



Bogota Foreign Investment Guide - 2025

Chapter 18.

- ▶ **Cross-Border e-Commerce**
During the operation

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1.

Definitions¹

Electronic Commerce has been defined internationally as the “sale or purchase of goods or services that is carried out through computer networks with methods specifically designed to receive or place orders²”. However, Cross-Border Electronic Commerce (“CBEC”), in addition to the above definition, is that in which goods, sold by sellers in one jurisdiction, cross borders and customs, to be imported by a buyer located in another jurisdiction of destination. In this way, allowing the sale and purchase of goods to materialize at a global level.

¹ Chapter prepared taking into consideration: Castrillón Velasco (2022).

² Definition of E-Commerce taken from: OCDE (2019).

³ “Whereby the Consumer Statute is enacted, and other provisions are issued”.

⁴ Ibidem, p. 58.

⁵ “Whereby provisions related to the Customs Regime are issued in development of Law 1609 of 2013”.

⁶ “Whereby a tax reform for equality and social justice is adopted and other provisions are enacted”.

2.

Regulatory framework in Colombia

The most relevant regulations regarding CBEC is composed by the following:

- **Law 1480 of 2011³**. Determines the consumer protection rules on CBEC (please refer to section 6 of this Chapter).
- **CONPES No. 4012 of 2020**. Public policy about e-commerce, which aims to “boost e-commerce in Colombia, in companies and citizens to increase the generation of social and economic value in the country⁴”.
- **External Regulatory Circular DCIP 83 of December 13 2021**. Circular of the Colombian Central Bank that regulates the provision of “aggregator of services of payment providers” by residents and non-residents, which is relevant for the CBEC.
- **Decree 1165 of 2019⁵**. Articles 253 and subsequent regulate the modality of postal traffic and express shipments. This regime seeks the agile development, with reduced costs and simplified procedures, of import and export operations.



- **Free Trade Agreements (“FTA”)**. The clauses of some Agreements of FTAs reduce tariffs and even other taxes in order to encourage the development of CBEC.

- **Law 2277 of 2022⁶**. Articles 53 and 73 modify the Colombian Tax Statute (Decree 624 of 1989), establishing a tribute for having “significant economic presence in Colombia” and modifying the regime to benefit from the de minimis rule respectively.

2.1.

Modifications introduced with the tax reform

Through Law 2277 of December 13 of 2022, a tax reform for “equality and social justice” was approved by the Colombian Congress. Article 57 of this Law, which adds to Article 20-3 of the Tax Statute created the so-called “taxation for significant economic presence in Colombia”, whose main characteristics are:

- Non-residents or entities not domiciled in the country with **significant economic presence in Colombia** are now subject to income and complementary taxes, which is calculated on income from the sale of goods and/or rendering of services in favor of clients and/or users located in the country.

- In the case of services related to CBEC, the income tax liability is conditioned to the following rules:

(I) For the commercialization of goods and/or services, it shall be understood that a non-resident person or non-domiciled entity shall have significant economic presence in Colombia when:

a) It maintains deliberate and systematic interaction in the Colombian market; that is, with clients and/or users located in the national territory.

b) During the previous taxable year or in the current taxable year, it has obtained or obtains gross income of 31.300 Tax Value Units (in Spanish, “UVT”) or more for transactions involving sale of goods with clients and/or users located in the Colombian territory.

(II) The provision of digital services from abroad are subject to income tax, being necessary to meet the above conditions persons who provide, among others, **online services through intermediation platforms.**

However, a non-resident or entity not domiciled in Colombia may choose to declare and pay in the income tax form, a rate of 3 % on the total gross income derived from the sale of goods and/or provision of digital services, from abroad, sold or provided to users located in the national territory.



3.

CBEC: principles of its customs and foreign trade system

CBEC operations are usually carried out through marketplaces: web pages that serve as online sales platforms that connect the seller (which may be in any country in the world) with the buyer (in Colombia for import operations).

Investors who intend to initiate CBEC operations through marketplaces should consider the following aspects:

3.1.

