their contractual obligations, preventing, sanctioning, or indemnifying them as applicable. In state contracting, it relates to the valuation

of the damages brought to the defaulted contract.

State contracts are personal, therefore once they have been celebrated, they cannot be transferred without a prior authorization from the contracting entity.

- **Payment terms:** An advance payment may be agreed upon, as well as partial payments, without the value exceeding 50% of the contract value.
- **Dispute settlement:** The general rule is that any controversies that are unable to be resolved by mutual negotiations between parties, will be resolved by the contentious administrative jurisdiction. The contracting parties may resort to arbitration, either national or international, which should be agreed on in the contract arbitration clause.
- **Settlement:** Once the contractual term has ended, in continuing performance agreements and others, where applicable, the

contract will be settled. The objective is to make a final balance and settle the parties' accounts. This will be done by mutual agreement, unilaterally or legally before a court of law.

How does the public-private associations (APP) regime work?

APP contracts are defined as private capital participation instruments consisting of an agreement between a state entity and a natural or legal person in private law for the provision of public goods and their respective services. It involves the withholding and the transfer of risks between the parties, as well as payment mechanisms related to the infrastructure and/or service availability and service level.

- The APP contracts are used when the state entities assign to a private investor, the design and construction of an infrastructure and associated services, or the construction, repair, improvement, or equipment, in addition to activities involving the operation and maintenance of the infrastructure required for the provision of public services.
- They are executed at the expense and risk of the concessionaire with a remuneration being considered. The concessionaire will be entitled to obtain resources at the expense of the project's economic exploitation, receive payments from public resources, or for any other remuneration.
- The maximum term is 30 years, including possible extensions. However, they may have longer terms provided that they have been previously approved by the National Economic and Social Policy Council (CONPES).
- An integral cost-benefit study is required before the project can be started, taking into account its economic, environmental, and social effects and with special emphasis on the objective selection principle.

According to the World Bank, Colombia is the third most competitive country in the world in terms of regulation for financing works of APP.

The Movistar Arena in Bogota was built using an APP.



11



FINANCIAL REGIME

BY: **Baker
McKenzie.**

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What is the Colombian financial and securities' system scheme?

The Colombian financial system is based on a specialized banking scheme, i.e. a scheme in which every activity from the financial sector and from the securities market can only be

performed by an entity especially appointed to carry out the corresponding activity, so that the same entity cannot provide all the possible financial sector and securities market financial services.

The country's financial system traditionally divides into the intermediated and the disintermediated sectors.

What is the intermediated sector?

It involves the activities that are carried out by bank entities, insurance companies, and supplementary or related service companies, comprised of:

- Entities collecting public resources with deposit or savings products, which are subsequently loaned to their clients.
- Financial companies that, despite obtaining public savings resources, due to the nature of their activities are considered entities providing services that are supplementary or related to their financial activity.
- Entities specializing in deposits and electronic payments.
- Insurance companies, capitalization companies, and the insurance and reinsurance intermediaries.
- Special financial entities.

What is the disintermediated sector?

Commonly known as the securities market, this is the sector that brings together all entities

and activities in which no professional intermediation exists among the economy's surplus and deficit sectors, so that the former and the latter are directly supported by the entities that provide the infrastructure and the associated services in order to make direct negotiations.

As opposed to the intermediated sector, the securities market is defined by the activities rather than the agents participating in it. These activities include the following:

- Securities offering and issuance
- Securities intermediation
- Investment fund management
- Securities deposit and management
- Administration of negotiation systems or registration of operations related to securities, futures, options, and other derivatives
- Securities offsetting and liquidation
- Risk ratings
- Self-regulation
- Supply of information to the securities market



In Colombia, entities have limited faculties depending on their nature.

What are the main financial sector products and how are they obtained?

Credit entities

- **Savings and deposits:** The main products are savings accounts, checking accounts, term deposit certificates, term savings deposit certificates, and electronic deposits.
- **Loans:** While the bank entities and the financing companies can only use resources received from the public in order to loan to the economy's real sector, financial corporations may also invest such resources in the economy's real sector.

Financial service entities

Entities providing asset management services under mercantile trusts or trust accounts. In the former, the assets' ownership is transferred to an independent trust for their management, while in the latter only the possession is transferred, with the client continuing to be the owner.

- **General warehouses:** They provide merchandise storage services, issue pledge bonds, and provide customs intermediation. They may also offer loans to cover the expenses related to such services.
- **Pension and severance management companies:** They manage the country's pension savings and severance resources, the latter being some sort of unemployment insurance. Their investment services are classified depending on the risk the saver wishes to assume, which may be either low, moderate, or high.
- **Exchange and financial service intermediation companies:** They provide services related to foreign currency operations in the country.
- **Insurance companies and insurance intermediaries:** Entities authorized to offer insurance coverage in the country.

Which are the main security market products and services and how are they obtained?

Investments in the securities market made through a stock-broker can be made under:

- Commission agreements (orders are provided by the investor directly)
- Third party portfolio management (investments are made by the commission agent according to instructions provided by the client)
- Securities management.

Bank accounts and requirements for opening them

- **Checking account:** Allows the client to deposit cash amounts and checks to a bank's checking account and partially or fully manage their balances by drawing checks or in other ways. No minimum interests are accrued.

- **Savings account:** No checks can be received or drawn; minimum interests are accrued.
- **Electronic deposits:** These instruments can be offered by loan entities and specialized deposit and electronic payment entities. They allow managing and keeping balances electronically and provide for a registration mechanism simpler than that of checking or savings accounts.
- **Opening of accounts in Colombian pesos for non-residents:** Non-residents may receive on-demand deposits, in checking accounts, in savings accounts, electronic deposits, and term deposits, in Colombian legal tender, without having to report them to the Central Bank. These accounts may have a general or exclusive use:
 - General use accounts: Accounts opened for any purpose, except for loans in legal currency or for exchange operations that have to be channeled, with some exceptions

such as imports, exports, and capital investments.

