CUATRECASAS

Doing business in Colombia

2023 Edition

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These guidelines present some key issues for foreign investors interested in investing in Colombia. They include legal issues that may require advice.

They must not be considered a thorough analysis of Colombian law or interpreted as legal advice from Cuatrecasas.

They were drafted based on the information available on July 15, 2023.

Cuatrecasas has no obligation and assumes no liability with regard to updating this information.

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Introduction

This guide provides an overview of key legal aspects for foreign investors interested in investing in Colombia. It is not intended to be comprehensive but rather to address practical issues that will help investors considering an investment project in Colombia. The guide addresses strategic aspects in different areas for business development in Colombia.

Cuatrecasas is a law firm that advises on all areas of business law through a multidisciplinary, diverse and highly qualified team of more than 1,200 lawyers from 26 nationalities.

We have a network of 26 offices in 12 countries and a strong presence in Spain and Portugal, with offices in the main cities, and in Latin America, where we have over 20 years of experience and a team of 200 professionals operating from our offices in Chile, Colombia, Mexico and Peru. We have a sectoral approach to all types of business, with extensive knowledge and experience in the most sophisticated advice, covering ongoing and transactional matters.

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Glossary

ANH	National Hydrocarbons Agency (“Agencia Nacional de Hidrocarburos”)
ANM	National Mining Agency (“Agencia Nacional de Minería”)
CDLI	International Logistics Distribution Center (“Centros de Distribución Logística Internacional“)
COP	Colombian Peso
DANE	National Administrative Department of Statistics (“Departamento Administrativo Nacional de Estadística”)
DTA	Agreement to avoid double taxation
E&P Contract	Contract: Exploration and production contract
E&P	Exploration and production
FDI	Foreign Direct Investment
FTZ	Free Trade Zone
GDP	Gross Domestic Product
OCDE	Organization for Economic Co-operation and Development
WIPO	World Intellectual Property Organization
PND	Colombian National Development Plan 2022-2026 (“Plan Nacional de Desarollo 2022-2026”)
POT	Land use plan (“Plan de Ordenamiento Territorial”)
RNBD	National Database Registry (“Registro Nacional de Bases de Datos”)
RNVE	National Registry of Securities and Issuers (“Registro Nacional de Valores y Emisores”)
RUB	Ultimate Beneficiary Owner Registry (“Registro Único de Beneficiario”)
S.A.	Joint-stock company (“Sociedad por acciones”)
S.A.S.	Simplified joint-stock company (“Sociedad por acciones simplificada”)
S.R.L.	Limited company (“Sociedad limitada”)
SE	Foreign company branch (“Sucursal de sociedad extranjera”)
SIC	Superintendence of Industry and Commerce (“Superintendencia de Industria y Comercio”)
SINAP	National System of Protected Areas (“Sistema Nacional de Áreas Protegidas”)
TEA Agreement	Technical Evaluation Agreement (“Unidad de Planeamiento Minero-Energética”)
UPME	Mining and Energy Planning Unit (“Unidad de Planeamiento Minero-Energética”)

Annual indicators

	UNIT	COP 2023
Tax units	1 TU	42,412
Statutory monthly minimum wage	1 SMMLV	1,160,000

1

Colombia has become a leading destination for investment and business developement

A look at the Colombian case

Colombia has emerged as a top destination for investment and business development, experiencing significant growth in 2022. The country's Gross Domestic Product ("**GDP**") increased by 7.5% over the previous year[1]. This represented great progress in economy recovery and the quality of life of Colombians, placing Colombia among the fastest growing countries in the region. This growth was higher than the world average of 3.1% in 2022 (OECD). According to OECD data for Colombia, a 1.5% growth is expected for 2023, slightly higher than the 2023 average forecast for OECD countries (1.4%). In the first quarter of the year, the growth rate doubled the projection for the country, reaching 3.0%[2].

While the COVID-19 pandemic triggered a recession in Colombia, the country's solid macroeconomic management helped it cope better than other countries in the region. Foreign Direct Investment ("FDI") has reached USD 5.78 billion as of May 2023, a remarkable cumulative figure since 2014, according to a report by the Colombian Central Bank.

Colombia is also reducing its external vulnerability, with the current deficit expected to fall from 6.2% of GDP in 2022 to 4.1% in 2023. The country met its 2022 fiscal deficit target of 5.3%, the lowest in the last three years, according to the Ministry of Finance.

Inflation in Colombia was 13.12% in 2022, with an annual variation of 12.13% as of May 2023. The Central Bank's main intervention mechanism to control the amount of money in circulation is interest rates, currently set at 13.25%.

In terms of international trade, Colombian foreign sales reached USD 4.544 billion in December 2022, a slight decrease of 1% compared to the same period in the previous year (USD 4.498 billion), according to Analdex.

Colombia is a member of the OECD and has 18 Investment Agreements in place with countries such as the United States, Mexico, Canada, the European Union, Korea, the United Kingdom, India, Israel, Switzerland, and China. The country has also signed agreements with China, Brazil, Singapore, United Arab Emirates, Turkey, France, and Canada that are expected to soon enter into force.

[1] National Accounts Technical Bulletin, DANE.
[2] Ibid.

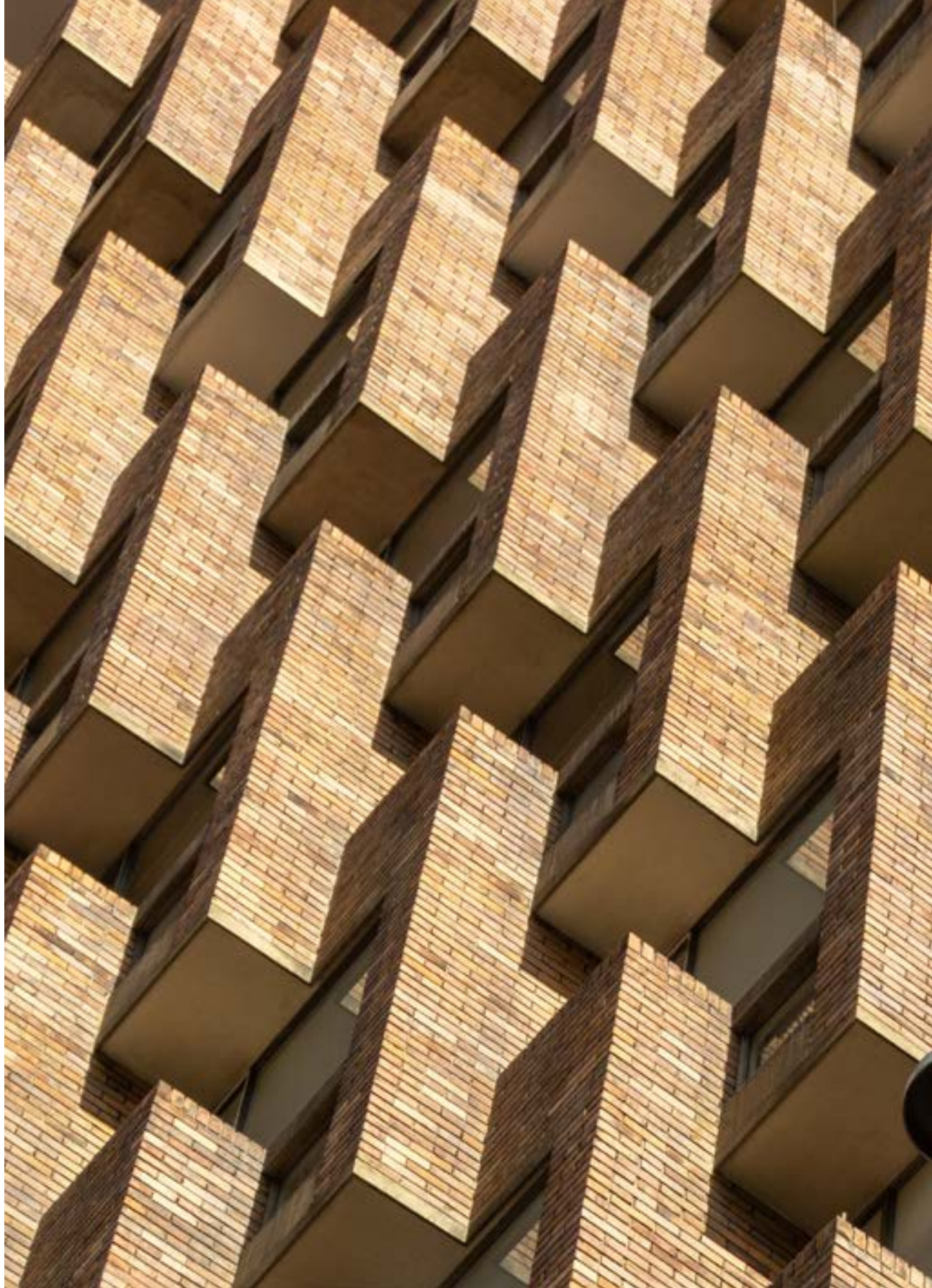
Colombia is a member of the OECD. In addition to its 18 Investment Agreements, it has signed six more that will soon enter into force

While Colombia made significant economic progress in 2022, projections for 2023 are moderate due to high global inflation, although growth is still expected to be higher than the Latin American average[3]. There is some economic uncertainty regarding potential reforms to labor, health, and pensions that President Gustavo Petro could introduce, which could potentially affect companies and foreign investment. However, these concerns have been somewhat appeased as none of the reforms have passed the required Congressional debate for their enactment during Petro's first term.

The growth in foreign investment, even in situations of uncertainty, attests to the overall confidence in Colombian institutions and their control mechanisms.

For those considering doing business in Colombia, it is important to understand the relevant legal areas. The following is a general framework that covers some of these areas.

[3] Economic Commission for Latin America and the Caribbean (ECLAC)



2

Foreign investment and corporate law

No prior authorization is required for foreign investment in Colombia, except in certain sectors

2.1. Foreign investment

Foreign investment in Colombia refers to the acquisition of certain assets by nonresidents[4], under any title, as capital or portfolio investment, through a lawful act, contract or transaction. The competent regulatory authority for foreign investment is the Colombian Central Bank (Banco de la República).

Foreign investment must be registered with the Central Bank and channeled through the foreign exchange market, which grants foreign investors exchange rights to receive profits or reimbursements upon liquidation of their investments.

While no prior authorization is required for most foreign investment in Colombia, certain sectors are subject to limitations: (i) the financial sector, requiring authorization from the Colombian Financial Superintendence (Superintendencia Financiera) and (ii) the insurance sector. Foreign investment is not allowed in defense and national security activities, or for disposal of toxic, hazardous or radioactive waste produced outside the country. Likewise, only up to 40% of foreign capital is allowed in television services.

Additionally, a special exchange regime applies to branches of foreign companies engaged in exploration and exploitation of oil, natural gas, coal, ferronickel and uranium, or those exclusively rendering services in the hydrocarbon and mining sector and holding exclusive dedication certificates. These entities may only access the exchange market on an exceptional basis.

[4] For individuals, the term "nonresident" must be analyzed on a case-by-case basis.

A series of rights are granted to duly registered foreign investment

2.2. Exchange rights granted by the registration of foreign investment

Colombian legislation grants the following rights to holders of duly registered foreign investment:

- Reinvestment of profits or withholding as surplus any undistributed profits with drawing rights, plus their registration as foreign investment.
- Capitalization of amounts entitled to drawing rights and originating from obligations derived from the investment.
- Remittance of net profits produced regularly by the investment.
- Forgein remittance of amounts received from (i) the sale of the investment within the country; (ii) lliquidation of the company or its portfolio; or (iii) la reduction in its capital.

To register foreign exchange investments in Colombia, the money must be channeled through an exchange market intermediary or a clearing account. A clearing account is a bank account in foreign currency held by a Colombian resident in a financial entity outside the country, registered with the Central Bank under the clearing mechanism included in Form 10.

Different exchange procedures apply depending on the nature of the transaction. In September 2021, the Central Bank's international exchange and payments department launched the new Exchange Information System (Sistema de Información Cambiaria), which will gradually replace the Exchange Statistical System (Sistema Estadísitico Cambiario) for the transmission of exchange transactions. The implementation of the new system was planned in three phases. Phase one allows online consultations and foreign investment transactions. Phase two enables transactions associated with exchange declarations, external credits and clearing accounts to be processed within the System. Finally, phase three, which is being implemented this year, includes exchange information from specific sectors.

The Foreign Exchange Information System offers several new features and benefits, including (i) foreign investment registration without foreign exchange channeling; (ii) foreign investment substitution and cancellation; (iii) special regime equity reconciliation; (iv) registration of supplementary investment to the assigned capital; (v) and cancellations and corrections to the above transactions.

2.3. Establishing business entities

Foreign investors traditionally use three mechanisms to establish a business entity in Colombia: (i) incorporating a limited liability company; (ii) opening of a foreign company branch; or (iii) other alternative vehicles.

Limited liability companies

An evident advantage of incorporating a company is the possibility of limiting investors' liability to their capital contributions.

Although there are multiple types of companies in Colombia that allow limitations of this nature, the most commonly used structures are joint-stock companies ("**S.A.**"), simplified joint-stock companies ("**S.A.S.**") and limited liability companies ("**S.R.L.**").

The choice of a corporate structure will depend (among other reasons) on the type of business activities to be carried out, the desired level of flexibility for the structure of the vehicle and the rules for the transfer of shares within the vehicle.

Branches

Alternatively, an investor may establish a branch in Colombia, i.e., a commercial establishment opened by a company domiciled abroad to carry out business in the country, managed by agents authorized to bind the foreign company.

Other vehicles

In addition to the commonly used corporate structures, there are other associative schemes available for investors to participate in the Colombian market. These schemes can be structured with Colombian entities, allowing investors to participate in the market through third parties by virtue of their business relationship with such entities. Examples of such schemes include joint ventures, joint accounts or other collaboration contracts, consortiums or temporary unions.

It is important to note that the engaging in permanent activities in Colombia, such as opening commercial establishments or business offices, obtaining concessions for the exploitation of resources from the State, or participating as a contractor in the execution of works or rendering of services, will trigger the obligation of the investor to incorporate a branch or a company in Colombia.

Ultimately, the chosen structure should be tailored to the individual needs of each investor and be efficient and viable from a legal and tax perspective. It should also provide protection against legal contingencies that may arise in the investment process.

Below is a table comparing the types of corporate or investment structures most commonly used in Colombia:

Types of companies in Colombia	S.A.S.	S.A.	S.R.L.
Formalities for incorporation	They can be incorporated by a private document registered in the commercial registry (unless the contributions are assets whose transfer is subject to special formalities).	Incorporation by public deed, registered in the commercial registry.	Incorporation by public deed, registered in the commercial registry.
Minimum/maximum number of shareholders/members	No minimum or maximum number of shareholders. They may be sole proprietorships.	Minimum 5 shareholders, no limitations to the maximum number of shareholders.	Minimum 2 and maximum 25 members.
Term and dissolution	Defined or undefined.	Defined.	Defined.
	The common cause for dissolution is non-compliance with the going concern hypothesis. There are other causes specific to each type, especially related to minimum/maximum shareholder requirements, without prejudice to those provided in the bylaws.	The common cause for dissolution is non-compliance with the going concern hypothesis. There are other causes specific to each type, especially related to minimum/maximum shareholder requirements, without prejudice to those provided in the bylaws.	The common cause for dissolution is non-compliance with the going concern hypothesis. There are other causes specific to each type, especially related to minimum/maximum shareholder requirements, without prejudice to those provided in the bylaws.
Corporate purpose	It may be indeterminate, and in such case, it will be assumed to be confined to any lawful commercial or civil activity.	It must be clearly defined.	It must be clearly defined.

Types of companies in Colombia	S.A.S.	S.A.	S.R.L.
Capital structure	The capital is divided into shares based on each shareholder's contribution. Except for shares with special rights, each shareholder has the same number of votes as shares owned. Preference or non-voting shares may be created, depending on the investor's needs. Any other type of shares may be established for an S.A.S. The capital is divided into three categories: – Authorized capital: maximum nominal value up to which contributions may be made (and whose modification requires an amendment to the bylaws), corresponding to the shares held in reserve by the company. – Subscribed capital: portion of the authorized capital that the shareholders have subscribed and have undertaken to pay or have actually paid. – Paid-in capital: portion of the subscribed capital actually paid by the shareholders. The company's shareholders may create usufructuary rights over their shares or transfer their use and enjoyment to a third party, keeping only the bare ownership on the share titles.	The capital is divided into shares based on each shareholder's contribution. Except for shares with special rights, each shareholder has the same number of votes as shares owned. Preference or non-voting shares may be created, depending on the investor's needs. Any other type of shares may be established for an S.A.S. The capital is divided into three categories: – Authorized capital: maximum nominal value up to which contributions may be made (and whose modification requires an amendment to the bylaws), corresponding to the shares held in reserve by the company. – Subscribed capital: portion of the authorized capital that the shareholders have subscribed and have undertaken to pay or have actually paid. – Paid-in capital: portion of the subscribed capital actually paid by the shareholders. The company's shareholders may create usufructuary rights over their shares or transfer their use and enjoyment to a third party, keeping only the bare ownership on the share titles.	The capital is divided into paid-in equity (*cuotas*). Each member has the same number of votes as paid-in equity owned.

Types of companies in Colombia	S.A.S.	S.A.	S.R.L.
Requirements for payment of contributions	They may be incorporated without an immediate capital payment, which may be made within two years after the date of incorporation.	At the date of incorporation, at least 50% of the authorized capital must be subscribed and one third of the subscribed capital must be paid for each share issued in the incorporation of the company.	The capital must be paid in full at the time of incorporation and any capital increase must also be paid immediately.
Liability	Liability limited to the contributions made by the shareholders, even in the event of liability for labor or tax obligations (except in cases of fraudulent acts, abuse of legal personality contrary to the law or by application of special rules, e.g., insolvency of parent or controlling companies).	Liability limited to the contributions made by the shareholders, even in the event of liability for labor or tax obligations (except in cases of fraudulent acts, abuse of legal personality contrary to the law or by application of special rules, e.g., insolvency of parent or controlling companies).	Liability limited to member contributions, except for tax and labor obligations (for which they are jointly and severally liable).
Managing bodies[5]	They must have a general shareholders' meeting and legal representatives in charge of managing and legally representing the company before third parties. The composition of the board of directors, as well as other collective management bodies, is optional. Systems other than the electoral quotient may be applied to elect them. Sole shareholders, as the case may be, may make the corporate management decisions and exercise legal representation.	They must have a general shareholders' meeting, a board of directors of not less than three members with their alternates, and the legal representative. Security issuers must have a board of directors of no less than five and no more than ten members, of which at least 25% must be independent, with their alternates.	They must have a general shareholders' meeting. Legal representation is exercised by all the members, although it may be delegated to temporary and revocable managers. The composition of the board of directors, as well as other collective management bodies, is optional.

[5] Except for S.A.S.s, in which a single shareholder may constitute the quorum, unless otherwise provided in the bylaws, S.A.s and S.R.L.s require a plurality of shareholders/members. Qualified majorities are legally required for some decisions.
The members of the board and those who exercise legal representation of the company are considered directors.

Types of companies in Colombia	S.A.S.	S.A.	S.R.L.
Restrictions on the subscription or transfer of shares[6]	By law, shareholders have a preemptive right in any new issue of shares, unless otherwise agreed and for certain exceptions provided by law. Unless otherwise agreed, the shares of S.A.s and S.A.S.s are freely negotiable.	By law, shareholders have a preemptive right in any new issue of shares, unless otherwise agreed and for certain exceptions provided by law. Unless otherwise agreed, the shares of S.A.s and S.A.S.s are freely negotiable.	Members have the right to assign their shares, and any provision that prevents this right will be deemed void. Such assignment will entail an amendment to the bylaws (which must be executed in a public deed).
Possibility to register shares in the National Registry of Securities and Issuers ("RNVE")	Since 2023, they are authorized under article 261 of the National Development Plan to register shares in the RNVE so that they can be traded on the stock exchange. Regulations are still pending.	They are authorized to register shares in the RNVE so that they can be traded on the stock exchange (in which case they will be considered "open" instead of "closed" companies).	They are not authorized to trade their securities on the stock exchange or register their shares in the RNVE.
Statutory auditor	A statutory auditor is only required if gross income exceeds 3,000 SMMLV, or if their assets exceed 5,000 SMMLV.	A statutory auditor is required.	A statutory auditor is only required if gross income exceeds 3,000 SMMLV, or if their assets exceed 5,000 SMMLV.
Legal reserve (withdrawal of 10% of the net profits up to 50% of the capital stock)	Not mandatory, unless provided in the bylaws.	Mandatory.	Not mandatory, unless provided in the bylaws.

