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1. Introduction
Colombia has become an attractive country for investors, and there are many reasons for this:

**Investment grade**
Colombia achieved an investment grade rating from the three main credit rating agencies (Standard and Poor’s, Fitch and Moody’s).

**Leading economy in 2050**
Colombia is the 39th largest economy in the world in 2015 and one of the largest non-OECD economies. Colombia is expected to be one of the fastest growing economies for at least the next 25 years. (Colombia Investing)

**Prospects for investment**
According to a report made by the newspaper The Independent in the United Kingdom, Colombia is ranked as one of the countries in Latin America with the best prospects for investment and development.

**Excellent macroeconomic performance**
The GDP per capita has more than doubled over the last years, going from USD 2,479 in 2000 to USD 3,417 in 2005 and USD 5,804 in 2016. (The Economist)

**Attractive market**
In terms of purchasing power parity (PPP), Colombia is the 32nd largest economy in the world and the 4th in Latin America (2016). The country’s GDP has more than doubled from 2005-2016 and although it is not a member of the OECD, it is expected to become one in the long run. (CIA World Fact book).

**Dynamic external sector and growth**
Since 2001, Foreign Direct Investment (“FDI”) in Colombia has grown 444% from USD 2.5 billion in 2000 to USD 13.6 billion in 2016. (Colombian Central Bank)

**Safety conditions**
Colombia is leader in terms of investor protection in the region and 14th worldwide. It has the second lowest perceived risk in the region, measured by the behavior of 5-year Credit Default Swaps. (Doing Business report, 2016, World Bank)

**An active economy in the global market**
Extensive trade relations, with exports to 181 countries and more than 9,700 export companies. Strong international integration with 16 free trade agreements in force, two signed agreements, and three under negotiation that provide a preferential access to a market of more than 1.5 billion customers. (Procolombia)

**Competitive advantages**
Fourth most business-friendly country and the country with the most reforms in Latin America, according to the World Bank’s Doing Business 2016.

Taking into account the aforementioned advantages and the facilities for doing business established in Law, this publication has as its main purpose to present to our readers in a simple language the most important legal and tax aspects applicable to foreign investment in Colombia, incorporating the most recent legislative changes. We hope that this information will be useful for those people interested in doing business in Colombia.

The content of this publication was revised in January 2018 and is based on information available at that time.

### 1.1. Country Outline

<table>
<thead>
<tr>
<th>Main Information</th>
<th>The Republic of Colombia is located in the northwest of South America and is bordered on the northwest by Panama, on the east by Venezuela and Brazil, and on the southwest by Peru and Ecuador.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Geography:</td>
<td>The continental area is 1,141,748km²</td>
</tr>
<tr>
<td>Area:</td>
<td>Colombia has no seasons. However, due to its location on the equator, it is possible to find a wide range of climates.</td>
</tr>
<tr>
<td>Weather conditions:</td>
<td>46,878,727¹</td>
</tr>
<tr>
<td>Population:</td>
<td>Spanish</td>
</tr>
<tr>
<td>Official Language:</td>
<td>Bogotá D.C.</td>
</tr>
<tr>
<td>Capital:</td>
<td>Medellín, Cali, Barranquilla, Cartagena</td>
</tr>
<tr>
<td>Main Cities:</td>
<td>A presidential representative democratic republic, whereby the President of Colombia is both head of state and head of government. Executive power is exercised by the government. Legislative power is vested in two chambers of congress, the Senate of Colombia and the House of Representatives of Colombia. The Judicial power is independent of the executive and the legislature.</td>
</tr>
<tr>
<td>Governmental System:</td>
<td>3.38%²</td>
</tr>
<tr>
<td>Annual Inflation</td>
<td></td>
</tr>
</tbody>
</table>

1 DANE, Census 2005
2 DANE, December, 2014
1.2. General aspects

Over the past few years, Colombia has experienced a significant improvement in its macroeconomic performance, internal security and stability. As a result social indicators have also improved.

Colombia has achieved solid structural growth given an increase in the investment rate, which in turn, generates higher productivity levels.

The Colombian economy remains with moderate inflation and has never driven hyperinflation as other countries in the region.

In 2011, Colombia was awarded an investment grade rating from the main rating agencies in the world. This investment grade is still in force as of October 2017. Colombia is aggressively negotiating free trade and investment agreements in order to expand its markets.

The Colombian Government is fully committed to reassuring favorable conditions so as to improve domestic and foreign investment. This is reflected in the establishment of free trade zones and legal stability contacts.

GDP

In the last decade, Colombia has shown a balanced trend in GDP growth.

In 2008, the year of the international economic crunch, Colombia had relatively strong economic growth despite of the external economic conditions. The latter was evident in the figures released by the International Monetary Fund (“IMF”) for the year 2009 showing economic growth for the year of 1.5%. The GDP growth for 2016 reached 2.0%.

Also, up to 2015, the GDP growth for Colombia remained above the average GDP growth for the region (1.7% for 2015 according to the World Bank).

GDP Growth

Trade operations

Exports have increased approximately 82% since 2004, rising from about USD 17 billion to USD 31 billion in 2016. In 2009, trade in Colombia was limited by political conflicts with some of its commercial partners, resulting in almost no trade with Venezuela. Despite of these problems, the behavior of the trade balance was positive.

In the last years, the trade balance has been decreasing significantly. As of the end of year 2016, the trade balance was negative by USD 11,776 million. This decrease is mainly caused by the downfall of oil prices since 2014, which generated less exports - oil is Colombia’s principal export product - and therefore an increase of the trade gap.
Exchange rate behavior

Following a significant appreciation of the Colombian Peso ("COP") since the year 2000, the Colombian Peso has ultimately devaluated against the USD, mainly due to the current global economic climate and the downfall of oil prices.

However, in the last years the COP has suffered a new devaluation, mainly due to the current global oil crisis. The end of year exchange rate (representative market rate) for 2016 was of 3,001 COP/USD.

End of year exchange rate

Source: Colombian Central Bank

Foreign direct investment

Increased confidence from foreign investors in Colombia is reflected by the growing FDI flowing into the country. FDI is currently about 5 times higher than it was in 2000. Most foreign investment is concentrated in the mining and oil sector. Investment in communication and transportation services, as well as the manufacturing sector, have great potential for growth in the upcoming years.

FDI inflows to Colombia were USD 14,648 million for the year 2011, a significantly higher figure when compared to the one registered in 2010 which was USD 6,430 million. Nonetheless, in 2013 Colombia presented the highest FDI historically, reaching USD 16,211 million. This increase was triggered mostly by a general investment increase in the petroleum industry of the country, which accounted for 29% (USD 4,909 million). From there, the investment inflows have presented a decrease in the following, reaching USD 11,732 million in 2015. However, for 2016 there has been a 16% increase compared to 2015, reaching USD 13.39 billion in FDI.

Precisely, the decrease between 2013 and 2015 was mainly due to the fall in raw material prices, especially oil. New investments in financial and enterprise services, oil sector and transport, storage and communications explain the increase for 2016.
**Investment in Colombia**

The 2016 Doing Business Report from the World Bank ranks Colombia as the 54th best country for doing business, out of 189 countries listed in the report.

Additionally, the same report ranks Colombia as the fourth Latin American country as it is especially attractive for foreign investors stimulated by the ultimate exchange rate developments.

<table>
<thead>
<tr>
<th>Latin America - Best countries to do business</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Country</strong></td>
</tr>
<tr>
<td>Mexico</td>
</tr>
<tr>
<td>Chile</td>
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<tr>
<td>Peru</td>
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<tr>
<td>Colombia</td>
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<tr>
<td>Costa Rica</td>
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<tr>
<td>Panama</td>
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<td>Guatemala</td>
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<td>El Salvador</td>
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<td>Uruguay</td>
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<td>Dominican Republic</td>
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<td>Paraguay</td>
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<td>Honduras</td>
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<tr>
<td>Brazil</td>
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<tr>
<td>Ecuador</td>
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<tr>
<td>Argentina</td>
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<tr>
<td>Nicaragua</td>
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<tr>
<td>Bolivia</td>
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<tr>
<td>Venezuela</td>
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</tbody>
</table>

**Inflation**

Colombia’s Central Bank, fulfilling its constitutional role, has enforced strict monetary policies in order to control price variations, mainly by adjusting the intervention interest rate of the monetary market.

Inflation has been under strict control for over a decade reflecting a one digit sustainable rate. At the same time, oscillating around the long-term goal inflation (3%) and between bands of 1% deviation. Nevertheless, the recent devaluation of the local currency resulted in higher import prices and therefore an increase of prices within the basic consumption basket. This has caused inflation values above the 1% deviation in the last two years. It is expected that as the exchange rate stabilizes, inflation will fall to the long-term goal in the following years.

**Free Trade Agreements (FTA)**

<table>
<thead>
<tr>
<th>In force</th>
<th>Signed but not in force</th>
<th>Undergoing negotiations</th>
<th>Future</th>
</tr>
</thead>
<tbody>
<tr>
<td>– CAN (since 1969) Ecuador, Peru, and Bolivia</td>
<td>– Israel</td>
<td>– Turkey</td>
<td>– Dominican Republic</td>
</tr>
<tr>
<td>– G-2 (since 1995) Mexico</td>
<td>– Panama</td>
<td>– Japan</td>
<td>– Australia</td>
</tr>
<tr>
<td>– MERCOSUR (since 2005) Argentina, Paraguay, Uruguay, and Brazil</td>
<td></td>
<td>– TISA-Trade in Services Agreement</td>
<td>– New Zealand</td>
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<tr>
<td>– Chile (since 2009)</td>
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<td></td>
<td></td>
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<tr>
<td>– Guatemala, Honduras, and El Salvador (since 2010)</td>
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<tr>
<td>– USA (2012)</td>
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<td>– Canada</td>
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<tr>
<td>– EFTA (Iceland, Liechtenstein, Norway, and Switzerland)</td>
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</table>
### International Investment Agreements (“IIAs”) and Double Taxation Agreements (“DTAs”)

DTAs are designed to protect investors from being taxed twice when the same income is taxable in two countries. Currently, the DTAs are:

<table>
<thead>
<tr>
<th>In force</th>
<th>Signed but not in force</th>
<th>Undergoing negotiations</th>
<th>Future</th>
</tr>
</thead>
<tbody>
<tr>
<td>– CARICOM (Caribbean Community) &lt;br&gt; – Cuba &lt;br&gt; – European Union &lt;br&gt; – Venezuela &lt;br&gt; – Nicaragua &lt;br&gt; – Korea &lt;br&gt; – Costa Rica &lt;br&gt; – Pacific Alliance</td>
<td>– France &lt;br&gt; – United Kingdom</td>
<td>– Belgium &lt;br&gt; – Germany &lt;br&gt; – Holland &lt;br&gt; – Japan &lt;br&gt; – United States</td>
<td>– Brazil &lt;br&gt; – China &lt;br&gt; – Italy &lt;br&gt; – Qatar &lt;br&gt; – Singapore</td>
</tr>
</tbody>
</table>
2. Banking system and sources of finance for commerce and industry
The Colombian financial system is formed by credit institutions and financial services organizations gathered in clusters with national and international presence. After the crisis in late 90’s, the industry has become stronger thanks to the constant regulation of the national government. As a consequence there are good indicators of profitability, risk and solvency. Now Colombia has a strong financial services sector with a continuous and sustainable growth with high relevance for the national economy.

