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LEGAL GUIDE
TO DOING BUSINESS
IN COLOMBIA

Bolivar Square, Bogotá D.C.

INVEST IN **COLOMBIA**

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Ministry of Trade, Industry and Tourism
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INTRODUCTION

Colombia is a democratic country, with a privileged location in Latin America and rich in natural resources. It is at present one of the main investment destinations in the region and it has been ranked by the World Bank as the top Latin American country in investment protection. In the last decade, Colombia's GDP growth rate has been significantly higher than the world average, and in recent years the country has shown great economic stability and adequately controlled its inflation rate. Recently, the principal risk rating agencies have given Colombia higher confidence indices.

Proexport Colombia and the Law Firm Posse Herrera & Ruiz Abogados have prepared this ***Legal Guide to Doing Business in Colombia*** (the "Guide") to provide foreign investors guidelines on the main legal aspects.

The content of this document was prepared and updated in June 2012 based entirely on the current information and legislation.

Warning

The purpose of this document is purely informative. The Guide is not intended to provide legal advice. Therefore, those using this Guide shall not be entitled to bring any claim or action against Proexport Colombia or Posse Herrera & Ruiz Abogados, their respective directors, officers, employees, agents, advisors or consultants arising from any expense or cost incurred into or for any commitment or promise made based on the information contained in this Guide. Neither shall they be entitled to indemnifications from Proexport Colombia or Posse Herrera & Ruiz for decisions made on the basis of the contents or the information provided in this Guide.

We strongly advise that the investors and, in general, the readers who make use of the Guide consult their own legal advisors and professional consultants regarding investment in Colombia.

On the figures in this Guide

The figures used on this Guide have been determined as follows: (i) the figures expressed in US dollars have been calculated using an exchange rate of COP 1800 = USD 1; and (ii) for those based on the current minimum legal monthly wage ("MLMW") in Colombia, the MLMW for the year 2012 is COP 566,700 (approx. USD 314.8).

The foreign exchange rate changes daily with the supply and demand for currency and the MLMW is adjusted at the end of every calendar year (December) for the following year.

We hope that this Guide will be of great use for your investment in Colombia.

CHAPTER 1

FOREIGN INVESTMENT PROTECTION

Cartagena Port, Proexport Colombia

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1. FOREIGN INVESTMENT PROTECTION

Four (4) things an investor should know about the protection of foreign investment in Colombia:

1. Foreign investment is freely permitted in all sectors of the economy, with the exception of national defense and security and the processing and disposal of toxic, hazardous or radioactive waste not originating in the country.
2. To encourage foreign investment, the Colombian government has signed several international investment agreements, including several Agreements on the Reciprocal Promotion and Protection of Investments, and the Investment Chapters contained in Free Trade Agreements.
3. Colombia's commitment to free trade is demonstrated by the number of free trade agreements ratified by the country.
4. Colombia is party to numerous double taxation agreements, that prevent investors from being subjected to double taxation.

The Colombian Constitution states that foreign nationals and citizens have rights identical to their Colombian counterparts, thereby permitting, with some limited exceptions, foreign investment in all sectors of the economy. Likewise, under the principle of equal treatment, foreign investors are entitled to access any benefits or incentives established by the Government for Colombian parties. The principles regulating foreign investment in Colombia are the following:

Equal Treatment

For all purposes, foreign investment is subject to the same treatment as investments made by Colombian nationals. Therefore, the imposition of any conditions on foreign investors, whether discriminatory or favorable, is not permitted.

Universality

Foreign investment is allowed in all sectors of the economy with the exception of the following:

- Activities related to defense and national security.
- Processing and disposal of toxic, hazardous or radioactive waste not originated in the country.

It is important to note that there are certain legal restrictions with respect to entities operating open television services, pursuant to which foreign investment cannot exceed forty percent (40%) of the company's capital stock. Additionally, certain activities in the areas of private security and surveillance can only be provided by entities whose equity holders are Colombian individuals.

Automaticity

Generally, foreign investment in Colombia does not require prior authorization, except for investment in the insurance, finance, mining and hydrocarbon sectors, which may require, in certain cases, prior authorization or recognition by the relevant authorities (e.g. the Colombian Financial Superintendency).

Stability

The conditions which were in effect on the date of registration of foreign investment may not be modified in a manner that adversely affects the foreign investor with respect to the repatriation of the foreign investment and the remittance of profits associated with it. Notwithstanding the above, the conditions for repatriation and remittance of profits in connection with foreign investment and the rights conferred by the proper registration of such foreign investment may be amended in a way that may affect the foreign investor when the country's international reserves are equivalent to less than three (3) months of imports.

1.1 International Investment Agreements

In order to create and maintain a favorable investment environment for foreign investors, Colombia has implemented a policy of negotiation and ratification of international investment agreements ("IIAs"), (which include agreements on the reciprocal promotion and protection of investment– "ARPPIs"), as well as free trade agreements ("FTAs") with investment chapters and double taxation agreements ("DTAs").

This policy implements the strategy of economic integration embodied in the Colombian Constitution and in the last three national development plans.

Such international investment agreements, aim to create a transparent regulatory framework with predictable rules to reduce non-commercial risks for investors. In particular, ARPPIs, as the name suggests, are not multilateral but have the purpose of securing foreign investment. To achieve this, these agreements define the protected assets, providing protection standards that are reflected in concepts such as equal treatment, fair and equitable treatment, full security and guarantees, and provide a forum for dispute resolution through international arbitration.

While IIAs offer protection for investors, they do not affect the government's regulatory authority. On the contrary, both ARPPIs and FTAs restrict the level of protection offered to investors to the substantial adverse effect on their rights. For this reason, the possible effects of regulatory changes do not necessarily constitute a breach of such agreements.

1.1.1 Colombia and International Conventions on the Protection of Foreign Investment

In order to protect foreign investment, Colombia is party of the Multilateral Investment Guarantee Agency ("MIGA"), the International Centre for Settlement of Investment Disputes ("ICSID"), the Overseas Private Investment Corporation ("OPIC"). Each of these agreements constitutes an important tool for the protection of foreign investment.

MIGA is a multilateral organization that provides protection to foreign investors in member countries against non-commercial risks such as riots and civil wars, exchange transfer restrictions and discriminatory expropriations. The agency aims to provide services for foreign investors who invested in member developing countries. Additionally, MIGA provides information about developing countries in order to support the investment process during the earlier stages.

The ICSID agreement provides foreign investors in Colombia with the option to submit disputes to international arbitration or conciliation. ICSID is specialized in disputes between investors and host states. It is possible to access arbitration or conciliation as long as there is a treaty into force allowing to do so.

The main objective of OPIC is the promotion of U.S. investment in developing countries. For this purpose, OPIC provides financing and guarantees to support investment projects and protect them against risks such as political instability and currency transfer restrictions.

1.1.2 Overview of the ARPPIs signed by Colombia

In general, the ARPPIs signed by Colombia contain the following types of clauses granting protections to foreign investors:

National Treatment

Under this principle, each country grants foreign investors and their investments, treatment no less favorable than it grants, under like circumstances, to its own investors.

Most Favored Nation Treatment

Under this principle, each party grants foreign investors treatment no less favorable than it grants, under like circumstances, to investors of any other country.

Fair and Equitable Treatment

This concept is derived from the international principle of good faith to protect against arbitrariness. It mainly addresses the issue of access to justice and compliance with the rules of due process.

Prohibition of Unlawful Expropriation

This principle bars discriminatory expropriation or expropriation without just cause, except for social purposes or in the public interest, carried out in accordance with due process of law, in a non-discriminatory manner, in good faith and subject to prior, prompt, adequate and effective compensation.

Reducing Barriers to Investment

This principle refers to the reduction of barriers concerning the admission and the establishment of foreign investment consistent with national legislation.

Dispute Resolution

ARPPIs, as well as most of the investment chapters of FTAs signed by Colombia, include legal mechanisms for resolving disputes arising between foreign investors and the Colombian state. These mechanisms enable investors to file claims against the State before international investment arbitration courts in connection with potential violations of the protections provided by these types of treaties.

1.2 Double Taxation Agreements signed by Colombia

As mentioned above, Colombia has been advancing the negotiation of international agreements to avoid double taxation and prevent tax evasion both on income and on capital, particularly in cross-border commercial transactions.

Double taxation avoidance agreements allow defining the scope of taxation powers between states.This is accomplished through the distribution of the taxable income or assets between the two countries, whereby taxation can be allocated to one of the countries or shared among them. These agreements contain rules to prevent discrimination between citizens and non-citizens and dispute resolution mechanisms between states. Double taxation agreements also regulate the international cooperation between tax authorities to combat tax evasion and tax fraud.

Double taxation agreements negotiated by Colombia are in accordance with international standards and include the principle of non-discrimination. According to this principle, the terms of a double taxation agreement cannot be more burdensome for taxpayers than those provided in national legislation. This principle is based on the respect for equality of conditions regarding tax legislation among residents of a State and is expressed in the event that the national standard provides for something more benefitial to taxpayers than what was established in the agreement.

In these agreements, Colombia negotiates taxation rights on income tax and additional income tax, as well as, tax on assets. Indirect taxes such as VAT are outside the scope of double taxation agreements. Regional taxes, such as the industry and commerce tax, are also excluded from the scope of these types of agreements.

In addition to avoiding double taxation and preventing tax evasion, double taxation agreements seek to eliminate barriers to the flow of capital, goods, technology and people between the countries executing these agreements.

1.3 Trade Agreements, Agreements on the Reciprocal Promotion and Protection of Investments, and Double Taxation Agreements concluded or under negotiation by Colombia

1.3.1 Trade Agreements Signed or Under Negotiation

Agreement	Entry In to Force	Approving Law	Stataus of the Agreement
Andean Community of Nations (Peru, Ecuador and Bolivia)	1993	Decision 324	In force
Andean Community of Nations -MERCOSUR	2005	Law 1000 of 2005	In force Constitutionality ruling C-864 of 2006
FTA G2 (Mexico and Colombia)	1995	Law 172 of 1994	In force Constitutionality ruling C-178 of 1995
FTA with Chile	May 8, 2009	Law 1189 of 2008	In force Constitutionality ruling C-031 of 2009
FTA with the Northern Triangle (Guatemala, El Salvador and Honduras)	Guatemala: November 12, 2009 El Salvador: February 1, 2010 Honduras: March 27, 2010	Law 1241 of 2008	In force Constitutionality ruling C-446 of 2009
FTA with the United States	May 15, 2012	Law 1143 of 2007 (Amendment Protocol to Law 1166 de 2007)	In force Constitutionality ruling C-750 and C-751 of 2008

Agreement	Entry Into Force	Approving Law	Status of the Agreement
FTA with EFTA (Iceland, Liechtenstein, Norway and Switzerland)	July 1, 2011	Law 1372 of 2010	In force only for Liechtenstein and Switzerland Constitutionality ruling C -941 of 2010
FTA with Canada	August 15, 2011	Law 1363 of 2009	In force Constitutionality ruling C-608 of 2010
Agreement with Venezuela	Pending	Pending	In the process of approval
FTA with the European Union	Pending	Pending	In the process of approval
FTA with Panama	Pending	Pending	Under negotiation
FTA with South Korea	Pending	Pending	Under negotiation
FTA with Israel	Pending	Pending	Under negotiation
FTA with Turkey	Pending	Pending	Under negotiation

1.3.2 Agreements on the Reciprocal Promotion and Protection of Investments Signed or Under Negotiation

ARPPI	Entry into Force	Approving Law	Status of the Agreement
Chapter XVII of the G2 FTA (Mexico and Colombia)	1995	Law 172 of 1994	In force Constitutionality ruling C-178 of 1995
Chapter IX of the FTA with Chile	May 8, 2009	Law 1189 of 2008	In force Constitutionality ruling C-031 of 2009
Chapter XII of the FTA with the Northern Triangle (Guatemala, El Salvador and Honduras)	Guatemala: November 12, 2009 El Salvador: February 1, 2010 Honduras: March 27, 2010	Law 1241 of 2008	In force Constitutionality ruling C-446 of 2009
ARPPI with Peru	December 30, 2010	Law 1342 of 2009	In force Constitutionality ruling C-377 of 2010
ARPPI with Spain	September 22, 2007	Law 1069 of 2006	In force Constitutionality ruling C-309 of 2007
ARPPI With Switzerland	October 6, 2009	Law 1198 of 2008	In force Constitutionality ruling C-150 of 2009
Chapter X of the FTA with the United States	May 15, 2012	Law 1143 of 2007 (Amendment Protocol to Law 1166 de 2007)	In force Constitutionality ruling C-750 and C-751 of 2008
Chapter V of the EFTA	July 1, 2011	Law 1372 of 2010	In force only for Liechtenstein and Switzerland Constitutionality ruling C -941 of 2010

ARPPI	Entry into Force	Approving Law	Status of the Agreement
Chapter VIII of the FTA with Canada	August 15, 2011	Law 1363 of 2009	In force Constitutionality ruling C-608 of 2010
ARPPI with China	Pending	Law 1462 of 2011	Constitutionality ruling C-199 of 2012
ARPPI with India	Pending	Law 1449 of 2011	Constitutionality ruling C-123 of 2012
ARPPI with the United Kingdom	Pending	Law 1464 of 2011	Constitutionality ruling C-169 of 2012
ARPPI with South Korea	Pending	Pending	In process of approval
FTA with the European Union	Pending	Pending	In process of approval
ARPPI with Kuwait	Pending	Pending	In process of approval
ARPPI with Japan	Pending	Pending	In process of approval
ARPPI with Turkey	Pending	Pending	Under negotiation
ARPPI with Uruguay	Pending	Pending	Under negotiation
ARPPI with Israel	Pending	Pending	Under negotiation

1.3.3 Double Taxation Agreements Signed, Under Negotiation or In Force

DTA	Entry into Force	Approving Law	Status of the Agreement
Andean Community of Nations (Peru, Ecuador and Bolivia)	2004	Decision 578	In force
DTA with Spain	January 1, 2009	Law 1082 of 2006	In force Constitutionality ruling C- 383 of 2008
DTA with Chile	January 1, 2010	Law 1261 of 2008	In force Constitutionality ruling C- 577 of 2009
DTA with Switzerland	January 1, 2012	Law 1344 of 2009	In force Constitutionality ruling C-460 of 2010
DTA with Canada	Pending	Law 1459, 2011	In force Constitutionality ruling C-295 of 2012
DTA with South Korea	Pending	Pending	Pending internal approval
DTA with Mexico	Pending	Pending	Pending internal approval
DTA with Portugal	Pending	Pending	Pending internal approval
DTA with India	Pending	Pending	Pending internal approval
DTA with Belgium	Pending	Pending	Under negotiation
DTA with the Czech Republic	Pending	Pending	Pending internal approval
DTA with France	Pending	Pending	Under negotiation
DTA with the United States of America	Pending	Pending	Under negotiation
DTA with Germany	Pending	Pending	Under negotiation
DTA with The Netherlands	Pending	Pending	Under negotiation
DTA with Japan	Pending	Pending	Under negotiation

CHAPTER 2

FOREIGN EXCHANGE REGIME

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2. FOREIGN EXCHANGE REGIME

Five (5) things an investor should know about the foreign exchange regime in Colombia:

1. The following foreign exchange transactions are regulated under Colombian regulations: foreign investment in Colombia, investment of Colombian capital abroad, foreign indebtedness, import and export of goods, granting of guarantees and security interests in foreign currency, cross-border derivative transactions.
2. Only duly registered foreign investment with the Colombian Central Bank allows the foreign investor to implement his remittance rights.
3. Foreign loans made to Colombian residents can be granted by any non–resident. There is the duty to register the non–resident with the Colombian Central Bank.
4. The guarantees granted by and in favor of Colombian residents must be analyzed on a case by case basis and may be subject to registration.
5. The obligations derived from transactions subject to registration cannot be compensated with each other or with any other type of obligation.

Colombia has a foreign exchange regime that although simple is strictly regulated by the Colombian Central Bank. Compliance is jointly supervised by the Companies Superintendency, the Financial Superintendency, and the Tax Authority.

The foreign exchange regime makes a distinction between two (2) different markets: (i) the foreign exchange market; and (ii) the free market.

2.1 Foreign Exchange Market

The foreign exchange market consists of all foreign currencies or foreign exchange transactions that must be completed through (i) authorized foreign exchange intermediaries; and (ii) compensation accounts. The latter are construed as accounts in foreign currency in foreign banks, whose holders are Colombian residents and that are subject to registration with and periodic reporting to the Colombian Central Bank. Additionally, the currencies that are exempt and thus are not required to be channeled through the foreign exchange market, but are voluntarily channeled through it, are also considered as part of the foreign exchange market.

Pursuant to Article 7 of Resolution 8 of 2000 issued by the Colombian Central Bank, the following foreign exchange transactions must be completed through the Foreign Exchange Market:

- Import and export of goods.
- Foreign debt transactions.
- Investment of foreign capital in Colombia.
- Investment of Colombian capital abroad.
- Granting of guarantees and security interests in foreign currency.
- Foreign derivative transactions.

2.2 Free Market

The free market consists of all other transactions that are not required the obligation to be channeled through the foreign exchange market, such as payments for services in foreign currency and transfer of foreign currency for other types of transactions, such as donations. These types of transactions do not have to be reported to the Colombian Central Bank.

Colombian residents are permitted to open and hold bank accounts at foreign banks. Free market bank accounts may be used in connection with transactions that need not be mandatorily traded through the foreign exchange market.

2.3 International Investment

In accordance with the foreign exchange regime, foreign investors in Colombia and Colombian residents that invest abroad

must register their investments with the Colombian Central Bank. Some direct foreign investments are directly registered when the foreign currency is converted into Colombian legal tender through the intermediaries of the foreign exchange market. In essence, this obligation allows the Colombian Central Bank to collect information on investment flows for statistical purposes.

2.3.1 Remittance Rights

Foreign investments duly registered with the Colombian Central Bank confer on foreign investors the following rights:

- To transfer abroad dividends resulting from the investment.
- To reinvest dividends and income derived from the disposal of such investment.
- To transfer abroad any income derived from: (i) the sale of the investment within the country; (ii) the liquidation (winding up) of the company or portfolio; or (iii) the reduction of the capital of the company.

The foreign exchange regime distinguishes between foreign direct investment and portfolio investment.

2.3.2 Direct Foreign Investment

The following are considered types of direct foreign investment:

- A company's capital contribution by means of the acquisition of shares, quotas in limited liability companies, or convertible bonds.
- The acquisition of rights in trust agreements with trust companies under the inspection and surveillance of the Colombian Financial Superintendency.
- The acquisition of real estate, directly or by means of a trust agreements, or securities issued in connection with of a real state securitization or real estate investment trust ("REITs").
- The contributions by investors in respect of joint ventures and concessions, among others, when they do not represent company's capital contributions and the income obtained is related to the businesses' properties.
- Supplementary investment to the assigned capital of the branches.
- Participation of non-residents in local private investment funds.

In order to register the foreign investment with the Colombian Central Bank, the investor must complete the remittance of funds through the foreign exchange market by means of filing an Exchange Form No. 4 "Exchange Declaration for Foreign Investments".

In the case of contributions in kind and investment amounts with drawing rights (*sumas con derecho a giro*), the foreign exchange regime requires that within twelve (12) months after (i) the date of the nationalization or of the lifting of the ordinary non - reimbursable imports or the date in which the goods enter the free trade zone, for the tangible contributions in kind; (ii) the date of the accounting record of intangibles in the equity of the company for the case of intangible payments in kind; (iii) the date of accounting registration of the contribution, for acts of contracts without participation on the equity; and (iv) the date of the accounting voucher of capitalization, for amounts with remittance rights; to have the investment registered through the filing with the Colombian Central Bank: (a) an Exchange Form No. 11 "Register of International Investment"; (b) the legal document that supports the investment made; and (c) the certificate of the external auditor or Certified Public Accountant ("CPA") of the receiving company evidencing the concept, date, number of shares, as the case may be, and the FOB value of the good imported.

2.3.3 Substitution of Foreign Direct Investment

The substitution of foreign investment should be recorded by the investor or his agent before the International Exchange Department of the Colombian Central Bank, with the filing of a formal request, within a period of twelve (12) months from the relevant transaction.

Substitution means a change of owners of the foreign investment by other foreign investors, as well as the change in the destination or the company receiving the investment.

2.3.4 Cancellation of Foreign Direct Investment

The cancellation, total or partial, of a foreign investment must be reported by the investor or his agent to the International Exchange Department of the Colombian Central Bank within a period of twelve (12) months from the cancellation of such investment.

2.3.5 Portfolio Investment

The foreign exchange regime regulates the registrations relating to the various forms of portfolio investments, defined as those made in securities registered with the National Securities and Issuers Registry ("RNVE", in Spanish), the participation in collective portfolios, as well as in values listed in the securities quotation systems abroad.

In the case of portfolio investments, local administrators (e.g. stock brokerage firms, trust companies and investment management companies, known as "*sociedades administradoras de inversión*") must be appointed as representatives of foreign portfolio investors, who then are required to carry out the applicable registration requirements.

The foreign exchange regime regulates the following special registration procedures:

- Foreign capital portfolio investments carried out under the framework of agreements between stock exchanges under any existing integration programs.

- Certificates representing depositary receipts programs (ADRs / GDRs);
- Exchange Traded Funds ("ETFs"), including stock funds that replicate national indexes, international indexes and foreign pooled funds; and
- Foreign capital investments in foreign securities issued abroad and registered with the RNVE.

2.3.6 Special Foreign Exchange Regime

Pursuant to Colombian foreign exchange regulations, there is a special regime applicable to branches of foreign companies that engage in activities related to the exploration and exploitation of petroleum, natural gas, carbon, ferronickel, and uranium; or provide services that are exclusive to the oil and gas sector.

It must be pointed out that the rules of the special regulation prevail over the general exchange regulations in relation to branch offices of the special regime.

Access to the special foreign exchange regime provides certain benefits to the branches that belong to it, among others, (i) to make payments in foreign currency in the country; (ii) receive payments from sales of the branch abroad; and (iii) some advantages in transfers from the parent company in favor of the branch office; however, it does not allow that the branch office acquires credits with third parties that are not resident in Colombia.

The branch offices of foreign companies that are addmited and have current operations within the special regime and want to leave such regime, address a letter to the Foreign Exchange Department of the Colombian Central Bank expressing the desire of leaving the special regime. Once the letter has been delivered to the Colombian Central Bank, such branch office would not be admitted into the special regime for the following ten (10) years and therefore must operate under the common regime.

2.3.7 Investments of Colombian Capital Abroad

This mode of outward-bound investment is defined by the foreign exchange regime as (i) the link of Colombian assets to foreign companies, securities and/or assets located or issued abroad; or (ii) the reinvestment or capitalization of funds abroad that otherwise may be repatriated, like interest payments, royalties, premiums and other payments for technical services.

Registration of foreign investment abroad gives the Colombian investors the right to repatriate, through the foreign exchange market, dividends generated by the foreign company as well as any other income derived from the sale or disposal of the company.

In general, to register the investments of Colombian residents abroad with the Colombian Central Bank, the investor must undertake the remittance of funds through the foreign exchange market by means of filing of an Exchange Form No. 4 "Exchange Declaration for Foreign Investments".

In the specific case of investment through contributions in kind or other funds of compulsory remittance through the foreign exchange market, the investor must file with the Colombian Central Bank an Exchange Form No. 11 together with a certificate of the corporation's legal representative, within twelve (12) months of the date of the investment, to conclude the procedure.

2.3.8 Substitution of the Colombian Investment Abroad

The substitution of Colombian direct investments abroad must be registered by the investor or his authorized agent before the International Exchange Department of the Colombian Central Bank, with the presentation of a communication, within a period of twelve (12) months from the completion of the substitution.

Substitution means a change of ownership of the Colombian investment by other foreign investors with the change in the destination or the company receiving the investment.

2.3.9 Cancellation

The cancellation, in whole or in part, of Colombian investment abroad must be reported by the investor or his agent to the International Exchange Department of the Colombian Central Bank through a notice that must be submitted within a period of twelve (12) months from the cancellation of the investment.

2.4 Foreign Indebtedness

Residents and the intermediaries of the foreign exchange regime can obtain credits in foreign currency from: (i) Colombian foreign exchange intermediaries; and (ii) non – residents. Additionally, they may obtain credits in foreign currency by placing bonds in foreign stock markets. On the other hand, the Foreing Exchange Regime allows Colombian residents to grant loans to foreign residents.

Entry and exit of foreign currency in connection with foreign indebtedness must be made through the foreign exchange market. Lack of compliance with this obligation, mainly by credits granted to residents, may be considered an infringement of the foreign exchange regime, unless the lack of compliance is justified by an act of God, force majeure, inexistence and unenforceability of the obligation.

Currently, the payment of interest for external indebtedness is subject to income tax withholdings of fourteen percent (14%) for credits whose term is of more than one (1) year, and of thirty three percent (33%) for credits whose term is less than one (1) year.

2.4.1 Credits Granted to Residents

Foreign loans must be reported to the Colombian Central Bank by means of filing an Exchange Form No. 6 "Report of Foreign Investment Granted to Residents". Additionally, a copy of the relevant loan agreement has to be submitted. Disbursement of the loan may be registered through a Form No. 6 "Report of Foreign Investment Granted to Residents" if the registration of the loan and the disbursement takes place at the same time. Other wise, the disbursement of the loan must be registered by means of filing an Exchange Form No. 3 "Foreign Indebtedness Exchange Declaration".

Exit of foreign currency to pay for debt must be reported to the Colombian Central Bank by means of filing an Exchange Form No. 3 "Foreign Indebtedness Exchange Declaration".

For the transmission of the Foreign Indebtedness Report (Form No. 6), when the foreign exchange credits have been granted by non – residents who do not have a code allotted by the Colombian Central Bank, the resident must, beforehand, a written communication addressed to the Foreign Exchange Department, following the procedure indicated by the Foreign Exchange Department of the Colombian Central Bank.

2.4.2 Credits Granted to Non-Residents

The credit granted must be reported to the Colombian Central Bank by means of filing an Exchange Form No. 7 "Report of Foreign Investment Granted to Non-Residents" upon exit of the funds from Colombia. Additionally, a copy of the relevant loan agreement has to be submitted. Disbursement of the loan may be registered by filing of Form No. 7 "Report of Foreign Investment Granted to Non-Residents" if the registration of the loan and the disbursement takes place at the same time. Nonetheless, if disbursement is made after the registration of the loan, it must be reported by filing an Exchange Form No. 3 "Foreign Indebtedness Exchange Declaration".

Furthermore, the entry of foreign currency to pay for the credit must also be reported to the Colombian Central Bank by filing of Exchange Form No. 3 "Foreign Indebtedness Exchange Declaration".

2.5 Import of Goods

Colombian residents must channel, through the foreign exchange market, payments to cancel the cost of their imports. For these purposes, they must submit an Exchange Form No. 1 "Exchange Declaration for Imports of Goods" using in each case, the corresponding exchange numeral.

In the case of imports paid with international credit cards, importers must submit an Exchange Form No. 1 "Exchange Declaration for Imports of Goods" when making the payment to the exchange market intermediary or channeling abroad through it or a compensation account.

In Chapter four (4) of this "Legal Guide to Doing Business in Colombia 2012" on customs procedures, there is a detailed explanation of the obligations related to the import of goods.

2.6 Export of Goods

The export of goods is an activity that must be conducted through the exchange market, and for this purpose an Exchange Form No. 2 "Declaration of Exchange for the Exportation of Goods" must be filed.

Residents in Colombia must channel foreign currency received from their exports through the foreign exchange market, including cash received directly from the foreign buyer, within six (6) months from the date of receipt. This applies to export payments made and those received as advances for future exports of goods. Foreign currency payments are considered as an advance when they are channeled through the foreign exchange market before the shipment of the goods.

In Chapter four (4) of this "Legal Guide to Doing Business in Colombia 2012" on customs procedures, there is a detailed explanation of the obligations relating to the export of goods.

2.7 Guarantees and Collateral Structures in Foreign Currency

The foreign exchange regime establishes different procedures and restrictions for the granting of guarantees and collateral in foreign currency, depending on whether or not the grantor is a Colombian resident.

2.7.1 Guarantees and Collaterals Granted by Colombian Residents

Colombian residents are permitted to provide guarantees in foreign currencies to back-up any obligations abroad. These operations must not be informed to the Colombian Central Bank.

In case that the guarantee or collateral becomes effective, for the sale of foreign currency a foreign exchange declaration must be presented through the same type of form as the one used for the principal guaranteed operation and with the certification from the guarantor covering the obligation. If the principal obligation guaranteed relates to a transaction between non-residents, an Exchange Form No. 5 "Exchange Declaration for Services, Transfers and other Concepts" must be filed. The negotiation of the foreign currency will result in the cancellation of the obligation guaranteed abroad.

When the guarantor pays the main liability, a withholding will be made on the interest paid. If the guaranteed obligation is a credit with a term of more than one (1) year, it is subject to income tax withholding of fourteen percent (14%), while for credits with term of less than one (1) year, it will be of thirty three percent (33%).

2.7.2 Guarantees and collaterals granted by Non - Residents

Foreign residents are allowed to endorse and guarantee the compliance of obligations related to foreign exchange transactions and domestic transactions.

These guarantees and collaterals must be registered through a foreign exchange intermediary with the Colombian Central Bank prior to the total or partial expiration of the obligation guaranteed. In order to complete the registration, an Exchange Form No. 8 "Registration of Guarantees and Collaterals in Foreign Currency" must be filed with the Colombian Central Bank, together with the document of the guarantee.

The intermediary will verify that the data in the report matches the documentation submitted and will forward, no later than two (2) business days after the date of submission, a communication to the Foreign Exchange Department attaching the original and a copy of the respective forms.

Furthermore, an Exchange Form No. 3 "Exchange Declaration for Foreign Indebtedness" including the number issued by the Colombian Central Bank which identifies the guaranty, must be submitted at the moment of receipt of the disbursement of the amount guaranteed, and/or at the moment of remittance abroad of funds owed to the grantor.

For guarantees issued to support the fulfillment of transactions that must be reported to the Colombian Central Bank (e.g. external indebtedness operations for working capital or financing of imports), the guarantee will be considered informed by the non-resident, with the presentation of the document which evidences the granting of the guarantee, along with the Exchange Form No. 6 "External Debt Information Given to Residents". Purchases or sales of foreign exchange generated by this operation will be done using an Exchange Form No. 3 "Exchange Declaration of Changes in External Debt", which will indicate the number assigned by the foreign exchange intermediary to the guaranteed debt.

2.7.3 Guarantees and Collaterals Granted and Payable in Foreign Currency by Foreign Exchange Intermediaries

The foreign exchange regime regulates the procedure to transfer foreign currencies through the exchange market, which are related to collateral and guarantees granted by foreign exchange intermediaries, to endorse operations such as bid bonds for public or private biddings; obligations derived from export of goods or services (other than financial services) and obligations of foreign residents.

The foreign exchange regime also regulates the procedure to transfer foreign currencies through the exchange market, which are related to collateral and guarantees granted to cover the fulfillment of residents' obligations in foreign currency; in connection with the acquisition of locally produced crude oil and natural gas to foreign companies that carry out exploration and exploitation activities in the oil and gas sector. Hence, branches of foreign companies regulated by the special exchange regime, can order and also benefit of the foreign currency collaterals and guarantees issued by the intermediaries from the exchange market. The funds received in foreign currencies from the execution and payment of the collaterals or guarantees must be received and paid through free market accounts or accounts of the parent company abroad.

These funds cannot be registered as supplementary investment to the allocated capital of the branch offices of foreign companies subject to the special tax regime (see item 2.3.6). It must be construed as supplementary investment the operation whereby a parent company transfers money to a branch office opened in Colombia, through an account. The deposit must be reported to the Colombian Central Bank and it can be returned to the parent company through the same procedure. The funds sent increase the capital of the branch office.

2.8 Derivatives

A financial instrument will be considered a derivative instrument if it meets the following two (2) main characteristics:

- Its fair value depends on or results from one or more underlying assets.
- Its settlement and liquidation is made at a time after the date of the derivatives contract.

Derivatives transactions with authorized foreign agents are considered foreign exchange transactions and, therefore, are subject to registration with the Colombian Central Bank.

2.8.1 Authorization to enter into Derivative Transactions

Colombian residents and foreign exchange intermediaries may enter into financial derivative transactions over (i) interest rates; (ii) exchange rates; and (iii) stock exchange indexes with foreign exchange intermediaries and foreign agents authorized to professionally enter into derivative transactions.

Colombian residents other than foreign exchange intermediaries may enter into derivative transactions with respect to commodities with foreign agents authorized to professionally enter into derivative transactions.

The entities subject to the supervision of the Superintendency of Finance may enter into credit default swaps with foreign agents authorized to professionally enter into derivative transactions, provided that such operations meet certain conditions which are set forth by foreign exchange regulations.

