



Bogota Foreign Investment Guide - 2025



Chapter 8.

► Financial Regime

Investment stage

**Baker
McKenzie.**



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.

In Colombia, each entity has a restricted set of powers according to its nature.

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 (although they may not freely engage in credit or investment activities with the deposited amounts).
- 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.

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

- **Trust companies:** 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 stockbroker 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 currency, 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:** colombian residents and the non-residents may open accounts in foreign currencies. The resources deposited in such accounts cannot be used for exchange operations that have to be channeled through the exchange market.

Payment and transfer system update

Through Decree 1692 of 2020, the government updated the applicable regime to the low-value payment systems. This regulation introduced the rules applicable to the participants of the Colombian low-value payment systems. These are:

- The acquirers.
- The payment platforms in the aggregator and gateway models.
- Functioning of the acquiring activity. It is pertinent to highlight that the acquiring activity can be carried out by (i) banks, (ii) companies specialized in digital payment and transactions and (iii) those entities that are not under the surveillance of the Colombian Superintendency of Finance.

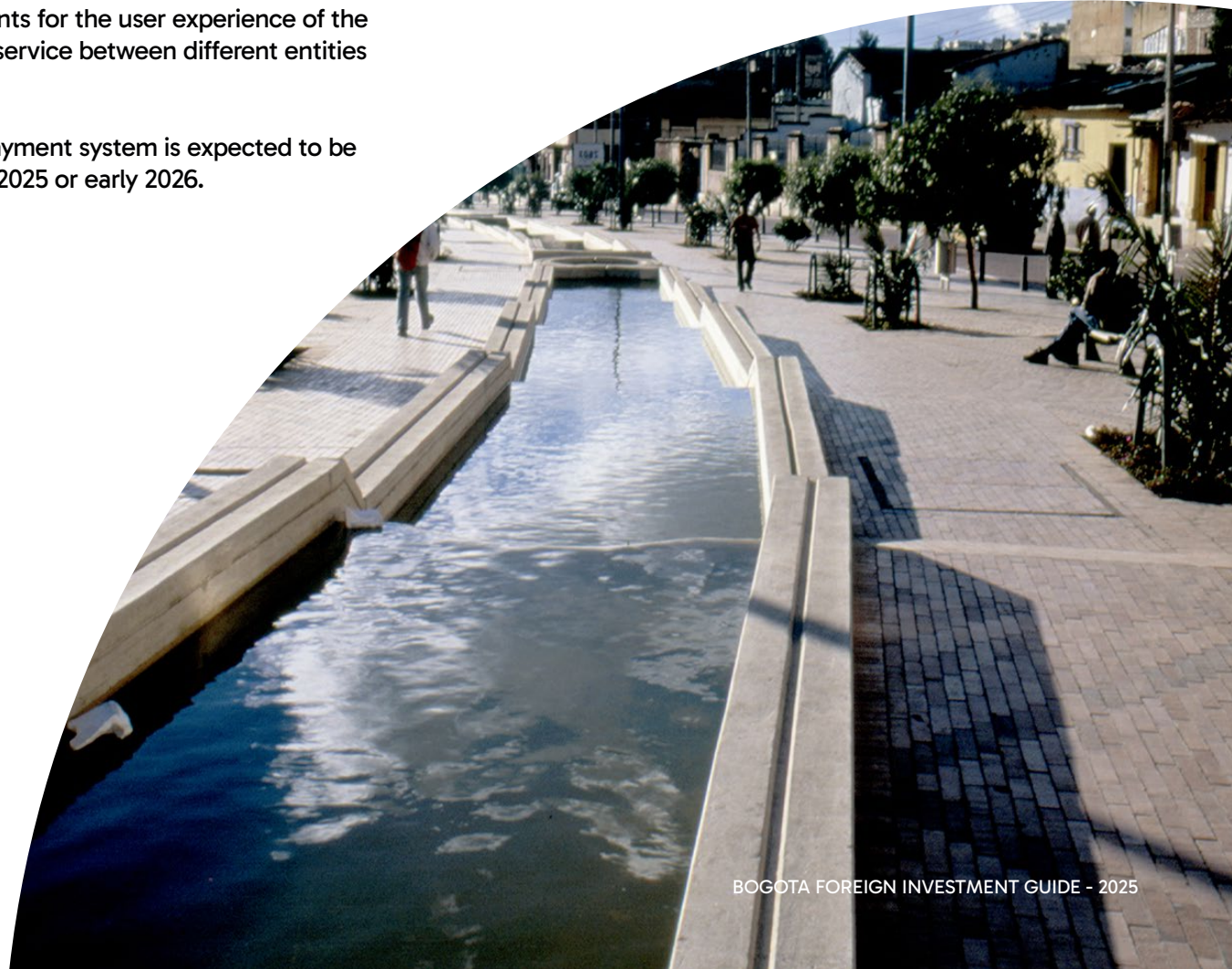
It is also necessary to point out:

- The separation and definition of the different activities that the participants of low-value payment systems must carry out and its corresponding duties.
- The strengthening of the corporate governance standards as well as a higher level of transparency in the system's access requirements for the access to the system and the fees and commissions charged to users and participants.
- The principle of open access to the payment systems, by virtue of which the participants should (i) refrain from arbitrarily restricting the entry of new participants and (ii) apply the same conditions and treatment to all new entrants and all payment or funds transfer orders executed in the low-value payment systems. Additionally, the participants shall not block payment orders of other participants and shall apply the same conditions and treatment to all payment orders.

In addition, it is important to highlight that the current National Development Plan establishes that low-value payment systems providing services related to immediate payment orders and/or transfers must interoperate with each other. Since October 2023, the National Government has made several legislative efforts to establish the rules and standards applicable to the immediate processing of payment orders and/or funds transfers.

On October 31, 2023, Central Bank issued External Resolution 6 of 2023, which sets the roadmap for the implementation of immediate payments in Colombia. Subsequently, Central Bank issued External Regulatory Circular DSP-465 of 2024 which: (i) establishes the parameters that will govern the interoperability of low value payment systems that provide services related to payment orders and/or immediate funds transfers and (ii) establishes the requirements for the user experience of the new immediate payment service between different entities (Bre-B).

The mandatory prompt payment system is expected to be operational by the end of 2025 or early 2026.



Open Finance

In July 2022, the Colombian government issued Decree 1297 on open finance regulation. This regulation addresses the possibility for supervised entities to provide digital or face-to-face third party services related to their activity.

Thus, the main objectives are: (i) to clarify the rules applicable to the transfer of consumer data between financial institutions, (ii) to promote access to such information in favour of the development of new financial services and functionalities, and (iii) to clarify the rules under which institutions can market their financial services through electronic platforms, including greater transparency on the conditions of such interfaces and the roles of those involved in the service chain.

In February 2024, the Colombian Superintendency of Finance issued External Circular 004 of 2024 to implement and regulate the provisions set forth in Decree 1297, the above as it amends the Basic Legal Circular to: (i) specifically include instructions related to open finance and the commercialization of technology and infrastructure to third parties; and (ii) modify the chapter related to access and information to financial consumers.

The marketing of customers' personal data was not prohibited in Colombia, as long as the requirements of the right to habeas data were fulfilled (special focus on the authorization and purpose conditions). Even before this regulation, it was possible to market personal databases held by a data controller, as long as the data owners authorized the market of the data.

The new feature of the abovementioned regulation concerns the regulation of the payment initiation activity as a payment system activity. This activity may be carried out by different participants, as long as they complied the specific rules aimed at protecting the financial consumer and the proper functioning of the system.

The success of the open banking model remains to be proven. On the one hand, a system of APIs was chosen for data sharing as opposed to more aggressive forms of data collection. On the other hand, the strict regime of prior, express, written and informed consent required for data sharing presents an effective challenge to the implementation of the model.