- **Exclusive use accounts:** Checking and savings accounts that can only be used for one of the following activities:
 - Direct foreign investment operations
 - Omnibus accounts allowing to make foreign capital portfolio investments (i.e., in the securities market)
 - Centralized foreign security deposit accounts
 - Accounts for external loan operations in legal currency

- **Opening of foreign currency accounts for residents:**

Persons living in Colombia and Colombian residents may open accounts in foreign currencies. Resources deposited in such accounts cannot be used for exchange operations that have to be channeled through the exchange market.

Is the crowdfunding mechanism regulated?

Decree 1357 of 2018 from the Ministry of Finances and Public Credit regulates crowdfunding, which allows the owners of small-scale productive projects (the beneficiaries) to access funds either through capital or

debt and also allows the qualified and non-qualified investors (the contributors) to participate in such financing.

Investments in such cooperation projects should be made with specialized platforms managed by the authorized collaborative financing entities, under the surveillance of the Colombian Superintendency of Finance and responsible for informing the public of the characteristics of projects being financed.



Limits to investments and crowdfunding-issued securities

- **Non-qualified investors cannot invest more than 20% of their annual revenues or their assets.**
- **Per-project investments will not exceed 10,000 minimum legal monthly current salaries (approximately USD \$2,601,833) should qualified investors participate in the project, and 3,000 salaries (approximately USD \$780,560) per project, should nonqualified investors participate in it.**

The regulation of this mechanism is progressive since:

- It allows the beneficiaries to offer on a large-scale their securities without prior authorization from the Colombian Superintendency of Finance pertaining to public security offerings.
- It allows concentrating the investors and the issuers' payments without the platform administrator having any legal risk of its activity being considered illegal, large-scale, and customary fund raising.

In Colombia cryptocurrencies are regulated?

In Colombia, acquiring and selling crypto assets is not prohibited, unless the buyer or the seller is subject to restrictions related to their investment regime according to the authorities' orders or regulations. Additionally, certain regulations have to be strictly met, such as those prohibiting the unauthorized collection of public resources or those related to the asset laundering or financing of terrorism prevention.



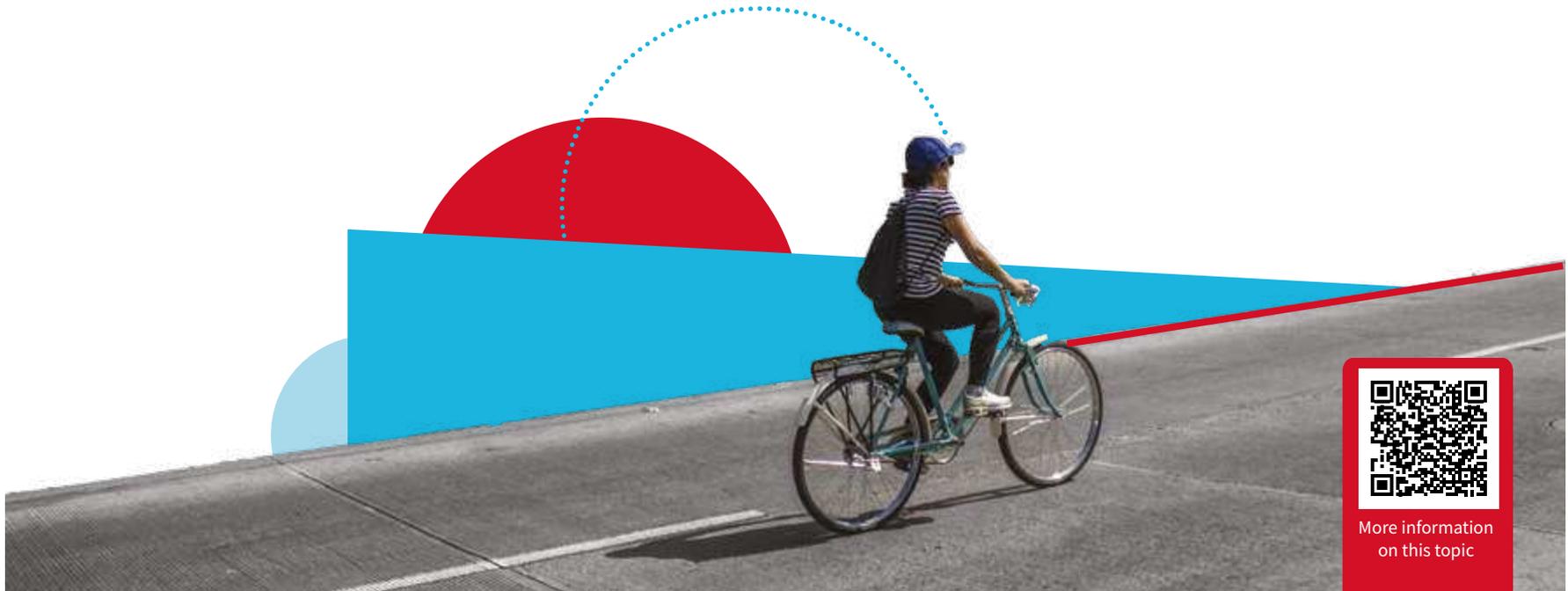
Despite no integral regulation having been issued in Colombia regarding crypto assets, some entities have made efforts to clarify their nature. The Central Bank has emphasized the fact that crypto assets are not legal tender, not foreign currency, not authorized as a means to perform exchange operations considered in the exchange regulation, and cannot be sold or issued by the exchange market intermediaries, such as the commercial banks. On the other hand, the Colombian Superintendency of Finance, the authority supervising the financial system, has stated that crypto assets are not securities, in the capital market's technical sense.