[6] In joint-stock companies, securities market regulations should be considered when making offers that exceed a certain number of addressees or are made to unspecified persons.

Foreign company branches in Colombia

To set up a branch, it is necessary to notarize (through a public deed) the following documents: (i) authentic copies of the incorporation document of the foreign company; (ii) its bylaws or equivalent document; (iii) the resolution or act establishing the branch in Colombia; and (iv) the documents proving the existence of the company and the legal capacity of its representatives.

The act of creation of the branch must define the business it will develop, the amount of capital assigned to the branch, its domicile, the term of duration of its business in the country and the causes for its termination. Additionally, a general agent with one or more alternates and a tax inspector must be appointed to represent the branch in its business in the country. The tax inspector is required by law.

The capital of the branch may be freely increased or replenished. It must keep its accounts in the chamber of commerce of its domicile in Spanish and record all businesses carried out in the country.

2.4. Procedure to invest in Colombia through a company or a branch

If foreign investment is made through a corporate vehicle or a branch, the following is required:

- Drawing the incorporation document with the required formalities;
- Obtaining the Single Tax Registry and the Tax Identification Number;
- Registering the investment vehicle before the chamber of commerce of its domicile;
- Opening a bank account;
- Activating the bank account by presenting the definitive certificate of existence and legal representation;
- Registering the minutes and shareholders books (not exclusive to branches);
- Companies (its application to branches is debatable) must register the following situations within 30 days: (a) control situation or (b) corporate group situation. Control is legally presumed to exist (admitting proof to the contrary) when a person directly or indirectly, individually or jointly (i) owns more than 50% of the capital of the subordinated company; (ii) has voting rights representing the minimum majority required for shareholders' meetings or to elect the majority of the members of the board; or (iii) has a dominant influence over the management decisions of the subordinated company by virtue of any act or contract. A corporate group is deemed to exist when, in addition to control, there is a common purpose and management.

2.5. Approximate cost of establishing a company or branch in Colombia

The cost of setting up companies in Colombia depends on the type of vehicle and the amount of capital, so it is necessary to analyze the specific structure of each company, but the main costs include:

- Notary fees: If a public deed is required for incorporation, the cost is 0.3% of the capital for companies by shares or equity interests and 0.3% of the authorized capital for joint-stock companies or of the assigned capital for branches, plus VAT (currently 19%).
- Registering documents in the commercial registry: investors must pay (i) the registration tax: 0.7% of the subscribed capital of the company or the capital assigned to the branches, and between 0.5% and 1% for real estate contributions subject to registration in the Public Deed Registry; and (ii) the registration fees: between approximately COP 53,000 and COP 172,000, depending on the range of assets of the company or branch. These amounts are updated annually.

The above costs do not apply to additional paid-in capital contributions after incorporation, in which case expenses will range between 0.1% and 0.3% of the additional paid-in capital. No registration tax applies to supplementary investments to the assigned capital of the branches, i.e., with respect to the current account between the foreign company and its branch in Colombia.

The above is without prejudice to other local taxes such as stamp duty.

2.6. Main periodic obligations of Colombian companies

- Ordinary meeting of the highest corporate body: The highest corporate body of a company, regardless of its type, must hold an ordinary meeting once every calendar year within the first three months following the end of the fiscal year to approve the balance sheets, distribute profits, if applicable, and receive any applicable management reports.
- Commercial registration renewal: Before March 31 every year, companies, commercial establishments and foreign companies must renew their commercial registration before the chamber of commerce of their main domicile, as well as those of the commercial establishments they own.
- Deposit of financial statements with the chamber of commerce: All commercial companies, regardless of their size or number of assets, must file with the chamber of commerce of their domicile a copy of the general purpose financial statements, together with their notes and opinion, if any, within the month following the date on which they are approved. This will not be necessary when the companies report information to the Superintendence of Corporations.
- Submission of financial statements and business practices report to the Superintendence of Corporations: In the case of companies inspected (upon request), supervised or controlled by the Superintendence of Companies, they must send a copy of their financial statements as of December 31 of the immediately preceding year and a report on business practices.
- Implementing the transparency and business ethics program (PTEE): The companies supervised by the Superintendence of Companies that meet the minimum income or asset requirements and that carry out international transactions for a specific amount (as legally defined) must implement the PTEE.

Companies in Colombia are subject to certain periodic obligations such as renewing commercial registration, preparing financial statements and keeping the ultimate beneficiary registry ("RUB")

Likewise, companies and branches that, directly or indirectly (e.g., through consortiums or temporary unions) have entered into contracts with State entities and meet the requirements on contract amount and minimum income or asset levels, must implement the PTEE and identify corruption risks. This obligation also applies to companies and branches in certain sectors (pharmaceutical, infrastructure and construction, manufacturing, mining and energy, information technology and communications, trade of vehicles and parts, and ancillary activities to financial services) that, directly or indirectly, have entered into contracts with State entities for an amount equal to or greater than the legal threshold and that comply with sector-specific requirements.

Act 2195 of 2022 seeks to modify and broaden the scope of entities subject to these obligations; regulations are still pending.

- Registering in the Single Registry of Beneficial Owners (RUB): Companies incorporated before May 31, 2023, must report information on beneficial ownership before July 31, 2023, through the RUB electronic system. In turn, companies incorporated as of June 1, 2023, must provide the information on beneficial ownership within two months following their registration in the Single Tax Registry through the RUB electronic system. The following entities must also report their beneficial owners on the same dates: (i) permanent establishments (i.e., branches, agencies, offices, factories, workshops or any fixed place of business located in the country through which a foreign company or a nonresident individual performs its activity); (ii) unincorporated structures; and (iii) foreign legal entities whose investment is not made through companies, permanent establishments or unincorporated structures.

- Implementing the money laundering and terrorist financing risk management system (SAGRILAFT): Companies supervised or controlled by the Superintendence of Companies with gross income equal to or greater than 40,000 SMMLV must design and implement the SAGRILAFT no later than May 31 of the immediately following year, submitting the corresponding report within the terms determined by such entity. Likewise, the Money Laundering and Terrorist Financing Risk Prevention reports must be submitted within the deadlines established by the Superintendence of Companies.
Depending on the type of activity, some companies must comply with the minimum measures regime for the purposes of SAGRILAFT, but there are other obligations associated with these programs and systems.

3

Tax

Domestic corporations are subject to taxation on their worldwide income and gains, while nonresident corporations are subject to taxation on their domestic-sourced income

3.1. Corporate income tax

Domestic corporations

Legal entities incorporated under Colombian law, with domicile in Colombia or with place of effective management in the country, are subject to taxation on their worldwide income and gains.

The place of effective management is determined by the place where the business and management decisions necessary to carry out the company's day-to-day business activities are made. However, this criterion finds exceptions in corporations that (i) have issued bonds or shares in an internationally recognized stock exchange; or (ii) have reported as foreign-sourced income at least 80% of their total income.

Foreign corporations

Nonresident companies and entities (i.e., without main domicile in Colombia, not incorporated under Colombian law and without effective place of management in the country) are subject to taxation exclusively on their domestic-sourced income.

The applicable legislation establishes some events where the total income tax payable by nonresidents corresponds to tax withholdings made during the fiscal year, without the need to file income tax returns. The general withholding tax rate for crossborder payments is 20%, but a specific analysis for each item of income is suggested, since there are special rules with higher and lower rates.

Nonresidents are required to file tax returns on certain income, despite being subject to withholding tax. Such returns may be ordinary (i.e., including all domestic-sourced income generated in the relevant period) or transactional (i.e., referring exclusively to disposals of foreign investments).

In addition, there are specific rules for non-tax resident entities that carry out activities in the country through a permanent establishment, which may result from a fixed place of business or a dependent agent in the country. As an exception to the general territorial taxation rule, worldwide income attributable to permanent establishments in Colombia is subject to income tax. For these purposes, the income attribution study must be carried out in accordance with the functions, assets and risks assigned to the permanent establishment under market conditions, i.e., as if the permanent establishment were a separate and independent entity from its head office.

This concept includes, among others, foreign company branches, agencies, offices, factories, workshops, mines, quarries, oil and gas wells, or any other place of extraction or exploitation of natural resources. No permanent establishment is deemed to exist in Colombia when the activities carried out by the foreign entity in the country are exclusively of an auxiliary or preparatory nature.

Moreover, since 2024, foreign corporations with Significant Economic Presence (SEP) will be subject to income tax on the sale of goods and services to customers and users located in Colombia. SEP is presumed when a nonresident engages in interactions with 300,000 customers, and they exceed a gross income threshold of around USD $350,000 per year from transactions with Colombian customers. Nonresidents with a SEP in Colombia may choose between two tax mechanisms: (i) taxation at 10% via withholding tax, (ii) or filing tax returns assessing their income tax liability at 3% over gross income.

Taxable base and rate

Income tax is levied on taxpayers' net income, calculated as income minus costs and expenses from the taxable period (generally the calendar year). Notwithstanding the exceptions provided in the Colombian Tax Statute, recognition and measurement of revenue, costs and expenses follows International Financial Reporting Standards (IFRS). With certain exceptions, legal entities with tax residency in Colombia are subject to a minimum effective tax rate of 15%. In case a taxpayer's effective tax rate is below 15%, the tax payable must be increased to reach such threshold.

The applicable tax rate for 2023 is 35%, with certain surtaxes on specific sectors such as 5% on financial institutions until 2027.

3.2. Personal income tax

Resident individuals

Tax-resident individuals in Colombia are subject to taxation on their worldwide income and gains. For these purposes, tax residency is determined based on different assumptions provided in the national legislation, as explained below.

First, an objective criterion of physical permanence in the country applies to Colombian nationals and foreigners alike: individuals who are continuously or discontinuously in the country for more than 183 calendar days in any period of 365 consecutive days are considered tax residents.

Colombian citizens may be considered tax residents, even if they do not meet the objective permanence criterion, based on family relationships, sources of income, location of assets, tax haven residency, and impossibility to prove tax residency in another jurisdiction.

For income tax purposes, unsettled estates of individuals who where tax residents upon their death are assimilated to individuals for income tax purposes until judicial or notarial settlement.

Nonresident individuals

Non-tax resident individuals in Colombia are subject to taxation exclusively on their domestic-sourced income.

Except for some specific situations, non-tax resident individuals are subject to the same rules as nonresident legal entities. Thus, the comments on territorial tax withholdings on crossborder payments, events giving rise to filing income tax returns and permanent establishments, apply to non-tax resident individuals.

Unsettled estates of deceased non-tax residents in Colombia are assimilated to nonresident individuals for income tax purposes, until judicial or notarial settlement.

Taxable base and rate

Tax-resident individuals in Colombia are taxed under different categories and subcategories: (i) the general category, comprising income from employment and self-employment, capital income (interest, leases and royalties), and other income not under other categories or subcategories; (ii) dividends; and (iii) pension benefits.

Each category and subcategory is subject to special rules for determining its taxable base.

The rates applicable to the general and pension categories are marginal and progressive, as follows:

RANGE IN COP 2023[7]		MARGINAL RATE	TAX PAYABLE IN COP
From	**To**		
-	46,229,000	0%	0
46,229,000	72,100,000	19%	(Taxable base - 46,229,000) x 19%
72,100,000	173,889,000	28%	(Taxable base - 72,100,000) x 28% + 4,920,000
173,889,000	367,712,000	33%	(Taxable base - 173,889,000) x 33% + 33,421,000
367,712,000	804,556,000	35%	(Taxable base - 367,712,000) x 35% + 97,378,000
804,556,000	1,314,772.000	37%	(Taxable base - 804,556,000) x 37% + 250,273,000
1,314,772,000	Thereafter	39%	(Taxable base - 1,314,772,000) x 39% + 439,049,000

[7] These values are updated annually according to inflation indexes.

3.3. Taxation on dividends

For tax purposes, dividends are considered (i) distribution of profits in cash or in kind in favor of shareholders or similar, charged to any equity account other than capital stock and capital surplus for additional paid-in capital; and (ii) transfers of profits by nonresidents' permanent establishments to their foreign related parties (branch remittance tax).

Dividends from profits that are subject to income taxation at the level of the company or permanent establishment are considered non-taxable income for the recipients.

Now dividends from profits that are not taxed at the level of the corporate level are considered taxable income for the recipients

Taxation on dividends from taxed profits

Dividends from taxed profits are subject to 20% withholding tax for nonresident investors (including individuals). Resident individual investors income tax rate [0%-39%] will apply, with a credit of up to 19%, i.e., a maximum rate of 20%.

Corporations with tax residency in Colombia are not taxed on dividends distributed by other resident corporations. However, the applicable regulations establish a back-up withholding of 10%, which is transferred in favor of shareholders in upper levels that are resident or nonresident individuals or companies alike.

Taxation on dividends from untaxed profits

Dividends from untaxed profits are subject to two levels of taxation. First, a tax equalization mechanism is applied, through which the company or permanent establishment distributing the dividend applies a withholding tax at the general corporate income tax rate (currently 35%).

Subsequently, the balance of the dividend (i.e., dividend distribution minus 35%) is subject to a second level of taxation at the rate applicable to each shareholder, as explained above. Therefore, effective taxation on these dividends may be as high as 48%.

3.4. Occasional gains tax

The occasional gains tax is complementary to the corporate and individual income tax and is levied on certain specific income, including (i) the sale of fixed assets (not disposed of in the ordinary course of business) owned for at least two years; (ii) profits from liquidation of companies incorporated for two or more years; (iii) donations and gifts; and (iv) income from lotteries, prizes, raffles, bets, and the like.

The general rate is 15%, both for residents and nonresidents. The rate applicable to lotteries, raffles, bets and the like is 20%.

3.5. Sales tax (VAT)

Sales tax is levied on sales of tangible movable assets within the country and imports to and services rendered in Colombia or from abroad, among others. Taxpayers may deduct the VAT paid from the VAT payable, subject to certain requirements.

The occasional gains tax rate is generally 15%, while the sales tax is 19%

Certain goods and services are VAT exempt (i.e., taxed at 0%), thus enabling deductions from taxes paid. On the other hand, some goods and services are excluded from VAT, so that the taxes paid add to the value of the goods or services. In other words, exempt products are taxed at 0%, thus allowing to deduct the input VAT paid along the supply chain. However, excluded goods and services subject to VAT do not allow deducting the input VAT paid along the supply chain.

The general rate is 19% on the total value of the goods or services, which cannot be less than the commercial value of the relevant transaction. Some goods and services are taxed at 5% and others at 0% (exempt), as mentioned above.

3.6. Financial transaction tax (GMF)

A tax of 0.4% is imposed on any transaction involving the disposal of resources deposited in Colombian financial institutions. The tax is collected through withholding by the financial institution and is applied to the account balance, without affecting the value of the transaction. The taxpayer may deduct 50% of the tax paid from their income tax. There are several exemptions from this tax, which must be analyzed on a case-by-case basis according to applicable regulations.

3.7. Territorial taxes: property tax and industry and commerce tax (ICA)

Their specific regulation varies among the different municipalities and districts.

The property tax is levied on the ownership or possession of real estate as of January 1 of every year. The taxable base is usually the cadastral value as set by cadastral authorities. However, some municipalities and districts allow increasing the taxable base through a private appraisal. This mechanism may optimize the income tax burden on the sale of the property. The applicable rate should be between 0.5% and 1.6%, depending on the municipality or district.

Individuals and legal entities that obtain income from industrial, commercial or service activities are subject to the ICA. The taxable base is the total gross income, and the rate varies between 0.2% and 1%, depending on the type of activity and the municipality or district. The Capital District of Bogota and, recently, the capital cities of the departments are authorized to set higher rates, so a case-by-case review is necessary.

The ICA accrued (100%) during the fiscal year may be deducted as an expense from income tax.

3.8. Double taxation agreements

Colombia has signed 19 double taxation agreements ("DTAs"). However, only 14 are currently in effect, since those with Brazil, the United Arab Emirates, Uruguay, Luxembourg and The Netherlands are yet to enter into force.

Colombia has asigned 19 double taxation agreements, of which 14 are in effect

The DTAs that are currently in force are those with Canada, Chile, South Korea, Spain, France, Italy, India, Mexico, Portugal, United Kingdom, Czech Republic, Switzerland and the Andean Community of Nations (Bolivia, Ecuador and Peru). In general, these agreements include special treatment for corporate income, dividends, royalties, interest and capital gains, among others.

3.9. Transfer pricing regime

In Colombia, the transfer pricing regime (based on OECD standards) is applicable to transactions between income tax payers (residents and nonresidents) and their foreign related parties and industrial free trade zone users. Generally, economically related parties include subsidiaries, branches, agencies and permanent establishments, and transactions between related parties through unrelated third parties.

The transfer pricing regime is also applicable to transactions with entities located, domiciled or operating in non-cooperative, low or no-tax jurisdictions, or subject to preferential tax regimes.

Under this regime, transactions must be carried out in compliance with the arm's length principle, i.e., as if they were carried out between unrelated parties to avoid the artificial crossborder transfer of profits and, consequently, the erosion of the tax base in Colombia.

This regime establishes formal obligations for taxpayers that exceed certain amounts determined by law, which are updated annually in relation to their income and assets. It applies to transactions with related parties. Taxpayers must submit a series of market studies and reports to demonstrate that the relevant transactions were carried out under the arm's length principle, namely (i) supporting documentation, (ii) informative declaration, (iii) master report and (iv) country-by-country report.

3.10. Tax benefits

The general trend in Colombia since 2016 has been to eliminate tax benefits in the interest of making the tax system more uniform and equitable. However, the Government has found it necessary to maintain some of the existing benefits, as well as to create new ones to stimulate certain sectors or for extra-fiscal purposes.

Among the tax benefits in force in 2023 are:

- Exempt income and VAT refund in real estate projects of social interest and priority housing;
- Special regimes for free trade zones and International Logistics Distribution Centers (see foreign trade section);
- Income tax rate reductions for companies located in Special Economic and Social Zones (ZESE) and Zones Most Affected by the Armed Conflict (ZOMAC);
- Tax deductions for investments in research, technological development and innovation projects or the hiring of highly qualified personnel;
- Special deduction, VAT exclusion, tax discount, tariff exemption, accelerated depreciation and exempt income for energy generation projects from non-conventional sources and efficient energy management;
- Job creation subsides.

Naturally, the suitability and appropriateness of applying these and other benefits must be analyzed on a case-by-case basis.

3.11. Wealth tax

As of 2023, the wealth tax became permanent, with a threshold of 72,000 UVT (i.e., net worth equal to or greater than COP 3,054,000 for 2023). The tax has a marginal and progressive rate of 0.5% to 1.5% and is levied as of January 1 every year. It must be filed and paid annually to the National Tax and Customs Authority (DIAN). The regulation does not provide exemptions for resident individuals.

Wealth tax is levied on assets of nonresident legal entities other than portfolio investments, accounts receivable and shares in national companies.

3.12. Tax return statute of limitations

The tax return statute of limitations is the period in which the tax authorities may initiate a formal audit.

In general, the statute of limitations for tax returns is three years from the deadline to file or from the date of late filing.

The three-year term is a generally valid reference for territorial tax returns. Nevertheless, the term for each municipality, district or department may vary, depending on the applicable tax regulations. At present, the general statute of limitations at territorial level is two years, which was the general rule for returns at the national level until 2016.

However, the statute of limitations for income tax returns determining or offsetting tax losses, as well as for those filed by taxpayers subject to the transfer pricing regime, is 5 years.

Nevertheless, taxpayers have one year for voluntarily amending tax returns to increase the balance in favor or reduce the amount due, and three years to reduce the balance in favor or increase the amount due.