The financial services system is regulated by the Superintendencia Financiera de Colombia. This is a government institution part of the Ministry of Treasury and Public Credit and is responsible for the supervision of the financial and stock exchange system. Furthermore, is responsible for the solvency and vigilance of all the financial, insurance institutions and controls the fulfillment of exchange obligations by financial intermediaries also known as exchange intermediaries.

The “Banco de la República” is the central bank of the country and is in charge of issuing and controlling the currency transactions in Colombia, some of the special functions of the central bank are:

- Official currency issuing
- International reserves managing
- Banker of credit and financial institutions
- Fiscal agent of the government
- Credit and exchange rate regulator

The board of the Republic Bank acts independently to ensure the proper execution of their functions. The board is elected for periods of four years renewable for a similar period.
3. Capital markets
The Capital market in Colombia has place in the “Bolsa de Valores de Colombia (BVC)”, which is the merge of the former main stock exchange of Bogota, Medellin and Cali. There are some small stock exchanges in the country, but all of them work directly through the BVC. In 2008, BVC launched its listed Derivatives Market introducing a Basket of Colombian Treasury Bonds.

With a strong total market capitalization, the Bolsa de Valores de Colombia (BVC) is the fourth-largest stock exchange in Latin America. The prospect of growth thanks to the peace agreement in 2017, along with Colombia’s solid fundamentals point to a positive outlook for the capital markets and foreign investments sector.

In 2011, the Colombian, Chilean and Peruvian stock markets integrated establishing the Mercado Integrado Lationamericano (MILA). Through the unification of their platforms, the objective was to increase the range of options and liquidity they offer to issuers and investors. MILA’s initial aim was to promote their combined markets as an attractive alternative to others in the region.

Colombian residents are generally free to purchase almost any financial or capital market product or service abroad. There are exceptions for products associated with the general mandatory pension system, as well as for a few forms of insurance.
4. Setting up business in Colombia
4.1. Types of business presence

In Colombia there are currently five (5) types of legal entities that entail an independent legal person and 1 other legal vehicle (branch) that does not. They all serve to establish a local business presence and differ on their formalities for incorporation and effects on the equity (among others).

These types of legal vehicles are distinguished in three (3) types of structures:

- Capital based entities: Entities in which the capital is the prevailing element of the vehicle. Corporations (S.A., by its acronym in Spanish) and Simplified Corporations (S.A.S., by its acronym in Spanish) belong to this type.

- Person based entities: Entities in which the personal qualities of the partners are considered to be an essential element of the entity. Therefore, the entrance of new members may be restricted. Limited Liability Companies and Partnerships are considered to be this kind of entities.

- Branch of a foreign company: When a foreign company performs permanent activities in Colombia it is obliged to incorporate a branch, which is a local representation of the foreign company. Therefore, a branch does not constitute a separate legal entity and all its activities oblige the parent company (head office).

4.1.1. Simplified Corporation (SAS)

The SAS can be incorporated in Colombia with a single shareholder. In every case, the incorporation of a SAS gives rise to a new legal entity completely independent of its shareholders or shareholder.

The liability of the shareholders of the SAS is limited to the amount of the subscribed capital; the shareholders of a SAS will never be jointly and severally liable for tax or labour liabilities. Being the most flexible and ‘customizable’ corporate type in Colombia, it is possible to create different kinds of shares for the SAS, such as shares with fixed dividends, which grant the right to receive a fixed dividend, notwithstanding the percentage of participation of the shareholder.

A financial or statutory auditor is mandatory if stipulated by the articles of incorporation or when the assets are higher than 5,000 minimum legal wages (USD 1,240,000 approximately) or the revenues are higher than 3,000 minimum legal wages (USD 754,000 approximately).

4.1.2. Corporations (S.A.)

A corporation must be incorporated with a minimum of five (5) shareholders. Each shareholder is liable for the amount of its capital contribution, represented by negotiable shares.

The capital stock of a corporation is divided into authorised, subscribed and paid capital. At the time of the company's incorporation, at least 50% of its authorised capital must be subscribed and at least 33% of its subscribed capital must be paid up. The remainder must be paid within one year.

Some characteristics of corporations are:

- If a corporation needs to be capitalised, it may issue shares or bonds convertible into shares.

- Shares may be sold at any time without restrictions, unless the bylaws provide for a special procedure or provides a pre-emptive right in favour of existing shareholders or the company. When a corporation's shares are registered on the stock market, they may be freely negotiated.

- The shareholders’ meeting can deliberate and reach decisions in a place other than the corporation’s main offices, and even abroad, if the total of the corporation’s shares are represented at the meeting.

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3 As explained below, limited partnerships are considered to be a mixture of capital based and person based entities.
4 However, the corporate veil may be pierced if the company is used for fraud against third parties.
5 However, Simplified Corporations cannot negotiate its shares in the stock market neither be used to develop activities that are under the supervision of the Superintendence of Finances (such as banking and insurance activities).
6 See, for example, the proportions required in Corporations.
– The corporation will be dissolved when 95% or more of the contributed shares belong to one shareholder.

4.1.3. Limited Liability Company (Ltda.)

A limited liability company has to be incorporated with a minimum of two partners and a maximum of twenty-five. The partners are liable for the amount of their capital contributions, except for tax and labour liabilities, in which partners are jointly and severally liable along with the company in accordance with particular provisions.

The capital of the company must be fully paid at the time of the incorporation and divided into capital quotas of equal amount, which may be assigned in accordance with the provisions in the company’s articles of incorporation.

The limited company’s highest management and administration body is the board of partners, in which the partners have as many votes as they own capital quotas in the company. The capital quotas of limited liability companies may be assigned to other partners or third parties, after approval by the board of partners. Every capital quota assignment implies an amendment of the articles of incorporation that must be legalised by a public deed and registered with the Chamber of Commerce of the company’s registered place of domicile.

A statutory auditor is mandatory if stipulated by the articles of incorporation or when the assets are higher than 5,000 minimum legal wages (USD 1,240,000 approximately) or the revenues are higher than 3,000 minimum legal wages (USD 754,000 approximately).

4.1.4. Limited Partnership (Sociedad en Comandita)

A limited partnership involves:

– One or more managing partners who are jointly and severally liable for the entity’s operations, and
– One or more capital partners who limit their liabilities to their respective capital contributions.

The partnership equity consists of the capital partner’s contributions and those of the managing partners or partners with unlimited liability.

Limited partnership entities can be subdivided into simple limited partnerships and shares partnerships. A simple limited partnership’s equity is divided into partnership quotas, while a shares partnership equity is divided into shares. Therefore, it involves elements of both capital based entities and person based entities.

As per its incorporation and statutory modifications, it follows the general rule of the need for a public deed and notary expenses.

4.1.5. Partnerships

Partnerships are the least commonly used corporate type in Colombia given its inflexibility regarding incorporation and modifications, and the fully comprehensive responsibility of its partners for the obligations entered into by the partnership. The equity divided into ‘parts of interest’ that confer one vote to each partner regardless of the partner’s contributions to the partnership’s capital.

The partnership is fully represented by all its partners which are also in charge of its management in every way.

4.1.6. Branch of a foreign company

A foreign company with permanent activities in Colombia including but not limited to having offices or commercial establishments within Colombian territory, must set up a branch office, and for this purpose it must register the following documents at a notary’s office and at a Chamber of Commerce in the place chosen for its main office:

– Articles of incorporation of the head office, dully apostilled and translated into Spanish
– A minute issued by the head office governing body authorising the incorporation of branch in Colombia.
– Documents evidencing the head office company’s existence and legal status of its representatives abroad.

As expressed above, branches are considered to be a local representation of the foreign company. Therefore, no new legal entity is created when incorporating a branch and the actions of the branch bind the foreign company directly. In addition, decisions regarding the company that have any effect in Colombia must be taken by the parent company (head office) and all documents that require being filed before the Chamber of Commerce must be dully apostilled (and translated into Spanish, in case a different language is used). Branches have an assigned capital that is granted by their parent company. Any increase to this assigned capital must be formalized by means of a public deed.

As an illustrative guide, we present this chart which compares the most prominent characteristics of three of the most used legal vehicles for foreign investors in Colombia:
<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Corporation (S.A.)</th>
<th>Simplified Corporation (SAS)</th>
<th>Branch of a Foreign Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Incorporation and modification procedures</td>
<td>As any other corporate type, the incorporation and any further bylaws’ amendments must be performed by means of public deeds.</td>
<td>As opposed to all other corporate types, the incorporation and any further bylaws’ amendments can be performed by means of a private document.</td>
<td>The incorporation and any modification to the branch’s articles of incorporation (including increasing the branch’s assigned capital) must be performed by means of public deeds.</td>
</tr>
<tr>
<td>Number of shareholders</td>
<td>A Corporation must have a minimum of 5 shareholders.</td>
<td>Simplified Corporations can be incorporated and function under a sole shareholder.</td>
<td>Branches have a unique parent company as they are not an independent legal entity.</td>
</tr>
<tr>
<td>Shareholder’s liability</td>
<td>Liability is limited to the capital contribution of the shareholders with the exception of tax matters.</td>
<td>Liability is limited to the capital contribution of the shareholders.</td>
<td>There are no limits to liability as the Branch binds the parent company directly.</td>
</tr>
<tr>
<td>Statutory Auditor</td>
<td>If the company surpasses the economic thresholds set forth by the law, an auditor must be appointed.</td>
<td>If the company surpasses the economic thresholds set forth by the law, an auditor must be appointed.</td>
<td>An auditor must always be appointed.</td>
</tr>
<tr>
<td>Duration and corporate purpose</td>
<td>The company’s duration and corporate purpose must be specifically determined in its bylaws.</td>
<td>The company’s duration may be chosen to be undetermined and its corporate purpose limited to “any lawful activity”.</td>
<td>The branch’s purpose must be that of its parent company or a more limited one. Branch's duration shall never exceed that of its parent company.</td>
</tr>
<tr>
<td>Management of profits</td>
<td>The company is mandated by law to create a legal reserve to ‘store’ part of its profits for future periods.</td>
<td>The company is free to make use of the total amount of its profits in any way that it deems proper.</td>
<td>Profits appertain directly to the parent company (head office).</td>
</tr>
<tr>
<td>Vigilance from the Superintendence of Companies</td>
<td>The Superintendence of Companies will exercise its faculties of supervision and vigilance if the company meets certain requirements stated by law.</td>
<td>The Superintendence of Companies will exercise its faculties of supervision and vigilance if the company meets certain requirements stated by law.</td>
<td>The Superintendence of Companies will exercise its faculties of supervision and vigilance if the branch meets certain requirements stated by law.</td>
</tr>
</tbody>
</table>
4.2. Formalities

As a general rule, in order to incorporate most of the legal vehicles in Colombia, the following documents would be needed:

- **Power of attorney (PoA)** that entitles their lawyers in Colombia to incorporate the legal vehicle (Newco).