2.8.2 Settlement of Derivative Transactions

The method pursuant to which derivative transactions must be settled depends on the parties involved and the specific characteristics of each transaction. The following are some basic guidelines:

- Colombian Peso–Foreign Currency or Foreign Currency–Foreign currency transactions entered into by and between residents and foreign authorized agents or between intermediaries of the foreign exchange market must be, as a general rule, settled non-delivery and paid in a foreign currency. The transaction may be comply in the agreed currency or in Colombian legal tender when (i) there is an underlying operation that must be mandatorily channeled through the foreign exchange market; (ii) when there is an obligation of payment abroad derived from the purchase of goods from users of the free trade zones or of non – user residents that make deposits of goods in the free – trade zones; or (iii) when there is an obligation or a right abroad derived from operations of sending and receiving payments and remittances in foreign currency from foreign exchange and special financial services' companies.
- Colombian Peso–Foreign Currency or Foreign Currency–Foreign currency transactions between residents and foreign exchange intermediaries must be, as a general rule, settled non-delivery and paid in Colombian pesos. The effective compliance with the operation can only be made in the stipulated currency or in Colombian legal tender when one of the three conditions mentioned in the preceding item occur.
- Derivative transactions between foreign exchange intermediaries must be, as a general rule, settled non-delivery and paid in Colombian pesos.

2.9 Compensation Accounts

Compensation accounts are savings or checking accounts opened by Colombian residents at foreign financial institutions and registered with the Colombian Central Bank. Compensation accounts are used to make and receive foreign-currency payments regarding transactions required by law to be traded through the foreign exchange market, without resorting to the intermediaries of the foreign exchange market.

Compensation accounts are subject to registration with the Colombian Central Bank and are subject to the following special report obligations:

- Compensation accounts must be registered with the Colombian Central Bank though an Exchange Form No. 9 "Registration of Compensation Accounts".
- The registration of the account must be made no later than one (1) month after the first foreign exchange transaction is conducted through the account.

The titleholder of the account is required to submit to the Colombian Central Bank on a monthly basis an Exchange Form No. 10 "Compensation Account Transactions Balance". The obligation to report the movements of the compensation accounts to the Department of International Exchange of the Colombian Central Bank is required until the date of cancellation of the registration of the account.

This information must also be submitted, on a quarterly basis, to the Tax Authority.

As a general rule, except some very specific cases, payments in foreign currency between residents are forbidden, except for companies carrying out exploration and extraction of oil, natural gas, coal, iron-nickel and uranium, or engaging exclusively in the provision of services related to the oil and gas sector. As an exception to the general rule, special compensations accounts have been created for the payment in foreign currency of obligations arising from local operations among residents, which are not subject to special regimes (those related to the oil and gas sector, mining and services involved).

Regulatory Framework

Norm	Subject
Law 9 of 1991 (modified)	Law on Foreign Exchange
Decree 1735 of 1993	Issues Foreign Exchange Regulations
Decree 2080 of 2000 (modified)	General Regime for Foreign Capital Investment in Colombia and Colombian Capital Investment Abroad
External Resolution 8 of 2000 (modified)	Foreign Exchange Regime
Regulatory Circular DCIN 83 (modified)	Foreign Exchange Market Regulation
Regulatory Circular DODM 144 (modified)	Derivatives Operations

CHAPTER 3

CORPORATE MATTERS

Corporate Matters / Proexport Colombia

LEGAL GUIDE
TO DOING BUSINESS
in Colombia
2012

POSSE HERRERA & RUIZ
ABOGADOS

PROEXPORT COLOMBIA
TOURISM, FOREIGN INVESTMENT AND EXPORTS PROMOTION

3. CORPORATE MATTERS

Four (4) things an investor should know about corporate regulations in Colombia

1. Corporate law in Colombia enjoys great legal stability.
2. Investors who wish to engage in permanent business in Colombia must, as a general rule, channel their investments through a legal vehicle, such as a corporation or a foreign company branch. Non-resident individuals who want to invest in Colombia are excluded from this requirement, as they can appoint an attorney-in-fact to carry out their business in the country.
3. Colombian commercial law is flexible and modern with regard to corporations, and it allows the creation of sole-shareholder investment vehicles, whereby the liability of the sole shareholder is limited to the amount of the corresponding contribution.
4. To carry out businesses in Colombia, foreign investors do not need a local partner or investor. With few exceptions, the entire equity of a corporate entity can be foreign-owned and there are no legal restrictions on its subsequent repatriation.

In Colombia, constitutional principles such as the right of association, the right to equality, and the protection of free enterprise and private initiative enable the creation of entities that receive local and foreign investments. This chapter summarizes the main relevant legal aspects regarding the most commonly used types of legal entities in Colombia.

3.1 Most Common Legal Vehicles to Channel Foreign Investment

The vehicles most widely used by foreign investors to channel their investments into Colombia are (i) simplified stock company ("S.A.S." in Spanish); (ii) limited liability company; (iii) stock company; and (iv) foreign company branch (the "Vehicles").

The S.A.S. has been welcomed by the business community since its creation in 2008, particularly because of its flexibility in terms of the incorporation process and the ample freedom its shareholders have to establish the terms and conditions for its functioning and internal structure (e.g., the possibility of including an undefined corporate purpose, have a sole shareholder, state an indefinite term of duration, among others). The possibility to be the branch of a foreign corporation is also noteworthy, particularly for the mining and hydrocarbon sectors, due to foreign exchange advantages.

3.2 Commercial Companies

The most relevant aspects regarding commercial companies are explained below:

3.2.1 Document of Incorporation

Corporations in Colombia are incorporated by means of a public deed formalized before a public notary or a notarized private document, which contains the corporation's bylaws, depending on the vehicle chosen by the investor to carry out its investment in Colombia.

The table at the end of this chapter indicates the way in which each type of commercial company is incorporated.

3.2.2 Commercial Registration

In addition, as part of the incorporation process, commercial corporations must be register with the commercial registry kept by the corresponding chamber of commerce of the city where the company is to be based.

To register the company it must be submitted the corporation's bylaws and any other document that the chamber of commerce may request, the letters of acceptance of the persons appointed as managers and tax auditor (in the event the company requires one), and the corresponding fees and taxes must be paid.

3.2.3 Registration before the chamber of commerce of the Tax Registry ("RUT", in Spanish)

The companies that register with the commercial registry kept by the chamber of commerce must register the RUT, which is processed via a form created for this purpose and may be obtained from the website of DIAN at www.dian.gov.co. This form must be submitted in person to the chamber of commerce either by (i) the legal representative of the company; or (ii) the attorney in fact together with the documents and the certification of the requirements indicated by the tax authority.

3.2.4 Power of Attorney and other Documents Issued Abroad

If the prospective partners or shareholders cannot be present or available in the country in order to attend the incorporation proceedings, they must grant a duly legalized written power of attorney. If the investor country is a signatory to the 1961 Hague Convention Abolishing the Requirement for Legalization for Foreign Public Documents, the document must be apostilled. Additionally, for any legal entity, a document issued by a public notary (or a competent official) must be included, certifying its incorporation and legal representation. This certificate must also be duly apostilled. If the country of the investor is not signatory of the Hague Convention, the power of attorney must be legalized by a public notary as described above and submitted to the Colombian consulate where the consular officer will certify the incorporation and legal representation of the company.

Documents issued in a language other than Spanish must be translated by an official translator duly authorized in Colombia and whose signature is legalized by the Ministry of Foreign Affairs.

3.2.5 Payment of Capital and Registration of the Foreign Investment

In principle, Colombian legislation does not require a minimum capital contribution to incorporate commercial companies. This implies that the capital contribution is set by the shareholders or partners, as may be the case, regarding the activities that the company plans to carry out in Colombia.

The legislation on consideration (cash, in kind and work) is quite flexible and it allows for great diversity for shareholders and partners, provided that the assets to be contributed are convertible into monetary value.

Foreign currency entering the country that is to be destined to capital contributions to the company must be registered as foreign investment with the Colombian Central Bank through intermediaries in the exchange market duly authorized in Colombia for that purpose or through bank accounts held abroad known as compensation accounts registered with the Colombian Central Bank. Accordingly, the corresponding foreign exchange declarations must be filed by means of the completed required forms (Form No. 4).

It is very important to be aware that foreign investment must be updated with the Colombian Central Bank every year, no later than June 30.

If the investment is made with foreign currency (not through a contribution of assets), filing the declaration will be sufficient to register the foreign investment. Conversely, if the investment is made through a contribution of assets, different procedures will apply (see chapter 4 "Customs and Foreign Trade Regimes" for further information).

3.2.6 Operation and Modifications to the Bylaws of Commercial Companies

Generally, corporations do not require permits to operate in Colombia. However, there are some exceptions for companies incorporated to carry out certain activities which can be of national interest, such as financial activities, stock brokerage activities, insurance services or, provision of armed private security services or any other activity involving the management and investment of funds obtained from the public. These companies will require prior authorization from the competent administrative authorities to be incorporated and to operate in Colombia.

As for the modifications to the corporation´s bylaws, which must always be approved by the governing body of the company, the general rule is that authorization from the state authorities is not required to introduce them. As an exception, for companies supervised or controlled by the Superintendency of Companies (the governmental authority responsible for supervising and controlling companies), modifications associated to mergers or divisions, may be subject to the authorization of the Superintendency of Companies or the supervisory entity. In any case, modifications following a reduction of capital due to the reimbursement of capital contributions in any type of company are always subject to prior authorization of the Superintendency of Companies.

Amendments to the bylaws of a S.A.S. and of other companies incorporated by means of a notarized private document are also carried out by means of a notarized private document. In turn, amendments to the bylaws of companies incorporated through public deeds must also formalize such amendment by a public deed. A modification involving the increase of capital as a result of an asset contribution that requires a transfer by means of a public deed may not be made by a private document.

3.2.7 Appointments

The appointment of administrators of the companies by the competent body, as set forth in the bylaws, such as the

appointment of legal representatives, tax auditors and members of the board of directors, must be registered in the commercial registry kept by the chamber of commerce.

For such purposes, the document notifying the appointment, the letter of acceptance and a photocopy of the appointed person's identity document shall be submitted.

It is important to bear in mind that except for tax auditors, the managers of the company may be foreigners not domiciled in Colombia.

3.2.8 Regulation of Parent Companies, Subordinate Companies and Business Groups

A company is a subordinate or controlled company when its decision-making authority is subject to the will of other person(s), whether individuals or legal, the latter being its parent or controlling company. This control may be economic, political or commercial and it may be exercised through a majority or controlling interest in the corporate capital of the subordinate company, or through the execution of a contract or other instrument that enables a party to exercise dominant influence over the administrative bodies of the controlled company, among others.

If the parent company exercises direct control over the subordinate company, the latter is considered an affiliate; if, on the contrary, the parent company exercises control with assistance of the subordinate company or through it, that is, indirectly, it is called a subsidiary. In this regard, it is important to highlight the following points:

- The law recognizes that an entity may exercise control over another entity without any capital participation in it.
- Likewise, it is recognized that corporate control can be exercised by individuals or non-corporate legal entities.

In order to determine the existence of a business group, in addition to the relationship of subordination or control, it must exist common purpose and direction for all the entities comprised in the group.

The law establishes that common purpose and direction exist when the activities of all the entities are designed to achieve an objective defined by the parent or controlling company by virtue of the direction that it exercises over the group, notwithstanding the ability of each member to pursue its corporate purpose individually.

The existence of a situation of control and/or business group, must be registered before the chamber of commerce, in order for such situation to be disclosed to third parties. Registration must be completed within thirty (30) days after the date of creation of the business group or the control situation. In this extent, the situation of control and/or business group produces other obligations with regard to accountability and preparation of information under the company's administrators responsibility.

3.2.9 Financial Statements

The purpose of financial statements is to provide information to those who have no access to the company's records about the controlled assets, the liabilities that may require a transfer of resources, changes in equity, and the annual results.

Commercial companies must close their books and issue certified general purpose financial statements at least once a year as of on December 31. However, the partners or shareholders may agree, within the terms of the bylaws, to issue the financial statements on different and additional dates. It is important to note that in the event of a merger, division or transformation, the company must prepare extraordinary financial statements.

General purpose financial statements are those prepared at the end of a specific period to provide information to undetermined persons interested in evaluating the capacity of an economic entity to generate positive cash flows. The financial statements include the balance sheet, the income statement, the statement of changes in equity, the statement of changes in financial position, and the cash flow statement. Financial statements must be clear, concise, neutral and readily available.

As for the financial statements of business groups, it is important to take into account that, for the purpose of tax control, business groups that are registered in the commercial registry of the chambers of commerce must submit to DIAN their consolidated financial statements on magnetic media, no later than June 30 of every year.

3.2.10 Profits

Profits are distributed on the basis of true and reliable financial statements prepared in accordance with generally accepted accounting principles, after setting aside the legal, statutory and occasional reserves, as well as the appropriations for the payment of taxes, in proportion to the paid portion of the par value of the stocks, shares or equity stake of each partner or shareholder, if the bylaws do not provide otherwise. It must be noted that for the S.A.S., the legal reserve is not mandatory.

Clauses which deprive any shareholder or partner of full participation in the profits will be disregarded.

3.2.11 Tax Payments by the Shareholders of a Company in Colombia

Pursuant to the current tax legislation, the profits of a company are liable to tax only once, either on the part of the company or of the shareholder. Thus, if the company pays the corporate income tax on profits, the shareholder does not have to pay an additional tax on the received dividends. Now, if the corporate income tax is not levied on the company, the distributed dividends will be subject to a thirty three percent (33%) withholding income.

3.2.12 Dissolution and Winding-up

The liquidation of a legal entity follows the dissolution of a company. This event marks the initiation of the winding-up process, which ends with the actual liquidation of the entity and the cancellation of the commercial registration of the company. Dissolution can come about by the expiration of the period agreed to by the equity holders for the life of the entity, or by the occurrence of certain circumstances (prescribed by law or the bylaws) that prevent continuation of activities in furtherance the corporate purpose. These circumstances could be, for example, a decision by the highest corporate body or the relevant authorities, or the extinction of the object which exploitation constitutes the corporate purpose, among others.

When the company has been dissolved and is in the process of liquidation, its corporate purpose is restricted to a single aim: to use its assets to pay any outstanding liabilities, that is, to proceed with all steps necessary to wind up the legal entity. However, pursuant to Law 1429 of 2010, companies and foreign company branches may agree to reactivate the company at any time after the winding-up process has been initiated, provided that (i) the external liabilities are not greater than seventy percent (70%) of the corporate assets; and (ii) the remaining assets have not been distributed among the partners or shareholders.

Creditors may appear in such proceedings to file their claims, in the form and within the time period prescribed by law, to enforce their rights and obtain payment of their claims in the order and with the priority and preferences established by law.

Once the final liquidation statement of the company or of the foreign branch is filed in the commercial registry kept by the chamber of commerce, the company must also cancel the RUT before DIAN and the foreign investment with the Colombian Central Bank.

3.3 Foreign Company Branch

Even though Colombian law does not provide a definition for a foreign company branch, the Code of Commerce sets forth that if a foreign company wishes to carry out business in Colombia on a permanent basis, it must establish a branch with domicile in the country.

The following are considered permanent activities:(i) opening commercial establishments or business offices, even if they only offer consulting services; (ii) participation as a contractor in projects or the provision of services; (iii) participation in any way in activities related to the management or investment of funds obtained from private savings; (iv) participation in any of the segments or services of the extractive industries; (v) the allocation of a concession from the Colombian Government, a transfer of or participation in the exploitation of the object of this concession in any manner; and (vi) holding shareholder, partner or board of directors meetings, or managing or administrating in Colombia. For these purposes, in addition to this list of activities, it is also worth noting that Colombian law does not set a specific duration to define whether an activity is permanent or not, but it is generally accepted that the minimum duration is of six (6) months.

Based on the definition provided in the Code of Commerce for a domestic branch, a branch of foreign companies can also be defined as a business establishment opened by a foreign company in Colombia with the purpose of carrying out permanent activities. Accordingly, it is possible to clarify that a branch is not an autonomous entity independent from its parent company because it does not have a separate legal personality.

3.3.1 Creation

To open a foreign company branch in Colombia, the bylaws of the foreign parent company must be formalized by means of a public deed and the following must also be submitted: (i) a copy of the parent company's decision to open a branch in Colombia, approved by the competent corporate body; and (ii) the documents that certify that the officers have the authority to represent the company. These documents must be duly legalized and apostilled in the country of origin, and, if issued in a language other than Spanish, they must also be translated into Spanish by an official translator.

3.3.2 Creation Resolution

The resolution authorizing the creation of the branch is issued by the parent company and must include, at least, the following information:

- The name of the branch.
- The business it intends to pursue.
- The amount of the assigned capital and of capital from other sources, if any.

- The domicile of the branch.
- The duration of its business in the country and the causes for termination.
- The appointment of a general representative, with one or more alternates, to represent the branch in the business activities that it intends to pursue in Colombia.
- The appointment of the tax auditor, who must be a Colombian resident.

3.3.3 Registration

The foreign company branch must be registered in the commercial registry kept by the chamber of commerce in the domicile where the branch will be based, under the same terms and conditions mentioned above for commercial companies.

3.3.4 Name

Because the branch does not have a distinct legal existence from its foreign parent company, it is given the same name as its parent, with the addition of the expression "*Sucursal Colombia*" (Colombia Branch).

3.3.5 Registration of Foreign Investment

The assigned capital must be registered as foreign investment by processing the corresponding foreign currency exchange declaration and submitting it to the local commercial bank that will receive the money or by compensation funds duly registered before the Colombian Central Bank. Additional money remittances from the parent company will be recorded as supplementary investment to initial capital. The parent company will hold a current account in that local bank to channel the investment to the branch. The branch must report on a yearly basis to the Colombian Central Bank the transactions processed through such supplementary investment account. For this effect, it will submit a special statement to the Colombian Central Bank no later than the 30th of June of every year.

3.3.6 Modifications

Amendments to the bylaws of the parent company or to the incorporation resolution of the Colombian branch must be formalized before a public notary in the domicile where the branch is based. The documents issued abroad must be legalized as indicated above for the powers of attorney.

3.3.7 Appointments

The appointment of the representatives and the tax auditor of the branch must be registered in the commercial registry kept by the chamber of commerce. For such purposes, the document notifying the appointment, the letter of acceptance and a copy of the appointed person's identity document shall be submitted. It is important to bear in mind that the representatives of the branch may be foreigners not domiciled in Colombia.

3.3.8 Corporate Bodies

The foreign company branch is a business establishment. Therefore, its main corporate bodies are the same as those of the parent company. However, the branch has a general representative, who manages the establishment and represents the foreign company in transactions with third parties. Additionally, the law provides that it is mandatory for foreign companies branches, to appoint a tax auditor, who must carry out the external audit.

3.3.9 Decisions

Except for the general agent's authority to make administrative decisions and those relating to the ordinary course of business, the decision-making authority rests with the appropriate corporate body of the parent company, in accordance with applicable corporate regulations of the country of origin of the parent company.

3.3.10 Special Causes for Winding-up

Based on the fact that a branch is an extension of the parent company and depends on it to subsist, a branch will be dissolved in accordance with the same causes provided and applicable to the parent company.

The grounds for liquidation that apply to Colombian companies can also apply to a foreign company branch, provided they are compatible with its legal nature.

A foreign company branch can also be reactivated at any time after the winding-up process has been initiated, provided that the external liabilities are not greater than seventy percent (70%) of the corporate assets and that the remaining assets have not been distributed among the partners or shareholders.

3.3.11 Profits

All profits generated by the branch will be distributed according to the results of the end of year balance sheet. Thus, the branch may not make advance payments or remittances to the parent company on the basis of presumed profits.

3.4 Steps and Related Costs of Setting Up the Vehicles

The steps and associated costs of setting up the Vehicles to channel foreign investment are the following:

3.4.1 Simplified Stock Company S.A.S:

No.	ACTIVITY AND/OR DOCUMENT	COST
1	Personal appearance of the attorney in fact or the shareholder before a public notary to formalize the incorporation by private document.	Notary's fee COP 4,000 (approx. USD 2.00)
2	Registration of the private incorporation document (bylaws) in the chamber of commerce of the city where the company is to be based. Bylaws must be accompanied by all documents required by the chamber of commerce. Registration duties and taxes must be paid.	Zero point seven percent (0.7%) of the subscribed capital value of the company (registration tax)+COP30.000 (approx. USD 15) (registration fees)
3	Processing the RUT before DIAN.	No charge
4	Request to the chamber of commerce an update of the certificate of incorporation and legal representation of the company to include the definitive Tax Indentification Number ("NIT", in Spanish). A copy of RUT issued by DIAN must be attached.	No charge
5	Request the certificate of incorporation and legal representation issued by the chamber of commerce.	COP 4.000 (approx. USD2)

3.4.2 Foreign Company Branch

No.	ACTIVITY AND/OR DOCUMENT	COST
1	The bylaws of the parent company and any other document required by the Commerce Code must be formalized by means of a public deed.	3 X 1000 over the capital assigned to the branch
2	Registration in the chamber of commerce of the public deed indicated above.	Zero point seven percent (0.7%) of the subscribed capital value of the company (registration tax)+ COP 30.000 (approx. USD15) (registration fees)
3	Processing the RUT before DIAN.	No charge
4	Request to the chamber of commerce an update of the certificate of incorporation and legal representation of the company to include the definitive NIT. A copy of RUT submitted by DIAN must be attached.	No charge
5	Request the certificate of incorporation and legal representation issued by the chamber of commerce.	COP 4.000 (approx. USD 2)

3.4.3 Stock Companies and Limited Liability Companies

No.	ACTIVITY AND/OR DOCUMENT	COST
1	The bylaws must be formalized by means of a public deed or by a notarized private document of incorporation, in the event the company meets the requirements set forth in Law 1014 of 2006.	3 X 1000 over the authorized or the social capital, in the event of the public deed. In the case of notarization of a a private document of incorporation, COP4.000 (approx. USD2)
2	Registration of the public deed or private document in the chamber of commerce of the city where the company will be based. Bylaws must be accompanied by all documents required by the chamber of commerce. Registration duties and taxes must be paid.	Cero point seven percent (0.7%) of the subscribed capital value of the company (registration tax) + COP 30.000 (approx. USD15) (registration fees)

No.	ACTIVITY AND/OR DOCUMENT	COST
3	Processing the RUT before DIAN.	No charge
4	Request to the chamber of commerce an update of the certificate of incorporation and legal representation of the company to include the definitive NIT. A copy of RUT submitted by DIAN must be attached.	No charge
5	Request the certificate of incorporation and legal representation issued by the chamber of commerce.	COP 4.000 (approx. USD 2)

3.5 Comparative Analysis of the Vehicles from a Legal Perspective

The following summary table shows the main characteristics of the most commonly used Vehicles in order to channel foreign investment, indicating similarities and differences.

SUMMARY TABLE OF TYPES OF COMMERCIAL COMPANIES AND FOREIGN COMPANY BRANCH

	LIMITED LIABILITY COMPANY	STOCK COMPANY	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
Incorporation	Usually, by means of a public deed. However, it may be incorporated by a private document if the company meets the requirements set forth in Law 1014 of 2006.	Usually, by means of a public deed. However, it may be incorporated by a private document if the company meets the requirements of Law 1014 of 2006.	Private document.	Resolution from the parent company must be formalized by means of a public deed.
Number of partners / shareholders	Minimum two (2) partners. Maximum twenty five (25)	Minimum five (5) shareholders, none of which may have ninety five percent (95%) or more of the outstanding capital stock of the company.	Minimum one (1) shareholder	Does not apply.
Liability	Limited to the amount of the capital contribution for any obligation. Partners are not liable for payment of any debt, except for tax obligations or labor liabilities, for which they are severally and jointly liable with the company.	The company's liability for any obligation is limited to the amount of the shareholders equity. In principle, shareholders are not liable for credit obligations, unless a specific guarantee has been provided or that the obligation to pay the subscribed capital has not been met. Shareholders shall be liable beyond the value of their contributions for fraud, or the parent or controlling company is liable in a subsidiary manner with regards to the company it controls when the latter is insolvent or undergoing judicial liquidation due to actions of the parent or controlling company.	The company's liability for any obligation is limited to the amount of its equity. In principle, shareholders are not liable for any debt incurred into by the company. Shareholders are jointly and severally liable only when the company is used to violate the law or cause damage to third parties.	The parent company is liable for the activities in Colombia. Accordingly, if the branch's equity is not enough, the parent company may be liable.

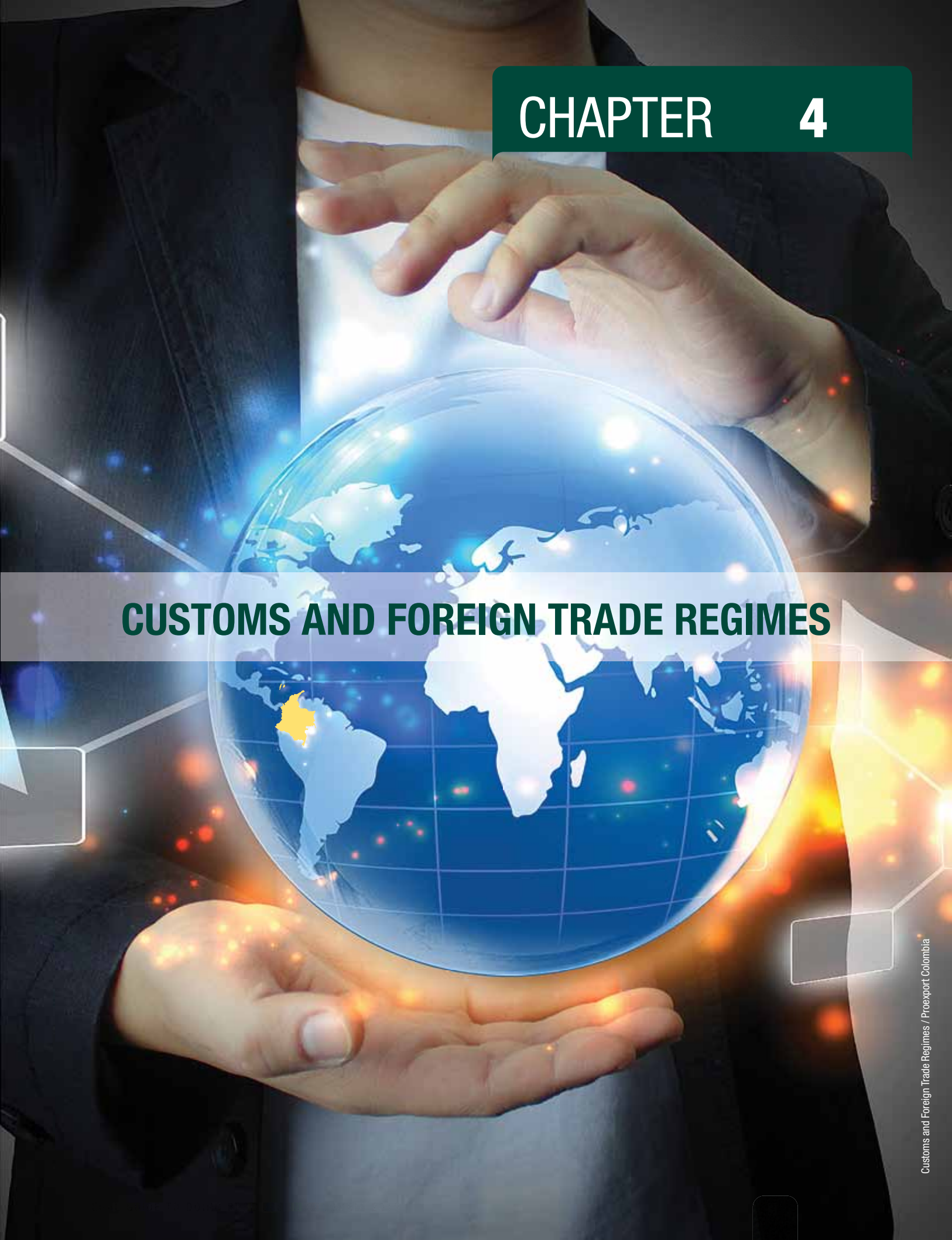
	LIMITED LIABILITY COMPANY	STOCK COMPANY	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
Capital	Shareholder contributions shall be paid in full when the company is incorporated, as well as when any increase is agreed.	At the moment of incorporation the shareholders must subscribe at least fifty percent (50%) of the authorized capital stock and pay at least one third (1/3) of the subscribed capital. The remaining two thirds (2/3) must be paid within a year.	The subscription and payment of capital can be made under the conditions, in the proportion and terms established by the shareholders. In any case, shareholders have a term of two (2) years to pay for the subscribed shares.	Once the branch is incorporated, all the share capital assigned must be paid. Additional capital may be assigned by means of a supplementary investment.
Assignment of shares/stock	Sale or assignment of shares implies that the company's bylaws must be amended. The decision to sell or assign shares must be legalized by means of a public deed duly registered with the chamber of commerce.	In principle, shares are freely transferable and no bylaws reform is required to negotiate them. Share assignment may be carried out by endorsing the certificates and registering them in the stock ledger.	In principle, shares are freely transferable and no bylaws reform is required to negotiate them. Share assignment may be carried out by endorsing the certificates and registering them in the stock ledger. Assignment can be limited to up to ten (10) years and be subject to authorization of a shareholders' meeting or any other corporate body or to preferential subscription rights.	Does not apply.
Reserves	The legal reserve for a limited liability company is equivalent to ten percent (10%) of the annual net gains up to an equivalent of fifty percent (50%) of the equity.	The legal reserve for a limited liability company is equivalent to ten percent (10%) of the annual net gains up to an equivalent of fifty percent (50%) of the subscribed capital.	No legal reserve is mandatory.	No legal reserve is mandatory.
Foreign Investment	Investment of private capital in money is automatically registered with the Colombian Central Bank when the corresponding exchange declaration is processed with an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank.	Investment of private capital in money is automatically registered with the Colombian Central Bank when the corresponding exchange declaration is processed with an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank.	Investment of private capital in money is automatically registered with the Colombian Central Bank when the corresponding exchange declaration is processed with an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank.	Investment of private capital in money is automatically registered with the Colombian Central Bank when the corresponding exchange declaration is processed with an exchange market intermediary (commercial bank), or through a compensation account registered before the Colombian Central Bank. The parent company must forward additional funds as "supplementary investment", which must also be registered with the Colombian Central Bank.

	LIMITED LIABILITY COMPANY	STOCK COMPANY	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
Tax Liability	The shareholders and the company are severally liable towards the tax authorities for the non payment of taxes, in proportion to their participation and the period of time during which they have been acting as shareholders.	The shareholders are not liable for tax payments excepting the cases of fraud to the law or harm to third parties.	The shareholders are not liable for tax payments excepting the cases of fraud to the law or harm to third parties.	The parent company and the branch are severally liable for the company's tax payments.
Tax auditor	Not required, except when (i) the value of the gross assets is equivalent to or greater than five thousand (5000) times the current minimum legal monthly wage (approx., USD 1,574,166), or (ii) the gross income for the immediately preceding year are equivalent or greater than three thousand (3000) times the current minimum legal monthly wage (approx. USD 944,500).	Mandatory for stock companies.	Not required, except when (i) the value of the gross assets is equivalent to or greater than five thousand (5000) times the current minimum legal monthly wage (approx., USD 1,574,166), or (ii) the gross income for the immediately preceding year are equivalent or greater than three thousand (3000) times the current minimum legal monthly wage (approx. USD 944,500).	Mandatory for branches.
Dividend remittances	If the foreign investment has been duly registered with the Colombian Central Bank, the investor is entitled to freely remit the dividends, provided they are supported by the financial statements of the company.	If the foreign investment has been duly registered with the Colombian Central Bank, the investor is entitled to freely remit the dividends, provided they are supported by the financial statements of the company.	If the foreign investment has been duly registered with the Colombian Central Bank, the investor is entitled to freely remit the dividends, provided they are supported by the financial statements of the company.	If the foreign investment has been duly registered with the Colombian Central Bank the investor is entitled to freely remit the dividends, provided they are supported by the financial statements of the company.
Board of Directors	The company is not required to have a board of directors. This body is optional.	The board of directors is a mandatory corporate body.	The company is not required to have a board of directors. This body is optional.	Does not apply.
Government Controls	Limited liability companies are controlled by the Superintendency of Companies only if their assets or revenues are equal to or greater than thirty thousand (30,000) times the current minimum legal monthly wage (approx. USD 10,389,500). Government control is exercised over financial aspects and requires that the annual financial statements are submitted to the Superintendency. Additionally, some changes to the bylaws require prior authorization from this entity.	Stock companies are controlled by the Superintendency of Companies only if their assets or revenues are equal to or greater that thirty thousand (30,000) times the current minimum legal monthly wage (approx. USD 10,389,500). Government control is exercised over financial aspects and requires that the annual financial statements are submitted to the Superintendency. Additionally, some changes to the bylaws require prior authorization from this entity.	Simplified Stock Companies are controlled by the Superintendency of Companies only if their assets or revenues are equal to or greater that thirty thousand (30,000) times the current minimum legal monthly wage (approx. USD 10,389,500). Government control is exercised over financial aspects and requires that the annual financial statements are submitted to the Superintendency. Additionally, some changes to the bylaws require prior authorization from this entity.	Does not apply since 2008.