Finally, failure to file tax returns as required by law entitles the tax authorities to initiate the sanctioning procedure within the following five years.

3.13. Foreign trade

- **Free trade zones (FTZ)**

The following are the main benefits of the Free Trade Zone Regime:

- Reduced rate at 20% for income from exports for industrial users and operators of FTZs compared to the general rate of 35%, subject to submitting an internationalization and annual sales plan in 2023 and 2024; FTZ industrial users authorized as such before 2023 are subject to the 20% reduced rate over their entire income, whether generated through exports or not;
- No customs duties (VAT or tariffs) are levied on goods introduced into the FTZ, since they are not considered to be imported into the national customs territory;

- VAT exemption for raw materials, parts, inputs and finished goods sold from the national customs territory to industrial users;
- Goods introduced into the FTZ or produced in the FTZ may be imported into the TAN or exported to third countries; and
- Foreign investors who are industrial users may obtain a certificate of origin for their goods, giving them access to the benefits of trade agreements and Free Trade Agreements signed by Colombia.

The FTZ Regime establishes a series of requirements on users' activities, investment amounts and job creation.

To date, Colombia has signed 18 Free Trade Agreements, namely with Panama, the European Union, the United States, Canada, Venezuela, Costa Rica, Chile, Cuba, the Pacific Alliance, the Andean Community, the Caribbean Community, South Korea, Mexico, the Northern Triangle (El Salvador, Guatemala and Honduras), the EFTA (Switzerland, Norway, Iceland and Liechtenstein), Mercosur, Israel and the United Kingdom.

Colombia has signed 18 Free Trade Agreements

- **International logistics distribution centers**

The following are the main benefits of the International Logistics Distribution Centers Regime (Centros de Distribución Logística Internacional, "CDLI"):

- Income from the sale of foreign goods owned by foreign companies that are stored in a CDLI is not Colombian-sourced income, so it is not subject to income tax;
- Goods may be introduced for their subsequent distribution abroad or within Colombia. Goods may remain in a CDLI for a maximum of two years;
- No import duties or VAT apply if the goods are distributed to any country other than Colombia; and
- No investment or job creation requirements.

4

Employment agreements in Colombia are based on the territoriality principle of labor law

Labor and employment

4.1. Employment agreements

In Colombia, there is an employment agreement when the following elements are present: (i) personal rendering of services by an individual (employee) to another individual or legal entity (employer); (ii) payment of a salary to the employee as direct compensation for such services; (iii) continued subordination of the employee to the employer, who may at any time give orders as to the manner, time or amount of work, and may impose regulations for the entire duration of the agreement.

Employment agreements in Colombia are based on the territoriality principle of labor law. This principle states that all employment relationships are governed by the labor legislation in force in Colombia, regardless of the covenants reached by the parties and their nationality. Thus, if a national or foreign company hires an employee to render services in Colombia, the employment agreement will be governed by applicable domestic law.

4.2. Types of employment agreements

Type of agreement	Comments
BY DURATION	
Indefinite term	It does not have a limited duration. It will remain in full force and effect as long as its purpose and the causes that gave rise to it continue to exist.
Fixed term	It has a limited duration, until a specific date previously agreed upon by the parties. It must be formalized in writing; otherwise, it will be deemed an indefinite term contract. It does not require a minimum duration, but it can only be implemented for a maximum of three years.
For the duration of the contracted work or task	It has a limited duration, subject to fulfillment of the purpose of the agreement, i.e., a specific event previously agreed by the parties. The purpose must be clearly detailed, making it possible to identify the actual termination date (e.g., the construction of 20 km of a public road or the production of a specific number of goods or services). It must be in writing.
For the performance of occasional, accidental or transitory tasks	It has a limited duration (max. 30 days) and must be exclusively for the performance of activities other than the employer's ordinary business activities.
BY FORM	
Oral	It is not contained in a document signed by the parties. The parties must agree on (i) the employee's tasks, (ii) the salary and (iii) the form of payment.
Written	It is contained in a document signed by the parties. It must include, at least, (i) identification of the parties; (ii) place and date of execution; (iii) place of hiring and rendering of the service; (iv) nature of the work; (v) salary; (vi) form and periods of payment; and (vii) duration.

4.3. Differences between employment and service agreements

The main difference between an employment agreement and a service contract in Colombia is the continued subordination of the employee. Services providers, as opposed to employees, are independent and autonomous with respect to the employer in all technical, administrative, financial and managerial aspects of the contractual relationship. Employees, on the contrary, are permanently subject to the employer's orders on the conditions of time, manner and place in which they must render their services, without the possibility of independently defining the conditions of their activity.

Unlike service contracts, employment agreements are defined by the continued subordination of the employee

There is no specific regulation in Colombia that specifies where it is possible to hire individuals through service contracts and where an employment agreement is required. Service contracts are frequently used, among others, for (i) contracting of specialized services, where the expert is the contractor and not the contracting entity; (ii) non-exclusive contracting, where contractors are free to work for other clients simultaneously; (iii) contracting services that the contracting entity does not have covered through its employees.

4.4. Salary payments and agreements

In Colombia, "salary payment" means any payment that directly remunerates the employees' services and compensates their subordinated activity. Salary payments must be considered as base for calculating fringe benefits, vacation, indemnities, mandatory contributions to the comprehensive social security system and payroll tax, among others.

Colombian labor legislation provides two types of salary agreements: ordinary salary and integral salary. The difference is that the integral salary, in addition to remunerating the employee's personal services, compensates in advance the payment of legal fringe benefits, supplementary work, surcharges, extralegal payments (if applicable), among other items, except vacation. The integral salary must be agreed in writing and cannot be less than 13 monthly legal minimum salaries.

4.5. Minimum integral salary

The minimum integral salary in Colombia for 2023 is COP 15,080,000.

4.6. What burdens does an employment relationship imply for the employer under Colombian regulations?

Every employee in Colombia is entitled, at least, to (i) a salary in consideration for services; (ii) be registered in the comprehensive social security system; and (iii) an annual vacation period. Additionally, employees under the ordinary salary scheme are also entitled to the following legal fringe benefits:

- Unemployment aid payments: 30 days of salary for each year of service;
- Interest on unemployment aid payments: 12% of severance payments for each year of service;
- Service bonus: 15 days of salary for each six months of service;
- Legal transportation allowance: COP 140,606 (*only for employees earning two monthly legal minimum salaries or less per month);
- Work clothing and footwear allowance: three times a year on specific dates (*only for employees earning two monthly legal minimum salaries or less per month); and
- Social security contributions paid monthly by the employer to the comprehensive social security system. These contributions must be paid jointly, as follows:

CONTRIBUTION SYSTEM	PENSION		HEALTH		LABOR RISKS	
%	EMPLOYER	EMPLOYEE	EMPLOYER	EMPLOYEE	EMPLOYER	EMPLOYEE
	12%	4%	8.50%	4%	0.522% - 6.9%	0%

Employees with a salary higher than four monthly legal minimum salaries must make an additional contribution between 1% and 2% of salary.

Additionally, employers must pay certain payroll taxes (based on salaries and vacation payments), except for those excluded by law, as follows:

SYSTEM	NATIONAL APPRENTICESHIP SERVICE (SENA)	COLOMBIAN FAMILY WALFARE INSTITUTE (ICBF)	FAMILY COMPENSATION FUND (CCF)
Payroll tax	EMPLOYER	EMPLOYER	EMPLOYER
	2%	3%	4%

4.7. Working hours, vacations and leaves of absence

The ordinary working hours in Colombia are the agreed by the parties. The maximum legal working hours (in the absence of agreement) is currently eight hours per day and, as of July 15, 47 hours per week, from Monday to Saturday. However, this maximum working day will be gradually reduced over the next five years to 42 hours per week in 2026.

The maximum working day will be gradually reduced over the next few years

Depending on the needs of the service, it is possible to establish different working hours and schedules for certain jobs (e.g., shifts) within the parameters provided by law.

All employees are entitled to 15 working days of vacation as paid rest for each year of service.

There are two types of leave: (i) paid leave, established by law; and (ii) unpaid leave, in which the employee does not render services and the employer is not required to pay the employee's salary. It is possible to agree on extralegal leaves.

4.8. Types of remote work

Remote working is allowed in Colombia. Depending on the circumstances and needs of the service, employees may: (i) telework; (ii) work from home; or (iii) work remotely.

Among the most important differences between these three types are (i) working at home is only possible when, due to occasional or exceptional situations, the employee's services cannot be rendered at the employer's workplace; (ii) in remote working, the entire employment relationship, from hiring to termination, is performed without the employer and the employee physically interacting; and (iii) remote working allows employees to render their services without being physically present through the use of information and communication technologies, but with the possibility of working a few days at the employer's workplace or requesting at any time to return to the conventional work activity at the employer's facilities.

4.9. Labor disconnection

All employees have the right not to be contacted during their rest time (e.g., time off, leave, vacation, off-duty) for matters related to their work activities, regardless of the means or form of contact. Persistent and demonstrable violation of this prerogative may be considered harassment at work.

4.10. Termination of the employment agreement

In Colombia, there are three ways for the parties to terminate the employment contract:

- Without cause: termination without invoking legal grounds. If the employer terminates the agreement, it must pay severance as provided by law (in addition to all employment rights actionable upon termination). The amount of severance will depend on the type of agreement, seniority and salary of the employee. It does not require a special procedure and may have immediate effects as of its notification.

AGREEMENT TYPE	SALARY	SEVERANCE AMOUNT
Indefinite term	Below 10 monthly legal minimum salaries	*30 days' salary for the first year *20 additional days' salary for each additional year or fraction of a year after the first year.
	Equal to or greater than 10 monthly legal minimum salaries	*20 additional days' salary for the first year *15 additional days' salary for each additional year or fraction of a year after the first year
Fixed term or for the duration of the work or task	No distinction	Time remaining of the contractual term or of the period determined by the duration of the work or task contracted, not less than 15 days' salary

- For cause: in the event the employee seriously breaches any special obligation or prohibition (legal, contractual or regulatory). Employees must be heard and allowed to give their version of the facts before formalizing termination (due process and right of defense). Different procedures must be exhausted depending on the cause of termination. The employer is not required to pay any severance or amounts other than the labor rights due and actionable upon termination.
- Due to legal causes: it does not depend on the will of the employer or the employee. It is applicable by virtue of the law (e.g., expiration of the agreed fixed term). The employer is not required to pay any severance or amounts other than the labor rights due and actionable upon termination.

Employment agreements of certain employees in special situations cannot be terminated without prior authorization of the Ministry of Labor or a labor judge.

4.11. Unions

- Requirements: under Colombian labor legislation, a minimum of 25 employees is required to establish a union, whether they work for the same company or not.
- Types of unions in Colombia: (i) company unions, formed by employees rendering their services in the same company; (ii) industry unions, formed by employees rendering their services in several companies of the same industry or branch of economic activity; (iii) trade unions, formed by employees of the same profession, trade or specialty; and (iv) various trade unions, formed by employees of different professions.
- Any employee of a company may join an industry union, which is thus entitled to submit a petition sheet to the company and initiate a collective bargaining process. It is not necessary to form a company union for these purposes.
- There may be more than one company union in the same company. Additionally, employees may be members of more than one union, but they may only benefit from one collective bargaining agreement.

4.12. Immigration issues

Foreign citizens must obtain a visa or work permit to legally perform paid services in Colombia. The visa or permit will depend on the particular conditions of their nationality and employment.

Where a visa is required, the employer or contracting sponsor of the foreigner individual must prove an average monthly income of 100 monthly legal minimum salaries.

Visa applications must be made directly to the Ministry of Foreign Affairs.

There are other types of visas that allow performing any lawful activity in Colombia, but they are subject to specific legal conditions.

Nevertheless, the Colombian authorities have discretionary powers to grant or deny these types of visas or permits, even when the legal requirements are met.

5

Intellectual and industrial property

Intellectual property protects the rights of individuals over intellectual creations ranging from artistic works to patentable inventions.
In Colombia, intellectual property rights can be divided into two main categories: (i) copyrights and related rights and (ii) industrial property.

There are two main categories: (i) copyrights and related rights and (ii) industrial property

5.1. Copyrights and related rights

Copyrights cover any original intellectual creation of artistic, scientific or literary nature susceptible of being reproduced or disclosed in any form (a "work"). In Colombia, copyright protection exists upon creation, without the need to carry out any formalities before the National Copyright Directorate ("DNDA"). Copyright protection comprises both moral and economic rights. Moral rights are non-negotiable, unwaivable and imprescriptible, while economic rights can be transferred and have a term of duration, after which the authors or holders cannot prevent others from using their work.

Related rights are held by (i) performers, (ii) phonogram producers and (iii) broadcasting organizations. Their protection, as in the case of copyrights, does not require registration or processing before a competent authority.

In any case, and even though the protection of copyrights and related rights does not arise from registration, it may be an advisable mechanism to guarantee their adequate protection in terms of opposability and evidentiary support.

5.2. Industrial property

Industrial property rights cover patents and industrial designs (new creations) and trademarks, slogans, brands, trade names and designations of origin (distinctive signs). Industrial property rights grant their holders the exclusive and temporary use of an invention, design or sign from other people in commerce. As a rule, they are protected after they are registered or granted by the Superintendence of Industry and Commerce ("**SIC**"), the industrial property authority in Colombia.

5.3. WIPO, CAN and Colombia

Colombia is a member of the World Intellectual Property Organization (WIPO) and of the Andean Community (CAN). As a member of these international organizations, Colombia has developed a balanced and efficient international intellectual property system that allows innovation and creativity and, especially, international collaboration in the protection of intellectual property rights.

Colombia is a member of the WIPO and the CAN

Colombia is a party to a series of Conventions and general rules. These include Andean Decision 351 (Common Regime on Copyrights and Related Matters) and Andean Decision 486 (Common Regime on Industrial Property).

Protections and requirements for trademarks, patents, industrial secrets, industrial designs and distinctive signs

	SCOPE OF PROTECTION	REQUIREMENTS	REGISTRATION (DECLARATORY, CONSTITUTIVE OR FOR OPPOSABILITY)	DURATION
COPYRIGHT				
Copyright	Copyright protection does not require registration or application procedures, since works are protected upon creation.	Any work that is (i) intellectual; (ii) original; (iii) of artistic, scientific or literary nature; and (iv) susceptible of being reproduced or disclosed in any form.	Opposability to third parties and for evidentiary purposes.	**Moral rights:** imprescriptible **Economic rights:** the author's lifetime, plus 80 years
INDUSTRIAL PROPERTY				
Trade secrets	Trade secret protection does not require any formalities, but the holder must ensure that the information is (i) secret (not generally known or easily accessible to those in circles that normally handle such information); (ii) has a commercial value because it is secret; and (iii) is subject to reasonable protection measures.	N/A	N/A	The duration of the secret
Industrial designs	Registration before the SIC protects the shape and aesthetic appearance of the product.	(i) Check whether the external shape of a product is already available to the public; (ii) Fill out the application form; and (iii) File the application with the SIC.	Constitutive of rights	10 years from the registration application
Distinctive signs (commercial slogans)	Registration before the SIC grants the holder the exclusive right to commercialize products or services identified with the registered sign.	(ii) No cause of unregistrability; (ii) Fill out the single form for distinctive signs; and (iii) File the application before the SIC.	Constitutive of rights	10 years from its granting and renewable for successive periods of 10 years
Distinctive signs (brand and trade name)	Exclusive right over a trade name is acquired upon its first commercial use. For opposability purposes, the holder may register its trade name with the SIC.	((i) Commercial use	Opposability to third parties and for evidentiary purposes	From first use until commercial use is abandoned

	SCOPE OF PROTECTION	REQUIREMENTS	REGISTRATION (DECLARATORY, CONSTITUTIVE OR FOR OPPOSABILITY)	DURATION
INDUSTRIAL PROPERTY				
Distinctive signs (trademarks)	Trademark registration before the SIC implies protection in Colombia of the right to use the trademark on the products or services identified by the sign.	(i) Not to be subject to any cause of *unregistrability*; (ii) Fill out the single form for distinctive signs; and (iii) File the application before the SIC.	Constitutive of rights	10 years from its granting and renewable for successive periods of 10 years
Patents	Invention patent: protects inventions of products or procedures that offer a new technical solution to a technical problem. Object of protection: apparatuses, compounds, compositions and substances, procedures and systems. Inventions are protected through a patent granted by the SIC.	(i) Novelty: the invention is not known worldwide prior to the filing date; (ii) Inventive level: the invention is not obvious nor arises from the state- of-the-art in a way that is obvious to a person with knowledge of the technical field of the invention; and (iii) Industrial application: it can be manufactured or used in any type of industry.	Constitutive of rights	20 years from application
	Utility Model Patent: protects new forms, configurations or arrangement of elements of devices, tools, instruments, mechanisms or objects that allow a better or different operation, use or manufacture, providing a new advantage, utility or technical effect. Object of protection: apparatus and machines. Utility models are protected through a patent granted by the SIC.	(i) Novelty and (ii) Industrial application.	Constitutive of rights	10 years from application

6

Anyone who makes decisions regarding a database or an operation involving the processing of personal data is a data controller

Personal data protection

In Colombia, personal data protection comprises the set of rules, concepts and decisions aimed at protecting the right of all individuals to know, update and rectify the information collected about them in databases or files.

In general, the Colombian data protection regime is provided in Act 1266 of 2008 and Act 1581 of 2012, as well as the modifying acts, regulatory decrees and relevant principles, i.e., (i) legality; (ii) purpose; (iii) freedom; (iv) truthfulness; (v) transparency; (vi) restricted circulation; (vii) security; and (viii) confidentiality.

The SIC is the authority in charge of monitoring and controlling compliance with personal data regulations.

Note: Recently, Decree 1297 of 2022 established the possibility for financial institutions to process and commercialize data authorized by financial consumers *(open banking)*.

6.1. Obligated parties

In Colombia, any individual or legal person, whether public or private, that makes decisions regarding a database or an operation involving the processing of personal data is a data controller.

6.2. Main obligations

The obligated parties must comply with the following main obligations:

- Requesting and keeping a copy of the authorization granted by the owner for the processing;
- Keeping the information under adequate security conditions;
- Adopting an internal manual of policies and procedures for personal data processing;
- Guaranteeing the holders the exercise of their rights, namely (i) to know, update and rectify their personal data; (ii) to request and obtain proof of the authorization granted for the processing of their personal data; (iii) to be informed of the use given to their personal data; (iv) to file complaints before the SIC; (v) to revoke the authorization granted and request the removal of their personal data from the databases in which they are stored; and

(vi) to access free of charge and freely to their personal data;

- Registering the personal databases under their control and keeping them up to date; and
- Informing the data protection authority of any security incidents.

6.3. Database registration in Colombia

Data controllers with total assets exceeding 100,000 UVT are required to register their databases in the National Database Registry ("**RNBD**").

The RNBD is the public directory of databases with personal data of data controllers operating in the country.

Databases must be registered in the RNBD within two months of the creation of the database. For registration purposes, an inventory of the company's databases (in physical or electronic format) is needed. Subsequently, the information identifying the database must be uploaded to the RNBD platform.

In addition to registration in the RNBD, data controllers must take into account the regulatory deadlines regarding situations that require updates or new registrations in the RNBD as follows:

EVENTS	TERM
Annual database update	Annually between January 2 and March 31
Substantial changes to the information registered or contained in the database	Within the first 10 working days of the month following the substantial change
Update information on claims submitted by data subjects	Twice a year, within the first 15 working days of February and August
Report security incidents	Within 15 working days after they are detected

6.4. Transfer and transmission of personal data

In general, the transmission of personal data involves that a controller send personal data to a third party (processor) so that the latter carries out the processing of personal data on behalf of the controller, complying in any case with the controller's processing policy and with the terms of the authorizations granted by the data subjects.

National and international transmissions of personal data are permitted to the extent that (i) they are expressly authorized by the data subjects; or (ii) they are governed by a personal data transfer contract signed between the controller and the processor.

On the other hand, the transfer of personal data implies sending personal data by a data controller to another person who also has such capacity.