Postal traffic and express mail regime (“PTEM”)⁷

PTEM is a modality to carry out import and export operations, which pursues the agile development of the operation through a simplified procedure in comparison with ordinary import operations or for consumption, or final export, in the case of exports⁸. This modality requires compliance with specific requirements in terms of dimensions and value of the package to be imported or exported. This regime is of great relevance for CBEC operations, since:

- It has an abbreviated procedure.
- It is optional to declare a specific tariff subheading⁹ for imported products.
- It is subject to a single tariff charge corresponding to ten percent (10 %) of the value of goods.
- May benefit from the de minimis rule (as explained below) in terms of tariff and VAT.

⁷ This section was made considering the following source: Castrillón Velasco (2022).

⁸ For imports, requirements are established in article 254 of Decree 1165, while for exports, they are found in articles 386 to 396 of the same decree.

⁹ The tariff classification is the numerical code that characterizes a good in the Harmonized Commodity Coding System and in the Colombian customs tariff. **Import requirements depend on the tariff subheading of the product.**

3.2.

De minimis rule

It is an international prerogative adopted by Colombia, which allows the import of goods under the PTEM regime without requiring to pay any type of customs duties and in some cases VAT, under the following assumptions:

- The value of the import is equal to or less than two hundred United States dollars (USD 200).
- The import must be made through the PTEM regime.
- It may benefit from the non-collection of Value Added Tax (“VAT”), if it is an import originated in a country with which Colombia has an agreement or FTA in force, by virtue of which it is obliged to the non-collection of VAT.

To bear in mind:

- The last amendment of the Tax Reform (Law 2277 of 2022) states that imports that make use of this benefit will be subject to the rules of the treaty to which they are subject, including the rules of origin, for which Colombian customs reserves the right to require proof of origin for imports that want to obtain the VAT benefit.

3.3.

Free Trade Zones (“FTZ”)

The modification of the free trade regime, through Decree 278 of 2021¹⁰, allowed the possibility of carrying out PTEM operations from the FTZ to the rest of the country. This possibility is pending regulation by the Colombian Ministry of Commerce.

In terms of exports, the export of goods from FTZ to the rest of the world under the PTEM modality is currently permitted and duly regulated.

Investors should consider the following best practices to get the most of this tool¹¹:

- Creation of FTZs specialized in e-commerce that are not limited to tax benefits.
- Connection of FTZ with airports, ports and border crossings.
- Creation of strategic alliances between public and private entities that allow a better implementation of the CBEC, as well as with strategic sectors.
- Creation of e-commerce platforms and marketplaces that allow entrepreneurs to market their products and encourage those who do not have an e-commerce model in their business strategy to incorporate it.



- To provide logistic services, logistic operators, custom agents, hauling and ground transportation, aviation and airport services, cargo storage in general, and repair and maintenance services.
- Construction of multimodal logistics centers to facilitate customs processes, allowing for the expeditious transit of cargo, reducing time and costs for businessmen.
- Consolidation of a standard document for the declaration of merchandise movements.

3.4.

Foreign exchange regime for E-commerce

The Colombian foreign exchange regime regulates transactions involving the transfer of foreign currency between Colombia and abroad, and vice versa. The import and export operations of goods must be channeled, which means that they must comply with certain formalities established in the foreign exchange regulations¹². Thus, payments for imports must comply with the following legal requirements:

- Pay / receive payments for the operations carried out. Applies to imports and exports. The means through which one can pay and/or receive a payment are limited by the foreign exchange regulations.
- Report each operation performed. Depending on where the import/export payment is made and/or received from, the report must be made to different control entities.

¹⁰ “Whereby Decree 2147 of 2016 is amended”.

¹¹ Invest in Bogota (2022).

¹² Article 41, Resolution 01 of 2018.

4.

E-commerce logistics process (warehousing, shipping and returns)

The logistics process of e-commerce is a fundamental element to ensure good customer service and subsequent customer loyalty with the sales platform. The main elements of effective e-logistics are¹³:

- Digital information systems integrated with the virtual operation. This refers to the integration between the virtual platform and the supply chain; namely, the ability of the purchasing processes on the platform to deal in real time with orders, returns, complaints, among other aspects that will affect the supply chain.
- Automated merchandise management procedures integrated with the operation of the virtual platform. It is related to the physical operation that requires a correct reception and management of the merchandise in the storage and logistics centers (i.e. picking and packing)¹⁴.
- Adequate distribution of each dispatch. It corresponds to the effective control of each shipment. In other words, to the planning of efficient delivery routes, the performance of real time tracking tasks, immediate attention to incidents, among others.