- If the shareholders abroad are companies, a minute with the written decision of such company which decides the incorporation of the legal vehicle in Colombia is needed. If this document is not signed in Colombia and the language used is different from Spanish, it must be duly translated into Spanish and apostilled. This decision should contain the following information regarding the Newco:
  - Corporate name
  - Address in Colombia
  - List of activities that the Newco will perform
  - Authorized, subscribed and paid capital
  - Number of shares in which the equity will be divided
  - Determination of whether a board of directors will be created.

- Copy of the passport or documents of the legal representatives of the Newco, as well as the letters of acceptance of their positions.

- Good standing certificate that proves that the grantor of the PoA has the powers to fully represent the shareholder and that the company that will act as shareholder of the Newco is in existence, as well as its articles of incorporation.

These documents will allow local lawyers to create the articles of incorporation of the Newco, which may be raised to public deed, depending on the type of business entity chosen.

After filing the registration request before the local Chamber of Commerce, the Tax Registration Number (RUT, by its acronym in Spanish) will be automatically requested by said Chamber of Commerce to the Colombian Tax and Customs Authorities (DIAN).

Finally, when the Newco’s capital contribution is paid, a registration of the foreign investment must be performed before the Colombian Central Bank, in order to comply with the foreign exchange regime regulations.

The Chamber of Commerce charges a fee for registration that goes from USD $15 up to USD 650 approximately, depending on the Newco’s equity, plus an approximate of 0.7% of the Newco’s subscribed capital.

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7 In Colombia, the authorized capital refers to the maximum amount of capital that a company shall have according to its bylaws. The subscribed capital is the capital that effectively appertains to the shareholders and the paid capital is the amounts of that subscribed capital that have been already payed. Please note that, depending on the type of company, the subscribed capital may or may not be payed entirely at the moment of incorporation.

8 This determination is relevant in the case of the SAS, in which the board of directors is not a mandatory corporate body.

9 It is not mandatory for the legal representatives to be domiciled in Colombia. However, for practical reasons it is advised that at least one of the Newco’s legal representatives or alternates is domiciled in Colombian territory.

10 Values in USD on this report considered an Exchange Rate of COP 2,936 = 1 USD according to the exchange rate from September 30th, 2017.
5. Intellectual property
5.1. Industrial property

Colombia’s legal system comprises a complex set of norms that aim to protect patents, trademarks, commercial names and any other distinctive sign that is used by enterprises and investors in the country. Decision 486 of 2000 of the Andean Community of Nations set forth most of the structural norms for industrial property in Colombia and other countries of the region regarding both procedural and substantial matters.

As brief approximation to the subject it is to be highlighted that (i) registration grants patents a 20 year period of protection, whereas trademarks and industrial designs are protected for a 10 year period; (ii) Act 1450 of 2011 set forth a presumption upon which industrial property rights under the scope of a labour contract or a services rendering contract are granted to the employer unless agreed otherwise; and (iii) that important industrial or commercial information of which the transference may entail an advantage to any competitor is understood as an industrial secret and therefore granted special protection.

5.2 Copyright

On the other hand, copyright matters are protected in Colombia by means of Decision 351 of the Andean Community, Act 23 of 1982, Act 44 of 1993 and even the Colombian Criminal Code. It is important to note that copyright protection in Colombia has origins in the country’s civil tradition and may therefore differ to the treatment of common law countries. In this sense, for example, the author of an intellectual creation protected by copyright has both moral and economic rights thereto related, the former are unnegotiable and non-transferable whereas the latter are subject to any assignment and conditions applicable to commercial intangible goods.

In opposition to industrial property rights, protection is granted to the author without the need of a registration. However, registrations are highly recommended from a practical perspective as they serve as proof of whom is the author of a certain piece protected by copyright. In addition, the presumption stated by Act 1450 of 2011 is applicable to copyright but only regarding the economic rights of the piece’s author.

5.3. Entities in charge

In Colombia, two major public entities are in charge of the protection of industrial property and copyright in order to guarantee both national and foreign investors the protection of their rights.

Protection, registration, procedures, requests and supervision of any kind are designated in charge of the Superintendence of Industry and Commerce (for industrial property matters) and to the National Direction of Author’s Rights (for copyright matters).
6. Data protection
6.1. General overview and regulation

Data protection matters and regulation were formerly introduced in Colombia as per Act 1581 of 2012 and have grown stronger since up to becoming one of the most important compliance matters for any business in the country.

As per the abovementioned act and other norms that complement it\(^1\), any natural or legal person in Colombia who is in charge of the treatment of any kind of personal data must comply with certain obligations related to (i) the formal ways for that information to be lawfully obtained; (ii) the design of personal data privacy policies within the business of the person in charge of the treatment; (iii) the restrictions to the transfer of personal data to other parties; (iv) the effective granting of measures and channels for the owners of said personal data to be able to exercise their rights thereto related and (v) the registry of the person in charge of treatment’s databases of personal data before the National Registry of Databases on Personal Data.

These obligations are especially important, because of the broad definition of personal data set forth by the law which, grosso modo, states that any data that can be related to a particular individual (I.D., health information, personal numbers, photographs, etc.) is understood as personal data and therefore, protected by the law. In this sense, any business who has at least one employee, for example, has to partake in the implementation and compliance of data protection regulation. Failure to comply may entail sanctions that go from fines of up to USD $500,000 approx. to the permanent closing and prohibition of the activities related with personal data for the business that is sanctioned.

6.2. Entities in charge

The Superintendence of Industry and Commerce is in charge of the supervision and enforcement of the regulations regarding personal data treatment in Colombia. It is said superintendence to whom any requests or issues related to personal data must be presented. The Superintendence of Industry and Commerce is also in charge of the National Registry of Databases on Personal Data and is entitled to impose any and all the sanctions set forth by the law to persons not complying with personal data obligations.
7. Sectors with special regulations
7.1. Financial and insurance sectors

Given its importance as a base for Colombian economy, the financial and insurance sectors operate in Colombia under the vigilance and supervision of the Superintendence of Finance. The activities permitted and applicable rules and procedures are thoroughly regulated by the Organic Statute of the Financial System and by the decrees and resolutions that further complement it.

7.2. Oil & Gas sector

In Colombia, industrial activities related to the oil & gas sectors are supervised by the National Agency for Hydrocarbons. Alongside the Ministry of Mines and Energy, the Agency has issued a considerable amount of decrees and resolutions to regulate the sector, of which the central norm is the Unique Regulatory Decree 073 of 2015.

7.3. Electric Energy sector

Electric Energy in Colombia is thoroughly regulated as well by the Unique Regulatory Decree 073 of 2015. All industrial activities related to generation, distribution, transmission, and commercialization have to be performed in compliance with the requirements set forth by said decree and the resolutions of the Energy & Gas Regulatory Commission.

7.4. Agronomic industry sector

The Ministry of Agriculture and Rural Development as well as the Agricultural Colombian Institute are in charge of the management of the agronomic sector in Colombia, which includes controls regarding sanitary and phytosanitary measures. The main regulatory norm for this sector is the Unique Regulatory Decree 1071 of 2015, which is complemented by many other decrees and resolutions both from the before mentioned ministry and other entities related to the sector.

Please bear in mind that due to the implementation of the “Peace Agreements” sustained between the National Government and the FARC guerrilla, the sector and its development has become of central importance to the Government’s public policies. This may entail an important of regulation to come regarding agronomic activities in Colombia.

7.5. Tourism sector

For this sector, the Ministry of Commerce, Industry and Tourism is the main Colombian entity in charge. The Unique Regulatory Decree 1074 of 2015 serves as angular stone of activities related to all kinds of licit tourism in Colombia. The decree is further complemented by a series of resolutions, circulars and decrees that go from the creation and administration of a National Tourism Fund to the regulation of specific subsectors such as ecological tourism.
8. Labour law overview
Colombian legislation establishes a regular working day of eight (8) hours – 48 hours per working week, from Monday to Friday or Monday to Saturday. The regular work day is from 6:00 a.m. to 9:00 p.m. Workers on shifts between 9:00 p.m. and 6:00 a.m. earn 35% more than the hourly wage.

The maximum length of the regular work day is eight hours, 48 hours per week, except for some special cases mentioned by the labour regulation.

Hours worked in addition to the normal working day are compensated as overtime. Overtime during the regular work day is paid 25% more per hour. Night overtime (out of regular work day time) is paid 75% more.

Overtime is not paid to employees in managerial or trustworthy positions.

8.1. Foreign employees

Pursuant to Colombian Labour Code, employers are not restricted in hiring foreign employees.

Colombia used to have a proportion rule[12] which was abolished on 1st January, 2011. Therefore, if a company expects to hire a foreign employee, there is currently no requirement or procedure regarding the number of foreign employees who could work for the company.

To hire a foreign employee, the Company must comply with the following requirements:

- To execute a work or services contract.
- To evidence economic solvency to hire an employee (the company must evidence banking statements with at least 100 minimum monthly wages 23,000 USD for 2017)
- Certificate of good standing
- Detailed foreigner's job activities and functions
- Foreigner's position
- If the foreigner will execute a regulated activity must complies with the profession homologation.

8.2. Types of labour agreements

Pursuant to the Colombian Labour Code, the labour contract is the agreement by which an individual agrees to render services to another individual or to a company, on the basis of the employee’s continued dependency or subordination in exchange for compensation.

The labour contract can be verbal or in writing and, depending on its term, can be one of the following kinds of agreements:

- Fixed-term contract
  This kind of contract can be signed for a period up to three (3) years and is renewable indefinitely. If the period of the agreement is less than one year after having renewed the contract three times, the employer will have to sign a new agreement for at least a period of one year.

  If the employer (the “company”) wishes to terminate the contract due to expiry, the company should notify the employee thirty (30) days before the expiry date. Otherwise, the agreement will be renewed tacitly.

- Open-ended contract
  This kind of contract does not have an expiry date, because it is not required by the parties or the type of work performed.

  If the parties do not agree a specific term, it will be understood that the contract is an open-ended one.

- Agreement for the duration of the work
  In order to be under an agreement for the duration of the work, the parties must sign a written contract that should include a detailed description of the activity or work to be performed by the employee, since the term of the agreement is determined by the time required to carry out the work.

- Temporary contract
  This kind of contract is used when the employer is required to hire temporary staff for less than one month.

  Employees hired under this contract are excluded from receiving those labour benefits arising from work accidents and occupational illness, life insurances and funeral expenses.

8.3. Types of wages

There are two types of salary compensation in Colombia, being:

Ordinary salary: The employee will have the right to receive the following labour benefits besides a fixed or variable amount as monthly salary:

a. Severance payment (‘cesantía’ in Spanish): One month’s salary for each year of work based on the last monthly wage, provided it has not been modified in the last three (3) months of the year. If the salary has been modified, the average of the last twelve (12) months is taken into account to determine the annual severance payment.

This payment is due during the enforceability of the labour contract and its termination and has to be deposited in an

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[12] According to the proportion rule, the employer had to respect the following proportion: 90% of their ordinary employees had to be Colombian citizens and at least 80% of the reliable and qualified personal had to be Colombian citizens.
individual account on behalf of the employee in a ‘cesantias’ fund chosen by the employee, until 14 February the following year to the one on which the ‘cesantia’ was accrued, for instance, 2016 severance (corresponding to one month of salary of 2016) should be deposited in the cesantia fund before February 14, 2017.

b. An annual 12% interest on the outstanding balance of the ‘cesantía’ as at 31 December of each year. It is payable directly to the employee in January of the year following the accrual of the ‘cesantía’, or on a pro rata basis at the end of the labour contract.

c. Service bonus (prima legal): One month’s salary per year 50% payable in June and 50% in December. The bonus is paid proportionally to the time served in a calendar semester.

d. Annual leave (“vacations”): Fifteen (15) paid working days per annum or proportionally to the time that the employee has been working.