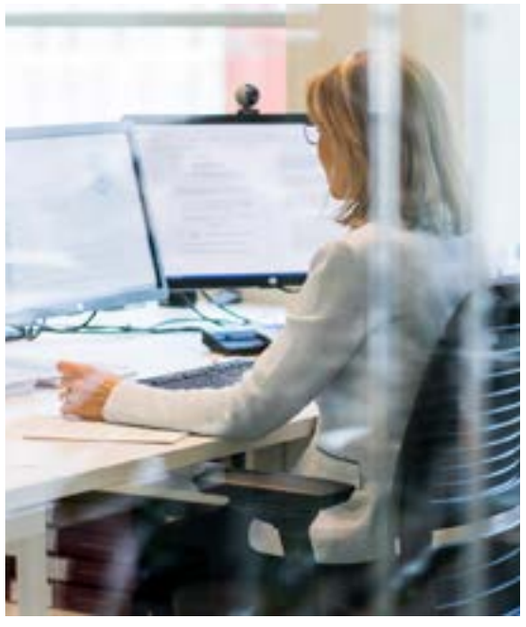
International transfers of personal data are permitted to the extent that (i) they are expressly authorized by the data subjects; (ii) they are authorized by the SIC; or (iii) they are within the exceptions provided by law.

By law, international transfer of personal data to countries that do not have adequate levels of data protection is prohibited. According to the SIC, the following countries have an adequate level of protection of personal data: Australia, Austria, Belgium, Bulgaria, Costa Rica, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, United Kingdom, United States of America, and the countries recognized as providing an adequate level of protection by the European Commission. The SIC must issue a certificate of conformity for data transfers to countries other than those indicated above.

6.5. Sanctions for improper data processing

The SIC may impose the following sanctions on data controllers and processors:

- Personal and institutional fines up to 2,000 SMLMV;
- Suspension of activities related to the processing for up to six months;
- Temporary closure of the operations related to the processing, if the corrective measures ordered by the SIC were not adopted within the suspension term; and
- Immediate and definitive closure of the operation related to the processing of sensitive data (i.e., affecting the data subject's privacy or whose improper use may generate discrimination).



6.6. Financial *habeas* data

The financial habeas data is mainly governed by Act 1266 of 2008. As in general personal data protection, these measures are aimed at ensuring that the financial information of individuals and legal persons is processed under strict security measures, ensuring the quality of the information at all times so that the financial system has reliable information regarding the payment capacity and credit history of individuals and legal persons.

There are measures aimed at ensuring that financial information is processed under strict security measures, safeguarding its quality at all times

Act 2157 of 2021 establishes the following requirements for credit institutions, in addition to the data subject's consent, to submit negative (non-compliance) reports on obligations:

- Notify debtors so that they may prove or make the payment, as well as challenge the value and term. This communication may be in physical format or by data message.
- Wait 20 calendar days from the date the notification is sent.

Once both requirements are fulfilled, the information may be reported.

For obligations whose value is less than or equal to 15% of one SMLMV, the negative data may only be reported after at least two notifications on different days. At least 20 calendar days must elapse between the last communication and the report.

6.7. Binding corporate rules

Under Decree 255 of 2022, data controllers that are part of a corporate group and that make transfers or a set of transfers of personal data to a third party that is part of the same group and that is located outside Colombian territory must be subject to binding corporate rules.

Binding corporate rules are the policies, principles of good governance or mandatory codes of good business practices established by the data controller in Colombia to make transfers or a set of transfers of personal data to a third party located outside Colombian territory and that is part of the same corporate group.

In compliance with the above, the binding corporate rules adopted by a group must include the following:

- Clear determination of the structure and contact details of the corporate group and each member;
- Determination of the transfers to be carried out, including the categories of personal data, the type of processing and its purposes, the type of data subjects concerned and the name of the third country or countries;
- Determination of the rights of the data subjects, as well as the effective means to exercise them;
- Measures to prevent transfers to other entities that do not belong to the corporate group, without prejudice to the exceptions set out in article 26 of Act 1581 of 2012;
- Mechanisms to ensure compliance with corporate rules;
- Mechanisms to communicate and record changes to the policies and to notify such changes to the SIC;
- Data protection training for personnel with access to personal data; and
- Request and complaint procedures for data subjects.

7

Competition

In Colombia, competition law comprises the set of rules, concepts and decisions aimed at protecting the overall interest of the market, i.e., the free operation of companies, economic efficiency and consumer welfare.

Broadly speaking, protection is guaranteed by (i) controlling business integrations; (ii) controlling anticompetitive practices (agreements and conduct); and (iii) sanctioning unfair competition practices.

7.1. Business integration

Depending on the type of transaction an the companies' market share, business integrations may be subject to notification or authorization from the SIC

A business integration is a transaction, whatever its legal form, by which a company directly or indirectly acquires control of one or more companies, or by which a new company is incorporated to operate jointly. Integration may be horizontal, when companies are in the same production or distribution level of a value chain, or vertical, when companies are at different levels of a value chain. Depending on the type of transaction and their market share, companies involved in a business integration, whether domestic or foreign, are subject to a notification or authorization procedure before the SIC.

- **Notification:** Under Act 1340 of 2009, title VII of SIC's Sole Circular and other related regulations, the transaction will be automatically authorized if the companies involved meet the following requirements. If so, it will be sufficient for one of them to notify the SIC in accordance with the notification procedure for business integrations:

  – They perform the same economic activity or are in the same value chain (objective condition).

  – During the fiscal year prior to the foreseen transaction, their joint or individual operating income or total assets exceed the amount established by the SIC in SMLMV for that year (1,641,044.99 UVT for 2023) (subjective condition).

    However, if the companies participate in the market exclusively through exports to Colombia and have no operating income or assets there, their total assets and operating income abroad must be taken into account.

In turn, if the companies only participate in the market through permanent establishments without legal personality in Colombia, the total assets and operating income linked to such establishments must be taken into account.

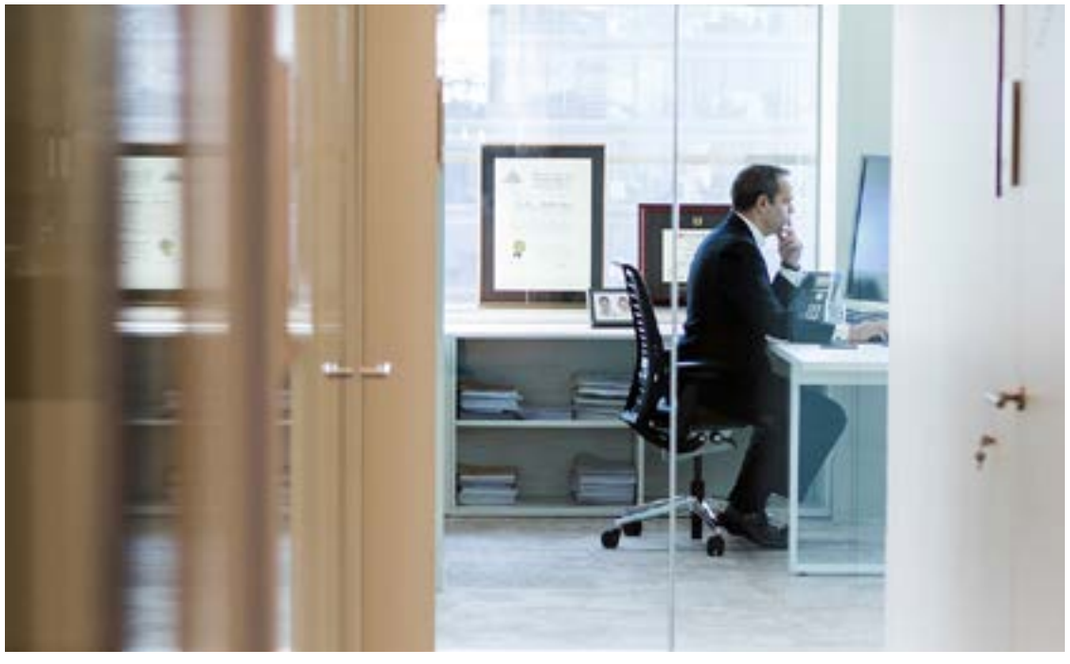
In any case, to determine this subjective factor, it is necessary to consider the operating income obtained in Colombia or the total assets located in the country of the companies that (i) are linked by control and (ii) carry out the same economic activity or are in the same value chain.

- Their aggregate market share does not exceed 20%.

- **Authorization:** If the companies meet the above requirements, they must request SIC's pre-evaluation for the integration.

The pre-evaluation request is the first step, and the SIC has 30 business days from filing the request to (i) authorize the transaction or (ii) move to step two of the authorization procedure, if there are no sufficient elements to rule out that the transaction may pose a risk to competition.

Step two has a duration of three months, after which the SIC may authorize, authorize with conditions or object to the request for evaluation of the business integration.



7.2. Anticompetitive practices. Types of anticompetitive agreements or conduct. Sanctions

Infringement of competition may result from agreements, unilateral conduct or abuse of dominant position

The general competition protection clause prohibits any agreements or arrangements that directly or indirectly seek to limit the production, supply, distribution or consumption of local or imported raw materials, goods or services, and, in general, any practice, procedure or system tending to limit free competition to fix or maintain inequitable prices to the detriment of consumers and producers of raw materials.

Infringement of competition may result from **agreements, unilateral conduct or abuse of dominant position.**

Under Colombian legislation, agreements that have the following purposes or effect are considered contrary to free competition:

- Direct or indirect price fixing;
- Determining discriminatory sales or marketing conditions for third parties;
- Distributing market shares among producers or distributors;
- Allocating production or supply quotas;
- Allocating, distributing or limiting supply of productive inputs;
- Restricting technical developments;
- Conditioning the supply of a product on accepting additional obligations that, by their nature, are not the purpose of the business;
- Refraining from performing a good or service or affecting its production levels;
- Colluding in bidding, tendering or distribution of contract awards, or setting terms in bids;
- Blocking the entrance of third parties to markets or marketing channels; and
- In general, directly or indirectly limiting the production, supply, distribution or consumption of local or imported raw materials, goods or services, and any practice, procedure or system tending to restrict competition to fix or maintain inequitable prices.

In addition, the following **conduct** is considered contrary to free competition:

- Breaching advertising regulations in violation of consumer protection rules;
- Influencing the increase or reduction of prices of a company's products or services;

- Refusing to sell or provide services to a company or discriminating against it to retaliate against its pricing policies; and
- Abuse of dominant position.

In turn, the following conducts are considered abuse of dominant position (understood as the ability to determine the conditions of the market):

- Predatory pricing (reducing prices below cost to eliminate competitors or preventing their entry or expansion);
- Imposing discriminatory provisions for similar transactions that place a consumer or supplier at a disadvantage vis-à-vis another consumer or supplier under analogous conditions;
- Provisions whose purpose or effect is conditioning the supply of a product on accepting additional obligations that, by their nature, are not the purpose of the business, without prejudice to other provisions;
- Selling to a buyer under conditions different from those offered to another buyer with the intent of reducing or eliminating competition;
- Selling or providing services in any part of the country at a price different from that offered in another part of the country, when the intent or the effect is to reduce or eliminate competition in that part of the country, and the price does not correspond to the cost structure of the transaction; and
- Failure by any contractor under a state contract on transport infrastructure, public works and construction to pay a monetary obligation on the agreed date to any of its suppliers qualifying as SMEs or MSMEs, after receiving an invoice duly accepted by the contracting entity.

The SIC may impose fines on infringements of any of the above prohibitions. It will apply the higher of the following: (i) up to 20% of the operating income in the fiscal year immediately prior to the fine being imposed; (ii) up to 20% of the net worth in the fiscal year immediately prior to the fine being imposed; (iii) up to 100,000 SMLMV; (iv) for public procurement, up to 30% of the value of the contract. Also, individuals who collaborate, facilitate, authorize, implement or tolerate the prohibited anticompetitive agreements or conduct may be subject to fines of up to 2,000 SMLMV.

7.3. Unfair competition practices and consecuences

Unfair competition is any act or deed undertaken in the market for competitive purposes that is not consistent with sound commercial customs, the principle of good commercial faith, or honest practices in industrial or commercial matters. Also, unfair competition is any act that affects, or is intended to affect, the freedom of decision of the buyer or consumer, or the competitive functioning of the market. Specifically, Act 256 of 1996 prohibits misleading customers, disrupting the market, abusing another party's reputation, violation of secrecy, inducing to breach of contract, and unfair exclusivity agreements. The following remedies are available against unfair competition:

- Declaratory and sentencing action: anyone affected by unfair competition practices may seek a judicial declaration of illegality, ordering the offender to remove the effects of said acts and compensate the plaintiff for the damages caused.
- Preventive or prohibition action: individuals who think they may be affected by unfair competition practices may request the judge to prevent unfair conduct not yet undertaken, or to prohibit it without any damages having yet been caused.

8 External debt and international exchange rate regime

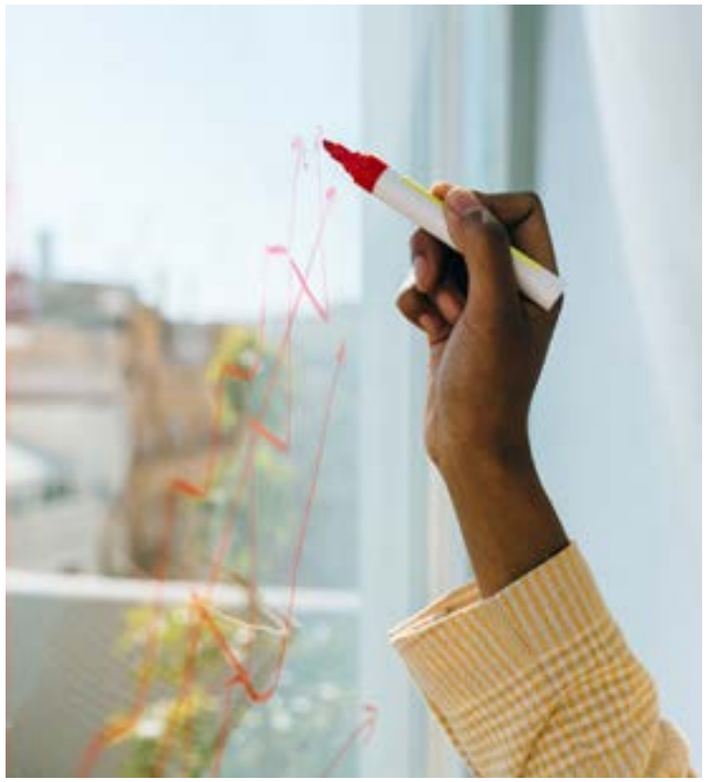
External debt transactipns must be registered prior to or simultaneously with the disbursment of the resources

8.1. External debt

Colombian residents are authorized to obtain loans from nonresidents, as well as to grant them.

Under applicable regulations, external debt transactions must be registered prior to or simultaneously with the disbursement of the resources so as not to infringe the international exchange regime.

All transfers of foreign currency to and from Colombia related to external debt transactions must be made through the foreign exchange market and reported to the Central Bank by filing an exchange declaration through a Foreign Exchange Market Intermediary or IMC (e.g., commercial banks).



8.2. Clearing accounts

Colombian residents who handle income or expenses from transactions that must be channeled through the foreign exchange market may do so through bank accounts in foreign currency opened with foreign financial institutions.

Clearing accounts must be registered with the Central Bank

Such accounts are known as clearing accounts and must be registered with the Central Bank.

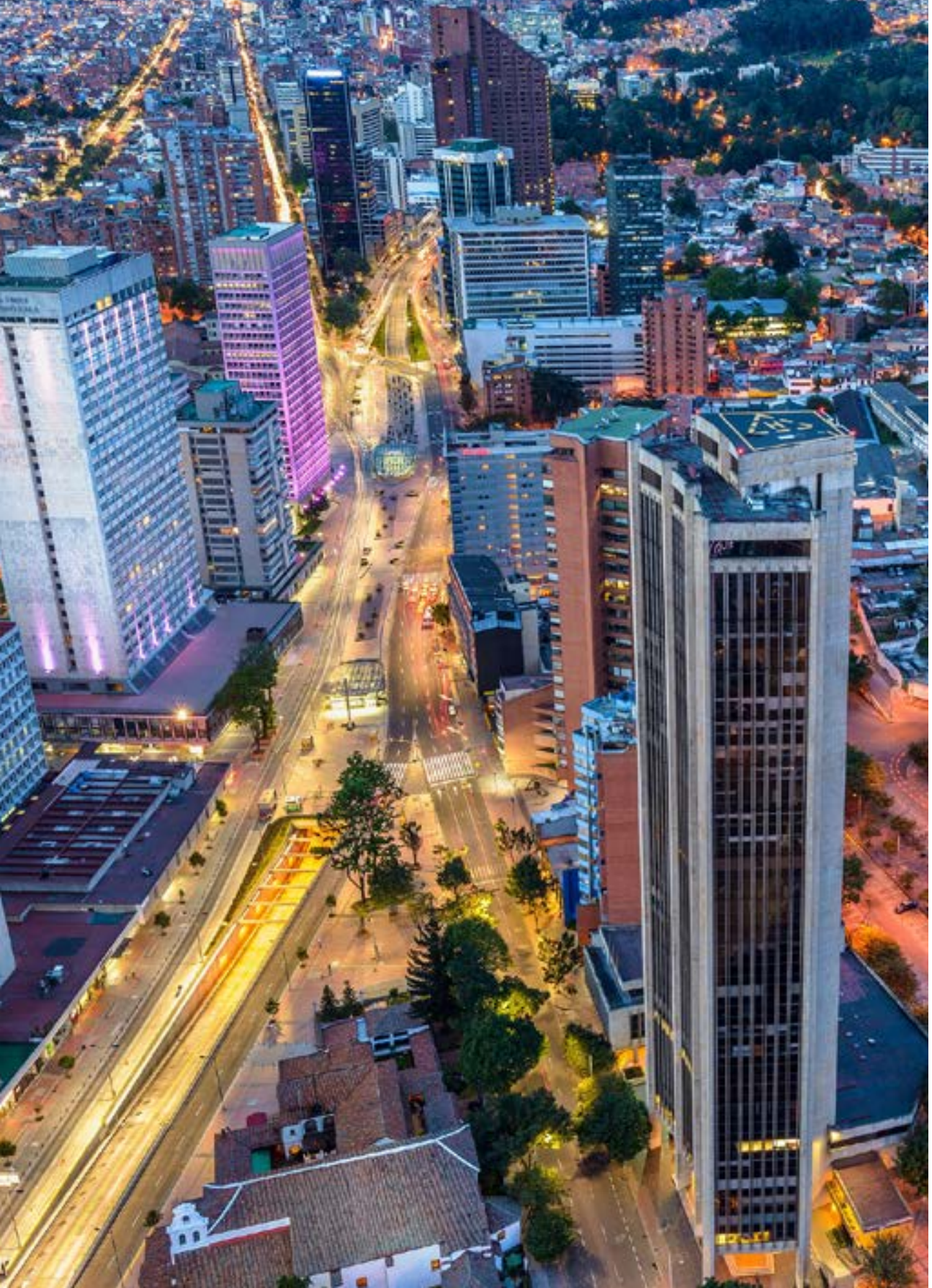
Movements made through such accounts must be reported monthly to the Central Bank.

8.3. Exchange violations

Exchange violations are infringements of the exchange regulations in force at the time of the event, subject to an economic sanction.

The following entities may impose sanctions for exchange violations, depending on the infringement:

- The National Tax and Customs Authority (DIAN) is the competent authority to monitor compliance with the exchange regime in the import and export of goods and services, expenses of foreign trade transactions and import and export financing, and clearing accounts. It may impose penalties ranging from 25 to 1,000 UVT or 100% of the amount of the transaction, depending on the type of infringement.
- In turn, the Superintendence of Companies monitors compliance with the foreign exchange regime in matters of foreign investment, Colombian investment abroad and external debt. The Superintendence of Companies may impose penalties of up to 200% of the amount of the transaction.