	LIMITED LIABILITY COMPANY	STOCK COMPANY	SIMPLIFIED STOCK COMPANY	FOREIGN COMPANY BRANCH
Repatriation of capital	If the foreign investment has been duly registered with the Colombian Central Bank, the investor is entitled to freely repatriate the invested capital after liquidation of the company or capital reduction provided it meets certain requirements.	If the foreign investment has been duly registered with the Colombian Central Bank, the investor is entitled to freely repatriate the invested capital after liquidation of the company or capital reduction provided it meets certain requirements.	If the foreign investment has been duly registered with the Colombian Central Bank, the investor is entitled to freely repatriate the invested capital after liquidation of the company or capital reduction provided it meets certain requirements.	If the foreign investment has been duly registered with the Colombian Central Bank, the investor is entitled to freely repatriate the invested capital after liquidation of the company or capital reduction provided it meets certain requirements.

Regulatory Framework

Norm	Subject
Code of Commerce	General and specific regulation on corporations and foreign company branch
Law 222 of 1995	Amends the Code of Commerce in matters pertaining to corporations and regulates aspects such as spin-offs, corporate groups, duties of managers, preferred stocks with dividends and without voting rights, majority required for the stock corporation and the one-person business
Law 1014 of 2006	Whereby the possibility and the requirements to set up an entrepreneurial company, by means of a private document is established
Law 1258 of 2008	The simplified stock company (SAS) is created and the applicable norm for this kind of corporation is set forth
Regulatory Circular DCIN 83 issued by the Colombian Central Bank	Foreign Investment
Law 1429 of 2010	Law on Formalization of Employment and Job Creation



CHAPTER 4

CUSTOMS AND FOREIGN TRADE REGIMES

LEGAL GUIDE
TO DOING BUSINESS
in Colombia
2012

POSSE HERRERA & RUIZ
ABOGADOS

PROEXPORT COLOMBIA
TOURISM, FOREIGN INVESTMENT AND EXPORTS PROMOTION

4. CUSTOMS AND FOREIGN TRADE REGIMES

Three (3) things an investor should know about the Colombian foreign trade regime:

1. Colombia's customs regulations provide a special import-export program in connection with agro industry and services.
2. Colombia has negotiated fourteen (14) free trade agreements with fifty (50) countries in the past few years, thereby providing a broad spectrum of potential markets for Colombian companies.
3. Colombia uses different types of importation regimes designed to satisfy most of the needs of companies established in Colombia.

Colombia enjoys a strategic and privileged geographic location to access international markets through commercial agreements and tariff preferences that guarantee the best competitive conditions to sell Colombian products in foreign markets. Additionally, Colombia uses flexible, efficient and modern customs procedures, in accordance with current international trade standards. They currently are controlled by the Colombian Internal Revenue and Customs Service ("DIAN", in Spanish).

4.1 Foreign Trade Procedures

Since 2005, Colombia implemented the Single Window for Foreign Trade ("VUCE", in Spanish) managed by the Ministry of Commerce, Industry and Tourism. The VUCE, based on electronic and internet media, has the purpose of centralizing all government procedures related to foreign trade operations in one simple tool. To this end, VUCE has four (4) separate sections: (i) Imports; (ii) Exports; (iii) The Single Foreign Trade Form ("FUCE", in Spanish) that allows on-line transactions such as electronic payments to speed up procedures; and the (iv) fourth section is the Simultaneous Inspection System –SIIS for exporting contained cargo. More information on VUCE may be obtained at the website (www.vuce.gov.co/).

4.2 Imports

Imports, according to customs rules, are defined as the entry of goods into the "national customs territory" from the rest of the world, or from a free trade zone, permanently or temporarily for a specific task or purpose.

The ten (10) digit custom sub-tariff codes are listed in the Colombian customs tariff schedule governed by Decree 4927 of 2011. This schedule lists the applicable tariffs with respect to each subheading. The value added tax ("VAT", or "IVA" in Spanish) which is also part of the customs duties is regulated in the Colombian Tax Code.

Regarding tariffs, Colombia has fourteen (14) types of rates that range between zero percent (0%) to ninety eight percent (98%). Considering the customs tariff schedule in force, most of the sub–tariff codes have a rate of five (5%), ten (10%) or fifteen (15%) percent. Only one point two percent (1.2%) of the sub–tariff codes have rates of more than twenty percent (20%).

In addition the tariff was temporarily reduced –for one year– to zero percent (0%) for three thousand one hundred and seventy (3.170) sub–tariff items, which correspond to raw materials and capital goods not produced in Colombia, until August 12th of 2012. In November of 2010, Colombia substantially reduced tariffs, which meant that the simple average of the tariff rates regarding a most favored nation, fell from twelve point two percent (12.2%) to eight point three percent (8.3%).

4.2.1 Ordinary Imports

The majority of imports into Colombia are ordinary imports. Once the importer has completed all customs procedures, under this type of importation, the importer in Colombia receives the goods cleared for home use.

Import returns may be subject to revision three (3) years after the filing and acceptance date before the DIAN, and constitutes the document that evidences the legal entry of goods into the national customs territory.

4.2.2 Temporary Imports

(a) Temporary Imports for Subsequent Re-export under the same Conditions

Temporary import is defined as the import of certain goods that must be exported under the same conditions as they entered the national customs territory within a specific period of time, that is, without having undergone any modifications, except for the normal depreciation originated by their use. Under this type of import, applicable custom duties (tariffs and VAT) are suspended. However, the sale of goods will be restricted while they remain within the national customs territory.

The temporary imports to be re–exported under the same condition may be of two (2) subtypes:

(i) Short-term

Applicable when goods are imported to meet specific needs. The maximum import term will be six (6) months, extendable for up to three (3) additional months, and in exceptional situations for up to three (3) additional months with prior authorization from DIAN. VAT or customs duties are not meant to be paid on this type of temporary imports.

(ii) Long-term

Applies to the imports of capital goods and any accessory or spare parts, as long as they constitute one single shipment. The maximum term for these imports is five (5) years. Customs duties will be deferred in bi-annual installments, which must be paid only while the goods are within the national customs territory.

(b) Temporary Imports for Inward Processing

Pursuant to the Customs Statute inward processing, under temporary imports for inward processing the following subtypes are permitted:

(i) Temporary Import for Inward Processing of Capital Goods

Customs duties will be suspended to allow the temporary imports of capital goods, their spare and repair parts, when they will be re–exported after being repaired and reconditioned over a term of no more than six (6) months, which can be extended for an additional six–month term. The local sale of such goods is restricted according to the customs provisions in force.

(ii) Temporary Import for Inward Processing

Allows the temporary imports of raw materials and supplies that will be subject to transformation, processing or industrial manufacture by industries recognized as “Highly Exporting Users” ("ALTEX", in Spanish) and “Permanent Customs Users” ("UAP", in Spanish). The local sale of such goods will be restricted according to the customs provisions in force.

(c) International Leasing

The concept of international leasing may be applied for financing long-term temporary import of capital goods, which may remain in the national customs territory for more than five (5) years. In addition, DIAN may allow the long-term temporary imports of accessories, parts and spares that do not arrive as part of the same shipment, if they are imported within the five-year term.

Payment of customs duties (tariffs and VAT) is carried out in bi-annual payments. The maximum term for deferment is five (5) years, even though the goods may remain for a longer period in Colombia. When the agreement’s duration term exceeds five (5) years, with the last payment corresponding to such period all customs duties that have not been paid must be attended.

All payments made to the leasing company, when it is a foreign leasing company without domicile in Colombia, are subject to an income tax withholding of fourteen percent (14%) (capital income and domestic income). This type of leasing is not subject to integral inflation adjustments on the part of the lessee, since it is not registered as an asset.

(d) Other Types of Imports

There are different kinds of imports in Colombia, some with considerable benefits, such as:

- Imports with franchise
- Imports for transformation and assembly
- Urgent deliveries
- Re-imports after repair or alteration
- Re-imports in the same condition
- Imports for warranty compliance
- Imports through postal traffic and urgent deliveries
- Travelers

4.3 Exports

Exports constitute foreign trade operations with respect to the exit of goods from the national customs territory to the rest of the world or to a free trade zone in Colombia.

The process of an export from Colombia starts with the filing and acceptance of an authorization of shipment through the procedures set forth by customs regulations. Once the shipment has been authorized, the goods are loaded and the certificate of shipment has been issued by the transporter, the application for authorization of shipment is considered, for all purposes, as the respective return.

In Colombia, exports are not subject to any customs duties and may enjoy special treatments, such as:

- Special export and import programs (Vallejo Plan).
- International marketing agents (Comercializadoras Internacionales), which are businesses specifically established to purchase national products for export. The manufacturers and the suppliers of the goods acquired by these businesses receive the same benefits as if they were exporters of goods.
- Special export programs for tax reimbursements.

4.3.1 Special Export Programs ("PEX", in Spanish)

These programs allow sales made by a domestic producer to a foreign company to be treated as exports, even though the products are not exported directly by such producer, but delivered to another domestic company to be transformed and exported as a finished product.

4.4 Special Import and Export Programs (Vallejo Plan)

In order to promote foreign trade operations, Colombia has included in its customs legislation special importation-exportation programs. Through these programs, goods such as capital goods, raw materials, inputs and parts may be imported with certain tax benefits. These benefits are subject to compliance with certain export undertaking of finished goods or services made by the beneficiary of the special program.

Benefits of Vallejo Plan are granted due to:

- Direct operation, to the importer of the goods such as capital goods, raw materials, inputs and parts, that produces and exports the final goods.
- Indirect operation, to the importer or producer of intermediate goods sold to the exporter or whoever provides services related to the production of the goods to the exporter.

The following are among the current applicable kinds of Vallejo Plan:

4.4.1 Vallejo Plan for Raw Materials

Grants total or partial suspension of customs duties, of raw materials, to be totally or partially exported after having undergone transformation or manufacture.

4.4.2 Vallejo Plan for Capital Goods of the Agricultural Sector

This modality allows importing capital goods and spare parts with no tariff and deferring the payment of the VAT for products of the agricultural sector that are not subject to any government subsidies.

4.4.3 Vallejo Plan for Services Export

Allows the temporary import of capital goods and spare parts listed in Decree 2331 of 2001, with total or partial suspension of any tariffs and deferment of the VAT payment.

Those having access to this program must export services, for an amount equivalent to one hundred and fifty percent (150%) of the Free On Board (FOB) value of the imported capital goods and spare parts. In addition, users of Vallejo Plan for services export must provide proper use of the capital goods and spare parts temporarily imported, and may not sell them or give them a use different from the authorized, while the goods are under the program restrictions. Usually this type of Vallejo Plan is applicable to the export of services provided by companies whose main activity consists of one of the following:

- Services of transmission, distribution and commercialization of electric energy
- Special design services, value-added telecommunications and software exports
- Lodging services
- Human health
- Passenger air transportation
- Research and development
- Consulting and management
- Engineering

It is worth mentioning that only legal persons and joint ventures may apply to this program.

4.4.4 Junior Vallejo Plan

This Plan grants the exporter of goods the right to replace, through a new import exempted from additional customs duties, the raw materials or inputs that have been used in the production of such goods, when all customs duties were originally paid

(tariffs and VAT) upon the initial import. This reposition right must be requested within twelve (12) months from the shipment of the exported products.

4.5 High Volume Exporters

Companies recognized as Highly Volume Exporters (ALTEX) by the DIAN enjoy a series of tax and administrative benefits. To be recognized as ALTEX, they must meet the following requirements:

- To have exported during the twelve (12) months prior to the filing of the request, an amount equal or higher than USD 2,000,000.
- The value of exports, directly or through an international marketing agent, must represent at least thirty percent (30%) of the amount of its domestic sales in the same period.
- If the conditions established above are not met, the entity seeking ALTEX recognition must certify that prior to the filing of the request for recognition as ALTEX, such entity exported directly or indirectly FOB amounts of at least USD 21,000,000, without regard to the percentage of exports compared to domestic sales.

Among the tax benefits for ALTEX are:

- No VAT is imposed for regular imports of industrial machinery that is not produced in the country, but is designated for the transformation of raw materials.
- Possibility of obtaining authorization from the DIAN for operation of an industrial processing warehouse that allows the import of supplies and raw materials with suspension of customs duties and VAT, as long as such supplies and materials are used in the production of export products.

4.6 Permanent Customs Users ("UAP", in Spanish)

UAP are recognized as such by the DIAN for up to five (5) years if they have carried out foreign trade operations in the previous twelve (12) months for a FOB value equal to USD 5,000,000 or such value as a yearly average during the past three (3) years and have filed at least one hundred (100) import or export declarations in the past twelve (12) months. The value of USD 5,000,000 may be reduced by sixty percent (60%) if the taxpayer is already classified as a major taxpayer.

Those entities that have used Plan Vallejo, as explained under section 4.4 hereof, in the previous three (3) years from the filing date and show exports of at least USD 2,000,000 in the previous twelve (12) months will also be considered UAPs.

In addition, the customs legislation establishes the possibility of acknowledging UAP status, in a provisional manner, the branch offices or subsidiaries of a foreign company in the country that plan export or import operations for a FOB value in excess of USD 5.000.000 during the twelve (12) months following the first day of the next month after the recognition and recording as permanent provisional customs user. The capacity as permanent provisional customs user shall be valid until the expiration of the term granted to carry out the respective import or export operations.

UAPs must provide either a bank or an insurance company guarantee, as requested by the DIAN, and shall not exceed five percent (5%) of the FOB value of the imports and exports carried out in the previous twelve (12) months of the filing of the request of recognition and registration. The guarantee must be delivered within fifteen (15) days of recognition and registration.

The UAPs are entitled to the following benefits once recognized and registered:

- Automatic imported merchandise release.
- Possibility of importing raw materials or inputs under the temporary import for industrial processing regime, that allows the import without paying custom duties for those raw materials or inputs used for manufacturing goods to be exported.
- Possibility of providing a single global guarantee that covers all foreign trade operations before the DIAN.

4.7 Authorized Customs Warehouses

Authorized Customs Warehouses are public or privately owned spaces approved by DIAN for the storage of goods under customs control. The goods may remain temporarily stored in the authorized customs warehouses, without payment of customs duties (VAT and tariffs) for the duration established by law, which varies according to the type of warehouse, while their customs situation is determined.

Among the privately-owned customs warehouses are:

- Private warehouses for transformation or assembly
- Private warehouses for industrial processing
- Private warehouses for international distribution
- Private warehouses for aviation
- Transitory private warehouses
- Warehouses for urgent deliveries

4.8 Authorized Economic Operators

The customs legislation establishes the acknowledgement of the status of Authorized Economic Operator ("AEO") to any

individual or legal entity domiciled in Colombia that, being part of the international supply chain, discharges activities regulated by the customs' legislation or under the vigilance and control of the Superintendency of Ports and Transportation, the General Maritime Directorate or the Civil Aviation Authority, in order to guarantee safe and reliable foreign trade operations.

The advantages established for those users recognized as an AEO include, among other, the possibility of direct action of the importers or exporters as taxpayers before DIAN; the reduction of the number of recognitions and physical inspections and the use of simplified procedures in the performance of acknowledgement proceedings; the accompaniment and assignment for its foreign trade operations of an officer from DIAN, Anti–Narcotics Police, INVIMA and ICA, in order to provide support to its operations and to guarantee the safety of the international distribution logistic chain; or the possibility to take part in mutual recognition agreements with other countries provided that the benefits granted to the AEO at the domestic level are granted in the country of destination of the goods.

The application to be acknowledged as an AEO must be filed by the foreign trade user before DIAN, and it will be granted upon the verification of the requirements established by the applicable regulations. The authorization has an indefinite validity, provided the maintenance of the conditions and of the requirements under which the acknowledgement was granted is evidenced before the customs authority.

4.9 Colombia and the World Trade Organization ("WTO")

The WTO Agreement came into force for Colombia on April 30, 1995.

4.10 Tariff Preferences

4.10.1 Generalized preference system with the European union ("GPS Plus")

At the end of 2005, the system called GPS Plus was approved, having a principal purpose to foster economic and social development and the integration of developing countries into the world economy. The system has a 10-year term and went into effect on January 1, 2006.

4.10.2 Commercial Agreements

In addition to the commercial preferences mentioned above, Colombia has been structuring a policy of open integration, thanks to which it has reached a great number of foreign markets. Particularly for the Latin American arena, this integration has been achieved in the framework of the Latin American Integration Association ("ALADI", in Spanish).

Moreover, within the various agreements signed by Colombia, in addition to those described in the Free Trade Agreements table in the First Chapter the most relevant commercial agreements are:

(a) Andean Community ("CAN", in Spanish)

One of the most strategic integration plans for Colombia is the CAN that works under the auspices of ALADI. By virtue of this agreement, Colombia is part of a free trade zone with Bolivia, Ecuador and Peru, which entails an exemption of duties and restrictions for trade operations within that area. Additionally, in September 2006, the Council of Ministers of Foreign Relations of the Andean Nations granted the condition of associated member country status to Chile, thereby reaffirming the economic commitments established with that country and further expanding the commercial relationships in the region.

The main objective of the CAN is to strengthen the integration through a common market, in which agreements are reached by consensus and with a supranational character, on monetary, fiscal, currency exchange, environmental and public services policies.

(b) Colombia – Mexico Free Trade Agreement

The ninety two percent (92%) of the customs universe has been brought to zero tariff. This agreement includes important provisions in matters of antidumping and safeguards, rules of origin, sanitary and phytosanitary measures, investment, services, among others.

(c) Economic Complementary Agreement CAN – MERCOSUR

On October 18, 2004, the Economic Complementation Agreement was signed between Argentina, Brazil, Paraguay and Uruguay, the contracting parties of MERCOSUR, and all Members of the CAN. The agreement, with an unlimited duration, takes into account the asymmetries derived from the different levels of economic development of the parties, and as a consequence, it determined sub-items for immediate tariff elimination and periods for tariff elimination of between six (6) and fifteen (15) years for critical products such as vehicles, auto parts and electric appliances. For purposes of the relations with Uruguay through 2012, comprehensive meetings are being held on topics such as access to markets, investment and public purchases.

(d) Colombia – Chile Economic Complementary Agreement

More than ninety percent (90%) of the trade with Chile has been liberalized by virtue of this agreement, also including provisions regarding rules of origin, technical barriers to trade and phytosanitary measures, trade remedies, government procurement, investment and sea-air transportation.

(e) Colombia - European Free Trade Association ("EFTA") Free Trade Agreement

All industrial products coming from Colombia and exported to any country within EFTA are subject to zero tariff. In the same way, eighty five point seven percent (85.7%) of imports to Colombia from such countries are liberalized as of July 1st, 2011. The treaty also addresses investment protection issues, agricultural commerce, public purchases, and intellectual property, among others.

(f) Colombia – Canada Free Trade Agreement

By virtue of this agreement, eighty four point three percent (84.3%) of the industrial trade coming from Canada is liberalized, as well as ninety nine point six percent (99.6%) of the Colombian industrial products exported to the northern country. The treaty also includes agricultural commerce, public procurement, and services, including telecommunications and financial services, among others.

(g) Colombia – Northern Triangle FTA

By virtue of this agreement, fifty five percent (55.5%) of the industrial trade exported from Colombia to Guatemala, Honduras and Salvador is liberalized. This agreement also allows Colombia to have a legal framework for approaching a twenty eight (28) million person market for services, investment, public purchases, technical regulations, sanitary and phytosanitary measures, among others.

(h) Colombia – Venezuela Economic Complementary Agreement

Colombia signed an agreement, within the framework of the ALADI, with Venezuela. More than ninety one percent (91%) of the tariff codes exported in the historic period of 2006 – 2010 have zero tariffs according to the aforementioned agreement, including an important portion of agricultural and cattle and industrial production.

(i) Caribbean Community ("CARICOM", in Spanish)

CARICOM is a trade liberalization program between the caribbean community and Colombia that went into effect on January 1st, 1995. For its application, it takes into account the differences in economic development levels of its member countries. The agreement gives Colombia access to fourteen (14) million consumers in the CARICOM member countries.

In the framework of the agreement, Colombia grants tariff preferences to member countries in one thousand one hundred and twenty eight (1,128) sub–items of products and receives a reduction in tariffs on one thousand and seventy four (1,074) sub-items from Trinidad and Tobago, Jamaica, Barbados and Guyana. The import duties for negotiated products are one hundred percent (100%).

(j) Colombia - Unites States Free Trade Agreement

More than eighty percent (80%) of American exports related to industrial and purchase products are considered to be duty free within the scope of this FTA. In the same way, ninety nine percent (99%) of the exportable Colombian portfolio is considered to be at zero duty under this agreement. This FTA also includes chapters on investment, financial services, communications, public purchases, e-commerce, among others.

Regulatory Framework

Norm	Subject
Decree 2685 of 1999 amended.	Customs Statute
Decree 624 of 1989 amended.	Tax Statute
Resolution 4240 of 2000 amended.	Customs Statute Regulation
Decree 4927 of 2011.	Customs Tariff

CHAPTER 5

LABOR REGIME

LEGAL GUIDE
TO DOING BUSINESS
in Colombia
2012

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PROEXPORT COLOMBIA
TOURISM, FOREIGN INVESTMENT AND EXPORTS PROMOTION

5. LABOR REGIME

Five (5) things an investor should know about labor matters in Colombia:

1. Employment contracts executed in Colombia, regardless of the nationality of the parties, are governed by local law.
2. At the end of each year, the Government determines the Minimum Legal Monthly Wage ("MLMW").
3. Under Colombian labor law, there are payments which must be considered as being part of the salary base, regardless of the will of the parties, such as commissions or bonuses for meeting targets.
4. Both national and foreign employees, resident in Colombia and legally bound by an employment agreement are required to join and contribute to the social security system, except certain legal exemptions.
5. In addition to the employee's monthly salary, extralegal benefits can be agreed upon which do not constitute part of the salary base, up to a maximum of forty percent (40%).

Labor law regulates employment relationships, which may be either individual labor law, or collective labor law. Individual labor law regulates the relationships between the employer and individual employees, and collective labor law regulates the relationship between the employer and associated employees, whether unionized or otherwise.

Labor law applies to all labor relationships in Colombia, regardless of the nationality of the parties (employer or employee) or the place where the contract was executed.

5.1 Overview

An employment contract does not require special formalization and only three conditions must be met: (i) that the services are rendered personally; (ii) a relationship of dependence or subordination of the employee; and (iii) in return for payment.

5.2 Employment contracts

5.2.1 Types of Contracts by Duration

Employment contracts can be classified according to their duration, as follows:

Types of Contracts by Duration

Indefinite term	The duration of this type of contract is not defined by a term or condition. Thus, it is indefinite. Verbal contracts are considered to be indefinite term contracts, regardless of whether the parties have agreed otherwise.
Fixed Term	The parties establish a term for the duration of the contract. This type of contract must be written, otherwise it will be consider as an indefinite term contract. Fixed term employment contracts with a term of less than one (1) year can be renewed for three (3) equal or shorter terms, after which any further renewal shall be for one (1) year. Fixed-term contracts of one (1) to tree (3) year duration, may be renewed indefinitely. If a renewal is not desired, prior notice of at least thirty (30) calendar days must be given to the other party, before the expiration date of the contract. The maximum term of a fixed-term contract is of three (3) years.
For the duration of the work	The term of the contract depends on the duration of the work that has been hired. It is necessary to describe in detail the duties or work object of the contract and for this reason it must be a written contract. Contracts for the duration of the work may not be renewed.
Casual or temporary	This type of contract is celebrated for tasks that are not part of the regular activities of a company and their term is of less than one (1) month.

5.2.2 Probation Period

During the probation period, both the employer and the employee have the opportunity to evaluate the convenience of the relationship and the conditions and abilities required for the job.

The duration of the probation period should be stated in writing, and during this time either party may terminate the employment contract without prior notice and the employer is not obligated to pay an indemnification. The duration of the probation period depends on the type of employment contract, but in any case it cannot exceed two (2) months.

5.2.3 Foreign Employees

Foreign employees have the same rights and obligations as Colombian employees. However, when foreign nationals enter into an employment contract in Colombia, both the employer and the employee must also meet additional requirements in connection with immigration procedures and the control of foreign nationals during their stay in Colombia.

5.3 Payments Arising from the Labor Relationship

5.3.1 Salary

The salary is the direct compensation that the employee receives for the services rendered to the employer.

(a) Salary Types

(i) Ordinary Salary

An ordinary salary pays for regular work. In addition to the regular pay, the employee must receive (i) overtime pay; (ii) pay for work on mandatory rest days; (iii) percentage on sales and commissions; (iv) individual performance-based bonuses; (v) permanent travel expenses for employee's meals and lodging; and (vi) in general, any payment made as direct compensation of the employee's work.

At the end of each year, the Government determines the minimum legal monthly wage. For 2012, the MLMW was set at COP 566,700 (approx. USD 315).

(ii) Integral Salary

In this modality, the salary covers the regular work hours, but it also includes all legal and extralegal benefits, severance funds and corresponding interest, service bonuses, overtime pay, pay for work on mandatory rest days, provisions in kind, and generally all fringe benefits; except vacations. The employee only receives twelve (12) monthly salary payments per year. An integral salary arrangement must be stated in writing. Additionally, this modality can only be adopted for those employees earning more than ten (10) times the current minimum legal monthly wage plus a payroll benefits factor that cannot be of less than thirty percent (30%) of the total salary. In this system, social security contributions are calculated on seventy percent (70%) of the integral salary. For the year 2012, the minimum integral salary is COP 7,367,100 (approx. USD 4,092).

(b) Salary Exclusion Agreements

Employees and employers can agree on payments or benefits which are not considered to be part of the salary and thus are excluded from the salary base on which contributions to the social security system and payroll taxes contributions are calculated. However, this kind of agreement is restricted to the extent that some payments cannot be excluded from the salary, since they correspond to the employee's personal services. Payments or benefits excluded from the salary with regards to contributions to social security cannot exceed forty percent (40%) of the total monthly payment worth the difference will be taken as base to make contributions to social security system.

(c) Travel Expenses (*Per Diem*)

Travel expenses include both travel costs, and meals, and other expenses when the employee is traveling for the benefit of the employer to perform a particular task. Regardless of how a company calls, treats or manages them (advance payment, reimbursement, travel expenses, corporate credit card, etc.) they are considered travel expenses. The portion of permanent per diem payments applicable to lodging and food constitute part of the salary. In no case occasional travel expenses are not considered as a salary payment.

5.3.2 Fringe Benefits

Every employer has the obligation to grant to its employees who earn a regular salary, regardless of the duration of the contract, the following fringe benefits:

Item	Pay period	Description
Severance	Annual	Employers must make an annual direct deposit to a severance fund on behalf of every employee, equivalent to one monthly salary for every year of service and proportionally for a fraction thereof. This deposit must be made before February 15 of each year. Upon termination of the employment contract, the employer must pay the employee the accrued severance until the date of termination. The employer may request an advance payment of the severance fund if the intention is to use it for housing or education or when the modality of salary changes from ordinary salary to integral salary. Failure to make the deposits on time generates a penalty of one (1) day's salary for each day of delay during the term of employment until payment is made.
Interest on Severance	Annual	Equivalent to twelve percent (12%) per annum on the balance of each year's severance owed to the employee as of December 31 of the preceding year, which must be paid no later than January 31st of each year.
Premium for services	Semiannual	Equal to fifteen (15) days of salary for each semester of service, and must be paid in June and in December of each year.
Transportation subsidy	Monthly	The employer must pay to employees with a salary of no more than two times the MLMW a monthly subsidy transportation expenses (for 2012, it is of COP 67,800 (approx. USD 38).
Dress and Footwear	Every four months	It is an endowment of one (1) pair of shoes and one (1) work outfit to be provided three (3) times a year to every employee, in accordance with the task to be performed (No later than April 30, August 31 and December 20). Employees entitled to this benefit are those who earn up to two (2) times the MLMW and that have been employed for at least three (3) months.

5.3.3 Contributions to the Integrated Social Security System

The integrated social security system ("Social Security System") was created in 1993 by means of Law 100 of 1993. The Social Security System integrates the general pensions system ("Pensions"), the general health system ("Health") and the general professional risks system ("Professional Risks"). Every employer is under the obligation to enroll its employees with the Social Security System and to make on timely relevant contributions. The percentages that the employer and employee must pay on their behalf to the Social Security System are as follows:

System	Contributions (% of salary)	
	Employee	Employer
Pensions	4%	12%
Health	4%	8.5 %
Professional Risks*	-	Betwen 0.348% and 8.7%
Pension Solidarity Fund**	Between 1% and 2%	

* The percentage of the contributions for Professional Risks varies in accordance with the insured risk, which is defined by the kind of activity to be carried out.

** The contributions percentage to the pension solidarity fund varies according to the employee's salary.

Colombia has executed social security bilateral agreements with Chile, Argentina, Uruguay and Spain, but the only operating agreements are the ones celebrated with Chile and Spain.The purpose of these agreements is to guarantee that citizens of contracting countries can have their contributions to a pensions system acknowledged in any of the other countries, (depending on the bilateral agreement) so that the old-age, disability and survivors' pensions are recognized under the conditions and characteristics of the country of residence of the employee at the moment when the employee requests the relevant pension.

5.3.4 Voluntarily Affiliates to Pensions

All independent employees and in general all individuals residing in Colombia, Colombians domiciled abroad, who are not mandatory affiliates to Pensions and are not expressly excluded by law 100 of 1993, and foreigners in Colombia with employment

contracts, not covered by any pension regime in their country of origin or any other, are considered to be affiliated, on a voluntary basis, to the Colombian Pensions regime.

5.3.5 Payroll Contributions

Employers who have more than one (1) permanent employee are required to make additional payments to the Colombian Institute of Family Welfare ("ICBF", in Spanish), to the National Apprenticeship Service ("SENA", in Spanish) and to the Family Compensation Funds ("CCF", in Spanish). The following table shows the payroll percentages to be paid to each of these entities:

Entity	% of Payroll
CCF	4%
SENA	2%
ICBF	3%

The CCF grant their employees whose payment does not exceed four (4) MLMW a sum of money in–kind payments and services. Its fundamental objective is to alleviate the economic burdens represented in the support of the family as the basic nucleus of society.

5.3.6 Payroll Benefits

Currently, there are several tax benefits and other payroll contributions available to employers that create new positions for employees belonging to vulnerable groups, defined as persons under the age of twenty eight (28), internally displaced populations, persons in the process of reintegration, disabled persons, and women over the age of forty (40) who have not had an employment contract in the previous twelve (12) months.

Law 1429 of 2010, as regulated by Decree 545 of 2011, determines that natural and legal persons who set up small businesses with less than fifty (50) employees and whose gross assets do not exceed an amount of five thousand times the minimum legal monthly wage five thousand (5000) MLMW, at present equivalent to COP 2,833,500,000 (approx. USD 1,574,166), and have registered the business with the commercial register of the corresponding chamber of commerce after the law entered into force, shall make their contributions to SENA, ICBF y CCF according to the following parameters:

Contribution	Exemption Period
0% of total contributions	The first two (2) years of business activities
25% of total contributions	During the third (3rd) year of business activities
50% of total contributions	During the first fourth (4th) years of business activities
75% of total contributions	During the fifth (5th) years of business activities
100% of total contributions	From the sixth (6th) year onwards

5.4 Working Hours

It is the time of day in which the employee is working for the company. The regular working day is eight (8) hours per day and forty-eight hours (48) per week, distributed from Monday to Friday or from Monday to Saturday, as agreed between the parties. The working hours must be distributed during the day into at least two slots, with a rest break in between, rationally set according to the nature of the job and the needs of the employees. The law also allows for flexible working hours, in arrangement with the employees.

The limits set on the regular working day do not apply for employees holding positions of trust or authority and management positions. If the job requires it, employees in positions of trust or authority must work longer hours without overtime pay.

Night work is defined as the period between ten (10:00) pm and six (6:00) am and the salary is paid with an additional charge of a thirty-five percent (35%) than the salary paid for regular daytime hours. Also, daytime overtime pay is equivalent to twenty-five percent (25%) of the regular daytime salary. Overtime pay for night work is equivalent to seventy-five percent (75%) of the salary paid for regular daytime hours.

5.4.1 Statutory Paid Rest Entitlements

(a) Mandatory Paid Weekly Rest Days and Public Holidays

All workers are entitled to pay for time off on Sundays as well as on national and religious holidays. This pay is included in the monthly salary.

For occasional Sunday work (defined as two (2) Sundays in a calendar month) the employee is entitled to an extra pay equivalent to seventy-five percent (75%) of the regular salary, calculated pro rata for the hours worked on a Sunday, or a compensatory day off in the following week, as the employee prefers. For regular Sunday work (defined as three (3) Sundays or more in a calendar month), the employee is entitled to both an extra pay equivalent to seventy-five percent (75%) of the regular salary, calculated pro rata for the hours worked on a Sunday, and a compensatory day off in the following week.

(b) Paid Annual Vacation

All employees are entitled to paid annual leave equivalent to fifteen (15) working days for each year of service and proportionally for any portion thereof. Employees may carry over vacation time to the following year, and in some special and concrete cases accumulate and carry over time for up to four (4) years.

Pay for annual leave not taken is permitted only at the prior request of the employee that half of the leave be compensated in money, and the agreement between the employer and the employee must be in writing. At the termination of the employment contract, untaken vacation entitlement must be paid.