Additionally, the entities, subject to the above Superintendence surveillance, are not authorized to keep in their custody, invest, intermediate, or operate with them, as well as not being able to lend their infrastructure for activities involving such types of assets. Finally, it warns the public in general of the risks these types of assets have and stresses the fact that it does not support them institutionally, as well as the absence of a legal regulation and of any official coverage.

From the tax point of view, the Colombian Tax and Customs Administration (DIAN),

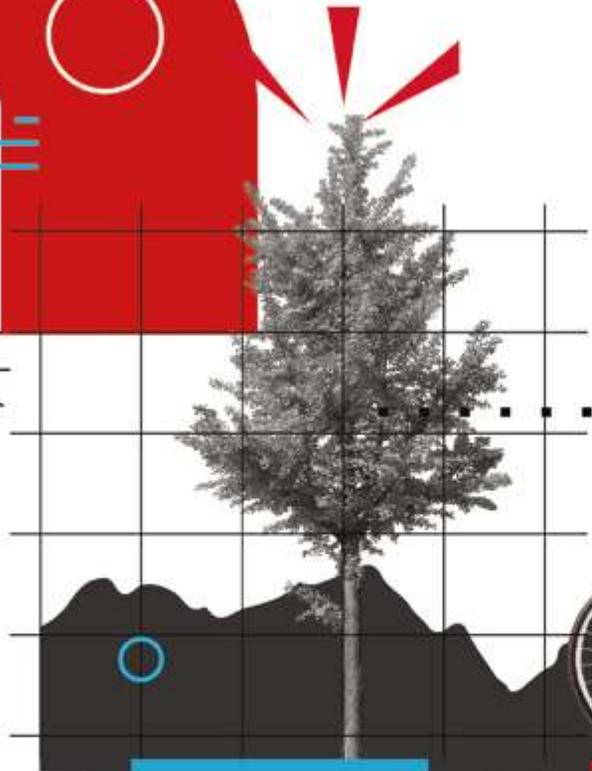
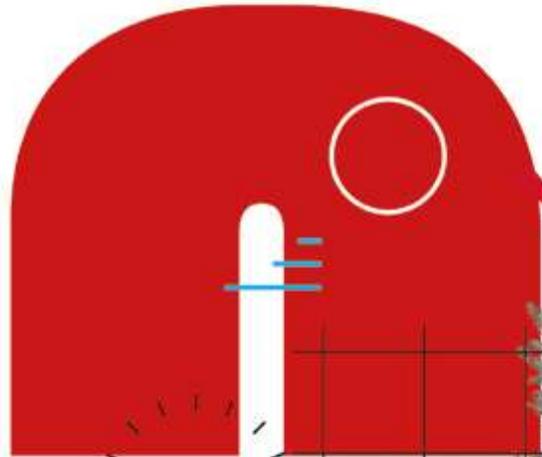
the entity responsible for overseeing and controlling proper compliance with the tax and customs obligations, has concluded that "virtual currencies are part of the persons' assets and may result in revenues being received".

It is then clear that no authority has reached an agreement regarding an integral regulation of the crypto assets issue or their aspects, either inside or outside the financial market. It is evident that the lack of a general framework does not facilitate a clear understanding of crypto asset activities.

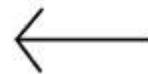
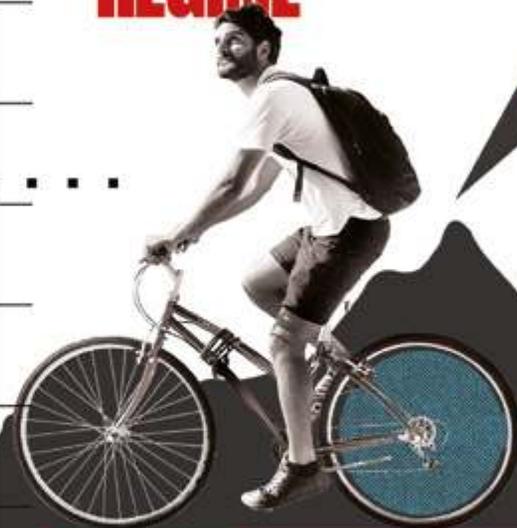


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12



ENVIRONMENTAL REGIME



BY:

Philippi
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El estudio de sostenibilidad

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What should I know about the environmental regime in the Bogota-Region?

In general, those interested in developing projects in Bogota or in the Department of Cundinamarca must apply for various environmental permits and/or authorizations, which may vary depending on the project's location and destination.

In Bogota, the District's Environmental Secretary (SDA) is the competent entity regulating and monitoring the application of environmental regulations, while in the municipalities of the Department of Cundinamarca some are regulated by Corporación Autónoma Regional de Cundinamarca (CAR) and others by regional environmental authorities such as Corpoinoquia and Corpoguavio.

In Colombia, the main environmental authorities are the Ministry of the Environment and Sustainable Development as the agency in charge of the en-

vironmental policy, the National Environmental Licenses Authority (ANLA), the SDA, and CAR.

What is and how does the environmental license work?

It is the authorization granted by the relevant environmental authority to implement a project, work or activity—in agreement with the law and regulations—that could produce a serious damage to the renewable natural resources, to the environment or introduce important modifications to the landscape. This procedure should be submitted to the National Agency of Environmental Licenses (ANLA), to the Regional Autonomous Corporation (CAR) or to the District's Environmental Secretary (SDA), depending on the characteristics of the project to be developed.