9 Infraestructure

Any State entity with public shareholding of more than 50% is subject to the EGCP, unsless a certain exceptional regime applies such as for example the provision of public utilities, hydrocarbons and minerals exploration and production, among others

9.1. General public procurement rules

Public procurement in Colombia is an important tool of the public sector to fulfill state purposes through certain principles and specific legal procedures. Public procurement regulation revolves around the State's constitutional principles and objectives, such as the principles of free market and competition, transparency and the pursuit of economic and social welfare.

As a rule, any State entity with public shareholding of more than 50% is subject to the Public Procurement Statute ("**EGCP**"). However, certain legal exceptions allow some State entities to be governed by private law.

For instance, contracts entered into by financial institutions (even with more than 50% public shareholding) are not governed by the EGCP (article 15 of Act 1150 of 2007). That is also the case for industrial and commercial State entities and mixed companies that, even with more than 50% public shareholding, operate in a regulated sector or in competition with the private sector and for those engaged in the provision of public utilities and exploration and production of hydrocarbons and minerals.

The EGCP provides a list of principles that must be complied with by State entities in the procedures for awarding State contracts. Broadly speaking, these principles are objective selection, transparency, economy, planning, preservation of the contract's economic balance, and due process.

Taking into account the above principles, the EGCP established several mechanisms for selecting State contractors, which are classified according to (i) the purpose of the contract, (ii) its amount or (iii) the special circumstances requiring a public entity. These procedures are public bidding, abbreviated selection, merit-based qualification, direct contracting and de minimis contracting.

9.2. Public procurement mechanisms and procedures

Article 2 of Act 1150 of 2007 provides five types of selection mechanisms for State contracting in Colombia: (i) public bidding, (ii) abbreviated selection, (iii) merit-based qualification, (iv) direct contracting and (v) *de minimis* contracting.

The contracting procedure varies depending on the type of procurement. However, the above regulation sets out the rules to determine which type applies, as indicated below:

CONTRACTING MECHANISM	SCOPE
Public bidding	This is the default mechanism, since it ensures the greatest participation of bidders. It allows the use of a dynamic bidding system, through which the contract is awarded to the bidder that makes the most favorable offer or has the lowest price to perform the contract, in the case of the reverse auction (Constitutional Court, Decision C-713 of October 7, 2009).
Abbreviated selection	This applies in cases in which a simplified process can be implemented to guarantee efficient contract management because of the characteristics of the purpose of the contract, the contracting circumstances, the amount or purpose of the good, work or service. For example, in the following events: (i) procurement or supply of goods and services of uniform technical characteristics and of common use by the entities; (ii) low-value contracts, based on the annual budgets of the public entities in SMMLV; (iii) healthcare contracts; (iv) bidding processes in which there was no award. In this situation, the entity must initiate the abbreviated selection within four months after the public bidding finished without award. (v) disposal of State assets, with the exception of those referred to in Act 226 of 1995; (vi) products of agricultural origin or destination offered in legally constituted commodities exchanges; (vii) acts and contracts directly involved in the commercial and industrial activities of State-owned industrial and commercial companies and mixed companies, with the exception of contracts under article 32 of Act 80 of 1993; (viii) contracts of entities in charge of implementing programs for protection of threatened persons; programs for demobilization and reincorporation into civilian life of persons and groups outside the law and highly vulnerable population in a recognized state of exclusion; and (ix) contracting of goods and services required for national defense and security.
Merit-based qualification	This applies for selection of consultants or projects in which open competition or prequalification systems may be used. Price is not the main selection criterion and experience is scored.
Direct contracting	This applies exclusively in the following cases: (i) manifest urgency; (ii) public credit contracting; (iii) inter-administrative contracts, provided that the obligations are directly related to the purpose of the entity as set out in the law or its regulations; (iv) contracting goods and services of the defense sector and the administrative department—National Intelligence Directorate—that require reservation for their acquisition; (v) contracts for developing scientific and technological activities; (vi) fiduciary assignment contracts entered into by territorial entities under a liability restructuring agreement; (vii) when there is no plurality of bidders in the market; (viii) for rendering professional and management support services; (ix) leasing or acquisition of real estate; and (x) selection of experts or technical advisors to present or rebut expert opinions in legal proceedings.
***De minimis* contracting**	This is used when the value of the contract does not exceed 10% of the smallest amount of the public entity, regardless of the subject matter.

Finally, article 3 provides that any administrative acts, documents, contracts and, in general, the acts derived from the pre-contractual and contractual activity may be in electronic format. Therefore, the Government has implemented the Public Procurement Electronic System ("**SECOP**"), which is managed by the National Agency for Public Procurement Colombia Compra Eficiente and works as an e-procurement transactional platform.

9.3. The SECOP and its purpose

A public procurement electronic system ("SECOP") has been implemented

The SECOP is the platform where State entities, whether or not subject to the EGCP, must publish the legally required information regarding their different selection processes so that the general public may be informed and make comments or submit bids.

The SECOP is the official means of information on all contracting carried out with public resources. In addition, it is the only point of entry of information and generation of reports for State entities, control entities and the general public, which ensures compliance with the principles of disclosure and transparency in contract management.

Thus, State entities using public resources to contract must publish their contractual activity in the SECOP, regardless of their legal regime, public or private nature or government branch, even if implementing the contract does not involve budgetary expenditures.

Article 99 of Act 2294 of 2023, through which the National Development Plan 2022-2026 was enacted (as explained below), provides that the Chambers of Commerce of Colombia must guarantee the interoperability between the Single Registry of Bidders ("**RUP**") and the SECOP, allowing users to access the information recorded through the SECOP platform. This change is of utmost importance, since all individuals and legal persons wishing to enter into contracts with State entities must register with the RUP.

9.4. Public-Private Partnerships ("PPPs")

Act 1508 of 2012 (the "**PPP Act**") was enacted on January 10, 2012, to address the delays and deficiencies in developing the country's infrastructure. It promotes the development of infrastructure projects in Colombia, seeking to attract new foreign investment.

The PPP Act has created new opportunities for building and operating public infrastructure projects, provided additional comfort to lenders and substantially improved the country's previous private finance initiative regime. Primarily, the PPP Act provides a new legal regime that continues to be governed by the EGCP in certain matters (procurement procedures and rules for entering and implementing contracts).

Under article 1 of the PPP Act, PPPs are an instrument to connect and raise private capital, materialized in a contract between a State entity and an individual or legal person under private law, for the provision of public goods and services. It involves retaining and transferring risks between the parties, and payment mechanisms related to the availability and level of the infrastructure or service

The PPP Act created new opportunities for building and operating public insfraestructure projects

The PPP Act significantly expanded the types of projects to include a wide variety of infrastructure construction and operation projects. Under article 3 of the PPP Act, this regime applies to all contracts that entrust a private investor with the design and construction of an infrastructure and its related services, or with construction, repair, improvement or equipment, all of which must involve the operation and maintenance of such infrastructure. PPPs may also include infrastructure for the provision of public services, so they may be used for all types of infrastructure related projects, such as roads, railroads, airports, hospitals, public buildings, public transportation systems and river projects. On the other hand, article 3(1) of Act 1508 limits its application to projects with investment amounts exceeding 6000 SMMLV.

Under the PPP Act, payments to concessionaires are subject to the delivery and continuous availability of the infrastructure and the concessionaire's compliance with certain service levels and quality standards. Therefore, payments to concessionaire will only be made once the project has reached commercial operation.

As a rule, the PPP Act sets out a maximum 30 years for contracts entered into by State entities. However, if there is a favorable decision of the National Council of Economic and Social Policy ("**CONPES**"), such maximum term may be extended in special circumstances. Additions and extensions of PPP contracts may only be made after the first three years and before expiration of the first three quarters of their original term

The PPP Act also establishes a limit to increase the value of the contract up to 20% for public initiative projects and 20% of the public funds originally requested in private initiative PPPs. Likewise, any extension (which is also limited to 20% of the initial term) must be measured economically so as not to breach either of these limits.

The PPP Act also includes elements typical of traditional project finance arrangements. For example, project resources must be managed through an autonomous trust fund through which all project assets and liabilities must flow. This requirement provides greater assurance to lenders with respect to the proper management of the resources, the payment of amounts due and the enforcement of any security interest. It also expressly grants project lenders takeover rights in the event of default by the concessionaire. In addition, the PPP Act requires that all PPP contracts include an early termination formula, which provides additional security for lenders.

On the other hand, article 14 of the PPP Act authorizes private parties to prepare public infrastructure projects or projects for the provision of related services at their own risk and assuming the full cost. They must submit such proposals confidentially and under reserve for consideration by the competent State entities, hence the difference between public initiative and private initiative PPP projects. Private initiative projects are referred to in article 14, while public initiative projects are governed by articles 9 to 13 of Act 1508 of 2012. Applicable regulations: Act 80 of 1993, Act 1150 of 2007, Act 1508 of 2012, Act 1682 of 2013, Act 1882 of 2018 and Regulatory Decree 1082 of 2015.

9.5. Basic features PPPs. Differences between private initiative and public initiative PPPs

Usually, PPP projects are proposed by State entities, advancing the entire structuring process required. These are known as public initiative PPPs. However, the law also allows private parties, at their own risk, to structure PPP projects that are then submitted to the competent State entity. These projects are known as private initiative PPPs and the difference, in addition to the structuring party, is the structuring process. The main differences between public initiative PPPs and private initiative PPPs are listed below.

- The sponsor of public initiative PPPs is a State entity, while in private initiative PPPs it is the private parties interested in implementing the project.
- The technical, legal and financial structuring process for private initiative PPP projects is divided into two stages to be completed by the sponsors:

i. Prefeasibility stage

1. The purpose of this stage is for the sponsor to propose, quantify and compare technical alternatives to analyze the feasibility of the project. It is, therefore, important for the sponsor to have secondary information, historical figures and State economic projections, as well as to carry out field inspections. Once the project initiative has been submitted at this stage, the State entity will have three months to verify whether the proposal is of interest to the entity, whether it is in the priority projects to be developed in accordance with sector policies, and whether it contains the necessary elements to determine its viability.
2. Once the private initiative has been submitted, the competent entity must register the project in the Single Registry of Public-Private Partnerships (RUAPP) within five working days following receipt. The purpose of this registration is to identify the first initiative submitted to any competent State entity and that will be subject to study. That is, other private initiatives on the same project will be studied only if the first one is declared non-viable.
3. After the three-month period mentioned above, the State entity must indicate whether it considers the project to be of public interest. If so, it must include the following information:

a. The minimum studies to be delivered at the feasibility stage, their form and specifications.

b. The studies identified in the prefeasibility stage that must be prepared or supplemented in the next stage.
c. The required financial or financing capacity.
d. The minimum experience in investment or project structuring.
e. The maximum term for delivery of the project in the feasibility stage, which in no case may exceed two years, including extensions.

ii. Feasibility stage

1. The purpose of the information to be delivered by the sponsor at this stage is to enable the entity to deepen the analysis and basic information available at the prefeasibility stage through field research and primary information gathering, with the purpose of reducing uncertainty and expanding the information on the technical, financial, economic, environmental and legal aspects of the project.
2. At this stage, the sponsor must submit proof of its legal, financial or potential financing capacity, investment or project structuring experience or experience developing the project; the value of the project structuring and a draft of the contract to be entered into, including, among others, the risk allocation proposal must be included.
3. Additionally, at this stage the sponsor must submit (i) a detailed financial model supporting the project's value; (ii) a detailed description of the phases and duration of the project; (iii) justification of the contract term; (iv) a project risk assessment; (v) the environmental, economic and social impact assessments; and (vi) the technical, economic, environmental, land, financial and legal feasibility studies.
4. Once the private initiative has been submitted at this stage, the competent State entity will have six months to evaluate the proposal and to consult with third parties and competent authorities as it deems appropriate. If, once the studies are completed, the State entity considers the initiative viable, it will so inform the sponsor, specifying the conditions for acceptance of the initiative, including the accepted value of the studies performed and the contract conditions. If, on the other hand, the entity rejects the initiative, it must do so by means of a duly motivated administrative act.

- The selection procedure for public initiative PPP projects will be public bidding.
  The selection procedure for private initiative PPP projects will be public bidding or abbreviated selection with prequalification, depending on whether or not the project involves public resources.
- Private initiatives may not be submitted for projects:

i. that modify existing contracts or concessions;
ii. that request guarantees from the State or disbursements of resources from the general national budget, territorial entities or other public funds, higher than those established in Act 1508 of 2012;
iii. if a similar project has been structured by any state entity, or if the contract for its structuring has been awarded or already contracted;
iv. if they are not provided for in the Pluriannual Investment Plan of the respective Development Plan or in any of the entity's planning instruments; and
v. those that do not require disbursement of public resources must have, at least, a liquid mechanism to address the risks borne by the State entity. Such mechanism will be funded with the project's own resources, other than surpluses of other subaccounts, and will represent at least 76% of the estimate of the valuation of contingent obligations.

9.6. Requirements and procedures for implementing projects through PPPs

The procedure for public initiative PPPs are different from that of private initiative PPPs. The following is the procedure for a public initiative PPP:

Under articles 9 of Act1508 of 2012 and 2(2)(2)(2)(1)(4)(1) of Decree 1082 of 2015, the selection process for PPP projects will be public bidding, under article 30 of Law 80 of 1993. Likewise, under article 10 of Act 1508 of 2012, State entities may choose the investor through an open or prequalification system. Under article 16 of Decree 1467 (compiled by Decree 1082 of 2015), when the value of the PPP contract has an estimated cost greater than 70,000 SMMLV prior to opening the bidding process, a prequalification system will be carried out so that the experience of the private sector may improve the definition of the project implementation conditions[8] .

Article 11 of Act 1508 of 2012 establishes the requirements that the tendering entity must fulfill: (i) current technical, socioeconomic, environmental, property, financial and legal studies in accordance with the project; (ii) complete description of the project, including design, construction, operation, maintenance, organization and exploitation; (iii) detailed financial model supporting the project's value; (iv) detailed description of the phases and duration of the project and justification of the contract term; (v) project cost-benefit analysis, considering its social, economic and environmental impact on the population directly affected, and evaluating the expected socioeconomic benefits; (vi) justification for using the PPP mechanism for implementing the project, in accordance with the parameters defined by the National Planning Department (DNP). The analyses must have the prior favorable opinion of the DNP or the planning entity of the relevant territorial entity.
For this purpose, the Ministry of Finance and Public Credit (MHCP) must approve the valuations of the contingent obligations made by the State entities; (vii) threat and vulnerability analysis to guarantee the non-generation or reproduction of disaster risk conditions; and (viii) the adequate typification, estimation and assignment of the risks, contingencies and matrix of related risks.

Article 12 of the above Act sets out that for public initiative PPP projects, or those that require disbursement of public resources, the principle of objective selection will translate into choosing the most favorable offer for the entity and the purposes it seeks. To this end, the selection and qualification factors must take into account: (i) the legal, financial or financing capacity and experience in investment or project structuring, which will be subject to documentary verification of compliance by the State entities as qualifying requirements for participating in the bidding, without awarding any points; and (ii) the most favorable offer, i.e., the one representing the best offer or the best cost-benefit ratio for the entity, taking into account the specific technical and economic factors and their weighting. Within these criteria, the entities may consider the service levels and quality standards, the present value of expected revenue (VPIP), the lowest State contribution or the highest State contribution, as the case may be, among others.

On the other hand, for private initiative PPP projects, article 14 of Act 1508 of 2012 provides that the structuring process is divided into two stages: prefeasibility and feasibility.

Additionally, the project sponsor must submit documents that prove its legal, financial or potential financing capacity, investment or project structuring experience or its know-how to implement the project, and the value of the project structuring (article 14, Act 1508 of 2012).

9.7. Future budgetary allocations *(vigencias futuras)*

Future budgetary allocations (vigencias futuras) are unconditional budgetary commitments of the Government against tax revenues and, therefore, are part of the annual budget of public entities such as the National Infrastructure Agency ("**ANI**").

[8] A list of prequalified bidders will be created through a public call for bids, establishing a limited group of bidders to participate in the selection process.

These future budgetary allocations are an exceptional budgetary instrument that allows public entities and the Government to make projections and assume greater amounts of fiscal obligations than they could generally assume from the annual budget; something that would not be possible if they could only consider ordinary provisions.

According to the information published by the Ministry of Finance and Public Credit, productivity levels in the transportation sector are expected to increase through the implementation of road corridor projects and mass transportation systems that will be financed with these resources. This, through two channels: on the one hand, to improve mobility in the capital cities, as well as to enhance regional integration; and, on the other hand, to favor the country's competitiveness by facilitating accessibility between production and commercialization centers.

9.8. Investment opportunities

Road sector

The Fourth Generation Highway Program ("**4G Program**") and the Bicentennial Concessions Program-5G ("**5G Program**") are currently being implemented.

The 4G Program includes 30 road projects and its purpose is the construction of highways of approximately 8,000 kilometers (4,970 miles)[9]. According to information published by the Colombian Chamber of Infrastructure, by February 2023, the projects of this generation already have an average construction progress of 70.7%.

Of the total of 29 projects of the 4G Program, to date, the following have been completed: (i) Girardot-Honda-Puerto Salgar; (ii) Puerta De Hierro-Palmar de Varela and Carreto-Cruz Del Viso; (iii) Autopista Conexión Pacífico 2; (iv) Cartagena-Barranquilla and Circunvalar de la Prosperidad; (v) Vías del Nus; (vi) Transversal del Sisga; (vii) Autopista al Mar 1; (viii) Neiva-Espinal-Girardot; (ix) Conexión Norte;(x) Chirajara-Fundadores; (xi) Autopista Rumichaca – Pasto; and (xii) Autopista al Mar 2. Seven of these projects are already completed and of the 29 projects, eight already have an average work progress of more than 90% and three already have an average work progress of more than 80%.

On the other hand, the 5G Program is composed of two phases, totaling approximately 1,000 kilometers (621 miles) in its first wave alone, and it will require an investment of COP 50.26 trillion. Unlike the 4G Program, the 5G Program is multimodal, including road, airport, railroad and river projects. It seeks to overcome the challenges and problems identified in the 4G Program regarding land, social and environmental management, and to improve the regulation of certain fundamental aspects of the projects, such as bankability or social and environmental sustainability.

In its first phase, the 5G Program comprises 14 projects, i.e., 7 highway projects, 4 airport projects, 2 river projects and 1 railway project: (i) IP ALO Sur, (ii) Accesos Norte 2; (iii) Accesos Cali-Palmira; (iv) Buga-Buenaventura; (v) Puerto Salgar-Barrancabermeja (Troncal del Magdalena 1); (vi) Barrancabermeja-San Roque; (vii) Santuario-Caño Alegre (Ruta del Agua); (viii) IP Aeropuertos de Suroccidente; (ix) IP Aeropuerto de Cartagena; (x) IP Nuevo Aeropuerto de Cartagena; (xi) IP Aeropuerto de San Andrés; (xii) Navegabilidad Río Magdalena; (xiii) Canal del Dique; and (xiv) La Dorada-Chiriguaná (railroad project).

Among the second phase projects of the 5G Program are (i) Terminación Ruta del Sol 1; (ii) Sistema Aeroportuario de Bogotá-SAB 2050; and (iii) IP Dragado de Buenaventura.

Five road projects of the 5G program have already been awarded: (i) Accesos Cali-Palmira; (ii) Accesos Norte 2; (iii) Alo Sur; (iv) Troncal del Magdalena I; and (v) Troncal del Magdalena II. Others, such as La Dorada-Chiriguaná, are undergoing a public bidding process to be awarded before the end of this year.

Other potential projects for the second half of 2023 are the Tren del Norte and Tren del Río (the bidding process is expected to begin in August 2023); Alo Centro, which, depending on its structuring as a public or private initiative, may be awarded in 2023 or 2026; and the Rafael Núñez Airport in the city of Cartagena de Indias, which is expected to be awarded in September 2023.

Railway systems

Colombia's railway system covers 3,344 kilometers (2,053 miles), of which 3,154 kilometers (1,959 miles) are narrow gauge, and 150 kilometers (93 miles) are standard gauge (the railroad connecting the coal mines of "El Cerrejón" with the seaport of Puerto Bolívar). Only 2,611 kilometers (1,622 miles) are currently in use.