Package salary: When the employee earns a salary higher than ten (10) times the minimum legal wage (approximately USD 3,321 per month), the employee might agree to a package or integral salary, which cannot be lower than ten (10) monthly legal minimum wages, plus a benefit factor equivalent to the 30% of said salary.

The benefit factor includes all the social benefits already mentioned for the ordinary salary, except annual leave.

8.4. Social security regime

Employers and employees (including independent contractors) are obliged to contribute to the social security system. In addition to pay their own contributions, employers must withhold and remit the contributions of their employees. The system includes subsidies for Colombian citizens who cannot afford to make social security contributions.

As set out in the Act 1607 of 2012, the payment of contributions to the Social Security System in Health, will have the following changes:

1. After December 31 2013, the employers are exempt to pay Social Security System in Health contributions by general rule, only settled this contribution on wages exceeding ten (10) monthly legal minimum wages.

2. Employers who have more than two (2) workers with less than ten (10) monthly legal minimum wages, are exempt from this contribution to health.

The following companies continue to pay contributions to the social security system in health:

– Companies declared Free-Trade Zones to December 31, 2012, and the companies at that time have applied for qualification as Free Trade Zone. Equally qualified users or those who apply in the future the determination as user of these special zones.
– The non-profit entities
– Non-income taxpayers
– People with less than two (2) employees

All contributions are computed as a percentage of the employee’s salary or wage. The ceiling for calculating the contributions that have to be paid by both employers and employees is 25 minimum legal wages. This means that the taxpayers earning more than 25 minimum legal wages will contribute to the social security system having as a contribution base this fixed amount (the excess of it is not taken into account). In the case of employees with a package or integral salary, the maximum base is 70% of the salary that in no case may exceed the cap already mentioned.

The rates for calculating the employer’s contributions under the social security system are:

<table>
<thead>
<tr>
<th>Fund</th>
<th>Employer’s contribution rate</th>
<th>Employee contribution rate</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health insurance</td>
<td>8.5%</td>
<td>4%</td>
<td>12.5%</td>
</tr>
<tr>
<td>General pension scheme (old age, disability, survivors’ pension and administrative expenses)</td>
<td>12%</td>
<td>4%</td>
<td>16%</td>
</tr>
<tr>
<td>Occupational accident insurance 13</td>
<td>0.5% - 6.96%</td>
<td>N/A</td>
<td>0.5%</td>
</tr>
</tbody>
</table>

13 This contribution is only payable by employers and varies per job type, depending on the risks associated with the type of business performed by the employee.
Employees who earn more than four (4) monthly legal minimum wages must pay an additional 1% for the general pension scheme towards solidarity fund.

Employees earning sixteen (16) monthly legal minimum wages or more will have an additional contribution over their contribution base income, as follows:

<table>
<thead>
<tr>
<th>Salary base</th>
<th>Employee additional contribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>From 16 to 17 minimum legal wages</td>
<td>0.2%</td>
</tr>
<tr>
<td>From 17 to 18 minimum legal wages</td>
<td>0.4%</td>
</tr>
<tr>
<td>From 18 to 19 minimum legal wages</td>
<td>0.6%</td>
</tr>
<tr>
<td>From 19 to 20 minimum legal wages</td>
<td>0.8%</td>
</tr>
<tr>
<td>20 minimum legal wages or more</td>
<td>1%</td>
</tr>
</tbody>
</table>

The above payments are the employee sole’s responsibility.

Pursuant to Act 1393 of 2010, from all income that the employee receives from the employer (regardless of this income being salary or non-salary) the base for the payments to general the pension scheme and health insurance must be at least 60% of such total income.

8.5. Payroll tax

All employers must contribute 9% of their monthly payroll. The total revenue of this contribution is allocated as follows:

- 2% to the National Learning Service (Servicio Nacional de Aprendizaje, SENA);
- 3% to the Colombian Institute for Family Welfare (ICBF, by its acronym in Spanish);
- 4% to the Family Allowance Fund (Cajas de Compensación Familiar).

After June 30 2013, the employers are exempt to pay ICBF and SENA contributions by general rule, as provided in Act 1607 of 2012. From this date, only settled on wages exceeding ten (10) monthly legal minimum wages.

Similarly, from July 1st. 2013, people (individuals) who have two (2) or more employees are exempt from paying these contributions mentioned above.

The following companies continue to pay contributions to SENA, ICBF and Family Allowance Funds:

- Companies declared Free-Trade Zones to December 31, 2012, and the companies at that time have applied for qualification as Free-Trade Zone. Equally qualified users or those who apply in the future the determination as user of these special zones.
- The non-profit entities.
- Non-income taxpayers.
- People with less than two (2) workers.
9. Foreign exchange controls
9.1. Foreign investment in Colombia

Colombia has a foreign exchange regime regulation that applies to foreign investments. Hence, all investment of foreign capital must be channelled through the exchange market by means of an exchange market intermediary (local bank) or a bank account abroad registered before the Colombian Central Bank ("cuenta de compensación," by its name in Spanish).

Foreign currency transfers of capital investments into companies or non-profit associations established in Colombia will be automatically registered upon the filing of an exchange declaration (commonly known as Form No. 4), when converting the funds into local currency (Colombian pesos). Other types of investments can take place (e.g. contributions in tangible or intangible goods, sums with drawing rights) without time for registration.

Once the investment is registered, the registration holder is entitled to:

- Transfer the net profits that the investment periodically generates.
- Reinvest profits or retain them as surplus undistributed profits.
- Capitalise sums with drawing rights.
- Transfer income received from selling the investment in the country, from liquidating the company, from portfolio, or from reducing the company’s equity.

The registration of foreign investments mentioned above is a procedural issue; nevertheless, failure to comply with this procedure could result in penalties by the Superintendence of Companies for foreign investors or their representatives in the country.

Changes in the foreign investor must also be reported to the Central Bank within six (6) months from the transaction. Failure to do so means the new investor will lose the aforementioned rights related to this register.

On the other hand, companies receptors of the investment should register it within the seven and eight months following the end of the financial year as at 31 December, by filing Exchange Form No. 15.

9.2. Supplementary investment account of branches of foreign companies

The Colombian branches of foreign companies are entitled to receive the initial capital investment from its main office, which should be classified as “assigned capital” investment.

Additionally, they may receive foreign currency as supplementary investment (“ISCA" by its acronym in Spanish). In both cases, the foreign currency must be transferred through the exchange market by means of a local bank or a registered foreign registered bank account before the Central Bank. Both operations must be declared by the Exchange Form.

9.3. Foreign indebtedness

According to exchange regulations, Colombian residents are authorised to obtain credits in foreign currency from local or foreign financial institutions, and other non-residents including its main office or controlling entity.

These operations should be registered before Central Bank through Form No. 6 before the disbursement of the foreign credit with the presentation of the loan agreement signed. This Form should also be used to report any changes in the credit conditions after initial registration. If the disbursement is simultaneous with the registration, this form is enough to report the operation, however, if the loan disbursement is performed later, the Colombian resident must additionally filing Exchange Form No. 3.

Advances for future capitalizations are understood as “external indebtedness” as of July 26, 2017 and must comply with the registration procedures, for external indebtedness, before the Colombian Central Bank.

9.4. Trade operations - Imports and exports

Imports and exports of goods are subject to the exchange market regulations, thus all payments related to those operations must be transferred through the exchange market through a local bank or foreign bank account registered before the Central Bank.

Colombian residents must pay amounts due to their foreign suppliers through the foreign exchange regime, for which they must fill out the exchange declaration (known as Form No. 1). In case of export, residents have to formalise through the foreign exchange market the payments received, through the related exchange declaration (Form No. 2).

Taking into account the aforementioned, it is not allowed to offset obligations derived from foreign trade transactions already mentioned. If these provisions are not complied with, the parties would breach the exchange regulations and could be subject to fines of up to 100% of the proved infringement.

9.5. Special Foreign Exchange Regime

There is a Special Foreign Exchange Regime in Colombia that is applicable to branches of foreign companies that perform activities related to the exploration and exploitation of oil, gas, coal, ferronickel or uranium or those that render services exclusively to the hydrocarbons sector.

This Special Regime allows these branches not to channel the foreign currency coming from its sales through the Foreign Exchange market (as the other companies must do), but they
cannot purchase foreign currency in the Colombian exchange market. Likewise, the only amount that they can channel through the exchange market is the foreign currencies necessary to cover the expenditures in Colombian pesos of these branches.

Regarding the foreign investment, the initial capital investment from the parent companies of this kind of branches should be wired through the exchange market and registered with the central bank using the corresponding exchange Form. On the other hand, the supplementary investment must be registered within the six (6) months following the end of the financial year as at 31 December, by filing Exchange Form No. 13. The foreign investment should be updated every year before 30 June.

9.6. Services payments

Services do not constitute an exchange market transaction. Therefore, they are considered to be of the ‘free market’. For this reason, the foreign currency movements for these operations should not be mandatory returned to the Colombian exchange market, which means they can be traded from free market accounts.
Investment in Colombia | Foreign exchange controls
10. Trade and customs
10.1. Free-trade zones (FTZ)

For the purpose of promoting trade, investment, creation of employment in some areas of the country, as well as implementation of the standards and obligations imposed by the World Trade Organisation (WTO), the Colombian Congress approved Act 1004, enacted in December 2005. This Act establishes a legal framework for the FTZ regime with incentives on income tax rate. In addition, it should be taken into account the latest modification to the regime under the frame of Decree 2147, 2016 with the considerations explained as follows.

In that sense, FTZs are geographic areas designated within the National Territory of Colombia (TAN14, by its acronym in Spanish), in which industrial activities and services are provided, or commercial activities are performed, under special legislation for customs and tax matters. The goods domiciled within the FTZ are considered outside of the TAN for the purposes of import and export duties and fees. Please note that Colombia does not have any export customs duties.

Some of the main tax and customs benefits are:

– Tax related:

  Industrial users of goods or industrial users of services are allowed an income tax rate of 20% (the regular rate for 2017 is 34%, plus a 6% of an income surcharge; for 2018 it is 33% plus 4%, and for 2019 and onwards, 33% and no surcharge). This reduced tax rate does not apply to commercial users located in free-trade zones as explained below.

  – Customs related:

  Exemption from payments of customs duties and VAT upon the introduction of merchandise from overseas to the FTZ, as long as the merchandise remains within the free-trade zone. Thus, the owner of the goods can maintain inventories of merchandise in warehouses in the zone without paying duties and VAT until the items are brought into the national customs territory.

  Additionally, the sale of goods from the national Colombian territory to an industrial user of services or goods established in a free-trade zone are not subject to VAT, provided those goods are necessary for the development of the business objective of these users.

  The next table explains when it is considered that goods from abroad are an importation.