There are some sectors which require the application of an environmental license, such as the mining, hydrocarbons,

and the electric sectors, as well as for public infrastructure or pesticides (production and import, among others).

What should I know about the implementation of air-related projects?

- **Emissions permit:** Issued by the competent environmental authority (CAR or SDA) to a natural or legal person in order to discharge particles into the air, within the established limits.
- **Contingency plan of atmospheric emissions control systems:** According to article 79 of Resolution 909 of June 5 of 2008, all those who have an emissions control systems should prepare a control system contingency plan, which they should activate during any control system stoppage.

- **Noise:** Resolution 627 of 2006 from the Ministry of the Environment and Sustainable Development implemented the national norm related to noise sources and environmental noise, which includes the allowed parameters, the noise measuring technical and methodological procedures, and the guidelines for presenting reports, and other conditions on this matter.

Noise is considered one of the environmental impacts that most directly affects the population. It causes hearing and extra-auditory problems.

The Sumapaz moor, in Bogota-Region, is the largest moor in the world.



- **External visual advertising:**

This is a mass means of communication whose purpose is informing or calling attention by means of visual elements. Law 140 of 1994 contains the characteristics and conditions it should meet; however, norms existing in each municipality regarding this matter should be taken into account.

In Bogota, the SDA issued the Resolution 931 of 2008 stating that the registry of external visual advertising is the authorization granted for this type of activity. The authorization will be granted if the applicant complies with the applicable norms and the Secretary confirms the requirements are met.

What should I know about water related projects?

- **Water concessions:**

Concessions are required for natural or legal persons and government entities wishing to use the water for purposes other than the current purposes recognized in the law. For this, they

should submit a written application to the competent environmental authority.

- **Program for the efficient and waste-free use of water (PUEAA):**

Applies to users requesting a water concession. It is a tool focused on optimizing the use of water, and comprises projects and actions that users requesting water concessions are required to prepare and implement in order to use water in a sustainable manner.

- **Groundwater exploration permit:**

Public or private natural or legal persons wishing to explore in search of underground water must submit a permit application to the competent environmental authority with the necessary requirements to obtain a water concession and the conditions in Article 2.2.3.2.16.5 of Decree 1076 of 2015.

- **Effluent permit:** This permit should be obtained as a result of a project, elements, substances, or compounds contained in

liquids that are to be spilled on the ground or into a body of water. Requirements vary depending on the type of discharge: on the ground or into a body of water.

In the special case of Bogota, the SDA has established that all users discharging non-household residual waters, with the exception of those discharged to the public sewage system, must register their effluents to such environmental authority. Non-household residual waters are divided into two categories: environmental interest substances (compounds, elements, substances, and parameters indicating physical-chemical and biologic pollution that allow evaluating the quality of the effluent and its effects on the water resources, especially those indicated in Table B of Resolution 3957 of 2009 from the SDA), and sanitary substances (chemical substances and elements and compounds subject to causing damages or possibly being toxic to the human health or to any water life forms, contained in Decree 1076 of 2015, Section 4, Effluents, Article 2.2.3.3.4.1).

- **Riverbed occupation permit:**

Should be requested in order to use the channel of water currents or deposits that could be possibly affected by any work to be done.

What should I know about waste regulation?

- **Ordinary:** Times and places indicated by the public utilities company should be taken into account for all waste handling and disposal activities. In the case of Bogota, the SDI provides special guidelines for handling and disposal of some types of waste, in case any of the following activities are undertaken:

- Cosmetics and cleaning
- Tannery
- Pharmaceuticals
- Printing and lithography
- Laundry
- Timber



- Metalwork
- Paint
- Chemical substances and compounds
- Textiles and fabric dyeing
- Car washing

- **Hazardous:** The following aspects must be considered should the activity generate waste that, due to its corrosive, reactive, explosive, toxic, flammable, infectious, or radioactive characteristics, could cause direct or indirect damages or unwanted effects to human health and/or to the environment:
 - Being registered as a hazardous waste generator, should more than 10 kg/month be generated.
 - Having an integral hazardous waste management plan.
 - Handling the waste through a third party having the respective environmental license.

In the case of Bogota, the SDA issued the Resolution 1188 of 2003 adopting the special norms and procedures manual related to handling of waste oil in the Capital District. It also has a norms and procedures manual for handling this type of waste.

- **Post-consumption plans:**

- Waste is sent to facilities allowing for its processing, valuation, treatment, or final disposal, the current ones being related to:
- Fungicides
 - Expired medications
 - Batteries or accumulators
 - Used tires
 - Waste from lighting fixtures
 - Waste from electric and electronic appliances

- **Forest use permit:** It is required in case of use of natural forests located in public or private territories, that are characterized as unique, persistent and domestic in accordance with Article 2.2.1.1.3.1 of Decree 1076 of 2015.

What should I know regarding the environmental restrictions?

- **Forest reserves:** A Subtraction Feasibility Evaluation for National Reserved Forest Areas should be made for projects involving forest reserves. This is a process according to which the environmental authority appraises the possibility of lifting the forest

reserve legal limitation in Law 2 of 1959 in order to develop a project, work, or activity.

- **Bans:** A restriction and regulation of the use of certain species, taxonomic groups, or types of vegetation found in the regional or national territory. In case of bans, the respective authorization should be requested to temporarily use, sell, and/or transfer the species, taxonomic groups, or vegetation affected by the ban at a regional or national level.
- **Protected areas:** A subtraction can be requested to develop a project according to the regulations applicable to such areas, with the

exception of natural national and regional parks, in which some projects cannot be developed since they are subject to a more restrictive environmental legislation.