Some territorial entities have made progress in structuring and developing rail projects to provide public transportation systems. Currently, there are several projects awarded or under structuring that involve the provision of public transportation systems through various types of railroads.

The most important project in Bogota is the First Metro Line. This project was awarded in October 2019, and its approximate budget is USD 4.4 billion. The project comprises 23.96 km, 16 stations, 10 of which will be connected to Transmilenio, Bogota's bus rapid transit system, with a maximum capacity of 36,000 passengers per hour in one direction, an average commercial speed of 43 km/h and a total rolling stock of 23 trains. The Second Metro Line, which will be 15.5 kilometers long and will have 11 stations, 5 of which will be integrated with the Transmilenio Integrated Mass Transit System, is currently in the prequalification stage. It is expected to be awarded in March 2023.

Projects aimed at developing economic, productive, social and environmental protection infrastructure in the country may be implemented under PPP schemes.

In the Department of Cundinamarca, the *Regiotram de occidente* project was awarded and is under construction. It includes an electrical system, 39.9 km of interventions in the main corridor, 17 stations, 2 yards and 1 repair facility. All this is distributed between an urban area (14.7 km, 9 stations and 1 repair facility) and a rural area (24.9 km, 8 stations and 1 yard and 1 repair facility). The estimated investment of the project is close to USD 424.24 million CAPEX, plus approximately USD 215.15 million for rolling stock and USD 16.36 million OPEX. The Department of Cundinamarca, Bogota and some important municipalities of the Department are in the process of structuring the second part of the *Regiotram* project, seeking to extend it to the northern municipalities.

9.9. National developement plan

Every four years, the Colombian Congress enacts a National Development Plan Act ("**PND**"), at the initiative of the incoming Government. The PND establishes the (i) general guidelines; (ii) national objectives; (iii) medium and long-term Government goals; (iv) strategies and public policies in economic, social and environmental matters; and, in general terms, the guidelines for the Government to achieve the defined goals in the next

[9] https://www.larepublica.co/opinion/editorial/el-urgente-salto-que-debe-dar-la-infraestructura-3370675

three years. In this case, Act 2294 of May 19, 2023, approves the "National Development Plan 2022-2026 Colombia world power of life," including the following guidelines for the infrastructure sector:

i. Public-popular alliances

Public-popular alliances are contractual instruments to link public entities and different associative entities such as popular economy units and communal, social or community organizations. Their purpose is to implement road, educational, environmental, agricultural, fishing, livestock and public service infrastructure projects. The value of the investments must not exceed 6,000 SMLMV, and the contribution made by the public entity must not exceed 50% of the investment value. The Government must establish the rest of the regulatory aspects of these alliances within six months (article 101).

ii. Financing

Transportation infrastructure projects may have several sources of financing, including the general national budget, territorial entities' resources, royalties and the mechanism of works for taxes (article 255).

The territorial entities may contribute the land or resources required by public infrastructure projects under the ANI through land management and financing instruments such as securitization of property tax or capital gains for public works. This will only be possible if the projects are included in the territorial planning instrument (article 256).

Finally, the PND establishes that the territorial entities may finance investment projects outside their jurisdiction but with benefits for them. For this purpose, they must sign an agreement including both the conditions for financing and the project's benefits for the contributing territorial entities (article 276).

iii. Special sectors

The PND enables the ANI to structure, contract, implement, manage and evaluate concession projects and other forms of public-private partnerships whose purpose is to expand social and productive infrastructure (article 105).

The Government may co-finance studies and designs, as well as the construction of infrastructure associated with strategic projects for urban development, in accordance with the climate change adaptation strategy for human settlements and resettlements (article 297).

The PND allows public-private partnership schemes for projects aimed at developing economic, productive, social and environmental protection infrastructure, as well as for projects that promote technological and educational development, healthcare service improvement, reduction of biodiversity loss and the fight against climate change. The Government is called to regulate this matter (article 239).

Finally, the National Roads Institute ("INVIAS") and the Special Administrative Unit of Civil Aeronautics ("AEROCIVIL") may enter into and implement public works contracts to carry out supplementary works on concession infrastructure, without requiring the concession's withdrawal. The foregoing is subject to entering an inter-administrative agreement between INVIAS or AEROCIVIL and the entity granting the infrastructure (article 284).

iv. Public transport

The PND provides two particularly relevant avenues for project co-financing.

The PND provides two special avenues for co-financing public transport projects

First, through the amendment to Act 310 of 1996, the PND sets out that the State will pay up to 40% of the total contributions of the co-financing agreement, but the territorial entity must certify that at least 60% of the routes of the respective public transportation system (including fleet management and control system and centralized collection system) are in operation for payment of the remaining percentage. In addition, within six months after termination of the agreement, the territorial entity must certify that 100% of the system is in operation. Otherwise, 40% of the resources co-financed by the State must be returned to the National Treasury. Also, the PND adds new items that may be co-financed (debt service, land acquisition and resettlement plans) and expressly excludes others (administrative expenses, maintenance, hiring or payment of personnel required during the implementation and development of the system, among others) (article 172).

Second, the PND provides that the State may co-finance, within the medium-term budgetary framework, an amount greater than 70% of railroad projects throughout the country subject to a previous co-financing agreement (article 173).

Finally, the PND sets out that the managing entities of the public transportation systems co-financed by the Government may contribute to their sustainability with the following sources of income: (i) performing supplementary commercial, service, leisure or telecommunication activities; (ii) exploiting the areas adjacent to the public transportation system that have been generated or will be generated according to the final studies and designs when the infrastructure is built; (iii) exploiting visual advertising inside and outside the infrastructure under construction or operation, including site enclosures, as well as on its rolling stock and vehicles; and (iv) developing urban projects or collateral businesses (article 182).

10

Energy

The energy mining sector is particularly important in Colombia

The energy mining sector is particularly important in the Colombian economy. According to DANE figures, the sector's share of national domestic product ranged between 8% and 14% in the period from 2005 to 2019. Below are the particularities and requirements to be considered by project developers in the Colombian mining and energy sector.

Under the 1991 Political Constitution, the State owns the subsoil and non-renewable natural resources. To exploit natural resources such as minerals and hydrocarbons, it is necessary to enter into contracts with the state entities that manage these resources, as well as to pay royalties to the State as a consideration for the exploitation.

10.1. Mineral exploitation

Colombia is a country with great potential for investment in mining exploration, since only 2.89% of its surface area is engaged in mining. This makes the country an interesting destination for potential investors. The National Mining Agency ("**ANM**") is the authority in charge of granting mining titles through concession contracts that include the right to explore and extract mineral resources and must be registered in the National Mining Registry. In addition to exploration and exploitation, they grant the right to carry out all activities and works necessary for developing the mining activity. The duration of the concession is usually 30 years, extendable for the same period.

Interested investors may access this contract by (i) request: the interested party may request the mining concession of any mineral located in an available sector; (ii) negotiation: investors may freely transfer to another the mining title previously granted by the competent authority; and (iii) strategic mining areas: due to the diversity of the sector, the ANM carries out an objective selection process in which a special exploration and exploitation contract is awarded for those areas with strategic minerals.

10.2. Hydrocarbon exploitation

The National Hydrocarbons Agency ("**ANH**") is the authority in charge of regulating, managing and promoting the country's hydrocarbon resources. As in the mining sector, the ANH awards the exploration and production contract (E&P), granting the right to explore the assigned area and allowing the production of hydrocarbons upon the holder's declaration of commercial viability, if production is considered economically profitable.

Investors can obtain E&P contracts through (i) a competitive process: the ANH carries out an open or closed process to select the most favorable proposal; (ii) direct assignment: exceptionally, the ANH may directly assign the E&P concession of certain areas; (iii) a technical evaluation contract (TEA): unlike the above, the ANH may grant this contract with the purpose of evaluating an area and identifying its hydrocarbon potential for a 36-month period extendable for 2 more years. The evaluator will have a priority right to subsequently execute the E&P contract.

The ANH is the authority in charge of regulating, managing and promoting hydrocarbon resources

10.3. Electricity sector

Colombia's electricity matrix is 68.4% hydraulic energy, 30.7% thermal energy, 0.1% wind and 0.1% solar energy. However, since the enactment of Act 1715 of 2014, the Colombian government has encouraged non-conventional renewable generation through tax incentives. The Colombian electricity sector includes (i) generators that produce energy; (ii) transmission agents that transport energy through transmission systems and the operation, maintenance and expansion of transmission systems with voltages equal or higher than 220 kV; (iii) distributors that transport energy through a distribution network at voltages equal or lower than 220 kV ; and (iv) trading companies that purchase energy and sell it to end users.

Under article 74 of Act 143 of 1994, vertical integration of the different activities is allowed, except for transmission, which cannot be developed jointly with any other activity in the electricity market value chain. The only exceptions to this rule are companies that operated in an integrated manner prior to Act 143 of 1994, which may continue to do so. These sector-specific competition restrictions also apply in the context of a corporate group, taking into account the figure of the ultimate beneficiary.

Regulations establish certain requirements for agents. Those interested in entering the power system must incorporate as a public utility company and register before XM S.A E.S.P. ("**XM**") in its capacity as Commercial Exchange System Administrator (ASIC).

XM is the Colombian power system operator. Among its functions are:

i. acting as national dispatch center (CND), in charge of planning, supervising and controlling the integrated operation of the generation, interconnection and transmission resources of the National Interconnected System, ensuring a safe, reliable and economic operation;

ii. acting as manager of the commercial exchange system (ASIC), in charge of registering commercial borders, long-term energy contracts, settlement, billing, collection and payment of all transactions in the wholesale energy market; and

iii. acting as liquidator and account manager (LAC) with respect to the charges for the use of the National Interconnected System networks assigned to it. It also calculates the regulated income of the transporters, in accordance with CREG regulations.

For the sale of energy, projects may choose to enter into power purchase agreements (PPA) or sell the energy produced in the spot market. Additionally, investors may obtain additional income through the reliability charge, i.e., remuneration paid to a generator for the availability of generation assets in hydrological critical conditions. This mechanism can be accessed, among others, through competitive mechanisms such as auctions.

The Colombian government has encouraged non-conventional renewable generation trough tax incentives

For 2023, the Energy and Gas Regulatory Commission (CREG) launched, through Resolution CREG 101-034A of 2022, an auction for allocating firm energy obligations of the reliability charge for the period between December 1, 2027 and November 30, 2028. Through this auction, participants will be able to be allocated with firm energy obligations for up to 20 years for new plants, 10 years for plants under construction or special plants and 1 year for existing plants. This auction will take place in February 2024.

10.4. Offshore wind power

Colombia has some of the best natural conditions for offshore wind power generation in the world. For this reason, and in response to the interest of private investors, the Government—through the Ministry of Mines and Energy—has recently issued the rules, requirements and minimum conditions of the competitive process for granting the temporary occupation permit over maritime areas. This permit allows activities to determine the feasibility of an offshore wind power project in a specific area. The permit is granted by the General Maritime Directorate (DIMAR), it is valid for eight years, and it may be extended under certain conditions. Likewise, the permit may be waived if the project appears to be unfeasible, or it may be transferred to a third party to continue with its implementation.

At the end of the eight-year term, or during the eight years, the permit holder may request a maritime concession from DIMAR to implement the project. The concession will be granted for 30 years and may be extended for one or more periods not exceeding, in total, 15 years. With the award of the maritime concession, the holder may request a connection to the system from the Mining and Energy Planning Unit (UPME) and commercialize the energy.

Finally, the Ministry of Mines and Energy has delegated to the National Hydrocarbons Agency the preparation of studies and assessments, as well as the structuring and advancement of competitive processes related to offshore wind power, taking into account its experience in offshore projects, especially in hydrocarbon exploration and exploitation.

The Government launched the regulation and bidding documents for the first action of temporary occupancy permits over maritime areas. Such competitive process will take place in 2024.

10.5. Hydrogen market

To advance in the diversification of the country's energy matrix, the Colombian government, through the Ministry of Mines and Energy, has issued guidelines for developing and exporting zero and low-emission hydrogen. Among the most relevant milestones in the development of a national hydrogen market are Act 2099 of 2021, providing significant tax benefits for projects that use or develop hydrogen for power generation, and Act 2169 of 2021, declaring the public and social interest of production and storage of green hydrogen projects.

Following this incentive approach, the Ministry of Mines and Energy issued Decree 1476 of 2022, introducing relevant market regulation elements. The Decree defines green hydrogen and blue hydrogen projects, and it entrusts different government entities with regulating different market specificities.

Under the current regulation, green hydrogen is defined as hydrogen produced from non-conventional renewable energy sources and hydrogen produced with self-generated power from non-conventional renewable energy sources and electric energy from the national interconnected system, as long as the self-generated power from non-conventional renewable energy sources delivered to the system is equal to or greater than the energy taken.

On the other hand, blue hydrogen is defined as that produced through fossil fuels with carbon capture, storage and utilization technologies.

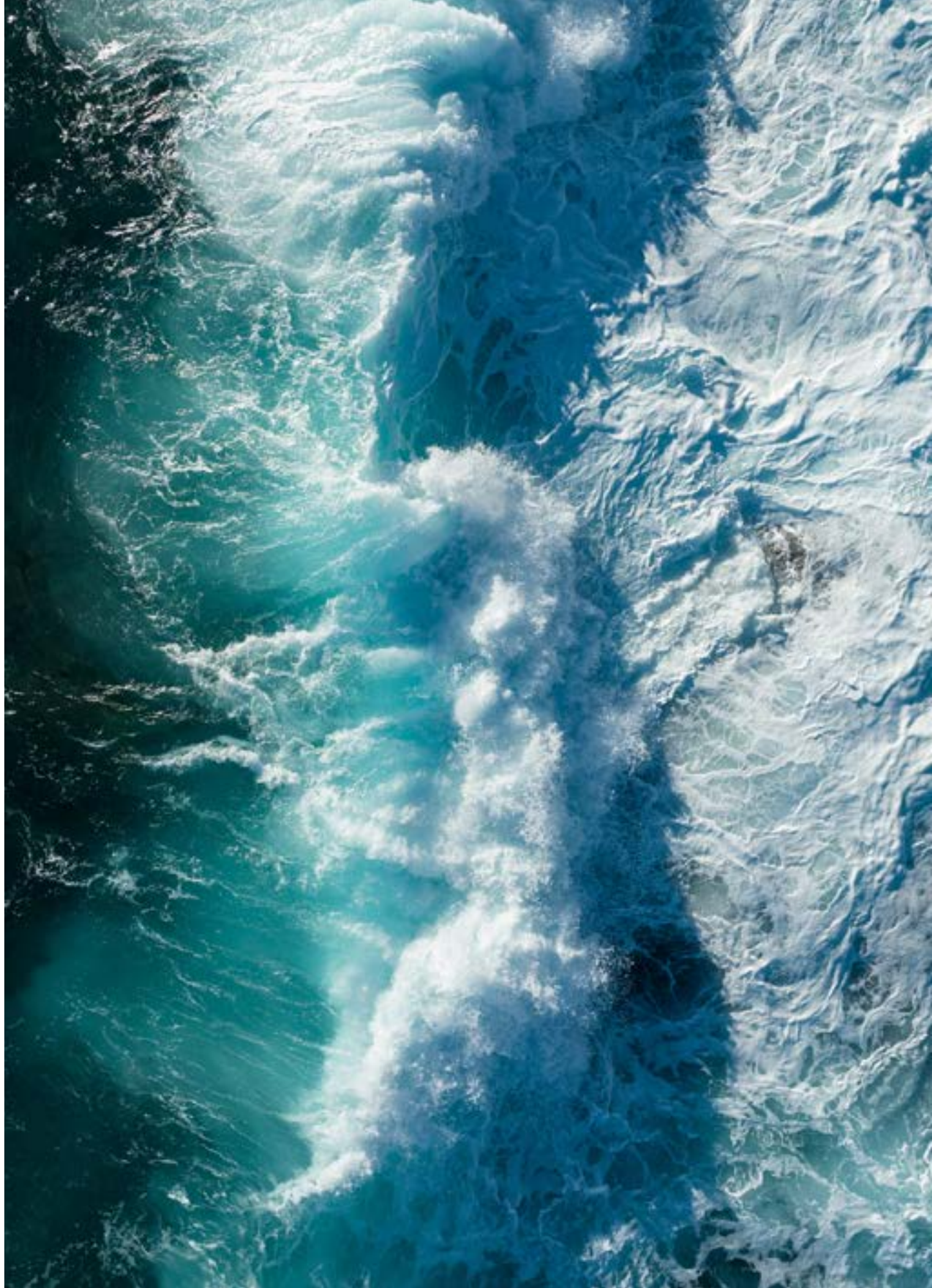
Based on the above, there is a clear intention on the part of the Government to encourage the production and storage of hydrogen for energy generation. With the introduction of clear rules and market incentives, the foundations are being laid for an investor-friendly market in terms of financing and legal certainty.

10.6. National Developement Plan (PND)

The PND also introduced a series of regulatory changes with direct impact on the energy sector. The following are the most relevant provisions:

i. Increasing the percentage of electricity transfers for non-conventional renewable plants.

   For new plants not yet in operation and located in areas with higher average annual solar radiation index (greater than 5 kWh/m2/day) and higher average wind speed (greater than 4 m/s at 10m height), according to IDEAM, the percentage of transfers will be 6% of gross energy sales from own generation. For existing plants that comply with the above requirements, transfers will be 4%. In both cases, the increase will be implemented gradually.



In the case of new plants, a first increase of two percentage points will be made two years after the PND is issued, followed by 1% annual increases for three years, until 6% is reached. For existing plants, a first increase of 1% will be made two years after the PND is issued, followed by annual 1% increases for two years, until reaching 4%.

ii. Definition of energy communities

The PND coins a new concept, "Energy Communities." These communities will be groups of individuals or legal entities whose purpose is generating, commercializing or efficiently using energy through non-conventional renewable sources, renewable fuels and distributed energy resources. Individuals and self-government structures of the Indigenous Peoples and Communities, as well as Black, Afro-Colombian, Raizal and Palenquero communities constituted as Energy Communities, may receive public resources for infrastructure investment, operation and maintenance. Regulatory Decree 2236 of 2023 issued the regulation applicable to the definition, registry, objectives and criteria applicable to Energy Communities to be considered as such.

SECTOR	CONTRACT / REQUIREMENT	AUTHORITY	TERM / PERMIT	PROCESS	REMUNERATION
Energy	Authorization	UPME	N/A	Application	Tariff / PPA
Hydrocarbons	Concession	ANH	E&P: 6 - 24 years ETA: 36 months	Invitation to tender / Direct award	Concession contract
Mining	Concession	ANM	30 years	Application / Direct award	Concession contract
Offshore wind power	Concession	DIMAR	30 years	Invitation to tender	Tariff / PPA

11

Private parties' use or exploitation of renewable natural resources in the public domain requires permits or concessions

Environmental

11.1. Environmental permits and licenses

Private parties' temporary use or exploitation of delimited parts of renewable natural resources in the public domain requires prior permits or concessions. Below is a list of the main permits for the use and exploitation of renewable natural resources under Colombian environmental law:

- Water discharge permit
- Groundwater exploration permit
- Water concessions
- Airborne emissions permits
- Forestry exploitation permit
- Riverbed occupation permit

According to Colombian environmental regulations, any project, work or activity listed as capable of seriously deteriorating the renewable natural resources or the environment, or of considerably altering the landscape, will require a prior environmental license.

The main characteristics of the Colombian licensing regime are as follows:

- The environmental license is a precondition for the exercise of the rights arising from permits, authorizations, concessions, contracts and licenses issued by authorities other than environmental authorities.
- The environmental license will include all permits, authorizations or concessions for the use, exploitation or allocation of natural resources required for the development of the project, work or activity. Therefore, they cannot be obtained independently.
- The environmental license will be granted for the useful life of the project, work or activity, and it must include all environmental authorizations associated with the planning, siting, construction, assembly, operation, dismantling, abandonment or termination of all actions, uses of space, activities and infrastructure related with its implementation, under the terms of Decree 1076 of 2015.
- Among the projects, works and activities subject to environmental licensing, the following stand out: hydrocarbon and mineral exploitation activities; construction and operation of power plants with installed capacity equal to or greater than 10 MW; projects for the exploration and use of virtually polluting alternative energy

sources with installed capacity equal to or greater than 10 MW; construction or expansion and operation of ports; construction and operation of facilities for the storage, treatment, use, recovery or disposal of hazardous waste; and projects for the storage of hazardous substances (excluding hydrocarbons).