5.5 Special Obligations of the Employer

5.5.1 Apprenticeship Contracts

Employers who employ more than twenty (20) employees must hire apprentices, in a proportion of one (1) apprentice for every twenty (20) employees. This obligation also applies to employers who employ more than fifteen (15) but less than twenty (20) employees. If the employer does not wish to take on apprentices as required by law, the employer may instead pay the National Apprenticeship Service (SENA) one (1) MLMW for each apprentice that should have been hired and was not.

5.5.2 Statutory Leaves

(a) Maternity Leave

Every pregnant or adpotive mother is entitled to fourteen (14) weeks of paid leave which can begin two (2) weeks prior to the anticipated date of birth. Of the fourteen (14) weeks of paid leave, the week prior to the anticipated date of birth is mandatory. For multiple pregnancies, the paid leave entitlement is of sixteen (16) weeks. Maternity leave is paid by the Social Security System, provided that the employee has been enrolled during the time of the pregnancy or a proportion thereof. Employment cannot be terminated on the ground of pregnancy or breastfeeding. A pregnant woman may be dismissed for just cause, if it has been approved by a labor inspector. Female job applicants may not be asked to submit pregnancy tests.

(b) Paternity Leave

The husband or partner of the pregnant employee or adpotive mother is entitled to eight (8) working days of paid paternity leave, provided he contributed to the Health Social Security System.

(c) Bereavement Leave

Employees are entitled to five (5) working days of paid bereavement leave on the death of a spouse, partner, a relative to the second degree of kinship, first degree of affinity or first degree of civil relationship (grandparent, parent, child, sibling, spouse, in laws, partner), regardless of the modality of employment. Regarding kinship through adoption, relatives to the first degree are included, that is, the adoptive parent to the adoptive child and vice versa. Therefore, on the death of adopting parent or an adopted child, only parents and children are entitled to bereavement leave, but not the other relatives.

5.6 Regulations

Employers are required to issue the following regulations:

5.6.1 Internal Working Regulations

Any company with more than five (5) permanent employees for commercial businesses, or more than ten (10) employees for industrial businesses, or more than twenty (20) employees for agricultural, cattle raising or forestry businesses must issue internal working regulations.

5.6.2 Industrial Health and Safety Regulations

Companies that have ten (10) permanent employees or more must establish an industrial health and safety regulations.

5.7 Termination of the Employment Agreement

Generally, with some legal and constitutional exceptions, employment agreements may be terminated without prior notice by any of the parties. However, the effects of the termination vary depending on the type of contract and whether the contract is terminated with or without just cause.

5.7.1 Indemnification

Indemnification payments become payable in the event of the employer's failure to comply with any legal or contractual

obligations, or for the failure to comply with any obligations that the labor law imposes on employers. The most common types of indemnification payments include the following:

(a) Indemnification for the Termination of the Employment Agreement Without Just Cause

Type of Employment Contract	Indemnification
Fixed term	The indemnification is equivalent to the salaries corresponding to the remaining period of the contract.
For the duration of the work	The indemnification is equivalent to the salary corresponding to the remaining period of the duration of the work, but in no event less than fifteen (15) days of salary.
Indefinite term	For employees earning a salary of less than ten (10) times the MLMW: -Thirty (30) days of salary for the first year of employment plus twenty (20) additional days of salary for each subsequent year and pro rata for fractions; For employees earning a salary equivalent to ten (10) times the MLMW or more: - Twenty (20) days' salary for the first year of employment plus fifteen (15) additional days of salary for each subsequent year and pro rata for fractions; The law provides for special indemnification for employees who as of 27 December 2002 had ten (10) or more years of continuous work, where by they are entitled to an indemnification equivalent to forty five (45) days for the first (1) year of employment and fourty (40) days for each subsequent year and pro rata for fractions.

(b) Indemnification for Failure to Pay Wages and/or Benefits

If at the time of termination of employment, the employer fails to pay the employee the sums owed for salary or additional benefits in due time and manner, the employee is entitled to indemnification pay of one (1) day of salary for every day of delay in payment for the first twenty four (24) months. From the twenty fifth (25th) month onwards, default interest begins to accrue at the maximum legal interest rate until the payment is completed.

5.8 Employment Stability

Pursuant to constitutional and legal provisions, some employees cannot be terminated unless authorized by a labor authority. The employees covered by these provisions include: (i) pregnant and lactating women; (ii) unionized workers; and (iii) employees who are in a vulnerable health condition.

5.9 Collective Right

Collective labor law regulates relationships between employers and workers' organizations, collective bargaining, as well as the defense of common interests, both of employers and employees during collective labor dispute.

5.9.1 Right of Association in Trade Unions

Colombian employees are entitled to unionize as part of their enjoyment of labor rights. This constitutional right aims to protect the creation and development of unions, as well as to guarantee the enjoyment on the part of the employees of the defense of their labor and union interests.

5.9.2 Trade Unions

Unions are workers' organizations legally formed for the purpose of obtaining, improving and consolidating common rights vis-à-vis their employers. The workers' associations are also responsible for the defense of the individual and collective interests of their members. Pursuant to Colombian Labor Law, a group of twenty five (25) or more employees, regardless of whether they work for the same company, may constitute a trade union.

5.9.3 Collective Bargaining and Collective Agreements

Collective bargaining is a fundamental right for unionized and non-unionized workers. The procedure for unionized workers is a collective agreement. Non-unionized workers subscribe a collective agreement with their employers, provided no trade union exists in the company that assembles at least one third of the workers.

5.9.4 Strikes

As strike is defined as the temporary collective and peaceful work stoppage of the workers of a company. It is only legitimate and possible within the process of collective bargaining as an option for workers, provided they work for an employer in the private sector that does not carry out activities that are considered under the law as an essential public service.

5.10 Other Special Employment Forms

Colombian labor law allows other employment forms for permanent employees, with particular regulation. In each particular case, it is important to verify the adjustment to the law, in order to avoid contingencies.

5.10.1 Service Agreements

Natural or legal persons can execute services agreements as independent contractors (individuals or legal persons). However, these contracts can only be executed when the provider enjoys full technical, administrative and financial independence and autonomy, such as practitioners of liberal professions. Under these agreements, no relationship of subordination between the company and the contractor is created.

5.10.2 Temporary Services Companies ("TSCs")

Temporary services companies provide recruitment of temporary workers. They are directly hired by the TSC, which for all legal purposes is the actual employer. Companies using these services may only employ temporary workers as provided by law. Hiring temporary personnel has a limit of six (6) months, which can only be extended once for another six (6) months.

5.10.3 Associated Labor Cooperatives

Associated Labor Cooperatives ("CTAs", in Spanish) are non-profit organizations which bring together natural persons who participate in management and make economic contributions, including their own work, to the cooperative. The aim of cooperatives is to produce goods, carry out works or provide services in common, through processes or sub-processes. Likewise, cooperatives have ownership of all the means of production and/or labor, such as the facilities, equipment, machines and technology. Associated work is ruled by its own statutes and thus the regulation laid down by the Colombian Labor Code does not apply to them.

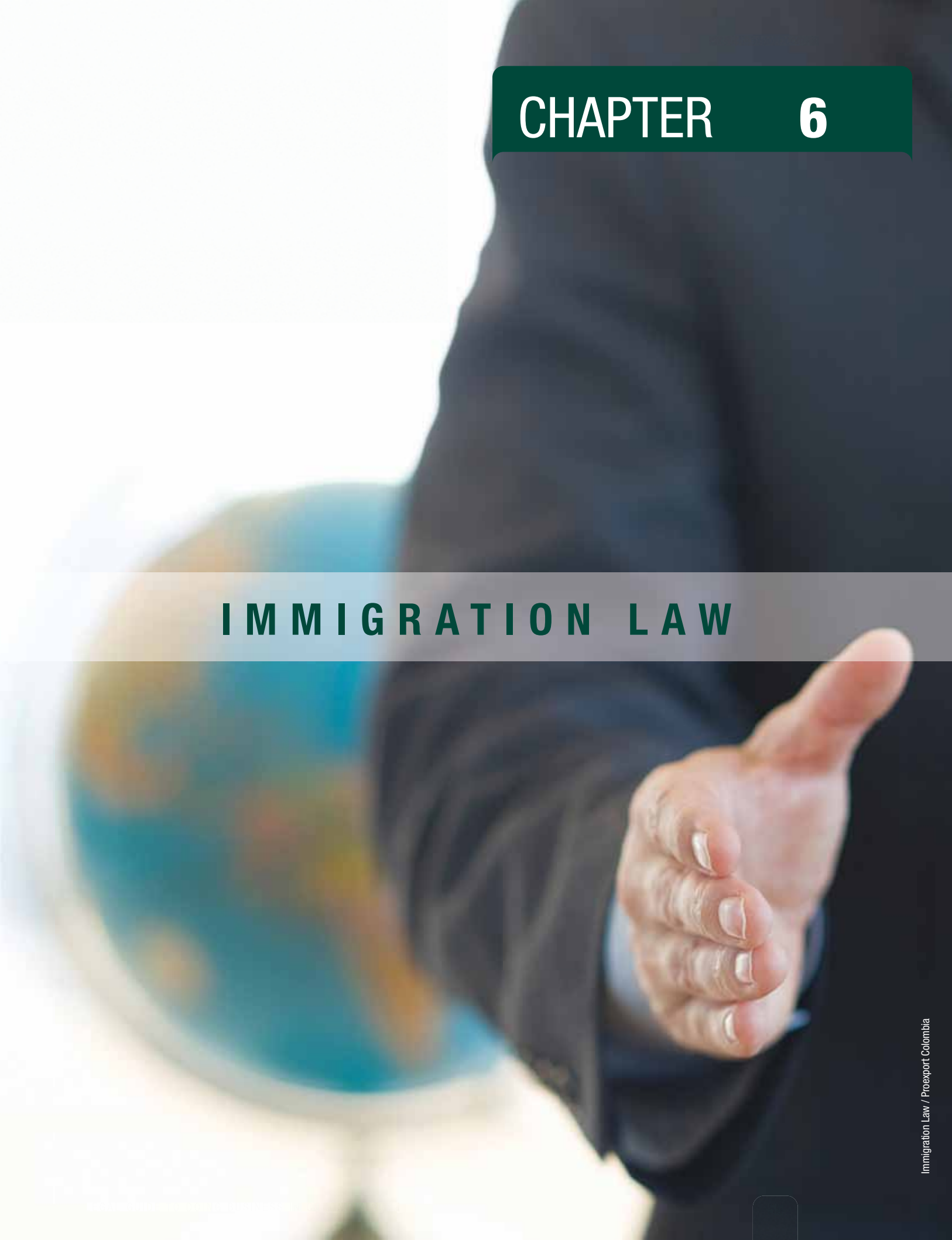
CTAs are explicitly prohibited from acting as labor intermediaries or to provide workers, under penalty of sanctions which may be of up to five thousand (5,000) times the MLMW.

Regulatory Framework

Norm	Subject
Article 37 of the Labor Code	Verbal contracts
Article 39 of the Labor Code	Written contracts
Article 46 of the Labor Code	Fixed-term contracts
Article 45 of the Labor Code	Contract for the duration of the work
Article 47 of the Labor Code	Indefinite term contracts
Article 6 of the Labor Code	Temporary contracts
Article 76 - 80 of the Labor Code	Probation period
Article 127 of the Labor Code	Wages
Article 128 of the Labor Code	Payments not equivalent to wages
Article 249 of the Labor Code	Severance assistance
Article 1 of Law 52 of 1975	Interest on severance
Article 306 - 308 of the Labor Code	Legal bonus
Article 2 Law 15 of 1959	Transport allowance
Article 230 - 235 of the Labor Code	Dress and footwear for employees
Law 100 of 1993, Law 797 of 2003, Law 1438 of 2011	Contributions to the social security system
Article 172 -178 of the Labor Code	Paid holidays
Article 186 of the Labor Code	Paid annual vacation
Article 30 - 41 of the Labor Code	Apprenticeships
Article 236 of the Labor Code	Maternity leave
Article 236 of the Labor Code	Paternity leave
Article 57, Section 10 of the Labor Code, complemented by Law 1280 of 2009	Bereavement leave
Article 104 of the Labor Code	Internal labor regulations
Article 249, 250 of the Labor Code	Industrial Health and Safety Regulations
Article 61- 66 of the Labor Code	Termination of employment agreement- Indemnifications
Article 353, 354 of the Labor Code	Right of association in trade unions
Article 432 - 475 of the Labor Code	Collective negotiations and collective agreements
Article 444 of the Labor Code	Right to strike
Articles 71 to 94 of Law 50 of 1990, Decree 4369 of 2006, Article 34 of the Labor Code.	Temporary services companies
Law 79 of 1988, Decree 4588 of 2006, Law 1233 of 2008, Law 1429 of 2010 and Decree 2025 of 2011	Associated labor cooperatives

CHAPTER 6

IMMIGRATION LAW



Immigration Law / Proexport Colombia

LEGAL GUIDE
TO DOING BUSINESS
in Colombia
2012

POSSE HERRERA & RUIZ
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PROEXPORT COLOMBIA
TOURISM, FOREIGN INVESTMENT AND EXPORTS PROMOTION

6. IMMIGRATION LAW

Five (5) things an investor should know about immigration law:

1. All foreigners entering Colombia must appear before the immigration authority with their passport and the relevant Colombian visa, if required.
2. If no visa is required to enter Colombia, the immigration authority, in full use of its discretionary powers, may grant entry and permanence permits to foreign visitors who have no intention of establishing residency in the country.
3. All foreign nationals who intend to practice a profession or engage in a regulated activity are required to have a temporary permit, validation of their university degree, and obtain a professional license, if required.
4. The migration policy promotes the entry of those foreigners with technical, professional or intellectual qualifications and experience that can contribute to the development of economic, scientific, cultural or educational activities that benefit the country. Likewise, it welcomes foreigners who can contribute capital to be invested in the incorporation of companies or in lawful activities that create employment, increase exports and are in the national interest.
5. Colombia currently has six (6) visa classes and twelve (12) visa categories in order to cover any activity that the foreigner intends to carry out in Colombia.

Through its immigration laws, Colombia controls and regulates the entry, residency and departure of foreign nationals. This chapter summarizes the Colombian legal framework with respect to immigration, including entry and residency permits and the main categories of visas that may be requested by a foreign national intending to establish relationships, provide services, trade or engage in investment activities in Colombia.

Thanks to the agreements executed by Colombia, citizens of more than ninety (90) countries, considered foreigners of unrestricted nationalities do not require a visitor visa nor do they have to carry out any procedures with the Colombian authorities in the country of origin. Among these are:

Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Barbados, Belgium, Belize, Bhutan, Bolivia, Brazil, Brunei-Darussalam, Canada, Czech Republic, Chile, Cyprus, Costa Rica, Croatia, Denmark, Dominica, Dominican Republic, Ecuador, El Salvador, Estonia, Fiji, Finland, France, Germany, Granada, Greece, Guatemala, Guyana, Honduras, Hong Kong (SAR-China), Hungary, Indonesia, Ireland, Island, Islas Marshall, Israel, Italy, Jamaica, Japan, Latvia, Liechtenstein, Lithuania, Luxemburg, Malaysia, Malta, Mexico, Micronesia, Monaco, Norway, Netherlands, New Zealand, Palau, Panama, Papua New Guinea, Paraguay, Peru, Poland, Portugal, Romania, Russia, Saint Kits and Nevis, Samoa, San Marino, Saint Lucia, Saint Vincent and the Grenadines, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, South Korea, Spain, Sweden, Switzerland, Surinam, Taiwan, The Philippines, Trinidad and Tobago, Turkey, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Vatican City and Venezuela.

6.1 Government Entities Responsible for Immigration Affairs

6.1.1 Ministry of Foreign Affairs and Consulates Abroad

The Ministry of Foreign Affairs assembles coordinating units or divisions covering several specialized areas, such as apostille, legalization, passport and visa services.

Only the Visa and Immigration Division of the Ministry of Foreign Affairs and the Consulates abroad have the discretionary authority to issue, deny or cancel visas.

The Ministry of Foreign Affairs and the Consulates have up to four (4) working days after the application has been filed to issue, make comments or deny a visa.

6.1.2 Special Administrative Unit Migration Colombia

The Special Administrative Unit Migration Colombia, an entity of the Ministry of Foreign Affairs, responsible for migratory control and supervision, after the abolition of the Administrative Department of National Security ("DAS", in Spanish).

Some of the functions of the newly–created entity are: (i) perform migratory control and supervision of nationals and to foreigners in the country; (ii) keep the identification record of foreigners, such as immigration verification; (iii) issue documents such as alien identity cards, permanence and extension permits, permits to leave the country, certificates of migratory movements, entry permits, aliens' register, and all other required procedures regarding migration and the status of foreigners; and (iv) handle and collect the penalties and sanctions for non-compliance with migration legislation.

The costs for 2012 of the migration procedures before the Special Administrative Unit Migration Colombia are as follows:

Procedure	Cost
Alien Identity Card	USD 83
Temporary permanence permit	Free
Extension of the temporary permanence permit	USD 39
Permanence and exit permits	USD 25
Migratory movement certificate	USD 25

6.1.3 Professional Associations

Professional associations regulate and supervise professional activities in Colombia, both for national and foreigners. Strictly regulated professions and/or activities such as medicine, law, accountancy, psychology, business administration, engineering and others, require the approval of the corresponding professional association. The authorization to practice the profession and /or activity is obtained by means of a license, professional card or temporary permit, issued by the relevant professional association for the profession of activity that the foreigner intends to practice or perform in the country.

6.1.4 Ministry of Education

The Ministry of Education is the authority that grants recognition of foreign degrees and qualifications. The procedure may take from two (2) to four (4) months. Once the recognition resolution is issued, the foreign national must register to obtain a professional license from the relevant professional association.

6.2 Entry Permits for Visitors

Entry and permanence permits are issued by Special Administrative Unit Migration Colombia to foreigners who enter the country without the intent of remaining permanently and who do not require a visitor visa. To obtain any of these permits, the migration authority must stamp the visitor's passport on arrival in Colombia. The stamp indicates the number of days the visitor can remain in the country, except in the case of a technical visitor, who requires prior application before the Special Administrative Unit Migration Colombia.

The following are the visitor permits to enter Colombia:

- **Tourist Visitors**
  This type of permit is granted for rest, leisure and recreation activities for a period of up to ninety (90) days extendable for ninety (90) more days.

- **Temporary Visitor**
  This type of permit is granted for the pursuit of activities such as participation in academic events, seminars, conferences, symposia, courses, exhibitions, to seek medical treatment, hold job interviews, make business contacts, provide training, participate in unpaid athletic, cultural or scientific events or to cover a news story. This permit may be granted for a period of up to ninety (90) days extendable for ninety (90) more days, per calendar year. On arrival, the foreigner must show the migration authorities a letter signed by the legal representative of the Colombian entity sponsoring the visitor's entry into the country.

- **Technical Visitor**
  This type of permit allows the visitor entry in the country to provide urgent technical services to public or private entities. This permit is granted for thirty (30) days, once per calendar year. Issuance of this permit has to be requested from the Special Administrative Unit Migration Colombia some days in advance of entry into the country. To obtain the permit, a copy of the travel itinerary and the passport must be submitted, and the permit must be submitted when entering the country.

6.3 Visas

A visa is an authorization granted to a foreigner to enter and remain for a period of time in Colombia. The authority responsible for granting, refusing, denying or cancelling visas is the Visa and Immigration Division of the Ministry of Foreign Affairs in Bogotá.

There are about one hundred and thirty (130) consulates around the world whose foreign nationals can apply for a Colombian visa, regardless of their nationality. Visa applications can be processed directly abroad by the foreign national who wants to travel to Colombia, or through the sponsor (expect for a first-time work visa). A fifty dollar (USD 50) document

processing fee must be paid. Additionally, once approved, a fee for the visa must be paid.

6.3.1 General Requirements for all types of visa

In addition to the documents required for each particular visa, these are the documents that must be submitted to apply for any type of visa:

- Valid Passport, in good condition, with a minimum of two (2) blank pages and a validity of at least three (3) months.
- Two (2) 3x3 cm. color photographs, front view, with a white background.
- A copy of the main page of the passport showing the holder's personal data, of the page containing the last Colombian visa, if any, and that of the most recent stamp of entry or departure from Colombia, as the case may be.
- DP-FO-67 Form "Visa Application" duly filled out and signed by the applicant. This form can be downloaded from the webpage of the Ministry of Foreign Affairs at http://www.cancilleria.gov.co/sites/default/files/4700.pdf

6.3.2 Types of Visa

To request any type of visa, the foreigner must submit, in addition to the general documents listed above, other documents depending on the type of visa being requested. It is important to note that documents issued abroad in languages other than Spanish must be translated into Spanish by an official translator authorized by the Ministry of Foreign Affairs of Colombia. Official and private documents must be apostilled or legalized by the Colombian consulate or the responsible entity in the issuing country.

Colombian regulations contemplate six (6) types of visa: (i) courtesy visa; (ii) business visa; (iii) crewmember visa; (iv) temporary visa; (v) visitor visa; and (vi) resident visa, some of which are subdivided into categories.

The main visa categories that a foreigner can apply for are the following:

(a) Visitor Visa

There are three (3) types of visitor visas: (i) tourist visitor; (ii) temporary visitor; and (iii) technical visitor, and issued for citizens of those countries that require a visa according to the current list of the Ministry of Foreign Affairs. Foreigners with a visitor visa cannot remain in the country for longer than one hundred and eighty (180) calendar days. Multiple entries are allowed.

The fee for this visa is one hundred dollars (USD 100).

(i) Tourist Visitor Visa

This type of visa is granted for rest or leisure activities

(ii) Temporary Visitor Visa

This visa is granted to members of a journalistic team with the proper credentials for the pursuit of journalistic activities or to cover special events; to foreigners intending to make business contacts in the country, perform commercial or business activities; to participate in non-regular academic activities which cannot exceed than one academic semester; to hold job interviews; to seek medical treatment; to participate in unpaid athletic, cultural or scientific events; or to receive at or provide training for public or private entities.

(iii) Technical Visitor Visa

Technical visitor visas are issued to provide urgent technical services to public and private entities upon presentation of a letter of responsibility from the entity requiring the services where the urgency is justified.

This visa can be requested at the Ministry of Foreign Affairs in Bogotá if the foreigner holds a technical visitor permit and requires a longer stay in the country.

(b) Business Visa

This visa is granted to foreign nationals who can prove (i) that they act as legal representative or hold a senior management position in a company based in a foreign country with commercial or economic interests in a Colombian company or in a foreign company based in Colombia, and wish to enter the country to attend business meetings, stakeholder meetings or supervise the operations of the company with which they have legal, business or strategic ties; (ii) their status as traders, industrialists, business person or marketing student in relation with a national or foreign company based in Colombia; (iii) their status as business persons acting within the framework of a free trade agreement; and (iv) their status as head, representative or member of personnel of a governmental foreign commercial office promoting economic or commercial exchange in Colombia.

The business visa is granted for multiple entries with a maximum validity of four (4) years and a maximum permanence term for each entry of one (1) year, except for those who visit the country within the framework of a free trade agreement, a partnership agreement or another international covenant of which Colombia is party, in which case, the maximum permanence term for each entry is of two (2) years.

The fee for this visa is one hundred and seventy dollars (USD 170).

At present, the relatives of a holder of a business visa are entitled to derivative visas.

(c) Temporary Visa

(i) Temporary work Visa

First-time applications for this visa can only be submitted abroad at any Colombian consulate. For renewals of this visa, it is allowed by law to apply at the Ministry of Foreign Affairs in Bogotá, provided that the application is submitted before the visa expires.

Temporary worker visas can be granted for a maximum period of two (2) years, for multiple entries, and they can be extended indefinitely. However, they will expire if the holder leaves the country for a continuous period of one hundred and eighty (180) days.

This visa may be granted to a foreign national who (i) intends to work for a national or foreign company or for a natural person who resides in Colombia; (ii) wishes to enter or remain in Colombia, by virtue of academic agreements made between higher education institutions, or inter-administrative agreements in specialized areas; (iii) is contracted as a journalist by a news agency or national or international information agency; (iv) who has been appointed by some agency or entity of the State; (v) is a volunteer and missionary but not part of the hierarchy of a church or religious denomination; (vi) is a manager, technician or administrative personnel of a foreign public or private entity, of a commercial or industrial nature, and who has been transferred to hold a particular position; or (vii) without being employed by a business based in Colombia, provides services in the course of specific projects at the request of a business based in Colombia.

To obtain a temporary worker visa to practice a regulated profession or activity (medicine, engineering, chemistry, business administration, public accountancy, architecture, biology, law, geology, among others), as listed by the Ministry of Foreign Affairs, the foreign national must either (i) have the professional degree validated by the Ministry of Education; (ii) get a temporary permit, special license or approval from the relevant professional association; or (iii) once the degree has been validated, request the professional license or card from the relevant professional association.

The Colombia-based company where the foreign national intends to work must provide a written commitment that it will cover the costs of their entry into the country as well as the costs of departure of the worker and his/her family when their visa expires or is cancelled.

Likewise, any company hiring foreigners must inform the Special Administrative Unit Migration Colombia, within fifteen (15) calendar days after the occurrence of their hiring or dismissal, as the case may be.

If the holder of a temporary worker visa changes employer, the visa is automatically cancelled and a new visa application must be submitted with the name of the new employer. This application must be submitted within thirty (30) calendar days after the termination of the contract with the former employer.

The current migration regulations allow for a foreign national to work for two (2) different employers at the same time. In order to do this, the work visa must include the name of both employers, since both will be responsible for the entry into, permanence in, and departure of the foreign national and his/her family from the country.

The fee for this visa is two hundred and five dollars (USD 205).

(ii) Temporary Visa – Spouse or Partner of a Colombian National

This visa can be granted for a maximum of three (3) years to the foreign national who has validly contracted marriage with a Colombian national or who can be considered a permanent partner, pursuant to current legislation.

The holder of this type of visa may stay in the country as a homemaker and/or student, work free lance or take contracted employment.

The fee for this visa is one hundred and sixty dollars (USD 160).

(iii) Special Temporary Visa

This type of visa is granted to foreign nationals who want to enter Colombia for particular purposes, such as (i) take part in administrative or judicial procedures; (ii) practice an independent trade or activity that does not unduly affect public space; (iii) carry out activities not provided for in the other types of visa; (iv) enter the country as a pensioner with a monthly income of no less than the equivalent to ten (10) times the minimum legal monthly wage; (v) medical treatment, when entering the country is not possible under the terms of a visitor visa or entry permit; (vi) as an agent of co-operation or a volunteer of a non-profit organization or NGO, or as a person duly introduced by an international organization or diplomatic mission to carry out work, among others, of social benefit, observation, or humanitarian aid in Colombia; (vii) as partner or owner of a business or establishment, incorporated and registered with a chamber of commerce, with registered capital or assets owned by the applicant of no less than one hundred (100) times the minimum legal monthly wage (COP 56.670.000) (approx. USD 31,500).

The fee for this visa is one hundred and seventy five dollars (USD 175).

(d) Resident Visas

There are three (3) types of resident visa: (i) investor resident visa; (ii) qualified resident visa; and (iii) resident visa as relative of a Colombian national.

This visa is granted for indefinite multiple entries to a foreigner who wants to settle permanently in the country. However, this visa will expire after two (2) years of absence from the country.

The holder of any type of resident visa can practice a regulated profession, provided it is explicitly authorized in the visa and the holder submits the documents that authorize him/her to practice the profession or activity, such as validation of the degree by the Ministry of Education or a temporary permit or license from the relevant professional association.

(i) Investor Resident Visa

This type of visa is issued to foreign nationals who in their own name make a direct foreign investment in (i) real estate of at least two hundred thousand dollars (USD 200.000) or (ii) in the case of investment other than in real estate, an investment of at least one hundred thousand dollars (USD 100.000), as provided in the International Investment Statute and other regulations in force at the moment of the application.

The holder of this type of visa may stay in the country as a homemaker and/or student, work free lance or take contracted employment.

To keep this visa status, the holder must keep the invested amount in Colombia for at least three (3) years.

The fee for this visa is three hundred and seventy five dollars (USD 375).

(ii) Qualified Resident Visa

This type of visa can be requested by a foreigner who (i) has been the holder of a temporary visa and has remained in the country for at least five (5) years; (ii) is the parent of a Colombian national; (iii) as the beneficiary of a holder of a qualified resident visa, is able to prove an activity or a source of income and that it has remained in the country for at least five (5) consecutive years; and (iv) has been the holder of a temporary visa for spouse or partner of a Colombian national for three (3) years.

The holders of courtesy, business, crewmember, visitor or temporary visas may not apply for qualified resident visa.

The fee for this visa is two hundred and eighty five dollars (USD 285).

(iii) Resident Visa as a Relative of a Colombian National

This visa is granted to a person who has resigned his/her Colombian citizenship, provided proof of the resignation is submitted.

The fee for this visa is two hundred and eighty five dollars (USD 285).

6.4 Dependents and Family Members

Holders of temporary work, business and resident visas may extend the effects of their visa to dependents. These include the spouse, permanent partner, parents and children who are economically dependent on the visa holder, on the proof of the ties or kinship. They may not work in the country, but are entitled to study.

A foreigner who entered as a minor and has remained in the country as dependent of a visa holder, on reaching the age of eighteen (18) must apply for an independent visa in the relevant category. The same applies if the main visa holder dies or becomes a Colombian citizen.

Visas granted to dependents are valid for as long as the main holder's visa is valid. They will automatically expire at the same time, without any additional notification from the migration authority. Equally, if a dependent ceases to depend economically on the work visa holder, the dependent's visa will automatically expire.

The holders of courtesy, crewmember and visitor visas are not entitled to apply for this kind of visa for those who depend economically on them.

The fee for this visa is the same as that for the main visa holder.

6.5 Grounds for Cancellation of a Visa

The Ministry of Foreign Affairs may cancel a visa on the following grounds: (i) deportation or expulsion; (ii) when there is proof that the visa applicant has committed fraud to evade complying with the legal requirements for the visa in question; (iii) when by an oversight of the competent authority the visa has been issued without compliance with all legal requirements; and (iv) when the migration authority, in full use of its discretionary powers, sees fit to do so.

The foreign national whose visa is cancelled will be issued an exit authorization and must leave the country within thirty (30)

calendar days; otherwise the foreign national shall be deported and be barred from applying for a new visa for one (1) year following the date of cancellation of the visa.

6.6 Grounds for Termination of a Visa

The validity of a visa terminates: (i) when the authorization expires; (ii) on the order of a judicial authority; (iii) when the foreign national has been absent from the country for a longer period of time than allowed for the type visa; (iv) on a written request of the visa holder; (v) when a new visa is issued; (vi) on a change of employer; and (vii) on cancellation of the visa.

6.7 Migratory Register and Control

All foreign nationals holding a visa valid for more than three (3) months must register with the national register of foreign nationals at the Special Administrative Unit Migration Colombia within fifteen (15) days after being granted the visa. Once registered, the foreign national will receive an alien identity card which will serve as identification in the country.

Registration is required every time the foreign national renews the visa or if there is a change of visa status.

Foreign nationals must notify the Special Administrative Unit Migration Colombia of any change of address within fifteen (15) days after moving to the new address.

The Special Administrative Unit Migration Colombia may impose penalties to ensure compliance with migration regulation, including in the following cases: (i) if the foreign national does not inform of a change of address within fifteen (15) days after moving to the new address; (ii) if change of employer or employment is not reported; (iii) if the visa holder remains in the country without the appropriate authorizations; and (iv) if the foreign national has not applied for the issuance or renewal of the alien identity card within fifteen (15) days after being granted the visa.

Regulatory Framework

Norm	Subject
Decree 4000 of 2004	General provisions on the issuance of visas and control of foreigners, among others
Resolution 5707 of 2008	Lists of countries that do not require visas for three kinds of visitors
Resolution 4700 of 2009	Requirements for each type of visa
Decree 2622 of 2009	Amendments and additions to Decree 4000 of 2004
Decree 4062 of 2011	Functions of the Special Administrative Unit Colombia Migration
Decree 019 of 2012	Norms to suppress or reform unnecessary regulations, procedures, or proceedings.

CHAPTER 7

TAX REGIME

Bogotá, Proexport Colombia

LEGAL GUIDE
TO DOING BUSINESS
in Colombia
2012

POSSE
HERRERA
& RUIZ
ABOGADOS

PROEXPORT
COLOMBIA
TOURISM, FOREIGN INVESTMENT AND EXPORTS PROMOTION

7. TAX REGIME

Five (5) things that investors should know about the Colombian Tax Regime:

1. The general income tax rate is thirty three percent (33%).
2. With the enactment of Law 1429 of 2010, a progressive income tax rate regime was created. This special regime applies to companies that start their activities or formalize their pre-existing activity after January first 2011 and which are deemed to be "small companies" based on their assets and number of employees. The companies that do not have more than fifty (50) workers and total assets that do not exceed COP 2,833,500 (approx. USD 1.574.166) throughout their existence, are considered as small companies.
3. For year 2012, hiring workers aged less than twenty eight (28) years old, as well as, women of more than forty (40) years, persons in situation of disability individuals who earn less than 1.5 minimum legal monthly wage (approx. USD 472,25), and/or individual who are heads of households registered at levels one (1) or two (2) in the System of Identification of Potential Beneficiaries of Social Programs, will allow the employer to use the payroll contributions and up to 3% of the social security contributions paid with regards to new employees, as a discount on their income tax.
4. Foreign individuals who are resident in Colombia are subject to income tax only regarding their Colombian sourced income. As from the fifth (5th) year of residence, their foreign sourced income is also taxed in Colombia. Foreign individuals that remain for more than six (6) months in one (1) fiscal year, continuously or discontinuously, are considered Colombian tax residents. It also occurs when their family or the main seat of their business remain in Colombia.
5. The government has defined priority sectors that are subject to zero percent (0%) income tax.