<table>
<thead>
<tr>
<th>Concept</th>
<th>Nature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction of goods from abroad to the TAN</td>
<td>It is considered as an importation. In this case, the importer of records must pay the corresponding customs duties.</td>
</tr>
<tr>
<td>Introduction of goods from abroad to a FTZ</td>
<td>It is not considered as an importation. In this case the user of the FTZ is not obliged to pay any customs duties for the introduction of the FTZ.</td>
</tr>
<tr>
<td>Introduction of goods from TAN to a FTZ</td>
<td>It is considered as an exportation when the goods are received by an Industrial User of goods and/or services. In case of commercial user it is not considered as an exportation.</td>
</tr>
<tr>
<td>Introduction of goods from a FTZ to the TAN</td>
<td>It is considered as an importation.</td>
</tr>
</tbody>
</table>

10.1.1. Colombian FTZ users

The following is a description of each kind of user that can operate in a free-trade zone:

– **Operators:** Legal entities authorised to direct, manage, supervise and develop one or several free-trade zones, as well as to qualify their users.

– **Industrial users:** These legal entities can be classified as follows:

  a. Industrial users of goods: Legal entities installed exclusively in one or several free-trade zones, authorised to produce, transform or assemble goods by processing raw materials or semi-manufactured products.

  b. Industrial users of services: Legal entities authorised to render services exclusively in one or several free-trade zones. The activities that can be carried out by an industrial user of services include:

14 Territorio Aduanero Nacional (Colombian territory for customs purposes)
i. Logistics, transportation, distribution, packaging, labelling, classification;
ii. Telecommunications; scientific and technological research;
iii. Medical, dental and general health assistance;
iv. Tourism.

− **Commercial users**: Legal entities authorised to carry out activities such as trading, marketing and storage or preservation of goods. In addition, the commercial users cannot hold both qualifications simultaneously (with industrial user of goods or services qualification).

### 10.1.2. Types of Colombian free-trade zones

Colombia has several kinds of free-trade zones, being:

− **Permanent free-trade zone**

Areas within the Colombian national territory in which several or multiple companies are established. This kind of free trade zone is managed by an operator user and has some requirements both in extension of land and infrastructure to operate.

Likewise, this permanent free trade zones must comply special requirements as follows: at the end of the fifth year following the declaration, the free trade zone must also guarantee five industrial users of goods and/or services and a new investment of 46,000 legal minimum monthly salaries or more.

Three years after the declaration of the Free Trade Zone, it must validate a new investment for an amount equal to or greater than 150,000 legal minimum monthly salaries and 150 new direct and formal jobs.

− **Special permanent trade zone**

Areas created for special projects with high economic and social impact for Colombia and to stimulate new investment and employment projects. The special free-trade zone allows companies that are physically located outside of a geographic free-trade zone area to operate as a free-trade zone user and enjoy the aforementioned benefits. This special zone does not have minimum area and there is one only user.

Special permanent trade zones can be classified as special permanent trade of goods or services and each of them has special investment and employment requirements:

− For special permanent trade zones of goods, for every 23,000 legal minimum monthly salaries of additional new investment, jobs may be reduced by 15 but never be less than 50.

After the second year, following the start of the project, a minimum of 90% of the jobs must be maintained.

− For special permanent service free zones, the requirements must be completed within 3 years of the declaration as follows: New investment for an amount from 10,000 and up to 46,000 legal minimum monthly salaries and the creation of 500 or more new direct and formal jobs; new investment for an amount from 46,001 and up to 92,000 legal minimum monthly salaries and creation of 350 or more new direct and formal jobs; and new investment for an amount of 92,001 legal minimum monthly salaries and the creation of 150 or more new direct and formal jobs.

After the second year following the start of the project, at least 90% of the jobs should be maintained.

− **Transitory free-trade zone**

Locations where trade fairs, expositions, conferences and seminars that are considered important for Colombia's economy and international economy will take place.

### 10.2. Current Free Trade Agreements signed by Colombia with third parties

Colombia has signed the following Free Trade Agreements (FTA) with other countries, which are currently in force:

− Andean Community –CAN– (Colombia, Ecuador, Peru and Bolivia)
− Canada
− Caribbean Community and Common Market –CARICOM- (Antigua y Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Monserrat, St. Lucia, Saint Kitts and Nevis, St. Vincent and the Granadines, Suriname and Trinidad y Tobago).
− Chile
− Common South Market -MERCOSUR (Argentina, Uruguay, Paraguay and Brazil)
− Costa Rica
− Cuba
− European Free Trade Association –EFTA-: (Switzerland, Lichtenstein, Norway and Finland).
− Mexico
− North Triangle (Salvador, Guatemala and Honduras)
− Pacific Alliance (Peru, Mexico and Chile)
− South Korea
− United States of America
− Venezuela
− European Union
− Korea

Additionally, currently there are negotiations held in order to sign the following FTA with Israel and Panama.
11. Corporation tax
11. Income Tax

National Companies are subject to corporation income tax on their worldwide income. Foreign companies are subject to this tax only on their Colombian-source income.

The Colombian Tax Code introduced the concept of Permanent Establishment (PE) as from 2012 (FY2013) which is levied in Colombia on their income and capital gain of domestic source attributable to it.

Generally speaking, a PE is a fixed place of business situated in the national territory, through which a foreign enterprise, either a company or any other foreign entity, or an individual without residence in Colombia, executes wholly or partly its entrepreneurial activities. Further, a foreign enterprise will have a PE in Colombia, if a person, other than an independent agent, acts on behalf of such foreign enterprise, and has or habitually exerts the authority within Colombia to conclude contracts or acts that would bind such foreign enterprise, unless the activities are exclusively preparatory or auxiliary in character. Additionally, a PE would exist if a foreigner acts in Colombia through an independent agent where such agent does not act in Colombia in the regular course of its activities. In that case such agent would be considered as a dependent one.

As a general rule, companies must keep their accounting records and pay their taxes using the accrual method. It is important to remark that the PE shall keep in a separately manner the identification of the income, costs and expenses attributed to it and its income and gains must be based on a study of functions, assets, risks and personnel involved in obtaining the income attributable to it, which should be made under transfer pricing rules.

11.1.2. Income Tax - Tax Rates

a. General Rates

For national companies and foreign entities that obtain their income by means of a branch or a PE the tax rate is as follows:

FY2017 Income Tax rate: 34%.
FY2018 and onwards Income Tax rate: 33%.

b. Income Tax surcharge

If taxable income equals or exceeds COP$800,000,000, the taxpayer would be also subject to the Income Tax surcharge on that excess at the following rates:

FY2017: 6%
FY2018: 4%

11.1.3. Concept of Taxable Income

a. General framework

Income tax levies the net income (“taxable income”) defined as the sum of all operating receipts plus non-operating income, minus the cost of goods sold or cost of services, minus the general business expenses incurred in the business during the year. The Colombian fiscal year runs from 1st January to 31st December of the calendar year.

With regard to the domestic source income, Colombia law defines it as the revenues resulting from the exploitation of tangible and intangible goods located in Colombia; rendering services within the Colombian territory and services rendered from abroad if the beneficiary is located in Colombia and the income obtained from the alienation of goods held within the country at the moment of its alienation, among others.

In the computation of taxable income, it is first necessary to subtract from the gross revenues, the restitutions, mark downs and discounts, the non-taxable revenues, the costs, the deductions and the exempt income. The taxable income will be the result of the following procedure:

| Gross revenues | (-) Restitutions, mark-downs (rebates) and discounts | = Net revenues |
| (-) Non-taxable revenues | = Gross income |
| (-) Costs | = Net income |
| (-) Deductions | = Taxable income |
| (-) Exempted income | |

b. Gross revenue

The concept of revenue is broadly defined by the tax law in order to include all ordinary and extraordinary earnings of the taxable period which trigger net increase in the taxpayer’s net worth, unless specifically exempt income.

For income tax purposes, taxpayers with the accrual system of accounting (e.g. legal entities) have to include in their Income Tax Return their income or revenues accrued in the tax year or tax period following the accrual accounting rules. Some of the exceptions are:

- The income or revenue coming from dividends from corporations or profits is deemed as received by the respective partners, stakeholders, associates, etc. when the distribution of the dividends has been decided and the payment of those can be demanded.

15 Approx. USD$268,000 by applying the exchange rate of January 2, 2018 (COP$2,984).
– Transfer of profits that correspond to domestic source income of branches and PE of foreign entities and non-resident individuals, is considered as a dividend and its accrual occurs at the moment of the transfer of the profits.

– The revenue received from the selling of real estate will be accrued on the date of the public deed through which the sale is formalised (this is mandatory in Colombia for real estate).

c. Non-taxable revenues

An example of non-taxable revenues is the income from the sale of shares listed in the Colombian stock exchange, provided the shares sold in the tax year by the seller are less than 10% of the outstanding shares of the company concerned.

d. Deductibility requirements

i. General deductibility rule

According to Section 107 of the CTC, expenses are deductible to the extent they are necessary and proportionate with the business activity carried out by the taxpayer, all of which must be determined from a commercial point of view. Overall the expenses must have a causal relationship with the income generating activity.

Deductible items include business expenses, depreciation, interest payments, wages, social security payments, industry and commerce tax (gross receipts tax), real estate tax (in the case of productive real state, this is, real estate that produce earnings for the taxpayer), 50% of financial movements tax (GMF in Spanish); in the case of taxes, the deduction concerns the amount effectively paid, etc.

Some limitations on the deductibility of payments made abroad to non-residents may apply as well as some special requirements in technology agreements.

ii. Deductibility rules in operations between related parties

Besides all the afore-mentioned requirements, the transfer pricing regulation must be adhered in the case of operations between affiliate or related parties. For more detail please see the chapter of the transfer pricing regime of this document.

iii. Special deductions

Pursuant to the Colombian Tax Code, in general, taxpayers who are required to file an income tax return in Colombia, are able to deduct the donations made during the tax year to the National Network of Public Libraries.

Donations to non-profit entities, among others, are not deductible but the donor could take as a tax credit in the calculation of the income tax the 25% of the grant amount.

11.1.4. Thin capitalization rules

Interests will be deductible only if they come from debts which total average during the year do not exceed the result of multiplying by three (3) the taxpayer’s net worth determined at December 31st of the preceding fiscal year.

It would not be deductible the proportion of interest arisen from the debt that exceeds the threshold referred above. The rule does not apply to institutions supervised by the Financial Supervisor of Colombia, for example, financial institutions, or to debts to finance utility infrastructure projects.

If the interests are paid to an economically related party located abroad, it would be necessary to fulfill with the Colombian transfer pricing regulations regarding interests, applying the arm’s length principle and other comparability requirements, filing the relevant return and executing the relevant study depending on the amount of the operation.

It is also required to fulfill the exchange market regulation16. To this regard, the Colombian foreign exchange regimen allows Colombian residents entities to obtain loans from financial institutions as well as from other non-residents not qualified as such. Anyhow, foreign loans are operations that must be wired through the exchange market; this means that such operations must be reported before the Central Bank through the authorized exchange market intermediaries.

11.1.5. Tax losses

a. Ordinary losses

Section 147 of CTC (amended by act 1819 of 2016), establishes the term of 12 years (12 fiscal years) as the time limit to offset the tax losses originated as from January 1st, 2017 against the taxable ordinary income.