- The Regional Autonomous Corporation of the relevant area or the National Environmental Licensing Authority will be responsible for granting the environmental license, according to the distribution of competences under the environmental regulations (based on the type, conditions and size of the project, work or activity).
- Applicants must provide certification from the Prior Consultation Authority on the appropriateness of prior consultation for the specific project, work or activity. Where applicable, the consultation must be carried out, in accordance with the guidelines of Presidential Directive 8 of 2020 and those established by constitutional case law.
- Additionally, non-ethnic communities must be informed of the project's scope, with emphasis on impacts and management measures.
- Omission of mandatory prior consultation may result in the suspension or nullity of the environmental license.

11.2. Competent environmental authorities

The National Environmental System comprises several authorities and entities. Among the most relevant are (i) the Ministry of Environment and Sustainable Development, responsible for the national policy on environmental matters and renewable natural resources; (ii) the National Environmental Licensing Authority, that grants environmental licensing of projects according to the distribution of competences under Decree 1076 of 2015; (iii) the Regional Autonomous Corporations as maximum environmental authority in their area of jurisdiction, also competent for granting environmental licenses under Decree 1076 of 2015 and for delimiting and declaring regional protected areas; and (iv) the Administrative Unit of National Natural Parks of Colombia, responsible for the administration, management and coordination of the Natural Parks System.

11.3. Environmental protection areas

In Colombia, there are different environmental protection categories that regulate or limit the participation in and use of natural resources or restrict the implementation of particular projects, works or activities (under the zoning and use regime). Accordingly, prior to any development or investment decision, it is advisable to carry out an analysis of the requirements, conditions and potential restrictions.

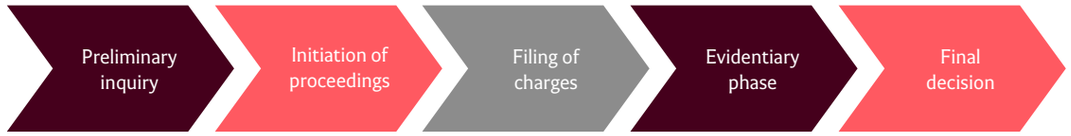
One of the most relevant environmental protection categories is the National System of Protected Areas ("**SINAP**"), made up of (i) public protection areas, namely the National Natural Parks System, Protective Forest Reserves, Regional National Parks, Integrated Management Districts, Soil Conservation Districts and Recreation Areas; and (ii) private areas, namely Natural Reserves of the Civil Society. Anyone interested in uses or activities prohibited within a protected area for reasons of public and social interest may request the total or partial removal of the area (except for legally excluded areas).

In addition to the SINAP protected areas, strategic ecosystems and international distinctions such as wetlands and moors are important for Colombia and limit the development of certain types of industries.

11.4. References to environmental liability

Act 1333 of 2009 established an environmental administrative sanctioning regime, including sanctions for environmental violations, understood as: (i) any act or omission that constitutes a breach of environmental regulations or administrative acts issued by the competent environmental authority; and (ii) any damage to the environment, under the same conditions as non-contractual civil liability.

The environmental sanctioning regime provides for a five-stage procedure:



As a result of the environmental sanctioning procedure, the competent authorities may impose the sanctions provided in article 40 of Act 1333 of 2009, including daily fines up to 5,000 SMMLV and the total or final closure of the establishment. For fine assessment purposes, the then Ministry of Environment, Housing and Territorial Development issued the Calculation Method for Environmental Violation Fines. This method applies temporality, benefit, degree of impact or risk, cost, economic capacity and aggravating and mitigating circumstances to determine the fine.

A bill is currently before the Colombian Congress seeking to modify the environmental sanctioning regime under Act 1333 of 2009.

11.5. New scenarios: climate change and ESG criteria

Colombia's climate change mitigation goals under the Paris Agreement have given rise to new realities, incorporating adjustments, obligations and greenhouse gas emission reduction targets as a structural part of new regulations, contractual models and new markets. Project finance initiatives for generation and transaction of carbon credits are already emerging in the country. Increasing capital has turned to projects aligned with these environmental objectives, generating new markets and investment models. Instruments such as the Climate Action Act and the adoption of the Green Taxonomy illustrate the country's progress and intention to generate green markets to achieve international global warming goals.

The Climate Action Act and the Green Taxonomy illustrate the progress towards the generating green markets to achieve international global warming goals

In addition, incorporating ESG criteria at all levels shows the need to adapt industry and business models to new and more demanding realities, so that compliance with environmental, social and governance standards is a basic requirement for accessing new growth opportunities.

11.6. National Development Plan ("PND")

The PND introduces changes to the environmental legal framework with the purpose of "changing our relationship with the environment and achieving a productive transformation based on and sustained by knowledge and in harmony with nature." It seeks mainly to: (i) strengthen communities and (ii) progressively leave behind dependence on extractive activities.

Among the most important changes, the PND:

- Creates Territorial Water Councils to strengthen territorial planning and water governance, with a focus on adaptability to climate change and risk management. To this effect, the Government will regulate the creation, implementation and operation of the Councils with other spaces for participation and consultation of the national integrated water management policy and the national land-use planning policy;
- Provides that those interested in applying for an environmental license for energy infrastructure construction projects required for the energy transition must meet the requirements of article 2(2)(2)(2)(3)(6)(2) of Decree 1076 of 2015. To initiate the process, it is sufficient to submit certification from the Prior Consultation Authority on the appropriateness of prior consultation, which in the case of energy projects implies a benefit;

  Additionally, if the interested party fails to meet all license requirements, the environmental authority will suspend the process. If the suspension exceeds three years, the project manager will have to submit the updated information necessary for the license;

  In adition, the PND allows the Colombian Institute of Anthropology and History (ICANH) to charge a fee to anyone who requires its services regarding the Preventive Archaeology Program (PAP) and the formalities for granting of Archaeological Intervention Authorizations, as well as others that require environmental licenses, registrations or equivalent authorizations before the competent authorities;
- Creates the Zero Waste Program, which aims to eliminate "burial" as a disposal method and encourage the definitive closure of open landfills and transitory cells, giving priority to waste treatment and use; and
- Recognizes the need for strategic minerals for energy transition and promotes knowledge of relevant areas.

11.7. Legislative initiatives

Bill 283 of 2023, amending Act 99 of 1993 and enacting other provisions is currently being processed. Among the proposed changes are (i) establishing the mandatory nature of the Sectoral and Territorial Strategic Environmental Assessment as an early warning tool; (ii) extending the environmental license requirement to other sectoral activities; and (iii) defining a different licensing scheme for different types of projects.

Finally, Bill 015 of 2022 seeks to regulate labeling, advertising and any other form of marketing related to environmentally friendly attributes.

12

Through the Land Use Plan, each municipality regulates its physical space

Real Estate

12.1. General information on the Colombian land use planning system

Organic Act 1454 of 2011 defines land use planning as a planning and management instrument so that territorial entities and territorial integration figures may provide state services throughout the Colombian territory.

Specifically, Act 388 of 1997 (Urban Development Act) and the Recast Regulatory Decree of the Housing Sector define territorial or urban planning as a set of actions undertaken by the municipalities to drive the development of their territory and regulate the use, transformation and occupation of their physical space. The purpose of land use planning is to give economic and social planning a territorial dimension, to rationalize the intervention on the territory and to promote its development and sustainable use. In other words, it makes it possible to manage cities and municipalities. Legally, it translates into (i) the definition of basic urban infrastructure; (ii) the preservation and defense of the ecological and cultural heritage; (iii) equitable and rational land use and, therefore, (iv) the assignment of an economic content to the right to property, as well as (v) disaster prevention.

The central instrument of Colombian urban planning law is the Land Management Plan (POT), through which each municipality regulates its physical space. These instruments classify land as urban, urban expansion and rural. They plan the activities that may be carried out in certain areas, determining the applicable urban development uses and establishing a series of tools and instruments for land use planning. In short, the POT organizes the land to achieve an occupancy model.

Given the convergence of national and regional territorial interests (i.e., transcending mere local or municipal interests), the power of municipalities to organize or plan their territory is limited by higher hierarchical criteria. These are defined as sector-specific administrative decisions at the supra-municipal level with an impact on the territory.

Act 2294 of May 19, 2023, approving the National Development Plan 2022-2026, modified article 10 of Act 388 of 1997, thus establishing a hierarchy of the different criteria for preparing and adopting municipal land use plans.

These higher criteria, especially related to environmental, heritage and infrastructure aspects, limit, on the one hand, the destination that the municipalities want to give to their land and, on the other hand, the right of use of the properties by their owners.

Application of this hierarchy of criteria is mandatory for the land-use planning instruments adopted by the municipalities. However, for collective territories of Afro-Colombian communities and indigenous reservations, the hierarchy of these criteria must respect first the rights of these communities.

The urban development uses and the square meters of building for a given use authorized by the development regulations, are generally contained in the land use plans and, exceptionally, in their supplementing instruments such as zoning plans or partial plans.

12.2. Identification of real property

Real property has a Land Certificate Number *(folio de matrícula inmobiliaria)* kept by the Public Registry Offices and a cadastral identification card. The first one allows legal identification of the property and its legal status. The second identifies the property from the cadastral point of view, determining its physical, legal and economic data. The physical description of the property must match at a legal and cadastral level. For this purpose, article 65 of Act 1579 of 2012 provides that cadastral authorities may only modify or adapt the legal cadastral information based on the titles registered in the Land Certificate Number, thus ensuring legal certainty in transactions.

12.3. Registration of real property

Registration of real property is a means for domain transfer of the property and makes the legal status of the property available to any person, so that any related acts or contracts may be opposable before third parties.

In Colombia, legal acts and businesses, judicial decisions and administrative acts affecting property ownership must be registered in the real estate registry, according to the procedure under Act 1579 of 2012 and its regulatory decrees.

Article 8 of Act 1579 of 2012 classifies the acts subject to real estate registration as follows:

- Transfer: modes of acquisition of ownership, e.g., purchase, trust and vacant land award.
- Encumbrances: mortgages, valuations, capital gains liquidation, mobilization and decrees granting the benefit of separation.
- Limitations and allocations: limiting one or several of the attributes of the property, its use or enjoyment, e.g., usufruct, easements, neighborhood relations, horizontal property, allocation to family housing, imminent or forced displacement, declaration of cultural interest or declaration of forest reserve.

Acts affecting property ownership must be registered in the real estate registry

- Precautionary measures: judicial or administrative decisions of a precautionary nature issued within the framework of a process to guarantee the effectiveness of the decision, e.g., seizures, civil lawsuits, judicial and administrative prohibitions or purchase offers.
- Possession: constituted by public deed or judicial decision, including leases, bailments, antichresis, leasing and liens.
- False transfer: where the transferor of a right is not its holder, e.g., disposal of third-party property or transfer of incomplete right such as between possessors.
- Cancellation: documents or acts that entail the cancellation of the registration of public deeds, judicial or administrative orders that encumber, limit or restrict the right of ownership.
- Others: legal acts that require publishing because they affect the in rem right of ownership but are not included in the previous record, e.g., updating boundaries, updating the size of the property, encompassing or subdivision.

12.4. Requirements for real estate transfers

- Public deed: any transfer or creation of *in rem* rights must be contained in a public deed executed before any notary public in the country.
- The deed must be registered in the real estate registry.
- Deeds may be executed by the legal representatives of legal entities. Likewise, they may be executed by a duly empowered attorney-in-fact. When granted abroad, they must be executed at the Colombian Consulate.

12.5. Aspects to be considered when investing in Colombian Real Estate

Most of real estate investments are structured through commercial trust agreements, traditional sale and purchase agreements or company mergers and acquisitions. Whatever the vehicle, the risks inherent to the real estate asset must be analyzed to determine the indemnities and their impact on the price.

Considering the Colombian context, the main risks have been classified as follows:

- Ownership-related risks: a due diligence should identify the general legal risks caused by the owner's lack of title, the existence of liens, seizures, conditions subsequent, domain limitations or unrecorded deed, among others. It is particularly important to verify the lack of land restitution and expired ownership, since these conditions may result in the legal and material restitution of the property to a third party or to the State, requiring proof of qualified good faith from the acquirer to claim compensation.
- Risks related to territorial and environmental planning: a due diligence is required to verify the purpose and urban use of the property according to land use regulations and higher hierarchy criteria in environmental, risk, heritage and other matters. These aspects have a direct impact on the development capacity of the property and therefore on the price of the transaction. If not verified in advance,

non-compliance may result in difficulties in the development of the property, including the judicial risk of popular actions to protect collective rights to the environment or to seek enforcement of urban planning regulations. Infringement of the above may result in total or partial demolition of the buildings; such position was reiterated last year in two landmark court decisions.

Although each of Colombia's 1123 municipalities has its own Land Management Plan, the procedure for obtaining permits for urban development or to parcel and build is the same throughout the Colombian territory: (i) partial plan for urban expansion land; (ii) urban development or parceling license, depending on whether it is rural or urban land; and (iii) construction license. Depending on the use and size of the construction, special supervision and certifications will be required to guarantee the quality of the work.

12.6. Specific risks associated with rural property

Act 160 of 1994 provides a special regime for rural property that should be taken into consideration prior to buying property or signing contracts. The most recent National Development Plan places significant weight on agrarian property by setting the bases and subsystems of the Agrarian Reform and Rural Development. In addition, Legislative Act 035/2022 Senate-173/2022 created the special agrarian jurisdiction to solve all disputes arising from rural property in Colombia. The regulation of this jurisdiction should become final before the end of 2023.

- **Rural property clarification processes**

Rural properties were, in principle, property of the nation; however, article 48 of Act 160 established certain requirements to prove the private nature of such properties. There are two options to determine whether real estate has correctly left the national domain: (i) a transactional formula and (ii) a form related to the original title issued by the State.

The form related to the original title consists of registering in the Public Deed Registry an adjudication resolution in force and issued by the competent authority. On the other hand, the transactional formula revolves around title deeds registered in the Land Certificate Number prior to August 5, 1974. If none of these formulas is registered, the National Land Agency could initiate a clarification process that may end up reverting the property to the national domain without compensation. This interpretation was reinforced by the Constitutional Court in judgment SU 288 of 2022, ordering the National Land Agency to prepare a recovery plan for wastelands whose original title is an adverse possession judgment.

- **Subdivision of real estate smaller than the Family Agricultural Unit**

Under articles 44 and 45 of Act 160 of 1994, subdivisions of rural properties smaller than the Family Agricultural Unit are prohibited, with certain legal exceptions. Any subdivision of rural property below the Family Agricultural Unit must expressly indicate the applicable exception in the deed and in the subdivision license. Otherwise, the Public Deed Registry could declare the registration null, leaving the owners as co-owners of the property before the subdivision. It is important to verify the area required and the use to be given to the property prior to its acquisition.

- **Undue accumulation of wasteland**

Article 72 of Act 160 of 1994 expressly provides that owners of properties originally awarded as wasteland may not acquire other properties of the same type if their combined extension exceeds the size of the Family Agricultural Unit in the relevant municipality. In case of undue accumulation of wasteland, the National Land Agency may order the reversion of the real estate to the State. It is necessary to verify that the real estate has not been awarded as national wasteland before purchasing.

12.7. Real Estate transfer taxes

Essentially, the buyer must consider the registration tax and registration fees, calculated according to the sale of the asset and paid at the corresponding Public Deed Registry. For transfers of real estate with value equal to or greater than 20,000 UVT, Act 2277 of 2022 additionally provides payment of the stamp tax at a rate determined by the value of the property. In addition, the notary fees for the public deed (also calculated according to the property value) must be paid at the notary's office. Finally, the seller is liable for the withholding tax on income and supplementary taxes depending on the type of property, its value and the duration of the seller's ownership.

12.8. Property taxes

In Colombia, real estate owners are liable for a series of municipal or departmental taxes:

- Property tax: a municipal and district tax arising from the mere ownership of real estate. It must be paid annually and is calculated on the cadastral value according to the economic use of the property, as calculated by the Agustín Codazzi Geographic Institute ("IGAC") or the cadastral manager operating in the municipality. The National Development Plan 2022-2026 requires the IGAC to prepare a method to correct the property appraisal lag nationwide. Consequently, the values paid annually may be adjusted for 2024.
- Valuation contribution: required for construction of public works that benefit a certain property. The amount results from dividing the value of the work by the number of properties that will benefit from the construction. The constructing entity (national, departmental or municipal) is responsible for collection.
- Participation in capital gains: arising from a change in the use of the land, an increase in the occupancy rate or construction rate, or the performance of public works. The applicable rate is between 30% and 50% of the difference between the higher value per square meter and the value before the change in the use of the land or the building conditions of the property. The Secretary of Finance of the relevant municipality is responsible for collection.

13 Finance

13.1. Financial legal framework

The Colombian financial system is comprised of credit institutions, financial services companies, capitalization companies, insurance companies and insurance and reinsurance intermediaries (collectively, the "**financial institutions**"), and is mainly governed by Decree 633 of 1993—Organic Statute of the Financial System ("**EOSF**").

The EOSF establishes the basic regulations applicable to the financial, securities and insurance in Colombia

The EOSF provides the basic regulations applicable to the financial, securities and insurance sectors in Colombia. Together with other supplementary rules, the EOSF governs the activities of the financial institutions to ensure they maintain the stability, security, liquidity and solvency required to protect financial consumers and, in general, anyone involved in financial activities, in a safe and transparent manner.

According to the EOSF, the Colombian Financial Superintendence ("**SFC**") is in charge of supervising the activities of the financial system. The SFC's main functions are to (i) authorize the incorporation and operation of financial institutions; (ii) inspect, monitor and control financial institutions; (iii) ensure the stability and security of the financial system; (iv) promote, organize and develop the Colombian securities market; and (v) protect the rights of financial consumers. The SFC may impose sanctions on financial institutions, as well as on their directors, management, legal representatives, statutory auditors or other officers for infringing the applicable law or breaching legal duties or obligations.

13.2. Supervised and non-supervised financial activities

Under article 335 of the Colombian Constitution, financial, stock market, insurance and any other activities related to fund management, use and investment are of public interest and, therefore, may only be exercised with prior authorization of the SFC. However, in Colombia there are certain financial activities that may be carried out by entities that are not financial institutions, and therefore are not subject to oversight by the SFC. Such is the case of granting loans using private resources that have not been obtained from the public.

Credit institutions, including banks, financial corporations and financing companies, are the only entities allowed to raise funds from the public. Performing this activity by any other entity other than the above may lead to sanctions, including criminal liability.