The main national taxes are income and capital gains tax; value added tax ("VAT") levy on financial transactions ("LFT"). The main local taxes are: (i) industry and commerce tax ("ICT"); (ii) the real estate tax; and (iii) the registry tax.

7.1 Income and Capital Gains Tax

Income tax is levied on profits and gains obtained by taxpayers, which are likely to enrich them, and are derived from day-to-day operations of their business (ordinary income) and extraordinary activities (e.g. transactions), that do not take place in the usual day-to-day operations of their business (extraordinary income).

7.1.1 General Features

For tax purposes, income is comprised of any kind of resources which increase the individual's or legal entity's patrimony. National legal entities and Colombian resident individuals are subject to income and capital gains tax on their worldwide sourced ordinary and extraordinary income. On the other hand, foreign entities are subject to income and capital gains tax solely on their Colombian sourced ordinary and extraordinary income. However, foreign individuals who are Colombian tax residents are subject to taxation on their worldwide sourced income only after their fifth (5th) year of residency (whether continuous or discontinuous) in Colombia.

Branches of foreign legal entities located in Colombia are subject to income tax solely with respect to their Colombian sourced ordinary and extraordinary income.

The fiscal period of income tax is annual, beginning on January 1st and ending on December 31st. There are exceptional events in which income tax is determined for a fraction of one (1) year, as is the case of the substitution of a foreign investor, or in the case of the probate estates that are divided during the respective year.

7.1.2 National Sourced Income

As a general rule, Colombian tax law states that the following revenues constitute national sourced income:

- Income derived from the exploitation of tangible and intangible goods within the country.
- Income derived from the rendering of services within the Colombian territory.
- Income derived from the transfer of intangible and tangible goods which are located in Colombia at the time the transfer takes place.
- Financial income derived from interest payments in connection with foreign loans granted to Colombian residents as well as the financial cost of lease payments originated in international leasing agreements.
- As an exceptional rule, income related to the rendering of technical services and technical assistance or consultancy to a Colombian resident, regardless of the place where these services are provided (in Colombia or abroad).

7.1.3 Income that is not Deemed National Sourced

The following types of revenues are not deemed to constitute national sourced income:

- Vendor credits originated in the importation of goods, provided that they have a term of up to twenty four (24) months.
- Income derived from technical services related to the repair and maintenance of goods, when rendered abroad.
- Income derived from the sale of securities, bonds and other debt instruments issued by a Colombian party and traded abroad.
- Foreign loans obtained by Financial Cooperatives (Cooperativas Financieras), Finance Companies (Compañías de Financiamiento), by the Colombian Foreign Trade Bank (Banco de Comercio Exterior de Colombia - "BANCOLDEX") and other financial entities incorporated under Colombian law.
- The income derived from rendering training services of public servants, to Colombian public entities.

7.2 Rates and Tax Base

The general income and capital gains tax rate is thirty-three percent (33%). In addition, certain companies, considered as small companies due to the size of their assets and the number of employees, and which started their activities during 2011, will enjoy special progressive income tax rates, as follows: zero percent (0%) for the first two (2) years; eight point twenty five percent (8.25%) for the third (3rd) year; sixteen point fifty percent (16.50%) for the fourth (4th) year; and twenty four point seventy five percent (24.75%) for the fifth (5th) year. As from the sixth (6th) year, small companies that are beneficiaries of this special progressive system will become subject to the general income tax rate of thirty three percent (33%).

"Small companies" domiciled and developing all their economic activities in the departments of Amazonas, Guainía and Vaupés will have a special rate for the income tax, as follows: zero percent (0%) for the first eight (8) years; sixteen point fifty percent (16.50%) for the ninth (9) year; and twenty four point seventy five percent (24.75%) by the tenth (10) year. From the eleventh (11) year on, the "small company" shall be subject to the general rate of thirty three percent (33%).

The Colombian tax regime establishes two systems to determine the income tax base: the regular system and the minimum presumptive income system.

7.2.1 Regular Determination System

The regular system includes all revenues ordinary and extraordinary, earned during the fiscal year, which are likely to increase the taxpayer's net wealth at the moment of earning it and which are not expressly excluded by law. It is necessary to substract refunds, discounts and reductions from such income in order to determine the net revenue of the taxpayer for the fiscal year. All the incurred costs attributable to the aforementioned income shall be subtracted from the net income, resulting in the gross income. Gross income is then reduced by deducting permitted expenses which will result in net income. Notwithstanding legal exceptions, the net income will constitute the tax base, to which the relevant tax rate will apply.

Regular System Calculation
Gross Revenue
Minus: refunds, discounts and reductions
Net Revenue
Minus: items not considered as income
Net Taxable Revenue
Minus: costs
Gross Income
Minus: allowed deductions
Net Income
Minus: exempt income
Net Taxable Income
Times: applicable rate
Basic Income tax
Minus: tax discounts
Net Income Tax
Minus: Withholdings
Balance Due

7.2.2 Minimum Presumptive Income System

The minimum presumptive income system is an alternative method to calculate the tax base for income tax purposes, according to which the tax base shall not be less than the three percent (3%) of the taxpayer's net worth as of December 31st of the immediately preceding fiscal year. This method applies whenever the ordinary net income is lower than the presumptive income. It is important to point out that the presumptive income system does not apply during the first five (5) years to the so-called "small companies" incorporated from year 2011 on. For "small companies" that develop their activity as of 2011 in the departments of Amazonas, Guainía and Vaupés, the term of the benefit is ten (10) years.

Similarly, the application of presumptive income is not applicable to the companies dedicated, among others, to the supply of:

(a) Public utilities.
(b) Services of investment, securities, common, pension or severance funds.
(c) Public urban service of mass transportation of passengers.
(d) Public services, developing the supplementary activity of generation of power.
(e) Assets attached to entities exclusively dedicated to mining activities (it does not cover hydrocarbons).

The presumptive income does not apply to non-profit foundations, corporations and associations dedicated to health, education, sports and research activities, among others.

7.3 Non-Taxable Income

Tax law establishes a special fiscal treatment that allows the exclusion of certain types of income from the determination of the tax base. Among others, some examples of non-taxable income include dividends (as long as the dividend-paying entity has already paid taxes on the profits that fund dividend payments); profits that come from the transfer of shares listed in the stock exchange, premium on shares, the capitalization of certain balance sheet items, compensation from insurance coverage, and distribution of profits derived from a company's winding-up, up to the value of the invested equity.

Notwithstanding the above, the determination of whether certain types of income are non-taxable income must be made on a case-by-case basis.

7.4 Costs, Deductible Expenses and Other Special Deductions

Costs are the charges incurred by a taxpayer for acquiring or producing goods, or for providing services, in order to obtain revenues. For income tax purposes, costs are deemed deductible if they are directly related to the revenue-producing activity, as long as they are necessary, proportional and accrued or paid during the corresponding fiscal year. As a general rule, acceptable costs are accrued in the year or period in which the obligation of paying becomes enforceable, even if such payment has not yet been made.

Expenses are all the outgoings that contribute to developing management operations, sales processes, researches and financing transactions undertaken by a taxpayer. Tax law states that all costs incurred during the fiscal year for developing the income-generating activity are deductible, provided that they are directly related to, necessary and proportional to such activity.

As of 2014, recognition of costs and expenses paid in cash by the taxpayers, will be limited to certain caps. Nevertheless, other methods of extinguishing contractual obligations, such as payments in kind, compensations, and others, will continue to be deductible for income tax purposes.

Some examples of permitted deductions include:

7.4.1 Wages and Payroll Contributions

Wages paid to employees can be deducted from income for tax purposes as long as the employer/taxpayer has duly paid the corresponding payroll contributions (*Aportes Parafiscales)* Institute of Family Welfare ("ICBF", in Spanish), to the National Apprenticeship Service ("SENA", in Spanish) and to the Family ("CCF", in Spanish). All of these contributions are also deductible for income tax purposes.

7.4.2 Paid Taxes

- One hundred percent (100%) of the industry and commerce tax and any real estate taxes paid during the corresponding fiscal year are deductible for income tax purposes.
- From 2013 until 2018, fifty percent (50%) of the LFT will be deductible for income tax purposes (please see the section describing financial transactions tax).
- For year 2012, it is possible to deduct twenty five percent (25%) of the LFT paid during the year.

7.4.3 Interest Payments

Interest payments on loan agreements entered into with any financial institutions subject to oversight by the Financial Superintendency (*Superintendencia Financiera*) are fully deductible.

On the other hand, interest payments in favor of individuals or other legal entities are deductible solely in the portion that does not exceed the maximum rate authorized by the corresponding authorities to bank institutions during the corresponding tax year.

7.4.4 Cross Border Payments

Cross border payments can be deducted for income tax purposes as long as they are directly related to the productive activity of the taxpayer, and the corresponding withholding tax (if any) has been withheld.

Nevertheless, the withholding tax is not necessary when the income is derived from certain types of payments, as follows:

- Fees paid to foreign commissionaires related to the purchase or sale of merchandise, raw materials and other types of goods, provided that such fee does not exceed a specified percentage of the transaction, as fixed by the Ministry of Treasury (*Ministerio de Hacienda y Crédito Público*) for the corresponding tax year.
- Interest payments on short-term loans (less than one year) whose underlying purpose relates to the import/export of goods, bank overdrafts and overdraws, as long as they do not exceed the value's percentage fixed by the Colombian Central Bank for each loan, overdraft or overdraw.

For cross border payments where costs and deductions are aimed at generating national sourced income and which have not been subject to withholding tax, the deductibility related thereto shall not exceed fifteen percent (15%) of the taxpayer's taxable income, calculated before subtracting such costs and expenses, except in the cases mentioned in the preceding paragraph. It is important to point out that this limitation is not applicable when, by virtue of a Double Taxation Agreement ("DTA"), the payment is not subject to income tax withholding in Colombia.

7.4.5 Donations

Donations to certain entities expressly authorized by Colombian law are deductible for income tax purposes during the fiscal year or period in which the donation takes place and as long as all the legal requirements related thereto are duly fulfilled. Some of these entities are nonprofit associations and foundations that carry out health, education or research activities, among other, in the interest of the community.

7.4.6 Scientific and Technological Investments and Donations

Taxpayers that invest in, or make donations that, directly or indirectly, invest in or make donations to projects qualified as scientific, technological or technological innovation or in projects related to professional education in public or private universities, are allowed to deduct one hundred and seventy five percent (175%) of such investment expense for income tax purposes. This deduction shall not exceed forty percent (40%) of the taxpayer's tax base, determined before subtracting such investment.

7.4.7 Investments in Environmental Control and Improvement

Taxpayers (entities) that invest directly in environmental control and improvement projects are allowed to deduct such investments during the corresponding tax year. This deduction shall not exceed the twenty percent (20%) of the legal entity's tax base, determined before subtracting such investment. The investments demanded by the environmental authorities are not acceptable for this benefit.

7.4.8 Fiscal Losses Carry-Forward

As of 2007, Colombian law permits the carry-forward and compensation of fiscal losses in subsequent tax periods. There is no time or amount limitation in order to carry forward and compensate such fiscal losses, notwithstanding the minimum presumptive income of the fiscal period. Carry-forward losses may not be transferred to the equity holders of a legal entity.

In the case of mergers and spin-offs, the absorbing or resulting company is entitled to carry forward and compensate the tax losses of the merged or spun-off company, up to a limit equivalent to the percentage of participation of the merging or spun-off company into the equity of the resulting entity, provided that the economic activity developed by companies is the same.

7.4.9 Amortization of Investments

Amortization consists of distributing the cost of an intangible asset over the time of its useful life or over any other period of time, determined in accordance with valid criteria. According to Colombian current tax regime, the necessary investments, which are those carried out to achieve the goals of a particular business or activity of the taxpayer, different to investments in terrains or depreciable fixed assets, can be amortized. Such payments include those which must be amortized during one (1) or more fiscal years, or that must be treated as deferred assets because they correspond to preliminary installation, organization and development expenses.

These investments must be amortized over a period not shorter than five (5) years, unless the amortization has to occur in a shorter time period because of the nature or time length of the busines in which case it must be authorized by the fiscal authorities.

7.4.10 Depreciation

Reasonable values of the depreciation caused by the assets wear and tear, normal deterioration or obsolescence of fixed assets used to carry out the activities of the company can be deducted for income tax purposes, in proportion to the amounts necessary to amortize one hundred percent (100%) of the cost of the asset over its useful life.

7.4.11 Difference in Foreign Exchange Payments

Payments in foreign currencies are estimated based on the purchase price in Colombian pesos. Therefore, when there are liabilities or assets denominated in a foreign currency, their value shall be adjusted according the applicable exchange rate *(Tasa de Cambio Representativa del Mercado "TRM", in Spanish)* and any difference in such exchange rate shall be taxed or deducted, depending on the circumstances.

7.4.12 Exempted Income

Applicable tax law establish, among others, the following tax-exempt income:

- Incomes of publishing companies companies whose purpose is to edit books, magazines, brochures or collectable collections with scientific or cultural contents (tax-exempted until 2033).
- The payment of capital, interest payments, commissions and other items related to foreign public debt and other transactions of a similar nature are exempted from all national taxes as long as they are paid to foreign non-resident parties.
- The sale of energy generated from wind sources, bio-mass or agricultural residues and produced by generating companies, are: (i) wind-sourced; (ii) bio-mass; or (iii) agricultural residues by generating companies are tax-exempted for a term of fifteen (15) years, as long as the company sells the energy by itself, and issues and trades certificates of reduction of greenhouse effect gases.
- Income derived from the cultivation of slow-growth plantations, such as cacao, rubber, palm oil, citrus and other fruits, as determined by the Ministry of Agriculture and Rural Development (*Ministerio de Agricultura y Desarrollo Rural, in Spanish*). In order to take advantage of this exemption, the plantation owner must sow its products between 2003 and 2014. This tax benefit can be applied for a term 10 years, starting on the beginning of the production.
- The provision of waterway transportation services with vessels and floating platforms of low depth are also income tax-exempted for a period of fifteen (15) years as of 2003. Low depth vessels and floating platforms shall have a draught of less than four point five (4.5) feet.
- Income derived from hotel services rendered in new hotels built within a term of fifteen years (15), as of 2003 (and up to December 31st, 2017) are exempted during a term of thirty (30) years from the date of initiation of the operations of the newly constructed hotel.
- Incomes derived from hotel services rendered in hotels that are remodeled or expanded between January 1st, 2003, and December 31st, 2017, for a period of thirty (30) years and exclusively in proportion to the value of such remodeling or expansion with regards to the tax cost basis of the building.
- Ecotourism services are exempted for a period of twenty (20) years as of 2003.
- Investments in new forest plantations, sawmill and wood trees.

7.4.13 Tax Credits

Colombian law establishes as tax credits certain items that can be deducted from the income tax, as determined by the taxpayer, including, among others:

- Credit on income tax paid abroad by national taxpayers and foreign individuals that have completed their fifth (5th) year of continuous residence in Colombia with regard to foreign sourced income (tax credit), provided that the discount does not exceed the total amount of the tax that has to be paid in Colombia for the same income. Regarding dividends from companies domiciled abroad, the tax credit on the income tax in Colombia shall be applied as follows:
  - The discount is equal to the result of multiplying the amount of the dividends by the income tax rate to which they were subject.
  - If the company that distributes the dividend received, on its part, dividends from other companies domiciled abroad, it must make the aforementioned operation into account with respect to the dividends of the other companies, in order to determine the portion of the tax credit applicable in Colombia.
  - The taxpayer must evidence the payment of such taxes.
- Credit on income tax paid abroad by Colombian air and maritime transportation companies.

- Credit related to plantations of trees in reforestation areas.
- Credit on VAT paid on the import of heavy machinery for primary industries.
- Credit derived from the purchase of shares of companies listed in a stock exchange.

Tax credits cannot exceed the Colombian income tax due. The income tax after credits cannot be lower than seventy five percent (75%) of the tax determined by using the minimum presumptive income system over the net-worth, before any tax discount.

7.5 Transfer Pricing

In general terms, taxpayers who engage in transactions with foreign affiliates or other related parties located abroad are subject to the transfer pricing regime. Accordingly, taxpayers subject to the transfer pricing regime must conduct such related party transactions on commercial standards (including prices and profit margins), which should be established taking into account comparable transactions with independent third parties. In essence, their operations and business transactions with related parties must be conducted on an arm's length basis.

Colombian regulations on transfer pricing are based on the guidelines set forth by the Organization for Economic Co-operation and Development ("OECD") and became effective in 2004.

Taxpayers who carry out transactions with foreign related parties that are domiciled or resident abroad, and whose gross equity exceeds one hundred thousand (100.000) tax value units (TVU - which constitute a reference value in order to determine updated tax values), (approx. USD 1.477.166); or whose gross income exceeds approx. USD 882.771 in the preceding fiscal year, must file, on an annual basis, an informative transfer pricing return of all the operations entered into with related parties.

Likewise, they must prepare and submit supporting documentation of every operation undertaken and of those that exceed a sum equivalent to approx. USD 157.416, upon written request of the tax authority, in order to prove the correct application of the transfer pricing regime. This support documentation must be kept for a period of five (5) years, starting on January 1st of the fiscal year following its preparation.

In the case the operations or transactions only affects the balance sheet of a taxpayer, who meets the requirements to have obligations under this transfer pricing regime, the preparation and filing of the support documentation of such operations will not be required; nonetheless, such information must be included in the annual informative report.

It is important to bear in mind the non-compliance penalties established by the law for the: (i) extemporaneous filing of support documentation; (ii) errors in the support documentation; (iii) filing information other that requested by the tax authority; (iv) filing information which does not allow the verification of the transfer pricing; and (v) the failure to furnish information regarding transactions with foreign related parties.

In addition, the tax authorities may impose sanctions related to non-compliance with respect to the annual informative return, including: (i) untimely filing of the annual informative return; (ii) amendments to the informative return; or (iii) not filing the informative return within the time period established by the DIAN.

7.6 Capital Gains Tax

As a complement to income tax, capital gains taxes are imposed on earnings that are obtained from certain operations expressly defined by law.

Capital gains profits cannot be affected by ordinary costs and deductions incurred by the taxpayer; and capital losses cannot be taken into account for purposes of determining the ordinary taxable income of the taxpayer.

Among the most significant operations subject to the capital gains tax regime are the following:

- Gains (the excess of the sale price over the tax basis of the asset) derived from the sale of fixed assets of the taxpayer owned for a period of at least two (2) years.
- Gains derived from the liquidation of any type of legal entity, in excess of the invested capital, when the gains or earnings do not correspond to income, reserves or earnings distributable as non-taxable dividends, as long as the company has completed at the moment of its liquidation two (2) or more years of existence.
- Gains derived from probate estates legacies, donations, as well as those received as marital share.
- Gains derived from lotteries, raffles and similar activities.
- Profits derived from the trade of financial derivatives held for more than two (2) years which underlying assets are represented in shares listed on a stock exchange in Colombia or on an index or in mutual funds or other type of collective portfolio.

For entities, whether national or foreign, the capital gains tax rate is thirty three percent (33%).

7.7 Tax Withholding

The Colombian tax system establishes the withholding of taxes as a method of advance tax collection. This mechanism

authorizes, by law or regulation, a private or public entity, under certain special conditions, to collect or withhold certain taxes due to its special attributes. According to the tax code, the withholding agents are, among others, legal entities that due to their characteristics take part of acts or operations in which tax withholding must be made because it is required by the law.

The main obligations of withholding agents comprise withholding the corresponding tax, depositing the withheld amounts in the places and on the dates established by the government, filing monthly tax withholding returns and issuing tax withholding certificates.

It is important to point out that the applicable tax withholding rate for a particular transaction depends on its nature. Consequently, applicability of the tax withholding regime is determined on a case-by-case basis.

7.8 Value Added Tax (VAT)

This is a national tax excised on (i) the sale of tangible goods which are not fixed assets and have not been expressly excluded by law; (ii) the rendering of services within Colombian territory; (iii) the import of tangible goods that have not been expressly excluded by law; and (iv) the sale and operation of games of chance, excluding lotteries.

In Colombia, this tax is structured as a value added tax, which means that, for purposes of VAT calculation, the taxpayer is allowed to credit the VAT levied on the sale of the goods it produces and/or the services it renders, in the production of income from VAT-taxable operations.

Entities or individuals which are responsible before the tax authorities for the collection and payment of the VAT are those who undertake any of the activities subject to VAT, despite the fact that the economic burden of the VAT is on the final consumer. In this sense, the following people, among others, are responsible for the collection and payment of the VAT:

- With regard to sales of goods, the merchants or businesses, regardless of whether they are distributors or manufacturers.
- The providers of services not excluded from the tax.
- Importers.

With respect to the sale of tangible goods (different to fixed assets) and the provision of services, the tax base is generally determined by the total value of the relevant transaction. The tax base of this tax includes the goods and services acquired on behalf of the beneficiary of the sale or service. Additionally, there are some special tax bases for certain goods and services.

The current general VAT rate is sixteen percent (16%), and there are some special VAT rates that vary from one point six percent (1.6%) to thirty five percent (35%).

7.8.1 Zero Rated and Exempt Transactions

(a) VAT-Zero Rated Goods

- National or imported equipment and materials for the construction, installation, assembly and operation of environmental monitoring and control systems.
- Imports of raw materials and supplies under the so-called Vallejo Plan these materials and supplies are incorporated into products for subsequent exportation.
- Temporary imports of heavy machinery and equipment for primary industries, provided that the types of machinery and equipment are not produced in Colombia. It is understood that primary industries are mining, hydrocarbons, heavy chemistry, iron and steel industry, metallurgy, extraction of natural resources, generation and transmission of electric energy, and obtaining, purifying and conducting hydrogen oxide.
- Imports of machinery and equipment produced outside the country for recycling and processing of waste.
- Ordinary imports, by high volume exporting users, so-called ("ALTEX", in Spanish) of industrial equipment not produced in the country and aimed to the transformation of raw materials for an indefinite period of time.
- The sale of fixed assets.

(b) Excluded Services

- Public and private, national and international freight transportation.
- Public transportation of passengers within the national territory, by water or land.
- Agricultural activities related to the adaptation of lands for agricultural and cattle exploitation, or those related to the production and marketing of their derivative products.
- National air transportation of passengers, to places where there is no authorized land transportation.
- Transportation of gas and hydrocarbons.
- Interest payments and other financial income from credit operations and financial leasing.
- Medical, dental, hospital, clinical and lab services for human health.
- Utilities including energy, water, sewerage, street cleaning, garbage collection and gas.
- Internet access services for homes in low-income urban zones one (1), two (2) and three (3).
- Education services provided by preschool, elementary, middle, high schools, universities and special or non-formal

education schools, recognized as such by the government, as well as, education services provided by individuals to these institutions.

(c) Exempt services

Services rendered in Colombia to be used or consumed exclusively abroad Colombia, by entities or people without business or activities in the country, are considered VAT exempt.

(d) Excluded Imports

VAT excluded imports are expressly listed in the law. The types of imports that do not accrue VAT are those where there is no clearance through customs (e.g. short term importations), importation of heavy machinery for basic industries, importations to special customs areas, among other.

7.8.2 Creditable Taxes

The VAT invoiced to the acquirer of goods services or on the import of goods is VAT creditable. It is important to keep in mind that VAT credits are only granted for the purchase of movable property, services and imports when such purchases or imports are treated as costs or expenses of the company for income tax purposes and are destined for VAT-taxable operations. For VAT paid on inputs for VAT-zero rated operations, a VAT credit is available only where the taxpayer who undertakes the exempt transaction is an exporter or producer of VAT-zero rated goods. The VAT credit is also available for exporters of services that fulfill the requirements established by Decree 1805 of 2010.

The VAT paid may be credited in the tax period corresponding to the date of accrual of the tax or in any of the two (2) following bi-monthly periods; and it can be claimed as a credit on the return of the period in which it was registered on the accounting books.

No VAT credit is allowed for VAT paid in the following transactions:

- Acquisition of fixed assets.
- Unrecoverable trade receivables.
- Acquisitions made from suppliers who are not registered as VAT taxpayers.
- Acquisitions made from fictitious or insolvent suppliers.

7.8.3 Determination of Tax

VAT is determined by the difference between the tax accrued on taxable transactions and the VAT credits authorized by law, as follows:

VAT Determination
Income from taxable transactions
Times: Rate
Tax accrued (limited to the same rate of the VAT generated)
Minus: Creditable taxes
VAT payable (vat liability)

7.9 Levy on Financial Transactions ("LFT")

The levy on financial transactions is a permanent tax. The taxable events comprise, among others, financial transactions by means of which certain monetary resources deposited in saving or checking bank accounts are disposed, the use of cashier's checks and the existence of accounting entries that involve or imply the payment of obligations. The tax is payable on the amount of the financial transaction.

The tax rate is zero point four percent (0.4%) of the total amount of the financial transaction. For year 2012, twenty five percent (25%), and from 2013 to 2018, fifty percent (50%) of the total tax paid is deductible for income tax purposes, regardless of whether or not the transactions have a causal nexus with the income producing activity of the taxpayer.

From 2014 to 2015, the rate of the tax will be reduced to cero point two percent (0.2%), to cero point one percent (0.1%) for years 2016 and 2017, and it will be eliminated as of 2018.

This levy on financial transactions is collected through a withholding mechanism, and the withholding agents are the Colombian Central Bank and the financial entities subject to oversight of the Financial Superintendency (*Superintendencia Financiera*) or the Cooperatives Superintendency (*Superintendencia de Economía Solidaria*) where the respective checking account, savings account, deposit account or collective portfolio are held, or where the accounting transactions that imply the transfer or disposal of resources are booked.

It should be noted that the law establishes a series of financial operations and transactions that are exempted from this tax, so the analysis must be individualized.

7.10 Industry and Commerce Tax and the Supplementary Tax of Billboards

7.10.1 Industry and Commerce Tax, and the Supplementary Advertising and Billboard Tax

The industry and commerce tax is a local tax that is imposed on gross revenues derived from the performance of industrial, commercial or service activities that are carried out directly or indirectly by individuals, legal entities or unincorporated entities in any of the Colombian municipal jurisdictions.

The tax base of this tax is constituted by the gross income generated by the taxpayer, minus any permitted deductions, exclusions, and certain other values.

The rate of this tax is defined by each municipality within the limits set forth by law. Currently, the rates' ranges are as follows:

- For industrial activities, the tax rate ranges from zero point two percent (0.2%) to zero point seven percent (0.7%).
- For commercial activities and services, the tax rate ranges from zero point two percent (0.2%) to one percent (1%).
- Notwithstanding the above, in some municipalities there are fees that exceed the above specified limits, because they were established prior to the issuance of the law that regulated the issue, so they can be of one point four percent (1.4%).

7.10.2 Supplementary Billboard Tax

The Supplementary billboard tax is a local tax, assessed in addition to the industry and commerce tax. This specific tax is triggered by the placement of billboards in public spaces. This tax is imposed on any persons or companies engaged in industrial, commercial and service activities in the municipal jurisdictions where the public space is used to advertise their business through billboards.

The tax base is the industry and commerce tax liability, and its rate is fifteen percent (15%).

7.11 Unified Real Estate Tax

The real estate tax is imposed on the ownership or usufruct of real property located in urban, suburban or rural areas, whether or not constructed land. Therefore, the property tax payers are the owners or holders or possessors of the real property. The real estate tax base is the current cadastral value of the property, as adjusted by the Consumer Price Index ("CPI"). In zones such as Bogotá, the tax base can be increased by a self–appraisal requested by the taxpayer directly.

The applicable rate depends on the nature of the property, which depends on factors such as the location and use. The rate ranges between zero percent (0%) and one percent (1%), taking into account the economic use of each property. Law 1450 of 2011 determined a progressive increase of the minimum rate until reaching zero point five percent (0.5%) in year 2014.

This tax is one hundred percent (100%) deductible for income tax purposes, as long as there is a direct relation to the income producing activity of the taxpayer.

7.12 Registry Tax

The registry tax is levied on any acts, contracts or business set forth in documents that require registration before the chamber of commerce and the public registry office (*Oficina de Registro e Instrumentos Públicos*).

The tax basis is the value referenced in the document that describes the act, agreement or contract. In the case of documents that do not have a stated value, the tax basis is determined by the nature of such documents.

- Acts, agreements, or contracts with a stated value subject to registration before the public registry office between zero point five percent (0.5%) and one percent (1%).
- Acts, agreements, or contracts with a stated value subject to registration before the chambers of commerce will trigger a tax rate between zero point three percent (0.3%) and zero point seven percent (0.7%).
- Acts, agreements, or contracts without a stated value that are subject to registration either before the public registry office or chambers of commerce will trigger a tax rate between two (2) and four (4) minimum legal daily wages.

Some examples of documents without a determined value include: appointment of legal representatives, name changes, statutory bylaws addendums (not including increase of capital and mergers), liquidation of companies, etc.

Examples of acts with determined value include the following: company incorporation, increase of equity and increase of the subscribed capital, transfer of quotas, sale of commercial establishments, liquidation of companies, etc.

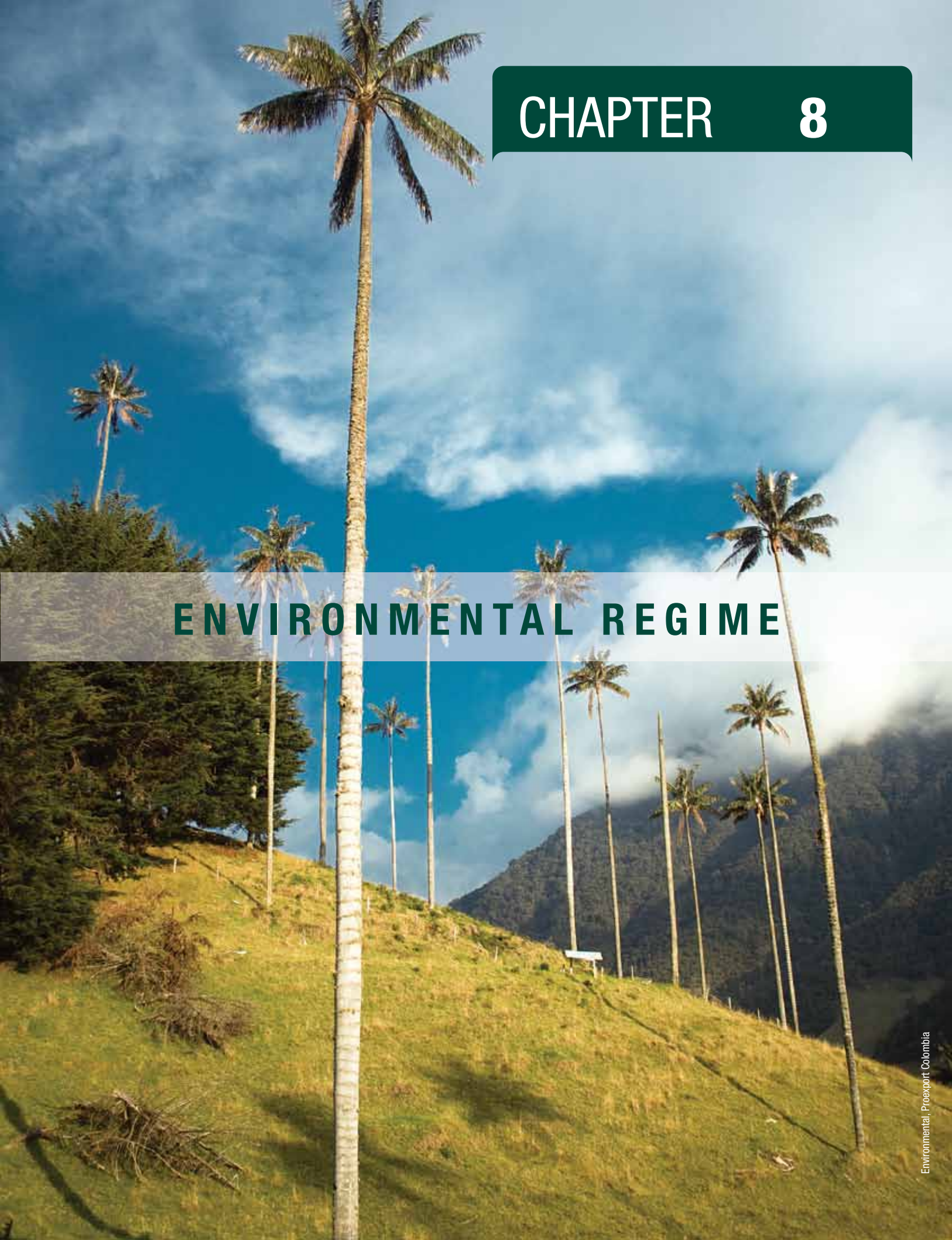
When acts, agreements, or contracts must be registered both before the public registry office and the chamber of commerce, the tax must be paid only once at the public registry office.