The following are some of the protected areas in Colombia, which are part of the National System of Protected Areas (SINAP):

- **Private protected areas:**
 - The civil society natural reserves
- **Public protected areas:**
 - The National Natural Parks System
 - The protecting forest reserves
 - The natural regional parks
 - The integrated management districts
 - The soil conservation districts
 - The recreation areas





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COMPETITION REGIME

.....



BY: GÓMEZ-PINZÓN
GRUPO 1942

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What should I know regarding competition law in Colombia?

It seeks to protect free economic competition, which guarantees economic conditions such as efficiency, the consumers' well-being, and the possibility to participate in the market under freedom and equality conditions. The Colombian legal norms contain various norms, whose purpose is guaranteeing the protection of such values.

In strict terms, the free competition regime in Colombia is composed of:

- Law 155 of 1959, which establishes a general prohibition regarding anti-competitive practices.
- Decree 2153 of 1992, which contains a non-comprehensive list of unilateral acts and agreements considered unfair competition, as well as conducts that are considered an abuse of the dominant position in the market.
- Law 256 of 1996, whose purpose is protecting free and fair competition, contains a list of unfair competition practices, coupled with a general prohibition to incur in such practices.

- Law 1340 of 2009, contains the main objectives of the right to competition and regulates the benefits for collaboration programs, as well as the norms for controlling corporate integrations, among others.

Which is the highest authority regarding competition regime?

The Superintendence of Industry and Commerce (SIC) is the highest authority in terms of free economic competition. In case of non-compliance of the regime, there are some sanctions whose charges have been increased after the issuance of Law 1340 of 2009:



- Currently, sanctions can be up to 100,000 minimum legal monthly salaries, or if it is a greater sanction, up to 150% of the offender's profits.
- Natural persons may also be sanctioned in case of violations to the competition regime without prejudice to a sanction imposed to the offending company consisting of pecuniary fines of up to

2,000 minimum monthly salaries, which cannot be paid by the company.

- These sanctions can be applied notwithstanding the existence of additional criminal sanctions.

Collusions in tenders and contracting processes with the State are anti-competitive practices and offenses against the public administration.

What are and how do the restrictive competition practices work?

In general, the regime prohibits all types of practices, procedures, or systems aimed to

limiting free competition and setting unfair prices. The above is commonly known as the general prohibition. However, the competition regime also contains a non-comprehensive list of unfair practices. They are classified into agreements, practices, and abuse of the dominant position.

Agreement

All contracts, agreements, arrangements, arranged practices, or practices consciously parallel among two or more companies. Despite the term "company" being used, the free competition regime also includes natural persons, who may be subject to monetary sanctions.

There are various types of agreements:





• **Explicit:** Agreements and understandings such as contracts or arrangements, according to which two or more competitors reach an explicit agreement to eliminate risks inherent to market competition. The above could occur through emails exchange, trade union meetings involving competitors, by executing collaboration agreements, etc.



• **Tacit:** Coordinated behaviors that cannot be explained by economic reasons other than the existence of coordination activities among competitors, as would be the case in a scenario in which a product becomes scarce and a company decides not to increase their prices.



• **Conscious parallelism:** Practices showing that two companies acted in a conscious and synchronized manner, not competing and generating a uniform behavioral pattern.

Upon investigating a practice, the SIC also considers issues additional to explicit agreements among the competitors.



• **Horizontal:** Agreements amongst competitors at the same level of the productive chain.



• **Vertical:** Agreements between companies belonging to different levels of the productive chain.

• **Agreements against free competition (listed in article 47 of Decree 2153 of 1992):**

- Direct or indirect price setting.
- Determination of discriminatory sales conditions with third parties.
- Market distributions among producers or distributors.
- Assignment of production or supply quotas.
- Assignment, distribution, or limitation of the supply sources of productive raw materials.
- Limitation of technical developments.
- Conditioning a product's supply to the acceptance of

additional obligations that, due to their nature, were not included in the original deal.

- Not producing a good or not providing a service, or affecting their production levels.
- Collusions in tenders and contracting processes resulting in the distribution of contract awards, competitions or establishment of the proposal terms.
- Preventing third parties from accessing markets or trading channels.

Act

Practices of those performing economic activities. Despite including a broad definition, only three practices are considered acts contrary to free competition. However, it should be noted that this is a non-comprehensive list since other acts could violate such general prohibition.

• **Acts against free competition (listed in article 48 of Decree 2153 of 1992):**

- Violations of norms related to advertising, as contained in the consumer protection regulation.
- Influencing a company to increase their product or service prices or to desist in their intention to lower them.
- Refusing to sell or provide services to a company, should this be considered a retaliation to its price policies.

Abuse of the dominant position

In Colombia there are no norms prohibiting a company from having a dominant position in the market. What is sought is preventing the company having such position from abusing it.



- **Practices that can be considered an abuse of the dominant position (as contained in Decree 2153 of 1992:**

- Decreasing prices below the production costs to eliminate one or several competitors or prevent their entry or expansion.
- Use of discriminatory conditions to equivalent operations, placing a consumer or a supplier in a disadvantageous condition compared to other consumers or suppliers with similar characteristics.
- Those whose purpose or effect is to condition the supply of a product to the acceptance of additional obligations that, due to their nature, had not been included in the original deal, notwithstanding what has been established by other norms.

- Sale to a buyer under different conditions from those offered to other buyers, should the intention be to reduce or eliminate competition in the market.
- Sale of a product or provision of a service anywhere within the Colombian territory at different prices to those offered in other parts of the Colombian territory, should the intention or the effect of this be to reduce or eliminate the competition in that area and should the price not correspond to the structure of transaction costs.
- Obstructing or preventing third parties from accessing the markets or the trade channels.