 Invest in Bogotá

5.

Sectors with potential in Bogota-Region

5.1.

Digital payment systems

On December 13, 2021, the Colombian Central Bank published the reform of its Regulatory Circular DCIP-83. The most recent authorization of the exchange regulations was included so that the service of aggregator payment service providers (known as payment gateways) can be offered, allowing:

- Third parties, other than importers and/or exporters, to make payment for import and export operations of goods and services.

Before this reform this possibility was prohibited, since the exchange regime expressly stated that “residents may not channel payments for imports that have been made by others¹⁵”.

An opportunity for the development of CBEC in the country arises: the provision of aggregator payment services. Currently, the regulation allows:

¹³ Taken from Elogística (s.f.).

¹⁴ Taken from Maplink (2022).

¹⁵ Chapter 3 of the DCIP 83.

¹⁶ (Angulo Flores, 2021).

¹⁷ Ibidem.

- That the gateway payment service providers are non-residents (i.e., foreign company) or residents (i.e., company incorporated in Colombia).

- That the gateway payment service providers declare only the aggregated information of the transactions of imports or exports of goods to the Intermediaries of the Foreign Exchange Market (in Spanish, “IMC”) and, monthly, a “report of the transactions carried out through gateway payment service providers”.

5.2.

World-class distribution and warehousing centers

Proper inventory management is a crucial activity for the effective operation of e-commerce platforms. In this area, Fulfillment Centers (“FC”) are positioning themselves as a warehousing and distribution solution for companies engaged in CBEC.

- They are defined as “the physical location from which a third-party logistics provider can prepare customer orders for e-commerce retailers¹⁶”.

- They are not to be confused with “warehouses”. The purpose of an FC is to store inventory on a short-term basis and generate continuous inventory turnover, which allows e-commerce to reduce and avoid fixed costs of merchandise storage. With this, it is intended that the inventory does not remain more than one month in the FC, there is a continuous supply of warehouses and are located in strategic points of the city (i.e., near the delivery points), in order to “reduce shipping costs, transit time and shipping zones¹⁷”.

6.

Consumer protection in E-commerce

6.1.

Liability of foreign companies in Colombia – related with consumer protection matters

- The Colombian Consumer Protection Statue (CPS-Law 1480 of 2011) includes a specific chapter for e-commerce operations. which contains (i) in article 49 what is meant by electronic commerce; (ii) in article 50 the obligations for suppliers and retailers in national territory through electronic commerce; (iii) in article 51 the right to the reversal of the payment; (iv) in article 52 the protection of children and adolescents); (v) in article 53 what is understood as contact portals); and (vi) in article 54 the precautionary measures that may be imposed by the Superintendency of Industry and Commerce when it considers that there are serious indications of violation of consumer rights while the investigation is being carried out by the authority.
- Foreign entities that are not located in the national territory do not meet the description of article 50, thus excluding them from the scope of this regulation.

Article 7 of the CPS sets forth that providers are liable for the quality, suitability, safety, and well-functioning of any service provided to consumers in Colombia. A foreign legal entity may be a supplier of a good or service. Therefore, the analysis arises as to whether the CPS is applicable and whether the Colombian authority has this power over foreign entities.

It is important to note, the Superintendence of Industry and Commerce (“SIC”), as the authority that enforces consumer protection matters, has analyzed the CPS application to foreign entities. Even though the CPS establishes a favorable regime for consumers, there is an ongoing discussion about the CPS application out of the Colombian territory.

The SIC has analyzed the application of the CPS to foreign entities in the following procedures:

File No. 13-050461	The SIC concluded that the obligations derived from the CPS are only applicable to traders located in Colombian territory unless otherwise expressly stipulated.
File No. 16- 370976	The SIC states that, if the product has a global warranty enforceable in Colombia, it will be the duty of the brand’s representative in the national territory to allow the consumer to enforce the product’s warranty.
File No. 21-102477	The SIC concluded that consumers lack effective protection for goods and services contracted with foreigners; however, it mentioned the need for international cooperation in this type of matters, for which there is a tool “econsumer.gov” through which complaints about conduct that disregards consumer rights can be raised.

6.2.