13.3. The financial system

Financial institutions

Financial institutions may only carry out the activities expressly permitted by the applicable regulations. Therefore, financial institutions have a specific and regulated corporate purpose. The following is a brief description of the financial institutions regulated by the EOSF:

TYPE	DESCRIPTION	FINANCIAL INSTITUTIONS
Credit institutions (art. 2 EOSF)	Financial institutions whose main function is to raise funds from the public in Colombian legal currency, in deposits, on demand or term, in order to place them again through loans, discounts, advances or other credit transactions.	Banks (Chapter II EOSF)
		Financial corporations (Chapter III EOSF)
		Savings and housing corporations (Chapter IV EOSF)
		Financing companies (Chapter V EOSF)
		Financial cooperatives (Chapter VI EOSF)
Financial services companies (art. 3 EOSF)	Financial institutions that provide financial services and carry out the financial transactions under the applicable special regime. These entities do not provide traditional resource intermediation; they are focused on specialized financial advice in the administration of resources.	Trust companies (Chapter VII EOSF)
		Pension and severance fund management companies (Chapter VIII EOSF)
		General deposit warehouses (Chapter IX EOSF)
		Exchange intermediation and special financial services companies (art. 34 Act 1328 of 2009, art. 2)(7)(1)(1)(1) to 2(7)(1)(1)(7) Decree 2555 of 2010)
Capitalization companies (art. 4, Chapter X EOSF)	Financial institutions whose main function is to raise funds from the public in Colombian legal currency, in deposits, on demand or term, in order to place them again through loans, discounts, advances or other credit transactions.	Capitalization companies (art. 4, Chapter X EOSF)
Insurance companies and Intermediaries (art. 5 EOSF)	Financial institutions operating in the insurance sector.	Insurance entities, including insurance and reinsurance companies and cooperatives (Chapter XI EOSF)
		Insurance intermediaries, including brokers, agencies, and insurance agents (Chapter XII EOSF)
		Reinsurance intermediaries, including reinsurance brokers (Chapter XIII EOSF)
Non-intermediated market entities	Financial institutions through which investors contact issuers in the securities market and make their investments through the purchase of fixed- and variable-income securities issued by companies seeking to raise financing.	Stock brokers (companies whose exclusive purpose is the purchase and sale of securities on the stock exchange)
		Bolsa de Valores de Colombia S.A. (private company that brings together suppliers and demanders of securities through specialized and authorized institutions such as stockbrokers)
Risk-rating companies	Financial institutions whose exclusive corporate purpose is the objective and independent rating of securities and risks related to financial, insurance, stock market and any other activity related to the management, use and investment of funds raised from the public.	N.A.

13.4. Other financial institutions

In addition to the financial institutions regulated by the EOSF, the Colombian financial system includes other relevant financial institutions and players. Some of them are listed below:

- **Central Bank of Colombia (Banco de la República)**

The Central Bank of Colombia is an independent entity responsible for Colombia's monetary policy. It implements the country's macroeconomic policies, keeps inflation under control, regulates, manages and invests the country's international reserves, acts as lender of last resort for financial institutions, sets interest rates for financial institutions, establishes credit policies and regulates the country's exchange rate regime.

- **Companies specialized in electronic deposits and payments**

Companies specializing in electronic deposits and payments are financial institutions whose exclusive purpose is to collect funds through deposits in electronic accounts and to make electronic payments and transfers. They are subject to the surveillance, supervision and control of the SFC and are governed by Act 1735 of 2014 and Decree 1491 of 2015.

- **Private equity funds**

Private equity funds ("**FCP**") are closed-end investment vehicles that, according to their specific regulations[9], must allocate at least two thirds of their investors' contributions to the acquisition of assets or rights of economic content other than securities registered in the National Registry of Securities and Issuers.

Every FCP must have a minimum of two investors. These vehicles are subject to the administrative regulations issued by the Central Bank on foreign exchange and currency matters, as well as to the administrative and technical regulations issued by specific governmental supervisory agencies, particularly the Financial Superintendence. The external circulars of the Financial Superintendence address specific issues for FCPs, such as investment valuation methodologies and information disclosure.

FCPs do not require prior approval from the Financial Superintendence for their creation, as they must go through a no-objection process. After filing the regulations (private document that governs the FCP in a comprehensive manner), the Superintendence of Finance issues a no-objection resolution that will allow the FCP to start operating within 15 business days. Local regulations allow FCPs to invest through equity or debt instruments, as well as to leverage through public bond offerings.

FCPs must be managed by a company authorized for such purpose and supervised by the Colombian Financial Superintendence. The following may act as FCP management companies: (i) trust companies; (ii) brokerage companies; and (iii) investment management companies. Decree 2555 establishes that FCPs must be managed by a professional manager ("**GP**") appointed or hired by the management company. The GP must be an expert in managing investment funds or the types of assets in which the FCP intends to invest and is solely responsible for its investment and divestment decisions. GPs should not be subject to oversight by the Financial Superintendence.

Additionally, each FCP is governed by its specific regulations. They establish the terms and conditions applicable to the entire FCP, including but not limited to the general aspects; investment policy; functions and obligations of each of its bodies and committees; rules applicable to the management company, the investors and the professional manager; exchange regime for the investors; mechanisms for information disclosure and conflicts of interest; as well as merger, liquidation and spin-off procedures.

Finally, FCPs' governance structure must include at least the following decision-making, management, administration and oversight bodies: (i) investors' assembly; (ii) management company, supervised by the Financial Superintendence[10]; (iii) professional manager; (iv) investment committee; and (v) oversight committee.

[9] Book 3 of Part 3 of Decree 2555 of 2010 ("Decree 2555") is the main regulation governing FCPs in Colombia. Since the entry into force of Decree 1984 in 2018 (comprehensively modifying FCP regulation), a single specific Book regulates these investment vehicles in a comprehensive manner. Prior to this Decree, FCPs shared characteristics and rules with collective investment funds. Decree 1984 was an important step in their regulatory development, establishing a new independent regulatory framework that has afforded FCPs greater flexibility to develop their investment policies and objectives. A good example is the authorization to invest in debt and to issue bonds in the Colombian public securities market.

13.5. Restrictions on interest rates

Under Colombian law, creditors (whether supervised or non-supervised by the SFC) may not grant loans at a rate higher than 1.5 times the current bank interest rate. Otherwise, they could be liable for usury under the Colombian Criminal Code, in addition to a penalty whereby the creditor forfeits all excess interest plus an amount equal to such excess.

Current bank interest is defined as the interest rate charged to the public by credit institutions such as banks, and it is certified monthly by the Financial Superintendence.

External credits follow special rules; however, this limit should be kept in mind to avoid liability.

13.6. Main types of financing

Financing operations can be classified based on (i) the mode of financing and (ii) the underlying asset.

Based on the model of financing

- **Credit:** the most common form of financing. It is documented on a credit or loan agreement, whereby a lender (usually commercial banks or funds) agrees to grant a loan to one or more debtors for a certain term, up to a certain amount and at a specific interest rate.
- **Leasing:** a type of financing documented on a leasing contract. A financial entity, whether a bank or a financing company (the "lessor"), acquires a capital asset at the request of a client (the "lessee"), for its use and enjoyment for a term and in exchange for a periodic payment under a financial or operating lease. At the end of the leasing period, the lessee can usually exercise a purchase option to acquire ownership of the asset.
- **Bond issuances:** a form of financing that, through issuing fixed-income securities in the stock market, allow the debtor or issuer to raise funds from the public. The bonds placed in the market must be paid

[10] Only the following may act as FCP management company: (i) trust companies; (ii) brokerage firms; and (iii) investment management companies.

by the acquiring bondholders, under the conditions of rate and term established in the prospectus, offering notice and other relevant documents. These placements require prior authorization by the SFC and may be directed to unqualified investors (primary market) or to professional investors (secondary market).

Based on the underlying asset

- **Corporate financing:** to obtain economic resources for corporate purposes, it is granted against the financial statements and projections of the debtor's business, and the source of payment is the income from the business operation.
- **Portfolio:** the underlying business involves portfolio origination. The source of payment and the guarantees to creditors refer to the portfolio originated by the debtor.
- **Project financing:** to finance the development and implementation of a project, usually infrastructure or energy. Granted through a project finance structure to a special purpose company in charge of implementing the project and of obtaining the required rights and permits. Project financing is granted according to a base case with closed sources and uses, and risk mitigation and management mechanisms that guarantee the implementation of the project and the repayment of the debt with the relevant debt and equity resources. The project itself is the guarantee, while the project's future cash flows are the source of repayment.
- **Acquisition finance:** to obtain resources to complete the acquisition of one or more companies. It is similar to corporate financing, since it is granted against the financial statements and projections of the target company or companies, and the source of repayment is their own income.

13.7. Types of guarantees in Colombia

The main guarantee instruments in Colombia are described below.

Security interests over movable assets

Act 1676 of 2013 ("**Movable Collateral Act**") regulates security interests over movable assets. It created the Movable Collateral Registry, a national centralized registry of all security interests over movable assets, so that such collateral may be opposable before third parties.

These types of security interests may be created over any type of movable property and rights, whether present or future, except for (i) aircraft, aircraft engines, helicopters, railway equipment, space elements and other categories of mobile equipment; (ii) intermediated securities and financial instruments regulated by Act 964 of 2005; (iii) collateral on securities, subject to the Code of Commerce; and (iv) deposits as collateral, when the depositary is the creditor.

Movable collateral comprises any transaction that has the effect of guaranteeing an obligation with the debtor's personal property, including (i) sale with reservation of title; (ii) pledge of commercial establishment; (iii) accounts receivables securitization and transfers, including purchase and security assignment; and (iv) security consignment.

- **Mortgages**

Mortgages are security interests on real estate, aircraft and large vessels, granted to a creditor to secure a specific obligation and perfected through a public deed before a notary public.

- **Security trusts**

Security trusts are fiduciary transactions by which a person delivers or transfers company resources or assets (both movable and immovable) to a trust, to guarantee the fulfillment of its own or third-party obligations. Thus, security trusts imply the irrevocable transfer of ownership of one or more assets as a commercial trust or the delivery in irrevocable fiduciary assignment, to guarantee the fulfillment of the settlor's or third-party obligations in favor of one or more creditors.

13.8. Most relevant features of guarantees in Colombia

FEATURE	SECURITY INTEREST OVER MOVABLE ASSETS	MORTGAGE	SECURITY TRUST
Perfection	No public deed is required. However, an agreement between the guarantor and the secured creditor is necessary.	Requires public deed	A public deed is required for the transfer of real estate to the trust but not for the transfer of personal property. The trust agreement may be executed by public deed or may be perfected upon execution of a private document.
Types of assets that may be secured	Movable property (except for those mentioned above)	Real estate, aircraft and large vessels	Movable and immovable property.
Registration	They must be registered before the Movable Collateral Registry to ensure their effectiveness before third parties and the right of preference over other creditors in enforcement proceedings.	They must be registered before the Public Deed Registry..	They must be registered before the Public Deed Registry (when containing real estate) and also before the Movable Collateral Registry.
Secured limit	No limit	The amount secured by the mortgage cannot exceed twice the amount of the secured obligations. If the mortgage exceeds this amount, the mortgagor may request the reduction of the mortgage to the maximum amount.	No limit

14

Litigation and arbitration

Contractual liability and tort proceedings are the most frequent

Below is an overview of the main proceedings in the Colombian ordinary jurisdiction.

14.1. Civil jurisdiction

- **Declaratory proceedings: stages and approximate duration**

Declaratory proceedings are those in which one of the parties seeks the declaration of a right and, potentially, a favorable ruling based on the existence of such right. The most frequent are contractual liability and tort proceedings.

The main stages of declaratory proceedings are: (i) filing the claim; (ii) admission of the claim and service to the defendant; (iii) answer to the claim; (iv) initial hearing; (v) trial hearing (evidentiary stage and first instance ruling); (vi) motion of appeal; and (vii) extraordinary cassation recourse (if applicable).

The approximate duration of these types of proceedings is as follows: (i) first instance: between one and a half and two years; (ii) second instance: between six months and one year; and (iii) extraordinary cassation recourse between three and four years.

- **Collection proceedings: stages and approximate duration**

The purpose of collection proceedings is to require the debtor to comply with an express, clear and enforceable obligation contained in one or more documents originating from the debtor or the debtor's principal. These documents may be private or public, e.g., a court judgment or an administrative act issued by an entity of the executive branch.

From the filing of the lawsuit, the claimant has the right to request the seizure of the defendant's assets. The defendant may request the judge to order the claimant to provide security for up to 10% of the current value of the debt to cover potential damages caused to the defendant.

The stages of the collection proceedings are the same as those of declaratory proceedings, except for the extraordinary cassation recourse, which is not available. Once the ruling is issued, seized assets are auctioned or delivered to the creditor.

The activity of governmental entities is controlled through contentious-administrative proceedings

14.2. Contentious-administrative jurisdiction

This jurisdiction refers to decisions acts, deeds, omissions, operations and contracts carried out or entered into by public entities or private parties exercising administrative functions.

Below are the most relevant types of procedures:

- Immediate control of legality (*control inmediato de legalidad*): all measures issued in exercise of administrative functions will be immediately reviewed to determine their legality.

- Simple nullity (*nulidad simple*): any person may seek annulment of general administrative acts in the event of non-compliance with the laws they are subject to, lack of competence, to issue said act, misuse of powers or disregard of the rights of the involved parties.

- Nullity and rights reestablishment (*nulidad y restablecimiento del derecho*): anyone who believes to have a subjective right, recognized as sub by law, may seek a declaration of nullity of the particular administrative act (whether express or presumed) and the reestablishment of the right, including compensation for damages.

- Direct reparation (*acción de reparación directa*): anyone interested may directly request the reparation of the damages produced by the unlawful action or omission of Stage agents

- Contractual disputes: Any of the parties to a contract where the State is a party may seek a declaration of nullity, a revision order, a declaration of breach, a declaration of nullity of the contractual administrative acts, or an order to pay damages, among other declarations or sanctions. Likewise, the judicial liquidation of the contract may be requested when not achieved by mutual agreement and the State has not unilaterally liquidated it within two months following expiration of the agreed term for the liquidation by mutual agreement, in its absence, of the term established by law.

The above procedures are processed through ordinary administrative proceedings, which consist of the following stages: (i) filing of the claim; (ii) admission of the claim and service to the defendant; (iii) answer to the claim; (iii) initial hearing; (iv) evidentiary hearing; (v) preliminary and trial hearing (first instance ruling); (v) appeal.

Ordinary contentious-administrative proceedings last approximately five years[11].

14.3. Fiscal liability

In Colombia, the Office of the Comptroller General of the Republic (Contraloría General de la República) and certain comptrollers' offices belonging to territorial entities oversee the government's fiscal management, as well as that of private individuals who handle State funds or those of any decentralized entity. These individuals are called fiscal managers (*gestores fiscales*)[12].

For fiscal liability to arise, there must be a damage to the public patrimony, defined by law as pecuniary loss (*detriment patrimonial*), produced by a willful or grossly negligent action or omission of a fiscal manager.

The stages of fiscal liability proceedings are investigation and trial. The fiscal investigation comprises the investigation during which the evidence that will serve as the basis for the decisions to be issued in the liability process is gathered. From this preliminary investigation on, the comptroller's office may impose precautionary measures on the assets of the investigated person. The decision of the comptroller's office is an contentious-administrative act subject to review by the administrative jurisdiction as explained above, through nullity and right reestablishment procedure (*nulidad y restablecimiento del derecho*).

[11] Rama Judicial. (2016). Resultados del Estudio de Tiempos Procesales. https://www.ramajudicial.gov.co/documents/1545778/8829673/TOMO+I+TIEMPOS+PROCESALES_18122015.pdf/2da294fd-3ef6-4820-b9e0-7a892b1bdbf0
[12] Restrepo Medina, Manuel Alberto. (2001). Responsabilidad fiscal. Estudios Socio-Jurídicos, 3(2), 75-95. Available at: http://www.scielo.org.co/scielo.php?script=sci_arttext&pid=S0124-05792001000200005&lng=en&tlng=es.

14.4. Alternative dispute resolution

The following are the main alternative dispute resolution mechanisms available in Colombia.

- **Conciliation (*conciliación*)**

This is an alternative dispute resolution mechanism through which two or more people, natural or legal, private or public, manage by themselves the resolution of their differences, with the help of a neutral and qualified third party, called conciliator. The agreement reached by the parties is *res judicata* and enforceable.

- **Amicable settlement (*amigable composición*)**

Amicable settlement is an alternative dispute resolution mechanism where parties to a dispute delegate to a third party, the power to settle, with binding force for the parties, a contractual dispute. This decision is *res judicata* and enforceable in the corresponding jurisdiction.

- **Domestic and international arbitration**

Through this dispute resolution mechanism, the parties refer the resolution of an arbitrable dispute on matter subject to settlement, to arbitrators. The arbitrators' award has the effect of a court ruling.

The Colombian Arbitration Statute distinguishes between national and international arbitration. An arbitration is international when (i) at the time of entering into the arbitration agreement, the parties have their domiciles in different states; (ii) the place of performance of a substantial part of the obligations or the place with which the dispute is most closely connected ot is outside the state in which the parties have their domiciles; or (iii) the dispute affects the interests of international trade.

The main differences between domestic arbitration and international arbitration are as follows:

	DOMESTIC ARBITRATION	INTERNATIONAL ARBITRATION
Appointing arbitrators	If the appointment has not been agreed upon in the arbitration agreement, the arbitrators will be chosen by lot from the list of the corresponding chamber of commerce.	The parties are free to agree on the procedure for appointment of the arbitrator(s). If the parties do not reach an agreement, the appointment will depend on the number of arbitrators. Where it has been agreed that the dispute will be settled by a sole arbitrator, he or she will be appointed by the relevant judicial authority. Where it is agreed that there will be three arbitrators, each party will appoint one and the third will be chosen jointly by the arbitrators selected by each of the parties.
Arbitrators	Arbitrators must be Colombian lawyers.	Nationality will not be an obstacle to act as arbitrator. Arbitrators may or may not be lawyers. It depends on of the parties' choice.
Grounds to set aside an award	- Non-existence, lack of validity or unenforceability of the arbitration agreement. - Expiration of the action (*caducidad*), lack of jurisdiction or lack of competence. - Failure to constitute the tribunal in a lawful manner. - The appellant is involved in a case of improper representation or lack of notification or summons, provided that the nullity has not been cured. - Refusal to consider evidence requested without a legal justification. - The award or the decision on clarification, addition or correction is issued after expiration of the established deadline for the proceedings. - The award was made in conscience or equity when required for it to be in law. - The award contains contradictory provisions, arithmetic errors or errors due to omission, change or alteration of words, provided that they are included in the resolutive chapter or have an influence on it and have been alleged in due time before the tribunal. - The award is issued on aspects not subject to the arbitrators' decision, having granted more than what was requested or does not rule on issues subject to arbitration.	At the request of a party, upon proof of: - Lack of capacity of a party. - Improper service of the arbitrator's appointment, of the commencement of the proceedings or that the applicant was unable to assert its rights. - The award deals with a dispute not provided for in the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement. - The composition of the arbitral tribunal or the arbitration proceedings was not aligned with the agreement between the parties. Ex officio, when: - The subject matter is not arbitrable. - The award is contrary to Colombia's international public order.

	DOMESTIC ARBITRATION	INTERNATIONAL ARBITRATION
Language	The proceedings must be conducted in Spanish.	The parties may freely choose the language of the proceedings.
Law applicable to the contract	Arbitrators are subject to Colombian conflict rules.	The parties may freely choose the law applicable to the contract.
Remedies against the award	Set-aside of the awards. Application for review of the award or against the ruling deciding upon the set-aside of the award.	Only award set-aside is admissible.

14.5. Enforceability of foreign arbitral awards in Colombia

Enforceability of foreign arbitral awards require a prior request to the competent authority—the Supreme Court or the Council of State, depending on the subject matter.

Enforceability of foreign arbitral awards requires the recognition of the Colombian Supreme Court or the Council of State

The grounds to refuse recognition of an arbitral award in Colombia are: (i) that, at the time of the arbitration agreement, the party against whom the award is invoked was affected by some incapacity or that the agreement is not valid under the law to which the parties have subjected it or, regarding a lack of indication in this matter, the agreement is not valid under the law of the country where the award was granted; (ii) that the party against whom the award is invoked was not given proper service of the appointment of an arbitrator or the initiation of arbitration proceedings or could not, for any other reason, assert its rights; (iii) that the award deals with a dispute not provided for in the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement; (iv) that the composition of the arbitral tribunal or the arbitral proceedings was not in accordance with the agreement between the parties or, failing such agreement, the law of the country seat of the arbitration; (v) the award has not yet become binding on the parties or was revoked or suspended by the judicial authority of the country seat of the arbitration tribunal; or (vi) the competent judicial authority finds that, under Colombian law, the subject matter of the dispute was not arbitrable, or that the recognition or enforcement of the award would be contrary to Colombia's international public law.

Awards issued in Colombia are considered national awards, so they do not have to go through the recognition procedure.

Awards that go through the recognition procedure may be enforced upon recognition by the corresponding court. Recognition may take up to 10 months, and enforceability, both domestic and foreign, from one to three years.

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