What are and how do corporate integrations work?

Corporate integrations involve an operation carried out under a le-

gal mechanism through which two or more companies will be subject to the same control body resulting in the loss of their independence to permanently act in the market as independent economic entities.

The free competition regime in Colombia also includes a system to control corporate integrations. Such mechanism requires certain companies to inform the relevant authority, or request its authorization, to implement an integration operation, provided that the companies carry out the same economic activity or participate in the same productive chain.

The SIC may authorize the operation unconditionally, or authorize under certain conditions whose purpose could be to diminish or eliminate the competition risks that such operation could involve. It may also object the operation should it find that its purpose is affecting free competition.

A 'Gun Jumping' situation will be deemed to exist should the parties integrate themselves before the SIC authorizes such integration. In this case, the SIC will not only be authorized to apply a pecuniary sanction but to order that the operation be reverted.



What are the Superintendence of Industry and Commerce exceptions as the integration control authority?

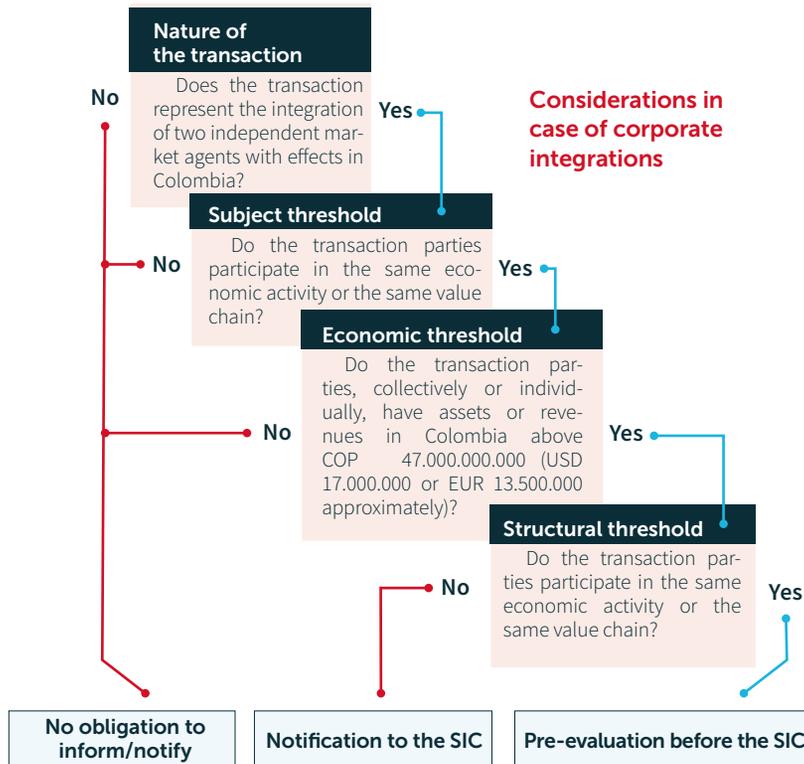
- Integration operations exclusively among companies subject to the surveillance of the Superintendency of Finance (SFC).
- Operations exclusively among entities under the surveillance of the Civil Aeronautics Administrative Units (Aerocivil).

What is and how does the unfair competition regime work?

The purpose of this system is to protect the healthy business practices, the commercial good faith, industry and trade honest practices, and the consumers' freedom of choice. Law 256 of 1996 contains a non-comprehensive list of conducts considered unlawful competition.

- Clientele diversion acts.
- Unlawful disorganization acts.
- Confusion acts.
- Deception acts.
- Discredit acts.
- Comparison acts.
- Imitation acts.
- Exploitation of a third





- party reputation.
- Secrecy infringements.
- Acts leading to contractual terminations.
- Violation of norms.
- Unlawful exclusivity pacts.

Requirements:

For any of the above practices to take place, the objective scope of application, the subjective scope of application and the territorial scope of application should be considered.

- **Objective scope of application:** Requires that the conduct
 - be carried out within the market,
 - be carried out with competitive purposes, which are assumed should the act be adequate to maintain or increase the market participation of those who perform it, or of a third party.

- **Subjective scope of application:** Means that the unfair competition norms do not apply exclusively to the traders but to every market participant. It also means that for an unfair competition practice to exist it is not necessary to have a competitive relationship between the offender and the affected person.

- **Territorial scope of application:** Unfair competition norms apply to acts mainly affecting the Colombian market. As such, it is possible that the practice may have an origin outside the national territory, nonetheless, unfair competition norms will be applicable.




More information on this topic

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CORPORATE INSOLVENCY REGIME



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As in most the legal systems throughout the world, Colombia has two mechanisms that allow reaching these objectives:

- **Reorganization:** It aims, through an agreed arrangement, to protect viable companies, normalizing their commercial and credit relationships through the operational and administrative restructuring of their assets and liabilities.
- **Legal liquidation:** It seeks a prompt and orderly liquidation, aiming to make an optimal use of the debtor's assets.

Upon Law 1116 becoming effective from 2007 and as of late 2018, 4,027 insolvency processes were reported in Colombia, of which 2,402 were organization processes and only 1,625 liquidation processes.

How long does a corporate insolvency process take?

In theory, a reorganization process should not take more than six months, eight months for a liquidation process, provided there are no circumstances that force extending this period, including aspects involving resources, incidents, annulments, and others. However, in practice this process takes close to two years.

The judge will establish the applicable fees and expenses, based on the following criteria.