The tax reform eliminated the reference to “readjust” tax losses, hence it should be understood that such tax losses (the originated as from January 1st, 2017) will not be readjusted.

Despite of the above-mentioned, for Income Tax losses and CREE tax losses originated in FY2016 and previous, the tax reform provided a transition regime, according to which they could be offset as follows:

Formula:

\[
\text{VPF2017} = \frac{(PFIRC \times \text{TRyC}) + (PF Cree \times (TCREE))}{\text{TRyC2017}}
\]

VPF2017 Correspons to the tax losses amount that can be offset as from FY2017.

---

16 The exchange market is the one that controls and rules the inflow and outflow of foreign currency to and from the Colombian territory.
PFIRC Corresponds to the Income tax losses cumulated to December 31st, 2016 that have not been offset.

TRyC Corresponds to the applicable Income Tax rate up to December 31st, 2016.

PFCREE Corresponds to the CREE tax losses cumulated to December 31st, 2016 that have not been offset.

TCREE Corresponds to the applicable CREE Tax rate up to December 31st, 2016 without including the surcharge.

TRyC2017 Corresponds to the Income Tax rate applicable to FY2017 without including the surcharge.

The transition regime allows that tax losses originated up to December 31st, 2016 are offset without a time limit. However, these losses cannot be readjusted as from 2017.

b. Capital gains losses

Capital losses incurred upon the transfer of fixed assets that were held by the company for more than two years are deductible only from capital gains that result from similar transactions. Capital gains arising from the transfer of fixed assets that were part of the company for less than two years are treated as net income, thus the aforementioned rule will be not applicable for these cases.

11.1.6. Presumptive System

a. General considerations

A presumption of income (presumptive income) is an alternate method for determining the taxable income, so as to ensure that the taxable income is not lower than 3.5% of the taxpayer’s net worth\(^{17}\) at the end of the preceding year. Some assets may be excluded from the net worth for this purpose.

The amount of the income calculated according to the presumptive system exceeding the income amount calculated under the ordinary one, can be carried forward as a deduction from the net income within a period of five (5) years. The excess is not subject to fiscal adjustments.

b. Presumptive Income Excess

According to the transition regime of section 290 of the tax reform (Act 1819 of 2016), the amount of the presumptive income excess and minimum basis excess generated up to 2016 in Income Tax and in CREE Tax which will be offset in FY2017 is the following:

\[
V_{PF2017} = (ERP_{IRC} \times TRyC) + (EBN_{CREE} \times TCREE) \\
TRyC_{2017}
\]

\(V_{PF2017}\) Corresponds to the excess of presumptive income excess and minimum basis excess to be offset as from FY2017.

\(ERP_{IRC}\) Corresponds to the amount of each presumptive income in Income Tax, cumulated up to December 31st, 2016 that have not been offset.

\(TRyC\) Corresponds to the applicable Income Tax rate up to December 31st, 2016.

\(EBN_{CREE}\) Corresponds to the amount of each minimum basis excess over the CREE taxable base cumulated up to December 31st, 2016 that have not been offset.

\(TCREE\) Corresponds to the CREE Tax rate applicable up to December 31st, 2016, without including the surcharge.

\(TRyC_{2017}\) Corresponds to the Income Tax rate applicable to FY2017 without including the surcharge.

Presumptive Income excess calculated by applying the referred formula for each FY, should be offset within the following 5 years\(^{18}\) as from the year in which the excess was generated and can be readjusted up to 2016.

The 5 years term also applies to offset excesses generated as from 2017 but these could not be readjusted.

11.1.7. Taxation of Capital Gains

Colombian law also taxes the capital gains, i.e. the earnings from the disposal of fixed assets of any type.

The general rule is that short term gains (those derived from assets held for less than 2 years) are taxed at a rate of 40% for fiscal year FY2017 (income tax rate of 34% and its surcharge\(^{19}\) of 6%), 37% for FY2018 (income tax rate of 33% and its surcharge of 4%), and 33% for 2019 and onwards; whilst long term gains (those derived from assets held for 2 years or more) are taxed at a rate of 10%.

Capital gains are calculated by subtracting the cost basis of the assets from the alienation price, which is the one agreed by the involved parties, provided it does not differ significantly from the average commercial price of goods of similar characteristics on the alienation date.

The price agreed by the parties differs notoriously from the average commercial price, for tax purposes, when it diverges

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\(^{17}\) The assets less liabilities at December as at 31 of a concerned year.

\(^{18}\) According to section 189 of the CTC.

\(^{19}\) The Income Tax Surcharge would be triggered only on the amount of net taxable income that equals or exceeds COP $800,000,000 approx. USD$268,000 by applying the exchange rate of January 2, 2018 (COP$2,984).
in more than 25% from the price established in the market for goods of the same kind and quality on the date of sale (fair market value), considering as well the nature and conditions of the asset.

In the case of shares non-listed on the stock exchange, unless evidence on the contrary, it is deemed that the alienation price of the shares cannot be lower than their intrinsic value (Entity’s accounting net equity/outstanding shares) increased in a 15%.

Income tax, foreign exchange, and transfer pricing (when the sale transaction is done between affiliates) compliance liabilities may have to be observed.

11.1.8. Tax credit

Colombia avoids international double taxation by granting a tax credit that consists of the possibility for resident individuals and national entities and corporations, who are resident income taxpayers, to take as a tax credit the result of a formula based on the amount of foreign tax paid upon foreign source income taxed in Colombia, as long as the foreign tax does not exceed the Colombian income tax.

Regarding dividends or participations distributed by foreign companies, the receiver of such revenues will be entitled to apply the tax credit taking into account that the amount of the discount is the one resulting from multiplying the amount of such dividends by the income tax rate applicable to the profits of the foreign company that generates and distributes those dividends (underlying tax credit).

Furthermore, when the dividends have been taxed in the country of origin, the tax credit will be increased by the amount of such burden. In all cases that we mentioned above the taxpayer is responsible to prove the payment made in each country where the companies are located; for this purpose it is necessary to use a tax certification issued by the tax authority or a document that proves this situation.

The excess of tax credit can be carried forward on any of the four following taxable periods and it is limited to the tax on income generated in Colombia over the income that gave rise to such tax credit, and it may not be combined with the excess of tax credits arising from other taxable income in Colombia in different periods.

The regulation provides some limitations that apply not only on the direct tax credit but also on the indirect tax credit or underlying one.

Finally, it is not possible to carry back a tax credit.

11.1.9. Tax treaties

Colombia has been negotiating bilateral treaties aimed at avoiding the double taxation (DTA), preventing the income tax and net worth tax evasion in cross-border operations, promoting the exchange of information, recognizing the non-discrimination of nationals and non-residents with activities in the contracting States, and implementing mutual agreement procedures for the resolution of conflicts, etc.

The DTAs negotiated by Colombia are mainly based on the Model Tax Convention on Income and Capital provided by the Organization for Economic Co-operation and Development (OECD).

Furthermore, at level of the Andean Community (which is composed by Colombia, Peru, Ecuador and Bolivia), it has been adopted the Decision 578, that is based in the exemption method, according to which the income is only taxed in the country of source and the country of residence shall consider the income as exempt income, however some exceptions apply.

The DTAs in force subscribed by Colombia are: Spain, Switzerland, Canada, Chile, Mexico, Korea, Portugal, Czech Republic and India. With regard to the DTAs negotiated with France and United Kingdom, Colombia is following its internal procedures in order for them to be considered as binding regulation.

Additionally, Colombia is negotiating DTAs with, Japan20 Israel, United Arab Emirates and Italy.

11.1.10. Withholding Tax

a. Income withholding tax

Pursuant to Section 367 of Colombian Tax Code, the purpose of the income tax withholding is to collect income tax in a gradual way and during the taxable year and applies on payment or accrual made to domestic and foreign companies21.

b. General rates and concepts

The withholding tax rates vary depending on the type of payment, for example:


WCC-096704%26_afrWindowMode%3D0%26_afr.dir_state%3D18qyybmm%9w...4

21 Foreign companies are taxed only on their Colombian source income under special rates provided for payments done abroad.
<table>
<thead>
<tr>
<th>Taxable company</th>
<th>Concept</th>
<th>Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>National Company (including branches)</strong></td>
<td>Services</td>
<td>4%</td>
</tr>
<tr>
<td></td>
<td>Purchase of goods (excluding cars and real estate)</td>
<td>2.5%</td>
</tr>
<tr>
<td></td>
<td>Fees and commissions</td>
<td>11%</td>
</tr>
<tr>
<td></td>
<td>Prizes from lottery, gambling and gaming</td>
<td>20%</td>
</tr>
<tr>
<td></td>
<td>Civil works</td>
<td>2% over the gross amount of the total payments made.</td>
</tr>
</tbody>
</table>

| **Foreign companies** | Dividends | Pursuant to section 245 of the CTC, dividends distributed out from profits taxed with income tax at the level of the distributing entity are subject to a WTH tax at a rate of 5%, and dividends distributed out from profits that did not pay income tax at the distributing entity level are subject to withholding tax at a rate of 35% plus an additional 5% after discounted the 35%, which means that the effective rate of the Income Tax WHT on dividends is of 38.25%. |
| | Interest, commissions, royalties, leases, general services and payments due to copyrights or know-how | 15% |
| | Other cases different from those specially mentioned | 15% |
| | Turnkey contracts | 1% over gross value of all the payments or accrual made according to the contract. |

Generally speaking, as far as withholdings with respect to foreign companies are concerned, it is important to consider that if the Colombian source income received by these companies is not entirely subject to withholdings at the stated by law, the foreign companies will have to determine its final income tax liability at the income tax rate on net taxable income and file an income tax return. In the latter case, the withholdings can be treated as an advance payment and used as a tax credit against the final tax liability. There are specific cases where the withholding tax rate is not the final tax but only a payment in advance that can be taken as a tax credit in the income tax return.

**c. Income Tax self-withholding**

Resident corporations in Colombia, PE’s of foreign entities and foreign entities subject to the Income Tax, are required to apply the Income Tax self-withholding in every payment or accrual they receive.

There are three (3) self-withholding rates: 1.6%, 0.40% and 0.80% which apply depending on the activity of the payee. The tax return must be filed on a monthly basis.

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**11.2. Anti-Abuse Tax Rules**

As from 2013, an anti-abuse clause is introduced in the Colombian regulation to prevent tax avoidance and evasion, which rests on the constitutional principle of substance over form, which is recognized by our case laws of both the Constitutional Court and the Council of State.

Given that the anti-abuse clause established a lot of difficult requirements to be fulfilled by the Taxing Authority to apply it, that clause was amended by means of the Law 1819 of 2016 (the latest tax reform).

According to the new anti-abuse clause, the Tax Authority may characterize or reconfigure any operation that constitute abuse in tax matters and, consequently, will ignore its effects; the Tax Authority would determine the true nature, form or characteristics of the operation and which entails the truly tax effects.

An operation will constitute abuse in tax matters when it involves the use or the implementation of one or more artificial legal transactions, with no apparent economic and/or commercial

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22 The income withholding tax on payments of interest has some especial rules

23 According to the Colombian tax doctrine, a turnkey contract is characterized by being a contract to supply equipment, plants, nets, centrals and other goods of similar nature and involves the design, building, installation, assembly, essays, commissioning or follow-on contractual actions or activities of similar nature and the training the personnel.