Regulatory Framework

Norm	Subject
Tax Code (Decree 624 of 1989 modified)	Establishes the elements of the national taxes (taxpayer, beneficiary, taxable events, taxable base, rate, exemptions). • Income Tax and supplementary taxes: regulates the taxable incomes, admissible deductions, fiscal residence, transfer pricing regime and occasional gains, among others. • Value Added Tax (VAT): establishes the persons who are responsible for collecting VAT, the rate applicable to certain goods and services, the exemptions and exclusions, the common regime, the simplified regime, the regime for the import and export of goods, and the calculation of proportionality, among others. • Levy on Financial Transactions: Establishes the persons and legal entities that are subject to it, the applicable exemptions and the withholding agents. • National Stamp Tax: Establishes the taxable events, the rate (currently 0%) and the tax base. It also contains the main formal (procedural) aspects associated with compliance with tax obligations • Tax withholdings • Tax proceedings • Sanctions for the default of tax obligations • Structure of the DIAN
Law 223 of 1993	It contains the main provisions related to tax rationalization, establishing, among others: • Goods that are not subject to VAT. • Goods that are excluded from VAT • Imports exempted from VAT
Law 14 of 1983	Establishes detailed standards regarding the essential elements of the main territorial taxes, such as • Real Estate Tax • Industry and Commerce Tax - ICA • Tax on the consumption of alcoholic beverages • Cigarette Tax
Law 97 of 1913	Regulates the territorial tax on public lighting.
Law 84 of 1915	Regulates the powers granted to the Municipal Councils and the Departmental Assemblies for managing the local taxes.
Law 633 of 2000	Modifies the national taxes (Income tax, VAT, GMF).
Law 788 of 2002	Establishes amendments to the tax procedure (tax regimes, sanctioning proceedings, goods exempted from VAT, rates, among others).
Law 1430 of 2010 Decree 1805 of 2010	Eliminates the special deduction for investment on real productive fixed assets and also: • Modifies the taxable events and the exemptions of the LFT. • Modifies issues related to the taxpayers of local taxes Contains provisions related to VAT in the exportation of services
First Job Law	
Law 1429 of 2010	Established special tax benefits for • The formalization and creation of “small companies”; and • The hiring of young people aged less than 28 years old, women aged more than 40 years old, persons in condition of disability, among others.
Decree 4910 of 2011	Contemplates the requirements and procedures to obtain the benefits of Law 1429 of 2010.

CHAPTER 8

ENVIRONMENTAL REGIME



Environmental, Proexport Colombia

LEGAL GUIDE
TO DOING BUSINESS
in Colombia
2012

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8. ENVIRONMENTAL REGIME

Four (4) things that an investor should know about Colombian environmental laws and regulations:

1. Projects, works or activities involving the use or affecting natural resources require an environmental license. Said projects, works or activities are defined in the applicable decrees, the most recent of which is Decree 2820 of 2010. Additionally, any project, work or activity which uses or affects natural resources, but that does not require an environmental license, must obtain the required environmental permits.
2. Colombia has a National System of Protected Areas ("SINAP", in Spanish) and accordingly there are many areas where it is completely or partially prohibited to develop projects, works or activities.
3. The National Environmental System ("SINA", in Spanish) consists of: (a) the national environmental authority; (b) the regional authorities; and the National Environmental Licensing Agency ("ANLA", in Spanish).
4. If the extraction of natural resources to be extracted is located in or affects the territories of indigenous or afro-descendant communities, it is compulsory to carry out a prior and informed consultation process with these communities. The purpose of the prior and informed consultation is to discuss and analyze with the communities the economic, environmental, social and cultural impact that can be caused within their territory. It must be highlighted that the Colombian Constitutional Court considers that the existence of the community is not limited to the territory and that areas of influence close to the communities may also be involved.

Colombia has extensive environmental legislation in place, which in some cases dates back to the early 20th century and it enshrines the duty of the State and of individuals: (i) to protect the natural riches of the Nation in order to guarantee the protection of rights, such as the right to enjoy and live in a healthy environment; (ii) to protect and maintain ecological balance and also to ensure rational management and use of natural resources; (iii) to protect public health and safety; and (iv) to prevent foreseeable disasters.

Thus, the aim is to guarantee sustainable development, preservation of the diversity and integrity of the environment, the protection of natural resources, of the landscape and of human health, the preservation of special areas of environmental significance, and the rational planning, management and use of natural resources.

In what follows, we present a brief summary of the most relevant aspects of the Colombian environmental regulations and institutions for foreign investors.

8.1 Environmental Licensing Regime

For any work, industry or activity that may severely harm renewable natural resources or the environment, or introduces major modifications to the landscape, an environmental license is required.

The environmental license is an authorization to carry out the project, work or activity, subject to the implementation of environmental impact mitigation measure. Based on the Environmental Impact Study ("EIS") submitted by the applicant, the competent environmental authority determines the required measures. As a rule, only those works, projects or activities explicitly listed in the applicable law require an environmental license.

To obtain an environmental license, the applicant must submit an environmental analysis of alternatives (except when the competent environmental authority certifies that such study is not required, as is the case for mining projects and hydrocarbon exploration and production) and an EIS which must be prepared based on the general terms of reference published by the Ministry of the Environment and Sustainable Development for the most common sectors and activities (hydrocarbons, mining, power generation and others) or *ad hoc* terms of reference for a particular activity when no general terms of reference are available.

The competent authority that grants or denies the license may be the ANLA or one of the regional environmental authorities mentioned below, depending on the nature and scope of the project, work or activity.

In no event shall the same project, work or activity require more than one environmental license. The duration of the environmental license shall be that of the project.

According to the legislation, processing an environmental license takes up to one hundred and twenty (120) days, although it may take longer (up to a year), depending on the competent authority and the complexity of the project, work or activity.

The interested party must pay a fee determined by the Government for the evaluation services and submit six-monthly environmental compliance reports which shall allow the environmental authority to monitor the project.

8.2 Other Environmental Permits

The environmental license includes all the permits, authorizations and/or concessions required to use the resources, as well as for the utilization or earmarking of the natural resources necessary to develop the project.

However, if the project, work or activity is not subject to an environmental license, each of the permits must be obtained separately. These permits are granted by the regional or municipal environmental authorities with jurisdiction over the area, as follows:

	Permits
Air	The emission of gases into the atmosphere is regulated. In some cases, a permit may be required for atmospheric emissions. However, in any case, the project, work or activity that emits gases into the atmosphere must comply with the permissible limits provided by the law for the particular kind of industry or activity. The permit shall identify the kind of project that will be carried out, the authorized emission and the quantity and quality thereof. It will be valid for a maximum of five (5) years.
Water	With regards to this resources, the authority may grant the following permits: **Concessions.** Concessions grant the right of using and taking water from rivers and wells. Generally, this type of permit will be granted for ten (10) years. In some exceptional circumstances, it may be granted for up to fifty (50) years for works related to the provision of public services or for the construction of works of social interest. **Permits for discharge of tailings.** These permits grant permission to discharge tailings into bodies of water. The permit is granted for a maximum term of ten (10) years. **Occupation of riverbeds.** A permit to occupy riverbeds is required in the event of any intervention of riverbeds. This permit will also be necessary for the construction and operation of hydraulic works in order to protect and preserve the riverbeds and the slopes and lands along rivers, streams or of any other body of water. **Groundwater.** A special permit is required for the exploration of wells and groundwater if the applicant wants to explore the subsoil to search for water.
Hazardous Waste	Special regulations deal with the proper handling, treatment and final disposal of hazardous waste. In general, whoever produces hazardous waste must have a contingency plan that has been approved by the environmental authority and is jointly and severally liable with other agents along the chain until the final disposal of the waste. Likewise, the applicant must register with the environmental authority and submit characterizations of the waste that is being produces.
Visual Outdoor Advertising	This kind of publicity is subject to prior registration with the municipality in charge. The applicant must pay the corresponding fee.
Trees	A Forestry Used Permit will be required if forestry products are to be extracted for the execution of any activity. It is also necessary to obtain an authorization for felling and pruning trees.

8.3 Consultation with Indigenous and AfroColombian Communities

Colombia is party to ILO Convention No. 169 and accordingly if the planned project, work or activity is to be developed in territories that have been declared indigenous reservations or in areas permanently occupied by indigenous communities, then a prior consultation process must be carried out to ensure the participation of the community in the use, management and conservation of natural resources.

It must be highlighted that for projects subject to environmental licensing, the consultation process is coordinated by the environmental authority, whereas for projects which do not require an environmental license, the consultation process is coordinated by the Ministry of the Interior. The consultation is carried out as the EIS is being produced.

According to the jurisprudence, the fundamental and constitutional right of indigenous communities to be consulted can be protected by means of a special and preferential legal action called *acción de tutela.*

As a rule, the consent of the communities is not necessary in order to develop the project. However, there must be evidence of the good faith of the interested party to reach an agreement with the communities.

Afro-Colombian communities are entitled to the same right to prior consultation, by virtue of Law 70 of 1993.

8.4 Protected Areas

Colombia has a National System of Protected Areas ("SINAP" in Spanish), which consists of different kinds of environmentally protected areas. Additionally, there are areas declared as forest reserve to protect, preserve and restore forests.

The SINAP and the forest reserves cover a large extension of the country's surface and it is very important for the extractive industries in particular to understand that there may be restrictions and prohibitions to the economic activities they intend to carry out in these areas.

As a rule, extractive activities are completely forbidden in natural parks (both national and regional), which constitute one of SINAP's strictest conservation categories. Likewise, it is prohibited to carry out extractive activities in forest reserves, although some of these reserves (created by Law 2 of 1959) can be removed from the system to allow activities considered of public benefit or social interest, such as mining and the oil industry. This procedure to have reserves removed from the system must be carried out in addition to the environmental license. Therefore, it must be undertaken as early as possible in order to prevent delays in the projects.

8.5 Environmental Authorities

8.5.1 Ministry of the Environment and Sustainable Development ("MADS", in Spanish)

MADS is the agency responsible for managing the environment and the renewable natural resources. As such, MADS defines the public policies regarding their recovery, conservation, protection, management, use and exploitation.

8.5.2 National Environmental Licensing Agency (ANLA)

The ANLA is the special administrative unit, at the national level, responsible for granting and supervising the environmental licenses for the projects, works or activities subject to environmental licensing, permitting or procedures.

8.5.3 Autonomous Regional Corporations and the Corporations for Sustainable Development ("CAR", in Spanish) and Urban Environmental Authorities ("AAU", in Spanish)

The CARs are public entities with competence over areas that constitute a same ecosystem or that make part of a same geopolitical, bio-geographic or hydro-geographic unit. CARs are responsible for the environment and the renewable natural resources within their jurisdiction, and for the promotion of sustainable development. AAUs have the same functions as the CARs but within the urban perimeter of municipalities, districts or metropolitan areas with a population of at least one million (1,000,000) habitants.

8.6 Administrative Responsibility and Environmental Sanctioning System

Any act or omission that breaches any of the provisions contained in the Renewable Natural Resources Code, in other environmental provisions in force and in all administrative acts issued by the competent environmental authorities, as well as committing a harmful act on the environment, provided there is harm, culpably or maliciously intended, and a causal link between the two can be established, constitutes an environmental infringement.

The alleged violator is presumed guilty and the burden of proof rests on the violator to prove that no culpable or malicious harm was intended.

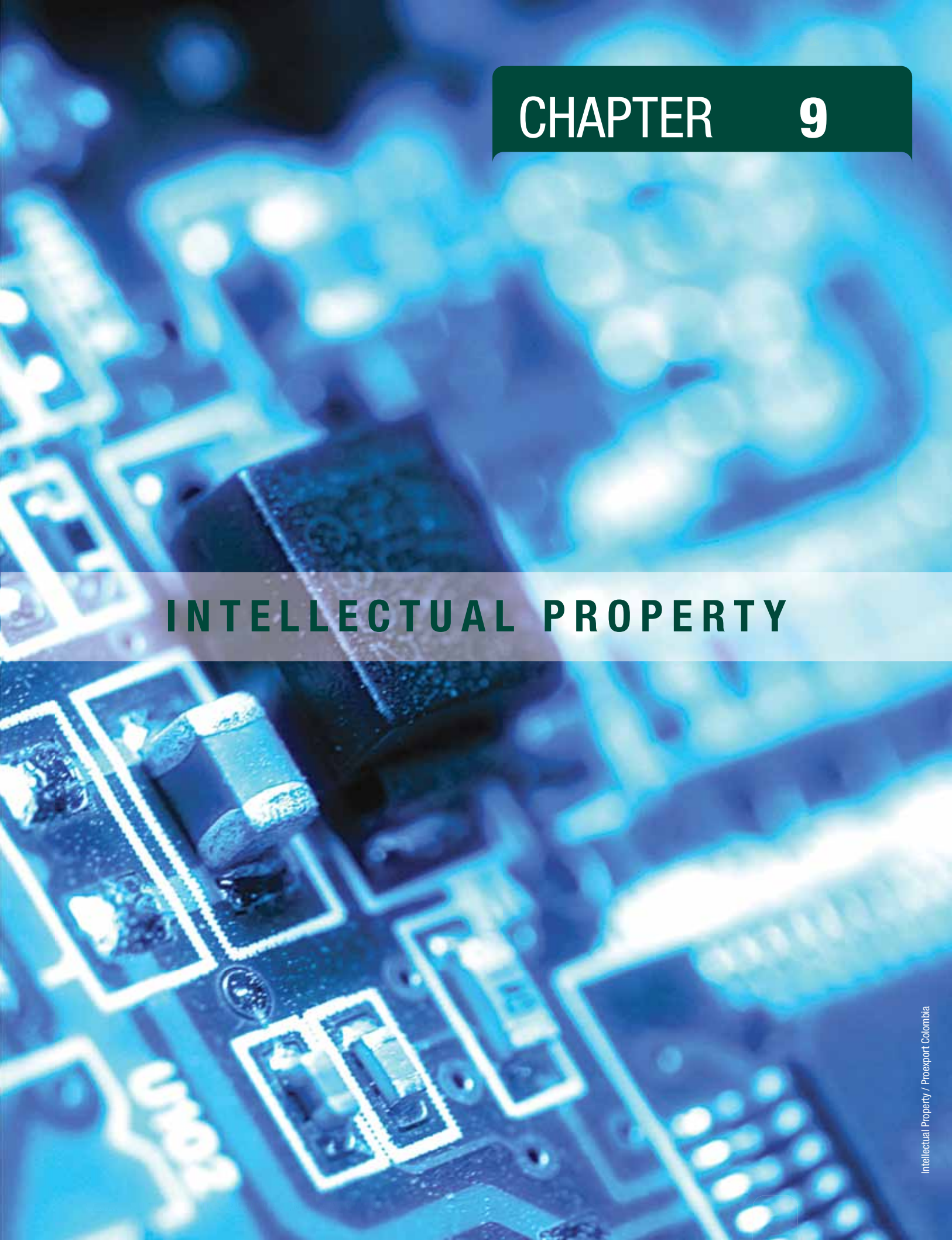
The environmental authorities may impose penalties of up to five thousand (5.000) minimum legal monthly wage (approx. USD 1,500,000) as well as sanctions, such as revoking or cancelling the environmental license or permit, even as a preventive measure. These and other preventive measures may be imposed by means of an administrative act not subject to appeal, although they can be lifted ex officio or at the request of the concerned party after proving that the causes that led to the sanctions have been removed.

Regulatory Framework

Norm	Subject
Principles and Institutional Framework	
Renewable Natural Resources Code (Decree Law 2811 of 1974)	The code establishes detailed regulations regarding management of renewable natural resources such as forests, soil, water and the atmosphere.
Political Constitution	The right of all to a healthy environment.
Law 99 of 1993	This law includes the basic principles and creates the environmental institution system by means of the National Environmental System (SINA).
Decree 1299 of 2008	By which the obligation is created to have, in certain circumstances, a department for environmental management in some companies.
Decree 2372 of 2010	Regulates SINAP.
Law 133 of 2009 and Resolution 415 of 2010	By which the Integrated Environmental Offender Registry (RUIA) is created and regulated.
Law 1450 of 2011 (Law on the National Development Plan)	By which the paramo ecosystems (high elevation neo-tropical ecosystems between the upper forest line and the lower snow line) are declared areas in which agricultural activities or hydrocarbon and mineral exploration and/or exploitation cannot be carried out.
Hazardous Waste	
Law 1252 of 2008, Decree 4741 of 2005 and Law 142 of 1994	Integral management of hazardous waste.
Environmental Permits	
Decree 948 of 1995 and	Air quality and atmospheric emission permits.
Resolution 910 of 2008 Decree 1791 of 1996	Forestry use.
Decree 1541 of 1978 and Decree 3930 of 2010	Regulation on the use of no-maritime waters, water management, water quality criteria and discharge permits
Environmental Licensing	
Decree 1753 of 1994, Decree 1728 of 2002, Decree 1180 of 2003, Decree 1220 of 2005 and Decree 2820 of 2010	These Decrees regulate the environmental licensing regime depending on when the activity was initiated.
Environmental Sanctions	
Law 1333 of 2009	This law establishes the procedure for environmental sanctions.
Criminal Code	The Code regulates offenses against the environment.

CHAPTER 9

INTELLECTUAL PROPERTY



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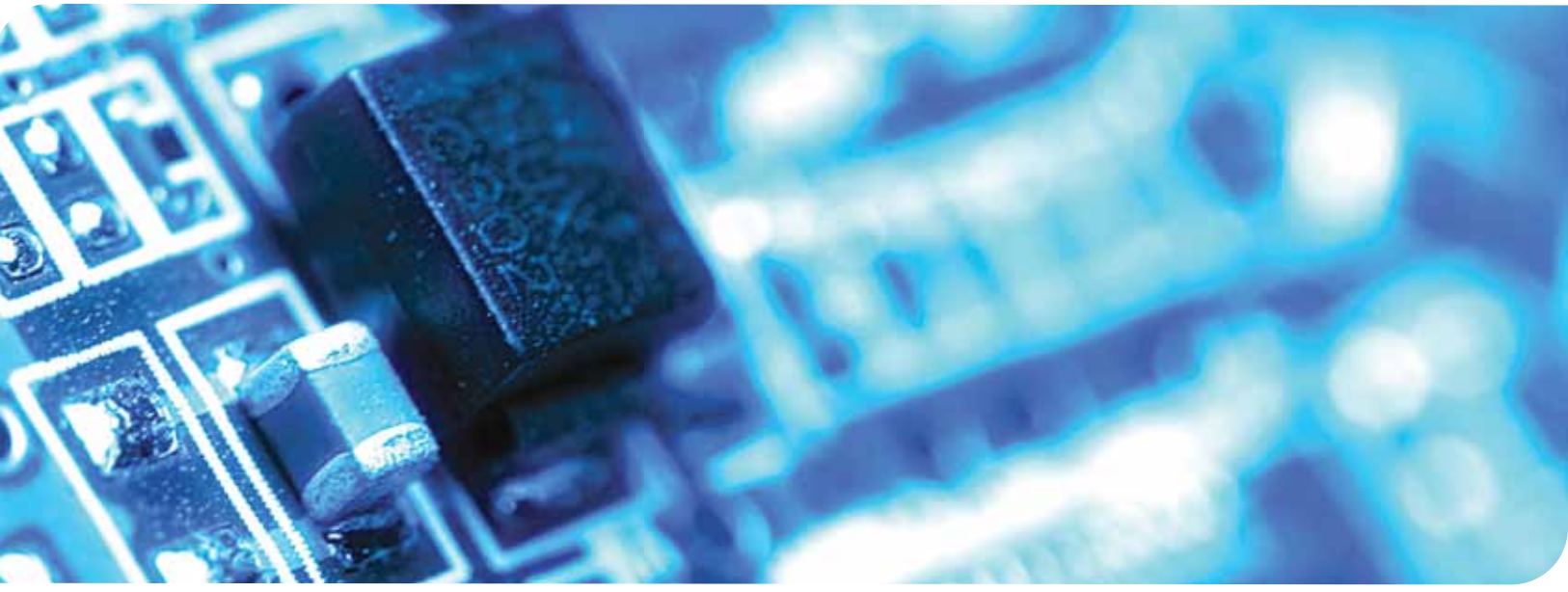

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9. INTELLECTUAL PROPERTY

Five (5) things an investor should know about intellectual property:

1. The mere use of a trademark does not confer exclusive rights over the same. The corresponding registration must be obtained in order to acquire protection.
2. A trademark registration can be cancelled on the grounds of non-use at the request of an interested party, if the registration has been in force for more than three (3) years.
3. Colombian legislation provides the assignment of author's economic rights and industrial property rights, by means of an employment or service provision contract. In fact, there is a legal presumption stating that, unless indicated otherwise, said rights are assigned to the employer or the commissioner.
4. The contracts by means of which intellectual property ("IP") rights are negotiated must be registered before the competent national authority for its provisions to be enforceable against third parties.
5. Patents protect technical innovation, which may be products or processes. Improvements upon such products and processes may eventually become patentable.

The main part of the intellectual property law applicable in Colombia is issued by the Andean Community of Nations ("CAN", in Spanish), whose member countries are Colombia, Bolivia, Ecuador and Peru. However, certain aspects are regulated by local legislation. Even though regulations issued by the CAN are common and prevail over national legislation, each member country has independent and autonomous authorities and registration systems. It is important to take into account that intellectual property rights are linked to the territory in which its protection is granted. It is therefore necessary to apply for their registration in Colombia, in order to obtain protection.

Consequently, although CAN member countries have a common intellectual property regime, there is no common registration system providing protection in all countries. Thus, applications must be filed in each CAN member country to ensure adequate protection of intellectual property rights.

9.1 Industrial Property

Decision 486 of 2000 of the CAN unified the applicable regulations for industrial property regarding to distinctive signs for goods and services (trademarks, slogans, trade names, trade ensigns and geographical indications), as well as new creations (patents, industrial designs and layout designs of integrated circuits). Regarding patents, it is important to bear in mind that the Patent Cooperation Treaty ("PCT"), which facilitates the process of obtaining patent protection in different countries, is applicable in Colombia.

9.1.1 Distinctive Signs

As a general rule, in CAN member countries protection and rights may only be obtained through registration before the competent agency (which in Colombia is the Superintendency of Industry and Commerce, "SIC" in Spanish). Thus, the mere use of a distinctive sign does not confer any rights or protection of any kind in Colombia, the only exception being trade names and trade ensigns since rights are derived from their proven public and continuous use.

Exclusive right to the use of a distinctive sign is granted by means of its registration, as well as the prerogative of impeding third parties from using identical or similar distinctive signs, provided that such use generates likelihood of confusion or likelihood of association.

(a) Trademarks

Trademarks are distinctive signs that distinguish goods and services from one manufacturer or provider form those of another. The Nice International Classification of Goods and Services is applicable in Colombia, so goods or services protected by a trademark must follow this classification.

Trademarks may be nominative, graphic, word & design, or tridimensional. Additionally, Decision 486 foresees the possibility of registering certain sounds, odors, a combination of colors or colors delimited by a given shape, the shape of a product, and its packaging or wrappings, as trademarks, provided that they are perceptible by the senses.

The exclusive right to use a trademark becomes effective once its registration is granted, for an initial term of ten (10) years, which may be renewed indefinitely for subsequent ten-year terms.

In addition, pursuant to Decision 486, the following provisions apply in CAN member countries:

(i) Priority Claim

A priority claim is granted to the owner of a trademark application originally filed in any member country of the Paris Convention for the Protection of Industrial Property. Accordingly, the holder may file an application for the same trademark in any other member country, preserving the filing date of the initial application, provided that the subsequent applications are filed within a six (6) month term after the filing date of the initial application.

(ii) Andean Opposition

The holder of a trademark registration or application filed in any CAN member country may file an opposition against trademark applications filed in another member country. In order to prove its legitimate interest in the local market, the opponent must simultaneously file an application in the country where the opposition is filed.

(iii) Cancellation of a Registration on the grounds of Non-Use

The non-use cancellation action is a procedure by means of which any interested party may seek the cancellation of a trademark which has been registered for more than three (3) years, provided that its titleholder cannot evidence any significant use in any of the CAN countries during the three-year (3) period prior to the date when the cancellation was requested. Adequate use of the trademark in any member country of CAN, with regards to all goods or services covered by the registration is sufficient to prevent cancellation. The titleholder of a trademark is under the obligation to supply evidence of use, failure to submit evidence leads to total cancellation of the registration. In case evidence is submitted of adequate use for some goods or services, partial cancellation will be ordered. In this case, the registration of the trademark will be limited to cover only and exclusively the goods or services that are being used.

Use of the trademark by an authorized third party (through franchise, distribution agreements, etc.), is considered valid to prove use in the event of non-use cancellation procedure. It is however advisable to register the licenses of use before the SIC.

Whoever obtains a favorable decision in a non-use cancellation action in a CAN member country, will acquire the preferential right to register an identical trademark as the cancelled one. The application must be filed within three (3) months after the notification date of the cancellation decision.

(b) Slogans

A slogan is the word, phrase, or wording, which is used together with a trademark. Slogan applications must indicate the trademark registration or application with which they are associated.

The title of Decision 486 regulating trademarks, including the provisions for non-registrability, is applicable to slogans.

(c) Trade Names and Trade Ensigns

Trade names protect the designation of the economic activity of an entrepreneur which is known by consumers and competitors. In some cases, the name does not correspond to the denomination on the good standing certificate. Trade ensigns, in turn, identify commercial establishments, defined as the set of goods and assets that have been put together in order to attain the objectives of a company.

The rights on trade names and trade ensigns are acquired by their first use in the market and end when no longer used.

Consequently, the registration of trade names and trade ensigns only has a declaratory value and no rights arise from it. Thus, its purpose is to introduce a legal presumption regarding the date in which the sign began to be used, which for all intents and purposes is the date of the application for registration.

(d) Geographical Indications

Geographical indications are appellations of origin and indications of origin. Appellations of origin refer to a geographical indication consisting of the name of a specific country, region, or of a denomination which refers to a specific geographical area, whose name is used to identify a product originating therein, the quality, reputation and other characteristics of which are exclusively or essentially attributable to the geographical environment in which it is produced, including natural and human factors. An indication of origin consists of a name, expression, image, or sign that indicates or evokes a particular country, region, locality, or place.

The SIC's declaration of protection grants the right of the exclusive use of the appellation of origin to the producers in such geographic region, and includes the possibility to prevent unauthorized third persons from using the sign, or similar signs that may lead to confusion, for associated goods. Likewise, the authorization of use of a protected appellation of origin may be requested for a term of ten (10) years, renewable for equal periods.

Likewise, titleholders of appellations of origin may oppose the registration of a trademark or a slogan that reproduces, contains, or imitates their protected appellation of origin.

9.1.2 New Creations

New creations are patents for inventions, utility models, industrial designs and layout designs of integrated circuits. The registrations granted by the Government confer on their holders an exclusive right of enjoyment and of preventing others to manufacture, sell and/or use their protected inventions for a certain period of time. Due to their importance for the technological development of Colombia and in order to guarantee their proper use, Colombian legislation grants new creations a paramount position.

(a) Patents for Inventions

Patents for inventions are granted with respect to goods or processes that are new, involve an inventive step, and are industrially applicable. The exclusive right on a patent is granted for twenty (20) years from the filing date of the application.

CAN legislation states that the following shall not be considered inventions: discoveries, scientific theories and mathematical methods; biological or genetic processes isolated from their natural environment, copyright protected works, software and any forms of conveying information. Likewise, therapeutic and surgical methods to treat humans and animals and uses or secondary uses of already patented goods and procedures, among others, are not considered patentable.

(b) Patents on Utility Models

Patents on utility models are granted to any new form, configuration or composition of elements of any device, tool, instrument, mechanism or other object, or part thereof, which allows an improved or different utilization of the object, or which enables any utility, advantage or technical effect which it did not have before. The exclusivity right of use is granted for ten (10) years from the filing date of the application.

(c) Industrial Designs

Industrial designs refer to the particular appearance of a product resulting from any arrangement of lines, or combination of colors, or of any two-dimensional or three-dimensional form, line, outline, configuration, texture or material, without changing the function or purpose of the product. The exclusivity right of use is granted for ten (10) years from the filing date of the application.

(d) Rights Conferred by Patents

In general terms, patents grant their holders the exclusive right to exploit the invention and to prevent third parties from manufacturing, utilizing, selling, using or commercializing the object of protection.

Decision 486 provides the possibility of "claiming priority", for which, as with trademarks, the holder of a patent application is entitled to file subsequent identical applications in other countries and claim priority for the initial application date. Consequently, patent and industrial design applications originating in other member countries of the Paris Convention are covered by the right to claim the earliest filing date. The term to claim priority is of one (1) year for patents and six (6) months for industrial designs.

9.1.3 Negotiability

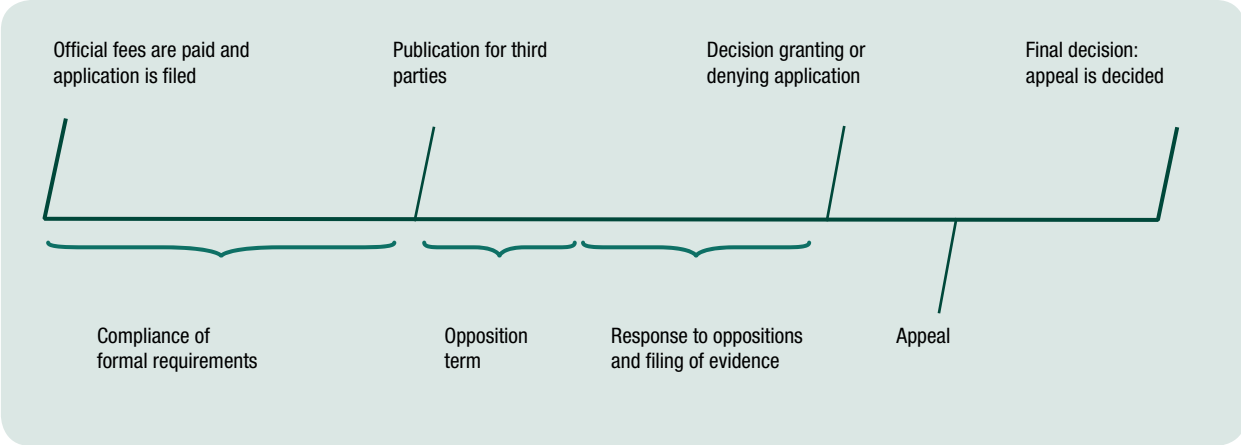
The rights conferred by the registration of distinctive signs and new creations are negotiable and assignable. Accordingly, their holders will be able to make use of their rights through different means, such as assignment by sale, license of use, or use them as encumbrances and guarantees.

Bearing in mind that the rights over trademarks and patents are derived from their registration, any act of disposal or assignment, such as those mentioned above, must be recorded before the competent agency so as to become enforceable against third parties, except trademark licenses of use since their registration is optional according to Decree 729 of 2012.

It is important to note that Colombian legislation allows the assignment of author's economic rights and industrial property rights by means of employment contracts or service contracts. In fact, the transfer of said rights is presumed unless stated otherwise. In order for this presumption to operate, the contract must be written, not verbal.

9.1.4 Applicable Proceeding and Fees

The nature of proceedings to register trademarks and patents is administrative and not judicial. Such proceedings are to be carried out with the SIC following these steps:



For distinctive signs, the process may take between eight (8) months to two (2) years until a final decision is rendered. Regarding new creations, the process may take between five (5) to seven (7) years.

Applicable fees can be found at www.sic.gov.co

9.2 Copyright

9.2.1 General Aspects

Copyright protection is granted to creations in the artistic and literary fields (including software). Copyright protection is granted on the way ideas are expressed, not on the ideas themselves.

Colombia has a protection system based on the concept of droit d'auteur, which stems from the tradition of civil law that rules in the country, in contrast to the copyright framework that exists in common law countries. Hence, the legislation protects the author of the work, that is, the individual who creates it, granting such individual moral and economic rights.

Moral rights refer to the perpetual, non-negotiable and non-transferable right the author has to his or her works, which allows the author to claim authorship, challenge the transformation, mutilation or deformation of those works, maintain his or her anonymity, and determine whether or not it can be published. Under such rights, the author is granted recognition and preserves the integrity of his or her work, protecting thereby the author's honor and reputation. Consequently, these rights may never be transferred and any reference thereto in an agreement may only reaffirm such rights.

Author's economic rights refer to the exclusive right the holder has to perform, authorize or prohibit the use or exploitation of his or her work, and to receive payment for its utilization. Author's economic rights arise once the work or production is used or disclosed through any means. It is important to note that there is a presumption of the transfer of author's economic rights to the employer or commissioner, within employment contracts or service contracts, provided they are in writing.

Registration of protected works only has declaratory value and no rights arise from it. Therefore, it does not grant any rights to the holder, and it only serves the purpose of making the creation public, enforceable against third parties, and it is an appropriate means to evidence ownership, originality and the time of creation of the work.

Protection of author's economic rights endures throughout the author's life plus eighty (80) years after the author's death. When the owner of the copyright is a legal entity, protection is for seventy (70) years from the date the work is published or disclosed.