Duties and Rights for Consumer Protection in E-commerce

ASPECT	SELLER'S OBLIGATIONS	CONSUMER'S RIGHTS
Information	<ul style="list-style-type: none"> • Provide clear and complete information about the product, price, shipping, etc. • Display images at actual scale. • Indicate the validity period of the offer and product availability. • Provide a summary of the order before finalizing the purchase • Send an order confirmation and proof of purchase. 	<ul style="list-style-type: none"> • Receive clear and complete information about the product and transaction. • View a summary of the order before confirming the purchase.
Contract	<ul style="list-style-type: none"> • Present a clear and visible adhesion contract. • Keep proof of the consumer's acceptance. 	<ul style="list-style-type: none"> • Review the contract before accepting.
Delivery	<ul style="list-style-type: none"> • Deliver the product to the specified address and verify the consumer's identity. • Deliver the proof of purchase (invoice). 	<ul style="list-style-type: none"> • Receive the product in good condition and within the agreed timeframe.
Evidence	<ul style="list-style-type: none"> • Document the purchase, transaction, and delivery. 	<ul style="list-style-type: none"> • Receive a copy of the invoice and other purchase documents.
Customer Service	<ul style="list-style-type: none"> • Have channels to receive requests, complaints, and claims. • Inform about the rights of withdrawal and refund. 	<ul style="list-style-type: none"> • Submit requests, complaints, and claims. • Know and exercise their rights of withdrawal and refund.
Warranty	<ul style="list-style-type: none"> • Offer legal or voluntary warranty. 	<ul style="list-style-type: none"> • Claim for product defects within the warranty period.
Refund	<ul style="list-style-type: none"> • Accept a refund in cases of fraud, product not received, or defective product. 	<ul style="list-style-type: none"> • Request a refund in case of seller's non-compliance.

7. Digital Security and Data Protection

7.1.

Personal Data

Colombian General Data Protection legal framework ("CGDP") ¹⁸	
What is personal data?	Any information that may be associated or connected to a given individual; in such a way it provides for her identification.
What is the application of the CGDP?	The CGDP applies to the collection, storage, use, transfer, transmission, suppression and, overall, the processing of personal data that takes place in Colombian territory, is subject to the CGDP.
Who is a "data controller"?	A "data controller" under the CGDP refers to the person who decides upon the use of a database and the specific data contained therein.
Who is a "data processor"?	A "data processor" is the person who processes personal data on behalf and in the interest of the data controller.
Are e-commerce platforms data controllers?	E-commerce platforms could be considered data controllers if they decide on the processing of data. In this case, they would be subject to the obligations of the CGDP.



¹⁸ Law 1581 of 2012 and Decree 1074 of 2015.

Main obligations under the CGDP	
Consent	The legal basis for processing data under the CGDP is consent from data subjects. For consent to be valid it has to be prior, express and informed.
PQRS	Process and address complaints, petitions and requests from data subjects regarding their rights under the CGDP.
Handbooks and policies	<p>I) Put in place an internal personal data handbook, to ensure the adequate handling of personal data related matters.</p> <p>II) Put in place a data protection policy, whereby data subjects are informed about: (i) The purposes sought with the processing of personal data. (ii) How personal data will be used. (iii) The rights to which data subject are entitled. (iv) The process for data subjects to exercise their rights. (v) The person appointed within the respective entity to handle data protection matters. (vi) The term during which the database will be in force.</p>
Protection measures	Implement and keep technical, human, and organizational measures aimed at ensuring the integrity, confidentiality and security of personal data.
Cybersecurity	Inform the Data Protection Authority (Superintendencia de Industria y Comercio) of breaches to their security protocols and whenever personal data is at risk.
Person or department for personal data matters	Appoint a person or department meant to handle personal data matters (i.e., execute relevant policies; address complaints, petitions, and requests from data subjects, etc.) and ensure data subjects' rights.
RNBD	Register in the National Database Registry (RNBD). This registry is administered by the Data Protection Authority. The Registry does not require to disclose the databases but, rather, to provide information related to the databases.

Data security in e-commerce platforms ¹⁹	
Security Incident Reports	The CGDP establishes an incident reporting obligation for both controllers and processors.
Safety principles	The CGDP establishes particularly relevant principles to comply with security requirements: (i) principle of restricted access and circulation; (ii) principle of confidentiality; and (iii) principle of security.
Security measures	It is important to note that the CGDP does not establish specific security measures. These must be evaluated on a case-by-case basis and must consider the nature of the data, the size of the databases, specific operations on the databases.