24 FY2017 (income tax rate of 34% and its surcharge of 6%), 37% for FY2018 (income tax rate of 33% and its surcharge of 4%), and 33% for 2019 and onwards
purpose, in order to obtain a tax benefit\textsuperscript{25}, regardless of any subjective intention.

It is understood that a legal act is artificial and therefore has no economic and/or commercial purpose, when it is evidenced, among other circumstances, that:

1. The legal act is executed in a way that, in economic and/or commercial terms, is not reasonable.

2. The legal act results in a high tax benefit that is not reflected in the economic or business risks assumed by the taxpayer.

3. The legal act or business is apparently correct, since its content hides the true will of the parties.

\textbf{11.3. Controlled Foreign Corporations}

Control of tax planning mechanism for the obtaining of passive income in other jurisdictions through investment vehicles. This regime obliges the controlling entity to include the income, costs and expenses of controlled foreign entity in the proportion that corresponds to it, at the moment of the accrual.

- Taxpayers that have a direct or indirect participation of 10\% in the capital or more than one entity located abroad or its results.

- The entity located abroad must be controlled by one or more residents in Colombia, in the terms of subordination and other economic relationship of the transfer pricing regime. The controlled entity must not have tax residence in Colombia.

- The entity includes any investment vehicle, such as companies, trusts, funds and foundations, whether transparent or not, or legal entities or not.

- This regime applies to passive income including dividends, interests or financial returns, income from the exploitation of intangibles, income from the disposal of assets that generates passive income, income from the sale or lease of real estate, income from the purchase and sale of goods whose consumption is made in a jurisdiction other than the ECE’s (among other requirements), income from the provision of technical services, technical assistance services, management services, etc. for or on behalf of a related party with the tax residence in a different country than the ECE’s.

\textbf{11.4. Incorporation of criteria for non-cooperative jurisdictions}

A. Non-cooperative and low or zero tax jurisdictions
B. Preferential tax regimes:

\textbf{11.5. Value Added Tax (VAT)}

The VAT is a national tax that levies the sale of assets that are not exempt (0\% rate) or excluded from the tax, the provision of services within the national territory or from abroad, the importation of tangible property that is not taxed at a zero-rate or excluded from the tax. The standard rate of the VAT is 19\%.

Some sales, provision of services and imports do not trigger the VAT (are excluded) and some of them are exempt. By way of example of excluded: desktop computers and laptops if their value does not exceed COP$1,592,000 for FY2017 (approx. USD$550), temporary import of heavy equipment for basic industries if such equipment is not produced in Colombia, medical services for human beings; by way of example of exempt goods and services: export of goods and services.

Sale of immovable goods does not trigger the VAT except for the first sale of new housing units with a value greater than 26 UVT which corresponds to COP$853,900.000 for FY2017 (approx. USD$295,500), levied with the VAT at the special rate of 5\%. Despite of this, pursuant paragraph of Section 468-1 of the CTC, if the promise to purchase agreement, the public deed of sale, the trust agreement related to the sale of the new housing unit, among other, is subscribed before December 31st, 2017, the sale is excluded from the VAT.

Those who execute levied operations as mentioned above are VAT liable, therefore they must charge, collect and transfer to the taxing authorities the VAT accrued (Output VAT). Taxpayers whose gross income at 31 December of the previous tax year was equal or greater than ninety-two thousand UVT (92,000) COP$ 2,931,028,000 (approx. USD$977,500 for FY2017), must file the VAT returns on bimonthly basis (Jan-Feb, Mar-Apr, May-Jun, Jul-Aug-Sep-Oct, Nov-Dec).

Taxpayers whose gross income at 31 December of the previous tax year was lower than ninety-two thousand UVT (92,000) COP$ 2,931,028,000 (approx. USD$977,500 for FY2017), must file the VAT returns on quarter basis (Jan-Apr, May-Aug, Sep-Dec).

When activities are started during the period, the taxable period will begin at the date of commencement of activities and the taxpayer would be obliged to file the VAT returns on bimonthly basis.

\textsuperscript{25} A tax benefit is defined as the alteration, disfigurement or modification of the tax effects that otherwise would be generated in the head of one or more taxpayers or beneficial owners, such as the elimination, reduction or deferral of the tax, increase in the balance for or against tax losses and the extension of tax benefits or exemptions
The VAT paid constitutes an input VAT in the VAT return, if it is related to VAT taxed transactions and if these transactions are deductible as a cost or expense for purposes of the income tax.

By contrast if the VAT paid is related to an operation that does not constitute a cost or expense for the buyer or to an operation that is not taxed with VAT its amount would not be deductible as in put VAT but would constitute a higher value of the cost or expense incurred by the buyer.

As from taxable year 2017 taxpayers are entitled to deduct from the Income Tax the VAT paid in the acquisition or import of capital goods taxed at the general rate. With regards to the acquisition, the deduction could only be applied if the goods are acquired through a financial lease and the option to purchase is exercised.

This deduction should be included in the income tax return of the taxable year in which the capital asset is imported or acquired.

Capital goods are understood as those to be depreciable tangible assets that are not sold in the business activities of the taxpayer, used for the production of goods or services and which are not incorporated in the final goods produced or transformed. To this extent and among others, the following are considered as capital goods: machinery and equipment, computer, communications and transportation equipment.

11.6. Financial Movements (GMF)

Generally speaking, GMF accrues all financial transactions meant to dispose resources placed in checking and saving accounts, as well as the deposit accounts in the Colombian Central Ban, and the drawing of managerial checks.

The rate is of 0.4% over the total amount of the financial transactions and accrues at the moment in which the financial transaction takes place.

The GMF must be withheld by the financial entities through which the transactions are performed. The financial entities must file the Tax Returns and pay the collected amount to the Tax Authority (DIAN). Additionally, they are liable for any failure and the compliance of these duties.

Income taxpayers are allowed to deduct 50% of the GMF.

11.7. Consumption Tax

Pursuant to Section 512-1 of the CTC, the consumption tax levies the sale of certain assets and the provision of certain services to the final customer and the import of certain goods by the final customer and its rates are of 4%, 8% and 16%. By way of example of 4% rate: the mobile telecommunication service, of 8% rate: motor vehicles of the family type and campers, whose FOB value or the equivalent of the FOB value, is less than USD30,000, with its accessories and of 16%: motor vehicles of the family type and campers, whose FOB value or the equivalent of the FOB value, is greater than USD30,000.

11.8. Registration Tax

The registration tax levies the registration of acts, contracts or legal documents that, in accordance with the legal provisions, must be registered in the Registry Office of Public Instruments or in Chambers of Commerce at rates from 0.1% to 1% of the amount in included in the document or the value of the immovable property, among others.

11.9. Industry and Commerce Tax (ICA)

ICA is a municipal tax that applies to industrial and commerce activities, as well as to services rendered within the territory of a municipality. It does not apply to exports and the sale of fixed assets. Municipal authorities are the responsible for managing the tax. The rate is set by each municipality regulation, according to the following limits established by law: (i) Industrial activity is taxed at rates from 0.2% to 0.7% on income from the sale of goods other than exports, sale of fixed assets and refunds and (ii) Commercial and services activities are levied at rates from 0.2% to 1.1% upon the gross income excluding the items mentioned above.

11.10. Transfer pricing considerations

The Colombian regulations regarding TP rules apply from Fiscal Year 2004 and are consistent with the “spirit” of the Organization for Economic Co-Operation and Development (“OECD”) Guidelines and are seen as part of a larger Government effort to prevent tax avoidance. The TP rules include specific issues such as financial transactions, application of the inter-quartile range, and adjustment to the median when the taxpayer’s margins or
prices fall out of the inter-quartile range and considerations of the industry and/or life business cycles.

In addition, the Colombian Tax Authorities (Dirección de Impuestos y Aduanas Nacionales – “DIAN”) will be entitled to assess taxpayers’ transactions subject to the rules as from year 2005.

**Applicable Colombian Transfer Pricing Regulation**

- Regulatory Decree 1625 of 2016;
- Law 1819 of December 29, 2016 (“Tax Reform”);
- Base Erosion and Profit Shifting (“BEPS”) Action Plan – Action 13: Transfer Pricing Documentation; and

**Filling requirements**

The TP duties in Colombia are composed of:

- Transfer Pricing Return;
- Master File (“MF”);
- Local File (“LF”);
- Country by Country Report (“CbC”); and
- Permanent Establishment Profits Attribution Study.

### 11.10.1. Scope of application

TP filling requirements apply to income tax and complementary taxpayers engaging in cross-border transactions with foreign related parties or transactions with related local parties placed in free trade zones or with entities or companies resident or domiciled in non-cooperative jurisdictions.

The above mentioned, according to the thresholds established in the local standard for such purposes, indexed to the UVT considering the gross equity account, gross income and cumulative annual amount of inter-company transactions for type of operation.

The following outline summarizes, from a general viewpoint, which taxpayers are required to submit the TP Return and, to prepare and send the LF in Colombia:

#### Income tax and complementary taxpayers

Performing transactions with:

- Foreign related parties
- Related local parties placed in free trade zones
- Legal person, companies, or entities resident or domiciled in non-cooperative jurisdictions

| Gross equity (accounting assets) ≥ 100,000 UVT | If any of these conditions is fulfilled, the taxpayer is subject to the TP regime and, automatically, must present at least the TP Return of the fiscal year under analysis. |
| Gross income (operational income + non-operational income) ≥ 61,000 UVT | Now, in reference to the Local File

- Total annual accumulated amount by nature of transaction with related parties > 45,000 UVT |

There will be NO obligation to prepare and submit the LF for those types of transactions, indicated in Section 1.2.2.3.2 of Decree 1625 of 2016, whose accumulated annual amount does not exceed the equivalent for forty-five thousand (45,000) UVT of the taxable period under assessment.

<table>
<thead>
<tr>
<th>UVT 2018</th>
<th>COP</th>
<th>USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>100,000 UVT</td>
<td>3,315,600,000</td>
<td>1,161,330</td>
</tr>
<tr>
<td>61,000 UVT</td>
<td>2,022,516,000</td>
<td>708,411</td>
</tr>
<tr>
<td>45,000 UVT</td>
<td>1,492,020,000</td>
<td>522,598</td>
</tr>
</tbody>
</table>

**Market Representative Rate Republic Bank of Colombia**

COP 2,855.85 = USD 1

For those transactions carried out with companies located in non-cooperative jurisdictions, without considering the thresholds of gross equity or gross income of the analyzed party, transactions > 10,000 TVU (approximately USD $108,021) are subject to be documented in the LF.

On the other hand, in relation to the MF, it’s inferred that the legislation establishes the same criteria that are in force for submitting the LF. However, additional conditions are pending of regulation.

The following outlines the companies required to file the CbC, henceforth taxable year 2016:

A. Managing Entities of Multinational Groups:

1. That are residents in Colombia;
2. That have subsidiaries, branches or PE’s, that reside or are located abroad, as the case may be;
3. Are not subsidiaries of another company residing abroad;
4. Are required to prepare, present and disclose consolidated financial statements; and
5. In the year or immediately preceding taxable period, have registered consolidated revenues for accounting purposes ≥ 81,000,000 UVT.
B. Entities designated by the parent company to comply with the reporting obligation.