9.2.2 Applicable Law

The regulations on copyright law are laid down mostly in Decision 351 of 1993 of the CAN, Law 23 of 1982, Law 44 of 1993 and Law 1520 of 2012. It is important to note that in the event of a discrepancy between the CAN provisions and

local legislation, the CAN provisions prevail, in accordance with the Colombian Constitution.

Furthermore, in Colombia both the Berne Convention and the WIPO Copyright Treaty (WCT), which include the Performances and Phonograms Treaty (WPPT), are applicable.

9.2.3 Negotiability

Due to their economic nature, author's economic rights may be subject to contractual arrangements for the benefit of the author or titleholder. Since these rights are freely transferable, they may be assigned through donations, purchase, sale, inheritance, etc. These rights may likewise be assigned by virtue of law and upon the death of the copyright holder. Additionally, there is a presumption of the transfer of author's economic rights to the employer or commissioner within employment contracts or service contracts, provided that they are in writing.

Author's economic rights or associated rights may be assigned inter vivos, whereby this assignment is limited to the foreseen modalities of use or to the time and territory determined by the contract. If no period of time is stated, the assignment is limited to five (5) years, and the territory to the country where the assignment takes place.

The assignment of author's economic rights will only be valid if the corresponding document is on writing. The latter must be filed before the National Copyright Office ("DNDA", in Spanish) in order for it to be enforceable against third parties.

9.2.4 Applicable Proceeding and Fees

To register copyrights before the DNDA the form provided by this agency must be filled out and submitted. However, no rights arise from the registration, but it can serve as evidence in case of litigation.

The registration before the DNDA is free of charge. Nevertheless, the applicant must assume certain costs, which may be found at www.derechodeautor.gov.co.

Regulatory Framework

Norm	Subject
Political Constitution of Colombia	Articles 58, 61, 78, 88, 150 and 189 – regulation on intellectual property
Paris Convention of 1883	For the protection of industrial property
Rome Convention of 1961	For the protection of performers, producers of phonograms and broadcasting organizations
General Inter-American Convention for Trade Mark and Commercial Protection of 1929	Trademark and Commercial Protection
Locarno Agreement of 1968	International Classification for Industrial Designs
Nice Agreement of 1979	International Classification of Goods and Services for the Purposes of the Registration of Trademarks
Berne Convention of 1979	For the Protection of Literary and Artistic Works
Law 23 of 1982	On Copyright
Law 26 of 1992	Treaty on the international registration of audiovisual works
Law 44 of 1993	Modifies and complements Law 23 of 1982 on copyrights
Decision 351 of 1993 of the CAN	Common provisions on copyright and related rights
Strasbourg Agreement of 1994	International Patent Classification
WIPO Treaty of 1996	On Performances and Phonograms
WIPO Treaty of 1996	On Copyright
Decision 486 of 2000 of the CAN	Common Intellectual Property Regime
PCT of 2001	Patent Cooperation Treaty
Decision 689 of 2000 of the CAN	Adjustments to Decision 486 of 2000
Law 1199 of 2008	TRIPs
Law 1343 of 2009	TLT and its regulation
Law 1403 of 2010	Fanny Mickey Law
Law 1450 of 2011	Issuing the National Development Plan
Law 1455 of 2011	Madrid Protocol
Decree 19 of 2012	Paperwork Reduction

CHAPTER 10

REAL ESTATE

Medellin, Proexport Colombia

LEGAL GUIDE
TO DOING BUSINESS
in Colombia
2012

POSSE HERRERA & RUIZ
ABOGADOS

PROEXPORT COLOMBIA
TOURISM, FOREIGN INVESTMENT AND EXPORTS PROMOTION

10. REAL ESTATE

Three (3) things that investors should know about the real estate regime in Colombia:

1. The Colombian State protects private property.
2. Colombian nationals and foreigners have equal obligations and rights regarding the purchase of real estate property. Real estate transactions do not imply for foreign investors any additional tax, legal, or financial burdens.
3. Land use in Colombia must comply with land planning regulations.

This chapter describes the main considerations to be taken into account for the acquisition and use of real estate property in Colombia and, additionally, introduces a brief description of the relevant urban regulations for the development of real estate projects in Colombia.

10.1 Real Estate Acquisition in Colombia

10.1.1 Due Diligence

Before acquiring real estate property in Colombia, the following basic documents should be reviewed, in order to have a complete overview of the legal situation of the property at the time of the transaction: (i) the most recent chain of title and no-lien certificate (*Certificado de Libertad y Tradición*) (issued ideally in the past ten (10) days); (ii) public deeds evidencing acquisition and any other legal acts concerning the property over the past twenty (20) years; (iii) tax payment certificates; and (iv) the land use certificate.

The following aspects must be taken into account:

- Analysis of Title Condition: This analysis is carried out by an expert lawyer to determine if there are any conditions or circumstances that actually or potentially affect or limit the right of ownership over the property. Basically, this analysis ensures that there are no legal risks entailed in the transaction as well as in the chain of title, verifying that the sellers are the actual owners of the property.
- Analysis of Land Use: This analysis is carried out by a lawyer or technical expert to determine what type of construction (including elevation) or development activities are allowed on the property being acquired.
  The purpose of this analysis is to ascertain with certainty the possibilities of developing on the property in question the investor's plans, according to the technical specifications of design.
- For the acquisition of rural land, it is important to note that there are special regulations that impose certain limitations on acquisition and development of this type of real estate property.

10.1.2 Contracts

For the acquisition of a real estate property it is common to execute first a promise to purchase agreement before concluding the purchase of real estate property. In the promise to purchase agreement, the future buyer and seller agree on the fundamental aspects of the purchase agreement. The promise to purchase agreement is usually signed when the parties have satisfied all the conditions of the purchase agreement and only the legal formalities are missing.

The purchase agreement of the real estate property must be executed by means of a public deed before a public notary. The cost of this procedure is approximately zero point three percent (0.3%) of the purchase price.

10.1.3 Registration Procedure and Effects of the Registration

Property rights over real estate properties are transferred by means of the registration of the acquisition title in the Public Instruments Registry Office (*Oficina de Registro de Instrumentos Públicos)*. There is a registration tax on this procedure equivalent to a maximum of one percent (1%) of the value of the sale, and there is also a registration fee equivalent to zero point five percent (0.5%) of the value of the sale.The registration taxes and fees must be paid by the purchaser.

10.2 Use of Real Estate Properties

It is not necessary to be the holder of the property rights of a real estate property to be able to be entitled to enjoy and use the property. Among other instruments, a lease agreement grants these rights to a tenant in return for the payment of rent.

10.3 Lease Agreements

Lease agreements can be executed verbally or in writing and all that is required for their enforceability is an agreement between the landlord and the tenant regarding the following: (i) value of the rental payment and method of payment; (ii) the contracting parties; (iii) the property that is being leased, or the portion of it that is the object of the lease agreement; (iv) an inventory of the utilities, objects or associated uses; (v) duration; and (vi) designation of the party responsible for the payment of public utilities. It is recommended that this type of agreement is executed in writing.

10.3.1 Landlord's Obligations

The landlord's main obligations are: to (i) deliver the real estate property to the tenant; (ii) maintain the property in a state that allows the use for which it was leased; (iii) address any contingency which prevents the tenant the use of the real estate for the purpose for which it was leased; and (iv) make any necessary repairs.

10.3.2 Tenant's Obligations

The main obligations of the tenant are: (i) to use the property in accordance with the provisions of the lease agreement; (ii) ensure at all times the preservation of the real estate property; (iii) pay the agreed rent; (iv) return the real estate property upon termination of the lease agreement; and (v) make repairs related to minor upkeep, esthetic reparations, and regular maintenance (*reparaciones locativas*) during the term of the lease.

10.3.3 Rent

Rent is the price that the tenant must pay to the landlord for the use of the real estate property. The rent can be stipulated in the lease agreement in any foreign currency, but it must be paid in Colombian Pesos at the market representative exchange rate established on the agreed date.

10.3.4 Contract Renewal

For the lease of real estate properties that are part of a commercial establishment, the tenant who has leased such property for two (2) years or more has the right to renew the contract at the time of its expiration.

10.4 Real Estate Investment Trusts

The growing importance of trust agreements in real estate transactions in Colombia must be highlighted. Because this mechanism offers trustworthiness and transparence to all parties, at present it is used in most real estate transactions. One of the modalities of trust agreements is the development of real estate projects, whereby the real estate property is transferred to one of the trust companies controlled by the Colombian Financial Superintendency. An autonomous equity is set up, which is independent form the owner's equity and of the trust company, thus enabling the assignment of the trusted assets exclusively for development of the real estate project. The object of a trust agreement includes: (i) the development of the real estate project; (ii) the transparent administration of the resources third parties have contributed towards the acquisition of one of the units; and (iii) once the works are completed, the trust shall transfer the property of the units to the purchasers.

10.5 Urban Regulations

Municipalities have the authority to establish zoning regulations pertaining to their territories, the rational and equitable use of land, and the preservation and protection of environmental and cultural heritage located in such territories. Municipalities are required to establish a territorial zoning plan (*Plan de Ordenamiento Territorial* "POT", in Spanish) for the regulation of potential developments and land use.

10.5.1 General Aspects of the Territorial Zoning Plan (POT)

The POT is an instrument that sets and describes the objectives, guidelines, policies, strategies, goals, programs, actions and regulations adopted to guide and manage the physical development of land and land use.

The territories of the municipalities and districts are classified as urban land, rural land or land for urban expansion. This classification should be taken into account by the investors in order to establish whether according to the environmental aspects and the zoning and land use regulations the contemplated uses are permitted on the real estate property.

10.6 Regulation for the Development of Property in any Territory

In general, the required planning instruments are: partial plans (*Planes Parciales*), rural planning units (*Unidades de Planeación Rural*), urbanization or parceling permissions (*Licencias de Urbanización o Parcelación*) and building permits.

10.6.1 Partial Plans

Partial plans develop and supplement the provisions of the POT for specific areas of urban land, the areas included in the territories earmarked for urban expansion and other areas that are to be developed through urban planning units (*Unidades de Actuación Urbanística*), macro-projects or other special urban interventions.

In these Partial plans, the urban regulations contained in the POT are developed for the portion of land within the scope of the POT. These instruments are approved by an administrative act issued by the relevant municipal or district administration.

10.6.2 Rural Planning Units

Rural planning units are intermediate planning instruments for rural land. Through the rural planning units the following aspects are addressed: environmental management, activities that take place outside of city limits, decisions on occupancy and uses, management strategies and instruments, and agricultural technical assistance strategies.

10.6.3 Parceling Permissions

Parceling permissions allow the creation of public and private spaces in one or several properties located in rural and suburban land. They are required also for the construction of roads and the building of infrastructure to ensure the self-provision of residential services, which will enable the use of the resulting properties for the purposes authorized by the relevant POT.

To build on the resulting land parcel, the corresponding building permit will be required.

10.6.4 Urbanization Permissions

Urbanization permissions are the prior authorization required to create, on one or several properties located on urban land, public and private spaces, build roads and infrastructure, and provide public services that enable the adaptation, allocation and subdivision of these lands for future construction of buildings destined for urban uses, according to the POT.

Urbanization permissions lay down the regulations regarding uses, elevation, volume, accessibility and other technical aspects based on which the building permits will be issued for new buildings in such urbanized properties. With the urbanization permission, an urban map (*Plano Urbanístico*) is approved, and such map will contain a graphical representation of the urbanization, identifying all its parts to facilitate its understanding, such as encumbrances imposed by the POT, transfers to the planning authorities for the construction of public parks, facilities and local roads or useful areas, among others. The urbanization permission on lands earmarked for urban expansion can only be issued after the adoption of the respective partial plan.

10.6.5 Building Permits

A building permit is the prior authorization to develop buildings, circulation areas and communal areas in one or several properties, in accordance with the provisions of the POT, the special management and protection plans for objects of cultural interest and other rules that govern such matters. The building permits will lay down the specific uses, elevation, volume, accessibility and other technical aspects approved for the respective construction.

10.7 Special Duties that Affect Real Estate Property

10.7.1 Real Estate Tax

The real estate tax is a duty levied on real estate in Colombia. It must be declared and paid once a year or quarterly, depending on the municipality where the real estate property is located, by owners, possessors or usufructuaries. In Bogotá the tax base is the same than the value provided by the taxpayer in the self-appraisal of the property (this value cannot be lower than cadastral appraisal). The tax base for the real estate properties located in other municipalities is the cadastral appraisal determined by the cadastral office. The rate of the real estate tax ranges between five per thousand (5‰) and sixteen per thousand (16‰) of the appraisal and is established by the municipal or district council. The rates are determined taking into account the characteristics of each property and its destination.

10.7.2 Surplus Value

The surplus value (Plusvalía) is a contribution derived from zoning actions and specific authorizations destined to improve the utilization of land or to give the property a more profitable use.

Acts involving transfer of property rights and the issuance of building permits generate surplus value, ranging between thirty percent (30%) and fifty percent (50%) of the higher value per square meter that befalls to the property from these acts.

10.7.3 Recovery Contribution

The contribution of recovery is a lien on real estate properties, which is imposed to owners or possessors of real estate property who benefit from the implementation of public works carried out by the state.

Regulatory Framework

Norm	Subject
Civil Code	Contracts
Code of Commerce	Contracts
Law 820 of 2003	Urban Leasing Law
Decree 2811 of 1974	National Code for Renewable Natural Resources and Environmental Protection
Law 9 of 1989 and 1469 of 2011	Municipal development plans, acquisition and expropriation
Law 388 of 1997	Amendment of Law 9 of 1989
Law 810 of 2003	Planning sanctions
Decree 564 of 2006	Planning permissions
Decree 2181 of 2006	Partial plans
Decree 0097 of 2006	Planning permissions on rural land
Decree 4300 of 2007	Partial plans
Decree 3600 of 2007	Rural land zoning regulation
Decree 4065 of 2008	Urbanization and development of lands and areas on urban land and expansion and applicable legislation on calculation of participation in surplus value
Decree 1469 of 2010	Planning permissions
Law 1469 of 2011	Promotion of developable land and access to housing
Decree-Law 0019 of 2012	Paperwork Reduction
Law 160 of 1994	Acquisition of rural land

CHAPTER 11

GOVERNMENT CONTRACTING

LEGAL GUIDE
TO DOING BUSINESS
in Colombia
2012

POSSE HERRERA & RUIZ
ABOGADOS

PROEXPORT COLOMBIA
TOURISM, FOREIGN INVESTMENT AND EXPORTS PROMOTION

11. GOVERNMENT CONTRACTING

Five (5) things an investor should know about government contracting in Colombia:

1. In Colombia, objectivity in the selection process is the guiding principle of government contracting as a means to attain the goals of the state. This implies that public entities must always choose the most favorable offer in furtherance of the public interest.
2. Foreigners may participate in the selection processes of contractors conducted by state entities under the same conditions as would a Colombian in a selection process in the country of origin of the foreign bidder.
3. All natural and legal persons, whether Colombian or foreign, based in Colombia or with a branch in the country, wishing to execute contracts with state entities must register in the Bidder's Registry. However, foreign entities without domicile or branch in Colombia do not have to register.
4. The contractors must submit a performance bond to guarantee compliance with the obligations of the contract, except in the case of loan agreements, inter-administrative contracts, insurance contracts, and contracts for less than ten percent (10%) of the budget allocated to the particular entity (known as "*de menor cuantía*" or low-value contracts).
5. In Colombia, private initiatives are possible for public-private parternships, regardless of whether public resources are required to develop them.

11.1 General Aspects

In Colombia, government contracting legislation has been designed to achieve the state's purposes and guarantees participation to all.

11.2 Scope of Government Contracting Laws

Generally, all state entities are covered by the government contracting regulations; however, there are some exceptions, which are subject to a special set of rules. It must be noted, though, that regardless of the applicable norm, in terms of the contracting legislation, a contract in which at least one of the parties is a public entity is considered a government contract.

11.3 Parties in Government Contracts

Government contracts are executed between the contracting entity and the contractor, whereby the latter may be a natural or a legal person, national or foreign, a group of persons joined in a consortium, temporary union (sort of consortium) or by a group of persons under a contract named commitment to create a company.

National and foreign legal persons wishing to execute contracts with state entities must demonstrate their legal capacity, pursuant to the applicable commercial legislation. They must also demonstrate that the activity that the contract would allocate is within the scope of their corporate purpose. In the same manner, they must demonstrate that they have the experience, technical and financial capacity and that they have not incurred into any of the grounds for impediment or conflict of interests.

A consortium is defined as two (2) or more persons who jointly submit the same proposal in order to be awarded, execute and perform the contract, and who are jointly and severally liable for each and all obligations derived from the proposal and the contract (including the sanctions that may be imposed during its performance). A temporary union, on the other hand, is basically the same as a consortium except for the fact that, the person liable for the sanctions imposed during the performance of the contract is individually the member of the joint venture responsible for the activity, according to the distribution of activities in the temporary union's contract.

Other corporate alternatives to submit a bid, to a state entity are: (i) the promise of incorporating a company, whereby the parties submit a document of intention to incorporate a company as soon as the contract is awarded; and (ii) the constitution of special

purpose vehicles, created with the sole purpose of executing and performing the government contract. In this case, the liability of the partners of a special purpose vehicle is the same as that of a consortium.

11.4 Grounds for Impediment and Incompatibilities

Grounds for impediment and incompatibilities are situations that by law limit the bidder's capacity to enter into contracts with the Colombian government. Their purpose is to protect the principles of morality, transparency and equality in government contracting. Impediments and incompatibilities have been defined as *"a set of circumstances with regards to the contractor, the existence of which prevent the contract from being executed because it can be considered invalid".*

Impediments *"are legal or special inconveniences that the potential contractor may have which hinder the right to participate in the process or to be awarded or executed the government contract".* Incompatibilities are *"prohibitions or ineligibilities to carry out the activity of the contract because the interested party is or has been for a certain period of time a public servant".*

It is worth highlighting that, due to the fact that there are limitations or restrictions to execute contracts with the State, impediments and incompatibilities must be explicitly indicated in the law and cannot be broadly interpreted or applied to analogous situations.

11.5 Bidders Registry

It is mandatory for all national or for foreign persons based in Colombia or branches of foreign companies in Colombia interested in executing contracts with state entities to register with the bidders registry ("RUP", in Spanish). The registration implies enlisting, certification of qualifications and classification of activities.

The RUP must be filed in the chamber of commerce of the main domicile of the interested party. The chamber of commerce must verify the information filed in order to issue a certification endorsing the qualifications of a contractor to participate in a contract selection process with state entities.

RUP is the only document required as evidence of the qualifications and classification it certifies, since they have been previously verified by the corresponding chamber of commerce.

The RUP is not required to execute contracts with state entities in the following situations:

- In the event of direct contracting.
- Contracts for less than ten percent (10%) of the allocated budget of the particular entity (low-value).
- Healthcare procurement contracts.
- Concession contracts and in general public-private partnerships ("PPP") of any kind.
- Contracts for the disposition of state assets.
- Contracts for agricultural products or products destined for agricultural production offered by legally established commodity exchanges.
- Acts and contracts directly involved in the commercial and industrial activities of state-owned industrial and commercial companies.
- Foreign natural persons not domiciled in Colombia or foreign legal persons without a branch in Colombia that wishes to execute contracts with state entities.

In the above mentioned situations, and for interested foreign parties, the relevant contracting state entities are responsible for verifying that the bidders meet the requirements that are otherwise included in the RUP certification.

11.6 Principles of Government Contracting

Government contracting is ruled by the following principles:

- The principle of objective selection, defined as the application of objective criteria in selecting the option that is most favorable to the interests of the entity and its objectives, without personal considerations or subjective motivations.
- Colombia supports the reciprocity principle and accordingly foreigners may participate in selection processes under the same conditions as nationals. This principle applies, allowing the foreign bidder to receive the same treatment as a national bidder if the former proves that a Colombian proponent would receive equal treatment as a national in the foreign bidder's country of origin. A foreign bidder with reciprocity will be preferred over one without it. In this regard, it is important to note that in selection processes, additional points are given to offers of Colombian goods and services and offers of foreign goods and services from countries where offers of Colombian goods and services receive equal treatment.
- The right to due process in government contracting applies to all public acts that imply a unilateral decision or a sanction affecting the contractor. Contracting legislation guarantees the right to a fair hearing (*audi alteram partem*) and to defense, and both rights are protected in the Constitution.
- The principles of transparency, equality, economy and rapidity, which are considered self-explanatory, also apply.

11.7 Modalities of Contractor Selection

To guarantee the principles of equality, reciprocity, transparency and objective selection, different modalities have been established for the selection process so that state entities can ensure the selection of the best offer.

The selection modalities are: public tender, abbreviated selection process, selection based on qualifications, direct selection and low-value contracts.

11.7.1 Public Tender

The tendering process begins with a public invitation placed by the public entity calling all interested participants to submit their bids. The most favorable bid in terms of the goals and needs of the entity is chosen on the basis of the criteria and conditions set by the public entity in the terms of the bid (*pliego de condiciones*).

The tender processes must adhere to the following rules:

- The contracting entity must undertake preliminary feasibility studies to determine the necessity and convenience of the project. These studies are the basis to draft the terms of the request for proposals ("RFP"), and they also provide the information to draft a document on the risks allocation.
- Based on these studies, the state entity will draft the preliminary RFP, which must be published (along with the preliminary studies) in the Electronic Public Contract System ("SECOP", in Spanish) for interested parties to obtain information and make comments.
- Acknowledging the comments, the entity corrects errors or inaccuracies in the preparation of the final version of the RFP.
- The representative of the state entity will then order the start of the bidding process through a resolution indicating the purpose of the contract, the selection modality, the schedule of the process, the physical or electronic location where the RFP of the bid and the preliminary documents may be accessed as well as the indicating the number of the budget availability certificate. The entity will also send notice of the process to civil and state controlling agencies and committees.
- The state entity must publish the definitive RFPs in the SECOP. The RFPs regulate the selection process as a whole and must explicitly include all the information required for the submission of bids.
- Within the next three (3) working days after the initiation of the process, and at the request of any person interested in the process, a public hearing ("Hearing") will be held to clarify the content and scope of the RFP. The minutes of this meeting will be prepared and presented to be signed by all participants.
- During the Hearing, risk allocation will be addressed, in order to characterize and calculate risks and establish definitive allocation. As a result of the debate during the Hearing, when convenient, the head or representative of the state entity will issue the corresponding modifications to the documents, and can extend the deadline for submissions, if needed, for another six (6) working days.
- When the deadline for submission of proposals ends, the tender is closed and the contracting entity begins the evaluation of the offers. The objective is to select the most favorable offer for the entity's interests.
- Thereafter, the entity prepares an evaluation report, ranking the offers from the most to the least favorable, allowing the bidders to comment. On the basis of the comments submitted by the bidders, the state entity may amend or adjust the evaluation report.
- Based on the evaluation report, the contract will be awarded in a public hearing where the chosen bidder will be notified. The award is irreversible and thus legally binding for both the entity and the winning bidder, except for some cases laid down by the law.

11.7.2 Abbreviated Selection Process

This selection alternative is faster than the public tender, and it can be applied in the following cases: (i) the procurement of goods and services which have uniform technical standards and are of common usage (e.g. office supplies); (ii) the procurement of products for agricultural use; (iii) low-value contracts; (iv) healthcare procurement contracts; (v) contracts for the disposition of state assets; (vi) contracts directly related to the activities of state-owned industrial and commercial companies; (vii) procurement of goods and services for defense and national security; (viii) when a public tender has been opened but is not awarded due to lack of qualified bidders; and (ix) contracts with entities responsible for programs for the protection of vulnerable populations.

11.7.3 Selection Based on Qualifications

The selection based on qualifications is a procedure for the selection of consultants, following stages laid down by law. Due to the fact that the contractor has to carry out an intellectual task, in this type of selection process priority is given to technical and professional considerations. Economic criteria are not a deciding selection factor.

11.7.4 Direct Contracting

Direct contracting is an exceptional selection mechanism, by virtue of which public entities can enter into contracts without the need to previously carry out a competitive selection process. The only grounds for the direct contracting modality are the following:

- Loans.
- Inter-administrative contracts.
- Urgent need.

- Provision of professional and support services for the implementation of artistic works that can only be entrusted to certain individuals.
- Goods and services for the defense sector, the acquisition of which is confidential.
- Trust agreements entered into by certain territorial entities (e.g. Departments or municipalities) under their liability restructuring agreements.
- Contracts for the development of scientific and technological activities.
- When there is no plurality of bidders in the market.
- Lease or purchase of real estate.

11.7.5 Low-value Contracts

Low-value contracts are awarded by means of fast procedures which can be carried out when the value of the contract is equivalent to or less than ten percent (10%) of the entity's budget (see Section 11.7.2). It only will apply, if it is not done by direct contracting mechanism.

11.8 Publication of the Contracting Process through Electronic Means

Government entities must publish on the website www.contratos.gov.co all the information required by law regarding the different selection processes they are conducting, in order to inform the general public so that it can comment on it or participate in the bidding process.

11.9 Contents of the Government Contract

The government contract consists of the subscribed contract document and any annex or amendments thereto, if any, the terms of the bid and amendment thereto, the preliminary studies, the risk allocation matrix, the proposal submitted by the awarded bidder, as well as, all other documents issued during the bidder selection process. Thus, government contracts consist of a group of documents that regulate the contractual relationship.

11.9.1 Term of the Contract and Additions

Government contracts generally establish a term for their performance and a term for their winding up, which can be of up to four (4) months.

Furthermore, except for concessions and other forms of PPP (see Section 11.10.7) state entities can consider entering into additional contracts, that is contracts which increase the scope of the initial obligations, the only limitation being that the addition must not be for more than fifty percent (50%) of the initial value of the contract.

11.9.2 Guarantees

Whoever submits a bid for a selection process must provide a bid bond for a value which is usually set at ten percent (10%) of the value of the entity's budget for the contract or of the offer, although this value may be lower in processes involving large sums. Additionally, those awarded the contract are required to submit a performance bond to cover any failure to comply with the obligations set forth in the contract. The performance bond must offer ample coverage.

When contracting with the State, contractors can submit different kinds of guarantees as risk coverage: (i) insurance policies; (ii) a trust as guarantee; (iii) a guarantee issued by a bank; (iv) securities endorsement as a guarantee; or (v) a cash deposit. In addition, foreign natural or legal persons without domicile or branch in Colombia may submit, as a guarantee, standby letters of credit issued abroad.

The guarantee must cover the risks that may arise in connection with any failure to comply with the terms of the bid or of the bid contract. The coverage amounts of the guarantees are established by law.

11.9.3 Extraordinary Powers

Extraordinary powers are the special legal authority for the administration and providers of public utilities. These powers can be used only when the failure of a contractor to comply with the terms of the contract is so severe that the service or public utilities the entity is responsible for are at risk of being paralyzed or seriously affected, or when such powers are required to protect the general interest. These powers are used to ensure the immediate and continuous provision of the services in question.

These extraordinary powers include unilateral modification, termination and interpretation of the contracts, as well as the mandatory hand-over of the assets to the state at no cost at termination of contracts for the exploitation of public assets and the forfeiture of the contract. These powers can only be exercised by state entities in the circumstances set forth by law.

For some contracts it is mandatory to establish exceptional powers clauses: (i) contracts to perform an activity that constitutes a state monopoly; (ii) the provision of public utilities; (iii) the exploitation and concession of state assets; and (iv) in public work contracts. In supply and rendering of services contracts, the use of these powers is optional. In all other contracts it is forbidden to include exceptional powers clauses.

11.9.4 Fines and Penalty Clause

In the fulfillment of the duty that public entities have to control and supervise the performance of government contracts, these entities may impose the fines agreed in the contracts in order to demand

from the contractor compliance with the agreed obligations. Likewise, public entities have the legal capacity to execute the penalty clause, as agreed in the corresponding contract.

11.9.5 Assignment of Government Contracts

Government contracts are based on the contractor's qualifications. Therefore, once they have been executed, they cannot be assigned without prior written authorization of the contracting entity. In the event a contractor has an impediment or incompatibility, the contractor must assign the contract, with prior written authorization of the contracting entity, and if not feasible, then the contractor must withdraw from the contract.

If a member of a consortium or temporary union has an impediment or incompatibility, it must assign its part in the consortium or temporary union with the prior written authorization of the contracting entity. In no event may the assignment take place between members of the consortium or temporary union.

For the contracting entity to approve the assignment of the contract, the assignee must comply with all the requirements set forth in the RFP of the awarded contract.

11.9.6 Payment Method

In government contracts, state entities can agree to make an advance payment (*anticipo*) or down payments (*pago anticipado*) but such advances may not exceed fifty percent (50%) of the contract's value. Accordingly, *"advance payment means the first payment of a contract agreed by the parties to be carried out over a period of time; and down payment refers to the first partial payment to a contractor for a contract to be performed immediately".*

11.9.7 Conflict Resolution

Government entities and contractors must seek to resolve disputes arising from their contracts in a flexible, rapid and direct manner, using conflict resolution mechanisms, such as conciliation, amicable settlements or transaction. The parties may also revert to alternative conflict resolution mechanisms such as national or international arbitration.

If the parties agree to resort to ordinary courts, the resolution of conflicts arising from government contracts is subject to the jurisdiction of the administrative courts.

11.9.8 Final Accounts for Government Contracts

For all continuing government contracts, it is mandatory to submit final accounts upon termination. The accounts should be mutually prepared and agreed and when no agreement can be reached the state contracting party has to unilaterally set them. Contracts for professional or support services do not need to submit final accounts.

11.10 Types of Government Contracts

State entities may enter into any kind of agreement permitted by law. Any contract executed by a public entity is a state contract. They are legal acts and accordingly create obligations derived from the exercise of free will.

Many types of government contracts have been created as a result of the diversity of needs of public entities with the aim of achieving the goals of the state. The following provide a brief summary of certain government contracts.

11.10.1 Construction Contract

Construction contracts are those entered into by state entities for the construction, maintenance, installation and the performance of any other material works, regardless of the execution and payment modalities.

11.10.2 Consultancy Contract

Consultancy contracts are executed by state entities to carry out studies related to the execution of investment projects, diagnostic studies, pre–feasibility or feasibility studies for specific programs or projects, as well as to engage technical assistance for coordination, control and supervision. Consultancy contracts also include auditing and advisory; management of works or projects; direction, programming and implementation of designs, blueprints, pre-projects and projects. The obligations of a consultancy contract are characteristically of an intellectual nature.

11.10.3 Service Contract

This contract is executed to carry out activities related to the administration or operation of state entities, and can only be entered into with individuals and not with legal persons, in situations where the state entity does not have sufficient or qualified personnel to carry out the contracted job.

11.10.4 Concession Contract

Concessions have been classified as a type of PPP, a form of association described in Section 11.10.7 below.

11.10.5 Trust Agreement for the Administration of State Assets

There are two types of trust agreements. The first type of trust agreement known as "*encargos fiduciarios*" in Spanish, are contracts executed between state entities and trust companies authorized by the Financial Superintendency, to manage the funds of contracts executed by the latter entities with third parties. The second type of trust agreement is similar to the "*encargo fiduciario*" in that as public funds cannot be

transferred to a stand-alone trust fund. State entities may set up a stand-alone trust fund in the cases explicitly permitted by law, such as securitizations.

11.10.6 Other Contractual Arrangements

Colombian legislation does not limit the types of contractual arrangements in government contracting, thereby permitting the creation of new contractual arrangements, as long as they comply with the law and the Constitution.

Other contractual arrangements not expressly regulated in government contracting are: supply, purchase, loan, exploration and production of natural resources, leasing, factoring, franchise, joint venture, merchandising, putting out system, just-in-time, swaps, forwards, and option contracts.

11.10.7 Public-Private Partnership Regulation

(a) Public-Private Partnerships ("PPP")

(i) Definition

Pursuant to Article 1 of Law 1508, a PPP has been defined as follows: *"Public–Private Partnerships is a tool to attract private capital, that materializes itself in a contract entered into by a state entity and an individual or legal entity for the supply of public goods and related services, which implies risk retention and risk allocation among the parties and payment methods according to the availability and the level of service of the infrastructure and/or service".*

PPP regulations explicitly establish that concession contracts are PPPs and that the purpose of these contracts is to grant a person the total or partial provision, operation, exploitation, organization or management of a public service, or the total or partial construction, exploitation or conservation of works or goods intended for public use or service.

The execution of the contract is the sole responsibility of the concessionaire under the supervision and control of the granting entity in return for payment, which can consist of royalties, duties, fees, value added or profit sharing with regards to the exploitation of the goods, or as agreed between the parties.