Legal Framework for Alternative Finance

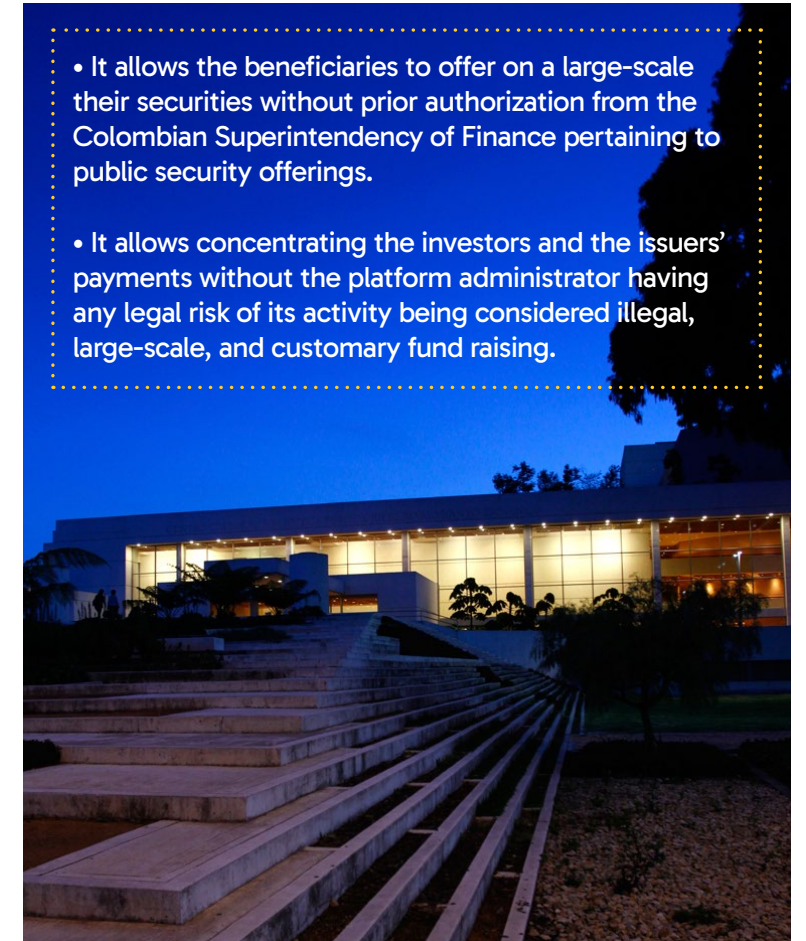
Crowdfunding

Decree 1357 of 2018 (updated by Decree 1235 of 2020 and Decree 2105 of 2023), from the Ministry of Finances and Public Credit regulates crowdfunding, which allows the owners of small-scale productive projects (the beneficiaries) 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 through specialized platforms managed by the authorized collaborative financing entities, under the surveillance of the Colombian Superintendency of Finance and are responsible for informing the public of the characteristics of projects being financed.

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.





Cryptocurrencies

In Colombia, acquiring and selling crypto assets is not prohibited, unless the buyer or the seller is subject to certain 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.

No comprehensive regulation on crypto assets has been issued in Colombia, and currently in the Colombian Congress there are no active legislative initiatives that seek to regulate crypto assets in Colombia. In the first semester of 2023 Colombian government sought to issue a law to regulate crypto-asset exchange services offered through crypto-asset exchange platforms, however such attempt was unsuccessful because it was not possible to complete the stages foreseen for the issuance of the law.

Additionally, some entities have made efforts to clarify the nature of crypto assets in Colombia. On the one hand, the Central Bank has emphasized that crypto assets are not legal tender, are not a currency, are not authorized as a means of fulfilling exchange operations covered by foreign exchange regulations and cannot be sold or issued by intermediaries in the foreign exchange market, such as commercial banks. On the other hand, Colombian Superintendency of Finance, as the authority in charge of the supervision of the financial system, has pointed out that crypto assets do not constitute a security, in the technical sense of the capital market.

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”.

The UIAF has established transactions reporting obligations for very low individual or aggregate amounts per month that establish a significant operational burden for service providers and platforms associated with cryptocurrency trading.

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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República de Colombia, Superintendencia Financiera de Colombia, Conformación del Sistema Financiero Colombiano, disponible en <https://www.superfinanciera.gov.co/jsp/Publicaciones/publicaciones/loadContenidoPublicacion/id/11268/dPrint/1/c/00>

Limits to investments and crowdfunding issued securities

- Non-qualified investors cannot invest more than 20 % of their annual revenues or their assets.
- Investments per project may not exceed 1,526,155.14 tax value units (“UVT”) (approximately USD 16,272,878). In the event that the funds come only from non-qualified Contributors, each Beneficiary may receive up to a maximum of 499,947 UVT (approximately USD 5,330,767)



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