Law 1116 was created based on the guidelines issued by the United Nations Commission of International Trade Law.

What is corporate insolvency?

This is a process whose purpose is to protect legal companies — both national companies and branch offices of foreign companies — performing activities in Colombia, should they have economic problems and face difficulties to meet their obligations towards their creditors.

This regime provides guarantees for the effective payment

of the creditor debts, focusing on the protection of companies towards normalizing their commercial and credit relationships.

What should I know about the corporate insolvency regime?

It was established in Colombia by Law 1116 of 2006, as part of an initiative to protect loans and protect the companies in their condition as an economic unity and job creators.

How are fees established?

Promoter

Category of the entity being reorganized	Per assets range*	Limit
A	Over USD \$12,420,000.00	Not to exceed USD \$121,440.00
B	Over USD \$2,760,000.00 and up to USD \$12,420,000.00	Not to exceed USD \$66,240.00
C	Up to USD \$2,760,000.00	Not to exceed USD \$33,120.00

Liquidator

Category of the entity being reorganized	Per assets range*	Limit
A	Over USD \$12,420,000.00	Not to exceed USD \$248,400.00
B	Over USD \$2,760,000.00 and up to USD \$12,420,000.00	Not to exceed USD \$248,400.00
C	Up to USD \$2,760,000.00	Not to exceed USD \$124,200.00

* In the original source the numbers are presented in Colombian mandatory minimum salary per month (SMLV by its acronym in Spanish). One SMLV is equivalent to approximately USD 276, depending on the official exchange rate.

Who is covered by this regime?

- Legal entities and individual traders doing businesses in the national territory.
- Branch offices of foreign companies.
- Independent trusts performing corporate activities.

Who is excluded from this regime?

- Health Promoting Entities Administrators of the Social Security Subsidized Regime in Health, and Providers of Health Services.
- Stock and agricultural exchanges.
- Institutions surveilled by the Financial Superintendence of Colombia. The above does not include companies that only issue stocks subject to control by such Superintendence.
- Entities surveilled by the Solidarity Economy Superintendence performing financial, savings, and loan activities.
- Public capital companies, industrial and commercial state companies, and public companies from any territorial level.

- Public law entities, territorial institutions and decentralized entities.
- Public utility companies.
- Non-commercial natural persons.
- Any other legal entities subject to special regime for business recovery, liquidation, or administrative intervention for their management or liquidation.

Which is the competent authority for insolvency proceedings?

The purpose of these processes is settling the debtor's pending payments. The Superintendence of Companies acts as the judge in processes involving companies, one-person companies, and branch offices of foreign companies. As a preemptive measure, in the case of debtors, also natural commercial persons. In the rest of the cases the competent authority will be the civil court where the debtor is domiciled.

A promoter is the natural person participating in the negotiation, analysis, diagnosis, and preparation of the reorganization agreements and in the issuance or publication



of financial, administrative, accounting, or legal information regarding the entities being reorganized.

A liquidator is the natural person acting as the administrator and legal representative of the company being liquidated.

Which are the credit priorities?

In general, creditors in Colombia may demand the sale of all the debtor's assets until the debt is paid in full, provided they are sufficient. Otherwise, payment shall be made proportionally should there be no special circumstances according to the priority rules that indicate the order and the manner in which each of them should be paid.

What exceptions are there regarding credit priority?

- **Administration expenses:** Obligations arising after the insolvency proceedings start, and are typically related to the usual business expenses.

- **Legally postponed credits:** Credits paid once all other loans have been paid.

- **Payment of small debts:** The judge may authorize their early payment regardless their relevance or type of obligation, provided they do not exceed 5% of the debtor's external liabilities altogether.

- **Exceptions in the Secured Transactions Law:** No additional claim shall be accepted or continued after the starting date of the reorganization proceedings, nor any other debt collection process against the debtor, should they relate to assets required for their economic activity, provided they have been identified in the information attached to the process initiation request as being necessary for their economic activity.

Any other enforcement of a security right related to goods not required for the debtor's economic activity may be continued or started based on the guaranteed creditor's approval.

- **Burdens applicable to insolvency proceedings:** Under the Colombian model, the debtor has the burden of proof and has to demonstrate the debt so that the creditor may be able to challenge it. In legal liquidations, the creditors have the burden of proof regarding the existence and the value of their obligations before the liquidator, which they should do within the 20 days following the day the notice informing of the opening of the legal liquidation process is issued.

What are the necessary assumptions for the initiation of insolvency proceedings?

The following is required:

- **Payment default:** A 90-days past due trigger applies to defaults involving two or more loans made to two or more creditors, or two claims for performance filed by two or more creditors for payment obligations. The accumulated value of these obligations should at least represent 10% of the debtor's total liabilities



as reflected in the financial statements of the debtor as of the date when the request is filed. This condition applies to both the reorganization process and the legal liquidation process.

- **Imminent default:** Should the debtor demonstrate the existence of circumstances, in the market or inside its organization or structure, affecting or prone to seriously affect the normal compliance with obligations with due date of one year or less. This only applies to legal persons and will not by itself be sufficient to initiate a legal liquidation process.

Who can start insolvency proceedings?

- For payment defaults, the respective debtor or one or several of their defaulted creditors, otherwise officially by the superintendence overseeing the respective debtor or activity.
- In case of an imminent default, this should be requested by the debtor or by a plural number of external creditors not related to the debtor or their partners. This can be done also as a result of the request submitted by the foreign representative of a foreign insolvency proceeding.
- In the case of legal liquidation processes, all of the above can request it, except for the creditors individually since in this case this should be

jointly requested by the debtor and a plural number of creditors holding at least 50% of the external liabilities.

What are the effects of starting a reorganization process?