Concession models have been addressed under project finance schemes known as "Project Finance", as follows:

- BOT (BUILD, OPERATE AND TRANSFER)
  Under this model, the company finances, builds and operates the project, which generates income that covers the operational and investment costs. On a date previously agreed to by the parties, the company transfers (returns) all rights to the asset to the state.
- BOMT (BUILD, OPERATE, MAINTAIN AND TRANSFER)
  Under this model, the company finances, builds and operates the project, which generates income that covers the operational and investment costs. It maintains the project for a specified length of time and on a date previously agreed by the parties, transfers (returns) all the rights to the state.
- BOO (BUILD, OWN AND OPERATE)
  Under this model, the contractor is contractually bound to build, own, and operate the assets, with the corresponding financing of the works and in compliance of the specifications as required by the regulator. In this case, the useful life of the project corresponds to the time required to pay off the debt and pay the contractors. The main difference between BOO and BOT is that "the assets will always remain property of the private entity".
- BOOT (BUILD, OWN, OPERATE AND TRANSFER)
  Under this model, the contractor is bound to build, own, operate and transfer the assets, and it is responsible for financing. The difference between BOOT and BOT is that the contractor owns the assets during the term of operation.
- BOOMT (BUILD, OWN, OPERATE, MAINTAIN AND TRANSFER)
  Under this model, the contractor is bound to build, own, operate and maintain the project for a period of time previously agreed by the parties, to transfer the assets, and to finance the project.
- BLT (BUILD, LEASE AND TRANSFER):
  This type of concession has the same features as BOT, but the financing is made through leasing.

(ii) General

PPPs are all contracts in which the entities entrust to a private investor the design and construction of infrastructure and its associated services, provided that the amount of the investment is over six thousand (6000) times the current minimum legal monthly wage ("MLMW"). (approx., USD 1,889,000). Pursuant to the law, the maximum term of these contracts is thirty (30) years, including extensions. Notwithstanding the foregoing, the term may be extended for more than thirty (30) years when necessary, according to the results of structuring the respective project, and provided that the National Council for Economic and Social Policy ("CONPES", for in Spanish) approves such extension.

Additional resources for PPPs through disbursements from public budget (the Nation, territorial entities or any other public fund) cannot exceed twenty percent (20%) of the value of the originally agreed contract. Likewise, requests for additional resources and the value of the time extensions taken as a whole cannot exceed twenty percent (20%) of the value of the originally agreed contract; the foregoing without prejudice to other additional requirements.

(iii) Selection Process

The selection process begins by carrying out a cost-benefit analysis of the project. Special attention will be paid to the documents of this analysis and to the structural design of the project ("Structuring") as well as risk definition, classification, calculation and allocation by means of the preparation of the risk matrix for the project.

The private partner will then be selected by means of a pre–qualification process, a public call or a public tender.

The selection must follow the principles established in Law 80 of 1993 and Law 1150 of 2007, which defines an objective selection as the selection of the offer that is most favorable to the interests of the entity, based on objective factors previously determined in the RFP or any other equivalent document.

(b) Private Initiatives of PPP

(i) General Considerations

Private initiatives refer to the fact that the originator of the idea or intention to carry out a project is of someone other than the state (the "Originator"). The Originator must carry out all the studies required, as indicated in this Section 11.10.7. There are two (2) types of private initiatives, namely (i) those that require public funding; and (ii) those that are privately funded.

Private initiative for PPP projects, whether with public or private funding, require that the Originator have the capacity to structure them, assuming all the implied costs. The submission of the project is confidential. The structuring process consists of two stages:

Pre-Feasibility: The Originator must make a complete and adequate description of the project ("Pre-Feasibility Stage").

Feasibility: The Originator shall provide documentary evidence of its legal and financial capacity or of its financing potential, its experience in investment or structuring and the value of the project ("Feasibility Stage").

The Public–Private Partnership Law establishes some terms for the state entity to determine whether or not the proposal is in line with the policies for the industry and the priorities set for projects, without giving any rights to the Originator. In case the initiative is not rejected in the Pre-Feasibility Stage, the Structuring of the project will continue, initiating the Feasibility Stage, in which the State analyses the Structuring submitted by the Originator.

(c) Private Initiative PPP with Public Funds

(i) Public Contributions

Public contributions destined to the completion of the project may be in kind or in the form of disbursements from the public entity's budget. This implies that the entity to which the proposal is submitted must have available assets (if the contribution is in kind), the necessary funds or the authorization to commit such funds, in order to carry out the project or service proposed in the initiative.

(ii) Selection Process

Once the Pre–Feasibility and Feasibility stages have been completed, and provided that the initiative has been deemed viable, in order to guarantee the transparency of the use of public funds and the right to equality, a selection process must be carried out in the terms set forth in paragraph III, subsection (a) of this Section 11.10.7.

The Originator shall obtain bonus points during the selection process, ranging between three percent (3%) and ten percent (10%), depending on the complexity of the project, as compensation for assuming the burden of structuring the project.

If, as a result of the public tender process, the Originator is not chosen, it shall have the right to be reimbursed with the costs of Structuring previously approved by the Public Entity.

(d) Private-Initiative PPP with Private Funds

(i) Selection Process

Once the Pre–Feasibility and Feasibility stages have been completed, and provided that the initiative has been deemed viable, in order to make the initiative public, the documents supporting the Structuring of the project must be published on the SECOP web site for at least one (1) month and for a maximum of six (6) months.

If during the time these documents are on the web site, nobody expresses an interest in developing the project, aside from the Originator, then the state entity may directly contract the Originator.

However, if a third party expresses an interest in executing the project on the same basis that it shall not require public funding, it must guarantee the offer with an insurance policy, a bank guarantee or any other guarantee authorized by law and submit evidence of its legal and financial capacity and of its experience in investment or structuring of projects to develop the project in question.

In the event that there are interested third parties, the entity must open an abbreviated selection process for a low-value contract with pre-qualification, which includes the Originator and all other interested parties that have submitted a guarantee.

If after the evaluation of the offers, the Originator's proposal is not the most favorable to the entity, the Originator may submit within ten (10) days after the publication of the evaluation report a new

offer trumping the offer submitted by the best qualified bidder. If the Originator improves the proposal, it will be awarded with the contract; otherwise, the Originator is entitled to be reimbursed with the costs of Structuring the project from the successful bidder.

11.11 Residential Public Utilities

The regime of residential public utilities ("SPD", in Spanish) is regulated by a special set of norms different from those of government contracting. Due to the importance of this industry, and the extensive development that it has had in the past twenty (20) years in Colombia, the most relevant aspects of such regulations are explained below.

11.11.1 General Aspects

Residential public utilities are subject to regulations laid down by law and these services may be provided directly or indirectly by the State, by organized communities or by private entities. In any case, the State shall guarantee their provision, and has the power to regulate, control and supervise these services.

The following are the SPD regulated by law: (i) water; (ii) sewage; (iii) waste management; (iv) electricity; and (v) gas distribution. Residential public utilities are considered essential and therefore, public utility companie's employees are not entitled to the right to strike.

There is a special legal regime for the generation, interconnection, transmission, distribution and marketing of electricity. It is worth pointing out some of the aspects of this legal regime, as follows: (i) the Nation or the territorial entities may allocate the provision of electricity to a private or public legal entity or to PPP by means of a concession contract; (ii) the contract's remuneration consists of the rate or the price that the users pay, pursuant to the regulation; and (iii) companies incorporated after 1994 for the provision of electricity may only perform one of the activities related to this service, with the exception of marketing which can be carried out simultaneously with generation or distribution.

11.11.2 General Principles of Residential Public Utilities

The provision of SPD is regulated by a series of principles that govern the performance of this activity, such as economic freedom, equality, continuity, regularity, efficiency and freedom of entry to the sector.

Some of the most important aspects of such principles are:

- Economic freedom implies that duly incorporated and organized public service companies do not require any permit to develop their activities in Colombia.
- In the context of economic freedom, public service companies may declare an asset to be of public utility or social interest to obtain its expropriation or the imposition of rights of way or easements.
- The principle of equality in SPD is reflected in the concept of "rate neutrality".
- The provision of public utilities cannot be interrupted except for reasons of force majeure, unforeseeable circumstances, scheduled rationings or technical repairs.
- Passing on to users the costs of managerial inefficiencies is absolutely forbidden.
- Any national or foreign person has the right to organize and operate companies that include in their corporate purpose the provision of SPD in Colombia, as long as the Constitution and the law are respected.

11.11.3 Applicable Legislation

The legal regime applicable to acts and contracts involving providers of SPD is that of private law. This implies that government contracting law and the regulations on government contracting processes do not apply to residential public utilities.

11.11.4 Authorized Providers of Public Utilities

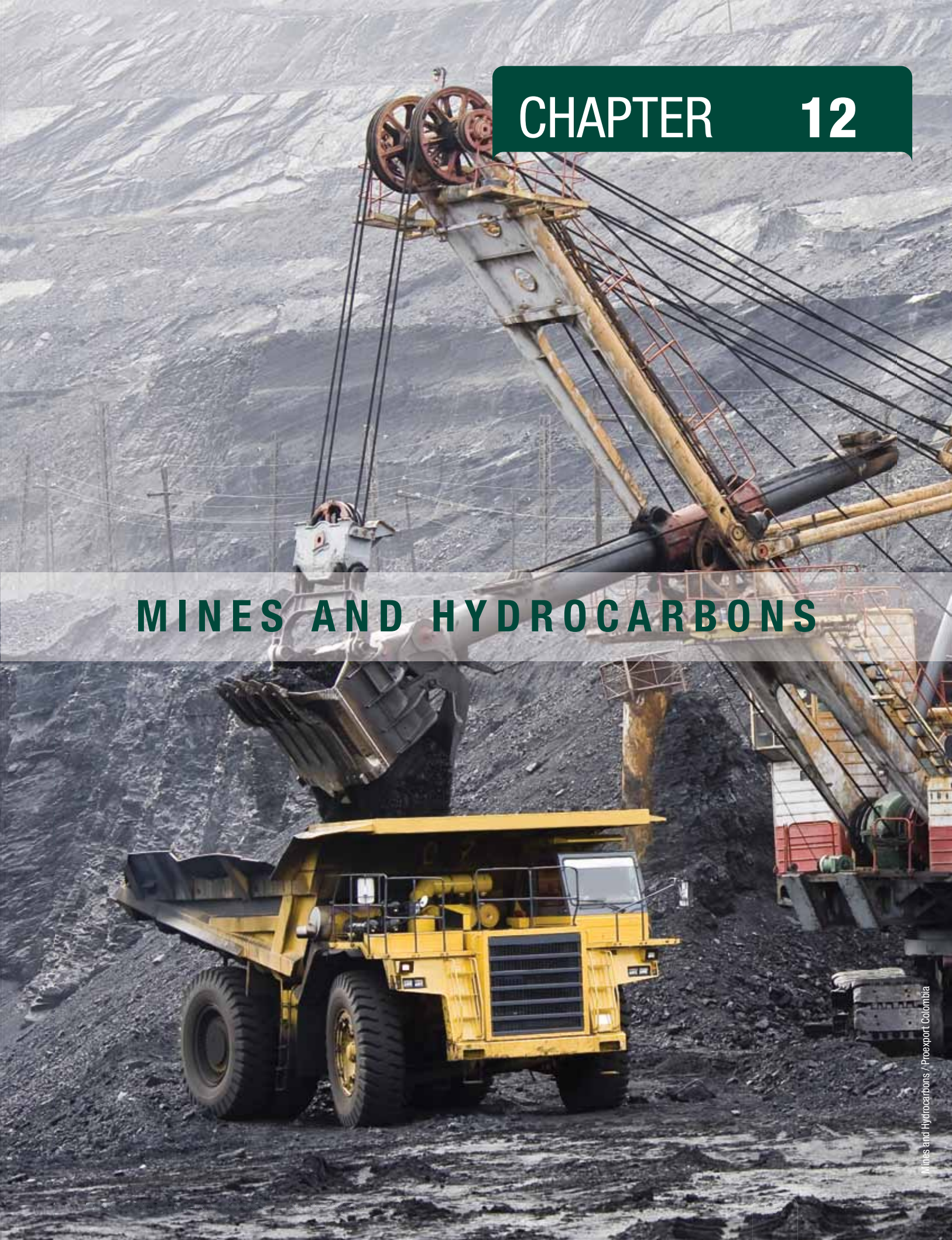
Persons authorized to provide public utilities in Colombia are: companies incorporated as public service companies commercial and industrial state companies organized communities, marginal producers and municipalities. Note that ESPs are stock corporations incorporated to provide public utilities or complementary activities and may attract capital contributions from national and/or foreign investors.

Regulatory Framework

Norm	Subject
Civil Code	Regime applicable to private parties
Code of Commerce	Regime applicable to private parties
Law 80 of 1993	Government Contracting Law
Law 1150 of 2007	Amends Law 80; and forms part of the contracting statute
Decree 734 of 2012	Government contracting statute regulation
Law 1508 of 2012	Public-Private Partnerships
Law 1450 of 2011	National Development Plan
Law 1474 of 2011	Anti-Corruption Statute

CHAPTER 12

MINES AND HYDROCARBONS



Mines and Hydrocarbons / Proexport Colombia

LEGAL GUIDE
TO DOING BUSINESS
in Colombia
2012

POSSE
HERRERA
& RUIZ
ABOGADOS

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COLOMBIA
TOURISM, FOREIGN INVESTMENT AND EXPORTS PROMOTION

12. MINES AND HYDROCARBONS

Four (4) things that an investor must know about mines and hydrocarbons in Colombia:

1. Although there are many aspects which are common to minerals and hydrocarbons, given historical differences in the manner in which the related legal and technical management has been undertaken, each sector has a separate and different legal system and regulatory authority. Accordingly, the first step when analyzing the investment is to study the applicable legislation for each resource.
2. Although mines and hydrocarbons belong to the State, Colombian legislation allows private investment both in the mining and in the hydrocarbon sectors, under equal conditions as domestic private investments and it does not require a local partner or investor.
3. Any investor who plans to carry out permanent exploration and production activities for minerals and hydrocarbons must have a presence in Colombia, either through a Colombian subsidiary or a branch office of the foreign company.
4. A great portion of our territory, both onshore and offshore, has not been explored for hydrocarbons or minerals. Colombia's geographical location has great potential and its geological diversity has been favorable to the formation of minerals and hydrocarbons deposits.

12.1 Regulations Common to Mining and Hydrocarbons

12.1.1 General Principles

The Political Constitution of 1991 sets the general legal framework and the principles that guide the regulation of the exploration and production of minerals and hydrocarbons. The most relevant constitutional principles are the following:

12.1.2 Sovereignty, Ownership of the Resources and Management

The State owns the subsoil and all the nonrenewable natural resources, without prejudice to any rights acquired under prior law. This means that, unlike other countries, the person who owns the land has no right to the subsoil or nonrenewable natural resources in the subsoil; and anyone who plans to explore or exploit these resources must secure an authorization or a title from the State to do so. Such title does not transfer any ownership rights on the resources, but merely grants a temporary right to explore and exploit them in the area and amount specified in the corresponding title.

12.1.3 Economic Freedom and State Intervention

Economic activity and private entrepreneurship in any sectors of the economy are free in Colombia. Notwithstanding, the State is entitled and at the same time has the duty to restrict the reach of economic freedom where social interest, the environment and the cultural patrimony of the Nation warrant an intervention. In furtherance of this principle, and given the nature of mining and hydrocarbon operations, these economic sectors are highly regulated by the State.

12.1.4 Public Interest

Exploration and production of hydrocarbons and minerals have been declared activities of public interest and social benefit on the grounds that they relate to the satisfaction of community needs. Accordingly, they take priority over other economic and private activities and initiatives, and can count on certain legal instruments to facilitate their development, such as land easements and expropriation.

12.1.5 Considerations given in return for Exploration and Production of Minerals and Hydrocarbons

Since the State is the owner of the minerals and hydrocarbons, the State is also responsible for determining the royalties and other fees and considerations to be paid for production of resources. Although the amount of consideration varies depending upon the resource that is being exploited, as a general rule there are two types of main considerations, as follows:

(a) Surface Fee or Subsoil Use fee

This consideration is determined mainly based upon the size of the area given under concession, and it refers to the occupation of the land surface.

(b) Royalty

This is a fixed or variable percentage of the extracted volume, payable in cash or in kind, as the State may decide. The specific regulations and applicable percentages depend upon the type of mineral, the hydrocarbon volumes and quality, or the location of the oilfield (onshore or offshore), among other things, and they are regulated by Law 141 of 1994 and Law 756 of 2002, the provisions of which are incorporated in the respective contracts.

12.1.6 Regulatory Authorities

Although each sector has its own specific regulatory authorities, the main authorities common to both sectors are the following:

- The Ministry of Mines and Energy ("MME") is the main policy-setting authority for the sector.
- The Ministry of the Environment and Sustainable Development and the Regional Autonomous Corporations are the authorities responsible for the protection of renewable natural resources and the environment.
- The Ministry of Interior is the authority responsible for the protection of indigenous communities and ethnic minorities which need special protection.
- The Mining Energy Planning Unit ("UPME", in Spanish) is a special administrative unit attached to the MME and is in charge of establishing the comprehensive planning for the sector.

12.1.7 Social Considerations

In accordance with the Constitution and applicable laws, the State is under the obligation to carry out prior consultation with ethnical communities about the economic, social and environmental impact that the exploration and production of mines and hydrocarbons may have upon their territory. Accordingly, it is important to review the state of the area where the works are to be developed in order to carry out the necessary prior consultations pursuant to applicable regulations.

12.2 Mining Sector

12.2.1 Overview of the Sector

Although over the last three (3) decades Colombia has been a target country for the development of important mining projects for the production of coal, cement, nickel and iron, during the last few years foreign investment has shown increased interest in other types of nontraditional minerals such as gold, silver, columbite and tantalite, among others.

12.2.2 Authority

In addition to the aforementioned general regulatory authorities for the sector, the competent authority for mining is the MME, which has delegated its functions to the Colombian Institute of Geology and Mining ("Ingeominas", in Spanish), and, in some cases, depending on the specific mineral, to the offices of the secretaries of mines of certain offices of governors across the country (currently Antioquia, Bolívar, Cesar, Norte de Santander, Boyacá and Caldas). Notwithstanding the foregoing, in order to improve the management of mining titles, mining resource management duties were transferred to the newly created National Minerals Agency ("ANM", in Spanish). The ANM began to operate on May 3, 2012. During this transition period Ingeominas will continue to carry out the duties of manager of mineral resources.

12.2.3 Specific Applicable Regulations

Mining activity in Colombia is regulated mainly by the Mining Code, which was partially amended by a law that was declared unconstitutional by the Constitutional Court on the grounds that the indigenous and afro–Colombian communities were not consulted. Therefore, the amendment law will remain in force only until May 11, 2013, and because of this the Government has submitted a new bill of law to reform the Mining Code.

12.2.4 Main Considerations on Mining Regulations

(a) The Right to Explore and Produce

Currently, the right to explore and exploit minerals is obtained through a mining concession contract that is registered in the National Mining Register ("RMN" in Spanish), although there are also mining titles that were granted under prior laws, and which may still be relevant.

(b) Procedure to Acquire a Mining Title

Any person can acquire a mining title as follows:

(i) Directly

A mining title can be obtained directly by submitting a proposal for a concession contract before the mining authority. The proposal must satisfy the minimum technical and financial requirements as set forth in the Mining Code.

(ii) By Assignment

A mining title can be obtained by partial or total assignment of the rights and obligations of an existing mining title.

(iii) Public Processes

A mining title can be obtained by competitive selection processes with respect to areas reserved by the government for this purpose. One of the objectives of creating the ANM is to have an authority in charge of reserving areas to be offered to national or international companies with the required technical and financial capacity to explore them. The areas are to be allocated by means of competitive bidding processes, which binds the companies to carry out previously defined exploration programs.

(c) Nature of Mining Concession Contracts

A mining concession contract is entered into between the State and a private party, whereby the latter is required to carry out, at its own expense and risk, the studies, works and activities for the exploration of the minerals that may be found within a determined area, and to exploit that resource under the terms and conditions established by the Mining Code and as set forth in the contract.

(i) Contract Stages

A mining concession contract is granted for a maximum term of thirty (30) years, and includes three (3) stages:

- **Exploration** The initial duration of this stage is of three (3) years; during which the technical exploration of the contract area must be carried out.
- **Assembly and construction** After the exploration stage is over, an additional three-year period will commence for the assembly and construction of the necessary infrastructure and set up production operations.
- **Production** The maximum term of duration of the production stage shall be the entire term of duration of the concession minus the exploration, construction and setup stages, plus any granted extensions.

(ii) Extensions

Pursuant to Law 1382 of 2010, the concessionaire may request additional two-year extensions of the exploration stage, for a total extended term of eleven (11) years. Likewise, it may request an extension of the construction and setup stage for a maximum term of one year. For the production stage, the concessionaire may request an extension of the contract for up to twenty (20) years, subject to renegotiation. In this case an extension will be granted if the fact is proven that this benefits the State.

(iii) Considerations Payable to the State

As indicated above, these are surface fee or subsoil use fee and royalties as follows:

– **Surface Fee**

This fee applies mainly to the exploration and construction and setup stages. It is equivalent to the minimum legal daily wage ("MLDW") per each hectare per year, from year one (1) to fifth (5) year. Thereafter, the fee increases every two (2) additional years as follows: for years six (6) and seven (7), one point twenty five (1.25) MLDW shall be paid per hectare per year; for year eight (8), one point five (1.5) MDLW shall be paid per hectare per year. This fee is payable as an annuity in advance. As mentioned above, the formula used to calculate the surface fee may vary depending on the set of applicable regulations to the mining title.

– **Royalties**

This is a fixed or progressive percentage of the pithead value of the gross product exploited of the mineral object of the mining title and its byproducts, payable in cash or in kind. The percentage to be paid will depend upon the type of mineral, as indicated in the table below:

Mineral	Percentage
Coal (less than three (3) million tons per year)	5%
Coal (more than three (3) million tons per year)	10%
Nickel	12%
Iron and copper	5%
Gold and silver	4%
Alluvial gold, in concession contracts	6%
Platinum	5%
Salt	12%
Limestone, gypsum, clay and gravel	1%
Radioactive minerals	10%
Metallic minerals	5%
Nonmetallic minerals	3%
Construction materials	1%

(d) Environmental Licensing

Mining concession contracts require an environmental license for the assembly and construction and production stages only, not for the exploration stage. Depending on the size of the projected production stage, the competent agency to grant this license can be the Ministry of the Environment and Sustainable Development, or a Regional Autonomous Corporation. The environmental license is granted on the basis of an environmental impact study that must be submitted by the party interested in the project. Additionally, it is important to verify that the area does not overlap with any environmentally protected areas. If this is the case, the investor should verify if it is possible to exclude the area from exploration and production. If there are any indigenous or Afro-Colombian communities in the area, they must be consulted regarding the impact that the project may have upon their communities and the environment, and the mitigation measures to be adopted, although these communities have no veto powers.

12.3 Hydrocarbons

12.3.1 Overview of the Sector

In general, regarding hydrocarbons it must be noted that since 2004 the country has sought to attract more private investment for exploration through the creation of the National Hydrocarbons Agency ("ANH", in Spanish), and the establishment of competitive contract terms.

12.3.2 Applicable Regulations and Authority

As in the mining sector, the exploration and production of hydrocarbons requires a title that is granted by the State by contract. Between 1974 and 2004, it was necessary to enter into an association contract with the state-owned oil company, Ecopetrol. But in 2004 ANH was created as the agency in charge of managing the hydrocarbon resources of the Nation. In this scheme, Ecopetrol became just one of the players in the market. The contracts that the ANH celebrates are oil Exploration and Production Contracts ("E&P Contracts") and Technical Evaluation Agreements ("TEAs"). Ecopetrol has retained the areas that it had under direct operation and the association contracts signed up to December 31, 2003, and it can enter into any type of contract with any private parties with respect to those areas.

12.3.3 Main Considerations on Hydrocarbons Regulations

(a) Specific Applicable Regulations

The specific regulations that apply to the hydrocarbon sector are contained mainly in the Oil Code, in the Resolutions (known as *Acuerdos*) issued by the Council of Directors of the ANH and in the respective exploration and production contracts.

(b) Mechanisms for Contract Making and the Assignment of Areas for the Exploration and Production of Hydrocarbons

As in the case of mining, a working interest in a hydrocarbon exploration and production area may be obtained in several ways:

- **Direct Contracting**
  The private parties which satisfy certain legal, technical, financial and operating requirements established by the ANH may request the award of areas to carry out a technical evaluation by means of TEAs or for the exploration and production of oil under E&P Contracts. Currently, this modality has been halted pending a revision of the applicable requirements.

- **Contracting through Competitive Bidding**
  Through this modality, the ANH offers blocks that have been reserved to be awarded to those who offer the best exploration programs, the largest investment or the largest amount of royalties to the State in addition to those established by law, as determined by the ANH. The requirements are contained in the terms of reference of each one of the rounds. The ANH has announced a new round for year 2012.

- **Contracting by Invitation to Bid**
  By means of this procedure, a plural number of proponents selected by the ANH are invited to bid, and the most favorable offer is objectively selected.

- **Area Nomination**
  By means of this procedure, a nominator presents a proposed E&P Contract with regards to an area that has been contracted out under a TEA; the proposal may or may not be as good as that of the holder of the TEA.

(i) Types of Contracts that the ANH Celebrates to Assign Areas

- **TEAs**
  This type of contract is also awarded by any of the abovementioned procedures for awarding E&P Contracts, and it applies to free and special areas. Its main purpose is to have the contractor evaluate the potential hydrocarbon production in a given area, identify prospects and secure enhanced information to eventually turn a part of the TEA area into an E&P Contract. The maximum term of duration of this contract is thirty six (36) months; under a TEA, the contractor is allowed to acquire seismic data and drill strati graphic wells, but it is not allowed to drill any wells that may be oil-producing wells.

- **E&P Contracts**
  This is a contract that is granted for the exploration and production of hydrocarbons in a determined area. Under this contract the private party is granted the right to explore the area and to produce any hydrocarbons found in the area in exchange for the considerations to the State established therein. In this type of contract, like in the TEA, the contractor is fully autonomous and has no obligation to associate with Ecopetrol or any other State entity. Some contracts include the right to produce nonconventional hydrocarbons, while other contracts exclude such right, and therefore it is essential to verify this aspect.

(c) Nature of an E&P Contract

(i) Contract Stages

An E&P Contract is granted for a maximum term of thirty (30) years, and it includes three (3) stages: (i) Exploration. The duration of this stage is six (6) years for the minimal exploration program to be carried out; (ii) Evaluation and Development, during this stage, a discovery is evaluated and it is determined if a commercial field has been found; and (iii) Production. Its duration is twenty four (24) years, plus extensions, if any. During this stage, the contractor must carry out production operations.

(ii) Considerations

Generally, the considerations comprise the surface fee and the royalties the formula to determine its value is regulated in the applicable laws and by contract.

(iii) High Prices

E&P Contracts have a provision according to which, when the accumulated production from each production area exceeds five (5) million barrels of liquid hydrocarbons (or when the field has produced during five (5) years if it is a gas field) and the WTI oil benchmark price (or the Henry Hub gas price, for gas) is higher than the base price established in the contract, as annually updated, then the contractor must pay to the ANH and additional value in accordance with a formula.

(iv) Environmental Licensing

The drilling of exploratory wells and the development of oilfields requires an environmental license which is granted on the basis of the environmental impact study submitted by the operator. Additionally, it is important to verify that the area does not overlap with any environmentally protected areas. If this is the case, the investor should verify if it is possible to exclude the area from exploration and production. If there are any indigenous or Afro-Colombian communities in the area, they must be consulted regarding the impact that the project may have upon their communities and the environment, and the mitigation measures to be adopted, although these communities have no veto powers.

Regulatory Framework

Norm	Subject
Common Principles and Norms in the Natural Resources Sector	
Political Constitution of Colombia (Articles 332, 333 and 334 among others)	These articles, and others, refer to sovereignty, property of natural resources, their management, economic freedom to explore and produce them, State intervention and the declaration of public interest
Law 21 of 1991 – International Labor Organization Convention No. 169	The law incorporates the obligation to carry out prior consultation with ethnic minorities before exploration and production of natural resources in their territories
Law 141 of 1994, Law 756 of 2002 y Decree 4923 of 2011	These laws refer to the royalty regime for the production of minerals and hydrocarbons and the budget for the system for the fiscal year 2012
Decree 70 of 2001	This decree establishes the functions of the Ministry of Mines and Energy as the ruling entity for the natural resources sector
Decree 255 of 2004	This decree establishes the structure of the Mining Energy Planning Unit as a special administrative unit responsible for comprehensive planning of the natural resources sector
Mining Sector	
Decree 2655 of 1988	The former Mining Code, in force until Law 685 of 2001 was issued, which regulates the mining contracts signed under its rule (e.g., contracts by virtue of contribution and production licenses) which are in force to this day
Law 685 of 2001 and amendments (Law 1382 of 2010)	The current Mining Code containing the main regulation on exploration and production of mining resources
Decree 2715 of 2010 and Resolution 180666 of 2010	Regulation of Law 1382 of 2010 including matters such as the technical and financial capacity required to submit concession contract proposals, as well as legalization of de facto mining
Resolution No. 180074 of 2004, Decree 252 of 2004 and Decree 3577 of 2004	Through which the MME delegated mining functions to Ingeominas, and its functions are established
Decree 4134 of 2011	Creation of the National Mining Agency
Hydrocarbons	
Decree 1056 of 1953	Oil Code
Decree 1760 of 2003	By means of which Ecopetrol was severed, its organic structure modified and the ANH created
Resolution 008 of 2004 issued by the Council of Directors of the ANH	By means of which the contracting regulations for hydrocarbon exploration and production development areas are set forth
Law 39 of 1987 and Law 26 of 1989	By means of which provisions regarding distribution of petroleum-derived are established
Law 812 of 2003 and Decree 4299 of 1995	By means of which the chain of distribution agents for petroleum-derived liquid fuels is defined and regulation is adopted
Decree 1521 of 1998	By means of which storage, handling, transport and distribution to service stations of petroleum-derived liquid fuels are regulated
Law 693 of 2001, Law 939 of 2004, Decree 2629 of 2007	By means of which fuel alcohols are regulated and provisions are laid down for the promotion of biofuel use, as well as applicable measures for vehicles and other motor devices which use fuels to function

SPECIAL CHAPTER

SYSTEM FOR INVESTMENT ATTRACTION

System For Investment Attraction / Proexport Colombia

LEGAL GUIDE
TO DOING BUSINESS
in Colombia
2012

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13. SYSTEM FOR INVESTMENT ATTRACTION

What is the System for Investment Attraction?

The System for Investment Attraction ("SIFAI", in Spanish) is a public/private system where information regarding opportunities for improvement of the investment climate is identified and centralized for a high level technical committee (the "Committee"), created within the framework of the National Competitiveness System ("SNC", in Spanish), to adopt relevant measures.

13.1 Purpose of the SIFAI

This system identifies and centralizes information regarding opportunities for improvement of the investment climate and determines the history of the circumstances that may hinder investment in Colombia.

SIFAI analyzes and prioritizes information and provides recommendations in order to facilitate foreign direct investment ("FDI") in coordination with the entities responsible for the particular issue.

SIFAI facilitates the implementation of effective measures to improve the investment climate through the Committee, which is part of the SNC and in which the competent authorities participate.

13.2 What is an opportunity for improvement?

SIFAI works on opportunities for improvement of the investment climate whereby opportunities are defined as the norms and their application and construction or the practices of state entities which affect the investment decisions of foreign investors in Colombia.

Opportunities for improvement, managed through SIFAI, include obstacles that may directly or indirectly affect the investment climate due to the fact that they produce any of the following effects:

- Cancellation of investment decisions. The investor decides to withdraw the project to invest in Colombia.
- Suspension of direct investment. The foreign investor decides to suspend indefinitely the decision to invest.
- Alteration of the characteristics of the investment. The sum of the investment or the number of jobs that the project would create is reduced.
- Divestment in Colombia. The impact of the obstacle leads a foreign investor who is already settled in the country to wind up its investment in Colombia.
- Delay in the time to carry out the investment.
- Increase of the cost to carry out the investment.

13.3 SIFAI's Management

Thanks to its close contact with foreigners interested in investing in Colombia, Proexport can identify the obstacles they face in investment processes. State and private entities working on competitiveness policies are in a similar position and they follow up the different factors that affect the investment climate in order to suggest improvements. The information on the opportunities for improvement that are detected is recorded in an information system which is placed on a web platform administered by Proexport.

SIFAI has a Committee composed of representatives from both the public and the private sector. From the public sector, the representatives are the High Presidential Counselor for Public

and Private Management, ("ACPGPP", in Spanish), or his/her representative, the Minister of Commerce, Industry and Tourism or his/her representative, the Director of the National Planning Department or his/her representative, and the President of Proexport or his/her representative. From the private sector, the member of the Council is the President of the Private Competitiveness Council or his/her representative.

The general purpose of this Committee is to coordinate the adoption of the reforms required for the improvement of the investment climate and follow up their execution. The Committee analyzes and prioritizes the opportunities for improvement, formulates proposals, coordinates with the authorities the adoption of measures geared towards the improvement of the investment climate, and carries out a follow-up on the implementation of these measures.

The Technical Secretariat of the Committee has been entrusted to Proexport, which coordinates the identification, prioritization, analysis of opportunities for improvement, as well as the implementation of the reforms that are subsequently suggested by the Committee.

The Executive Coordinator of the Committee is the ACPGPP. This office is in charge of summoning the members of the Committee for meetings and of carrying out a permanent follow-up of the work plan. Whenever required, the ACPGPP summons the entities responsible for the issues that are to be discussed in the agenda.

Should you require more information on the work carried out by SIFAI, do not hesitate to contact the Legal Board of the Vice-presidency for Investment of Proexport.

This chapter has been prepared by Proexport.

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