¹⁹ Although the CGDP does not primarily address cybersecurity issues, it does contain some security requirements that must be taken into account concerning the processing of personal data.

Annex 1

1. Duties and Rights for Consumer Protection in E-commerce

1.1.

Information Duty:

Articles 3 - 1.3 and 50 of the Consumer Statute establish certain specific obligations for those who sell through e-commerce, without exempting them from the other duties of information that apply in general to all merchants. These duties are related, amongst others, with:

1. Providing certain information about the person offering the products, the products themselves and the way in which the commercial transaction will be carried out.
2. Provide, at all times, information regarding the products offered. If images are used, the advertiser must indicate at what scale they are shown.

3. Business must indicate the period of validity of the offer and the availability of the products, the total price of these with taxes, the costs and expenses that must be paid in order to acquire them, as well as the shipping costs if any, the delivery time, and the means or channels available to make payments.
4. If in the commercial transaction the consumer must sign a contract of adhesion: must be published in the same electronic media and must respect all the rules established in the CPS.



Consumer: before finalizing the transaction, you have the right to receive from the supplier a summary of the order with all the selected goods, the individual price of each one of them, the total cost of the products, and if applicable, the costs and expenses to be paid for shipping or any other additional item, and at the end, the accumulated total.

Seller: once the transaction has been concluded, he must keep proof of acceptance by the consumer, which must be express, unequivocal and verifiable by the competent authority. Likewise, it must send the consumer, no later than the following day, an acknowledgement of receipt of the order, with precise information on the delivery time and the total price to be paid. At the time of delivery of the products, the seller must ensure that it is made at the address indicated by the consumer, and that this has been fully and unequivocally identified. He must also deliver the support of the transaction, such as the corresponding invoice issued in compliance with all legal requirements.

Supplier: must document both the purchase and the commercial transaction and delivery to satisfaction, so that, in case of dispute, he will have the burden of proof to demonstrate the conditions under which the consumer contracted and the real and effective delivery of the products purchased. Finally, the supplier must have, in the same medium in which the electronic commerce is carried out, mechanisms for consumers to file petitions, complaints or claims, and clearly inform the rights of withdrawal and reversal of payments to which the buyers are entitled.

1.2.

Withdrawal Right

The right of withdrawal is the right of the consumer to rescind a contract without the need for a cause other than his will to terminate it. This right creates an exception to the rule of finality of the sales contract once the parties have agreed on the price and the product. This right applies to non-traditional sales and distance sales, including e-commerce.

1.3.

Warranty

The right to claim for warranty is the right of a consumer to claim before producers, importers, suppliers, or retailers for faults in quality, safety, good condition, proper functioning, and suitability of a product in accordance with the legally required conditions or those offered. The producer, importer, supplier may grant the warranty term and the conditions thereof as it deems best. However, if he does not grant a warranty, the legal warranty, established in article 8 of the Consumer Statute, will apply.

Regarding the effectiveness of the warranty, it is possible to state that there are two e-commerce systems through which companies can make the purchase.

- Order the good directly to Colombia.
- Order the good to a mailbox in some other country and send it by a postal service to Colombia.

In the case that the product has been ordered to a post office box, the consumer must directly contact the company in the country of purchase so that, according to the return policies of the company, the good is fixed, replaced, or so that the company sends a remanufactured good. On the other hand, if the product was purchased in Colombia, it must be taken to the producer and/or supplier for repair, exchange for one of similar characteristics or refund of the money.

1.4.

Reversal of Payment

The purpose of payment reversal is to protect consumers who purchase goods and services through electronic commerce mechanisms such as Internet, PSE, call centers or any other online sales or virtual store mechanism, and who have paid with credit cards, debit cards or any other electronic payment instrument. This mechanism does not apply when the purchase is made through face-to-face channels.

This figure applies when any of the following events occur: (i) when the consumer has been a victim of fraud; (ii) when it corresponds to an operation not requested by the consumer; (iii) when the requested product is not received on the agreed date or within thirty (30) days after the transaction has been made; (iv) when the delivered product does not correspond to the one requested, does not comply with the inherent characteristics, or those characteristics attributed by the information provided about it; or (v) when the delivered product is defective.





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