- In the case of new and ongoing execution processes no claim for performance or collection process against the debtor, may be accepted or continued.
- No restitution processes may be started or continued in relation to real or personal properties used by the debtor to perform their corporate objectives provided the reasons provided is the default on the payment of royalties, rent, or any other consideration corresponding to lease agreements.
- There may be no unilateral contract termination or administrative expiration against the debtor, unless the process declaring termination was started priorly.

What are the effects of starting a legal liquidation process?

- Dissolution of the legal entity.
- Suspension of functions of the corporate body and the legal person's oversight.
- Removal of all administrators.
- Termination of continuing contracts deferred execution contracts, or instant execution agreements, deemed unnecessary protect the assets, as well as the termination of commercial trust agreements or fiduciary mandates involving own assets and required to cover the debtor's - or third party - obligations they may have in their constituent capacities.
- Termination of work contracts with the corresponding indemnification payments to the workers.
- Termination of fiduciary mandates and mercantile trust agreements executed by the debtor to guarantee their own obligations or third party obligations with their own assets.

An insolvency proceeding will be terminated with a reorganization and liquidation agreement, with the effective judicial decision or with the execution of a reorganization agreement.



- Suspension of the prescription time and non applicability of the actions' expiration related to obligations formalized or enforceable against the debtor or their co-debtors and guarantors, among others, prior to the start of the legal liquidation process.
- Enforceability of all the subsequent debtor payment obligations.
- Prohibition to the administrators, associates, and controlling parties regarding availing of assets being part of the debtor's net worth.

How does the exclusion of goods operate?

This is a process that applies to the liquidation initiated by the asset holders which, despite not being property of the debtor, are included in the process. Regarding this, Law 1116 includes a number of assets that, according to the legal norms, cannot be part of the assets being liquidated.



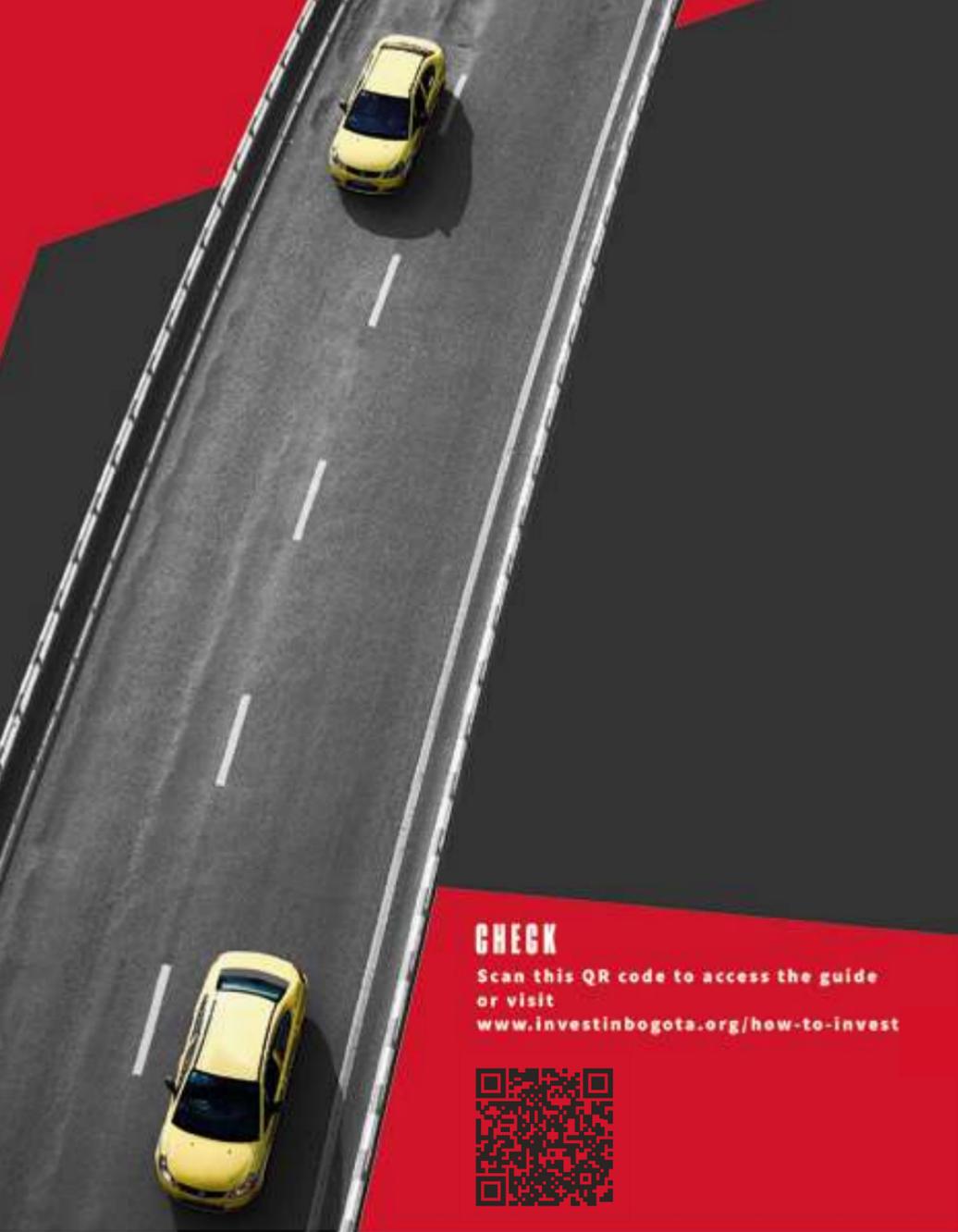
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