C. One or more entities or PE’s resident or located in the national territory that belong to the same multinational group whose parent company is located abroad:

1. Have a share participation in the consolidated revenues of the multinational group ≥ 20%.

2. The parent company did not present the CbC in its country of residence.
   - There is no legal requirement for the parent company to present the CbC in its jurisdiction;
   - There is no qualified agreement with Colombia for the exchange of CbC reports;
   - There is a systematic non-compliance in the tax residence of the parent company, and the local entity has been notified of this failure by the Colombian tax authorities.

3. The multinational group obtained consolidated income for accounting purposes ≥ 81,000,000 TVU in the immediately preceding year or taxable period.

Companies required to file the CbC henceforth taxable year 2016

- If there exist more than one entity or PE that would be required to file the CbC in Colombia, the Group may designate one of them to present it. If it is not designated, the entity with the highest value in equity is the one obligated to present this requirement.

- However, the requirement to file locally will not apply if an entity located in another jurisdiction has already filed the CbC and if certain other conditions are met, such as the fact that the CbC will be exchanged with Colombia and the Tax Authorities have been notified.

- All member entities of a Multinational Group in Colombia must notify the Tax Authorities if they are the parent company or the substitute entity. If none apply, they must notify the identity and fiscal residence of the entity that would report the CbC.

11.10.2. Colombian BEPS Action Plan Regulation

The Ministry of Finance and Public Credit of Colombia disclosed the draft Decree (hereinafter, “the Project”) that will regulate the TP regime in Colombia as of 2018. Among the aspects that stand out, are the following:

Country by Country Report, Master File and Local File

The most relevant change introduced by Law 1819 of 2016 to the TP regime is the adoption of the three-tiered approach of TP documentation proposed in Action 13 of the BEPS Action Plan. According to the Project, the following are the conditions and content of each of these reports:

Country by Country Report

The obligation to present the CbC applies from the fiscal year 2016.

Furthermore, the CbC must be submitted with the following information, requested by jurisdiction:

I. Consolidated information of revenues, profit (loss) before taxes, income tax paid, income tax accrued, stated capital, accumulated earnings, number of employees; and tangible assets other than cash and cash equivalents.

II. Identification of each member entity or belonging to the Group, indicating the jurisdiction of fiscal residence; the place where the PE’s and / or the Branch Offices are located and the main activity or activities of the entities businesses.

Master File

According to the provisions established in Action 13, the MF must contain a general overview of the Multinational Group’s business, including the nature of its economic activities worldwide, its general TP policies and its global distribution of revenues, risks and costs. The Project is foreseen to be delivered in English. Specifically in Colombia, this report requires:

I. Organizational structure (organization chart of the Group);

II. Description of the Group’s business indicating the utility generators, the description of the supply chain of the five (5) main products or services, the list and description of the intra-group agreements for the provision of services, the description of the main geographic markets; a functional analysis to identify the value creation chain of the Group and a description of the main internal restructuring operations during the fiscal year;

III. Group’s intangibles, indicating the global strategy, the legal owners, significant agreements, the pricing policies and the relevant transfers of rights;

IV. Group’s inter-company financial activities; and

V. Group’s financial and fiscal position.

Local File

Under the LF, income tax and complementary taxpayers will demonstrate in a particular way if the income, costs, deductions, assets and liabilities acquired during the year with related parties from abroad or located in a free zone or in transactions with non-cooperative jurisdictions, were determined considering the arm’s length principle. Following the structure stated in the current report delivered to the DIAN, the Project states that the LF must contain the following:
1. Executive summary;

2. Functional analysis;

3. Market analysis (as long as it is relevant to demonstrate compliance with the arm’s length principle); and

4. Economic analysis.

Likewise, it is important to highlight the following information as new aspects in the regime:

- Functional analysis: The remunerations derived from compensations must describe the details and evaluation of benefits, and the consideration or costs that quantify the compensation.

- The definition of intangible is introduced and the contractual clauses to be described are added.

- Economic analysis: The details of each operation are established by type / nature of transactions; the methods used, the information of the comparables, the adjustments implemented, among others. It emphasizes the treatment of financial, intangibles and commodity transactions.

- Finally, it is specified that if an expense transaction was not requested as a cost or deduction in the income statement, there is no obligation to document it in the LF. However, it is necessary to inform it both in the LF and in the TP Return; and it cannot be subject to cost or deduction in the following fiscal years.

11.10.3. Other provisions

In addition to the abovementioned, the following aspects are also highlighted:

- New procedures to develop an Advance Pricing Agreement, including the application, implementation and monitoring process.

- Requirements for commodity transactions, including the priority use of the Comparable Uncontrolled Price method (“CUP method”) and certain documentation requirements along with the specific registry of contracts for these operations.

- Rules for shared-cost agreements, including the obligation to detail the costs or expenses incurred, the benefits received, the method of allocation and the adjustments made, among others.

- Rules for business restructuring, including that taxpayers must identify the purpose of such restructuring, identify the assets, functions and related risks, describe the potential benefits and provide information on other aspects of the restructuring.
12. Individual taxation
12.1. Income Tax

12.1.1. Taxpayers

First of all, it is important to clarify that an individual will be deemed resident for tax purposes in Colombia in any of the following cases:

- if the individual stays continuously or discontinuously in the country for more than one hundred eighty-three (183) calendar days including arrival and departure, during any period of three hundred sixty five (365) consecutive calendar days. It should be highlighted that when the continuous or discontinuous stay in the country occurs in more than one taxable year or period, the individual will be considered as resident as from the second taxable year or period; or

- if the individual is a Colombian diplomatic agent who works in a country where he/she is tax exempted; or

- if the individual is a Colombian national that during the taxable year fulfilled any of the following circumstances:
  - spouse/life partner or dependent minor children considered as Colombian tax resident,
  - 50% or more domestic source income,
  - 50% or more assets administrated/managed from the country,
  - 50% or more assets owned in the country,
  - Is considered as tax resident of a country considered as a “tax heaven”.
  - Tax Authority – DIAN, has requested to support a foreign tax residency, and the individual has not responded.

Taking into account the aforementioned, individual taxpayers can be summarised as follows:

<table>
<thead>
<tr>
<th>Taxable person</th>
<th>Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residents individuals</td>
<td>Subject to income tax in respect of their worldwide income.</td>
</tr>
<tr>
<td>Non-resident individuals</td>
<td>Subject to income tax only in respect of their Colombian source income.</td>
</tr>
</tbody>
</table>

12.1.2. Taxable income

The taxable income of an individual is the sum of all ordinary and extraordinary revenues/income, unless specifically exempt, obtained during the taxable period that upon collection can produce a net increase in the taxpayer’s net wealth or equity.

In order to obtain the taxable income, the base is reduced by applicable deductions and exemptions. There are also some types of income that are not taxed and will reduce the taxable income.

As from FY 2017, a “basket tax system” was introduced by a tax reform in Colombia. This system “split” the income in different baskets and the definition of each basket depend on the kind of income perceived by the taxpayer.

There are five baskets: labor income, pension, capital income, other income and dividends.

The calculation of the taxable base for each basket must be done independently. In the same way, exempt income, deductions, expenses and other tax benefits, must not be recognized simultaneously in various baskets and could not generate double benefit. To bear in mind, losses within a basket, can only be offset against the income of the same basket (not applicable to labor income).

As a general rule, individual taxpayers should report their income and pay their taxes on a cash basis.

12.1.3. Rates

Resident individuals’ income tax rates are progressive in accordance with the level of taxable income obtained in each basket, as follows:

**Labor and pension income**

<table>
<thead>
<tr>
<th>Taxable income in UVT (tax value unity)</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 up to 1.090 UVT (COP $34,726.000 or USD $11,600 approximately for 2017FY)</td>
<td>0%</td>
</tr>
<tr>
<td>From 1.090 UVT up to 1.700 UVT (from COP $34,726.000 to COP $54,160.000 or USD $11,600 to USD $18,150 approximately for 2017FY)</td>
<td>19%</td>
</tr>
<tr>
<td>From 1.700 UVT up to 4.100 UVT (COP $54,160.000 to COP $130,622.000 or USD $18,150 to USD $43,800 approximately for 2017FY)</td>
<td>28%</td>
</tr>
<tr>
<td>From 4.100 UVT onwards (COP $130,622.000 or USD $43,774 approximately for 2017FY)</td>
<td>33%</td>
</tr>
</tbody>
</table>

**Capital and other income**

<table>
<thead>
<tr>
<th>Taxable income in UVT (tax value unity)</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 up to 600 UVT (COP $19,115.000 or USD $6,406 approximately for 2017FY)</td>
<td>0%</td>
</tr>
</tbody>
</table>
From 600 UVT up to 1,000 UVT (from COP $19,115,000 to COP $31,859,000 or USD $6,406 to USD $10,677 approximately for 2017FY) 10%

From 1,000 UVT up to 2,000 UVT (COP $31,859,000 to COP $63,718,000 or USD $10,677 to USD $21,353 approximately for 2017FY) 20%

From 2,000 UVT up to 3,000 UVT (COP $63,718,000 to COP $95,577,000 or USD $21,353 to USD $32,030 approximately for 2017FY) 30%

From 3,000 UVT up to 4,000 UVT (COP $95,577,000 to COP $127,436,000 or USD $32,030 to USD $42,706 approximately for 2017FY) 33%

From 4,000 UVT onwards (COP $127,436,000 or USD $42,706 approximately for 2017FY) 35%

Applicable rates are progressive and also depends on the type of income.

12.2.2. Income withholding tax for non-residents

As previously explained, non-residents are subject to income tax only with respect to their Colombian source income, and the tax generated from this income is usually collected by means of the income withholding tax.

Therefore, the payments made by Colombian employers to non-residents are subject to income withholding tax upon the income.

The withholding rate applicable to non-resident individuals is 15%. Now, if a foreign individual is withheld on the complete Colombian sourced income, such individuals will be not liable to file an income tax return in Colombia.

12.2. Income withholding tax

12.2.1. Income withholding tax for Colombian residents

Colombian source income from employment, investments and capital gains obtained by tax residents is subject to withholding income tax over the gross income.

If the taxpayer is not compelled to file an income tax return, the withholdings from his payments will be considered final income tax. On the contrary, the withholdings of taxpayers that must file an income tax return (at the moment of filing it) can be treated as an advance payment and used as a tax credit against the final income tax liability.

Dividends

For the dividends that were subject to income tax by the company which distributes them.

<table>
<thead>
<tr>
<th>Taxable income in UVT (tax value unity)</th>
<th>Tax rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>0 up to 600 UVT (COP $19,115,000 or USD $6,406 approximately for 2017FY)</td>
<td>0%</td>
</tr>
<tr>
<td>From 600 UVT up to 1,000 UVT (from COP $19,115,000 to COP $31,859,000 or USD $6,406 to USD $10,677 approximately for 2017FY)</td>
<td>5%</td>
</tr>
<tr>
<td>From 1,000 UVT onwards (COP $31,859,000 or USD $10,677 approximately for 2017FY)</td>
<td>10%</td>
</tr>
</tbody>
</table>

Dividends which were not subject to the company tax, the tax rate is 35%. In this case, the progressive tax rates in the above chart, will be applied after deducting this tax.

For non-resident individuals the income tax rate is 35%.

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