

GARRIGUES
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COLOMBIA

Legal Framework of Colombia

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- Foreign Investment
- Investment vehicles commonly used for channeling Foreign Investment
- Labor aspects
- Environmental regime
- Protection of competition
- Anti-corruption regime
- Foreign trade
- Tax regime
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Principles that regulate the foreign investment in Colombia

- National treatment: Foreign investment receives, for all purposes, the same treatment as the investment of capital of national residents
- Universality: Foreign investment is allowed in all sectors of the economy, except in (i) activities of national defense and security; and (ii) processing, disposition and discarding of toxic, dangerous or radioactive waste not produced in Colombia
- Liberalization: Investment of foreign capital in Colombia does not require prior authorization, with the exception of the safety, financial, mining, hydrocarbon and private security sectors, which is required, in certain cases, prior authorization or inspection by the authorities
- Stability: The conditions for the refund of the investment and for the remission of the benefits associated to the same, which would be valid in the date of registration of the foreign investment, cannot be modified in a way that affects the investor unfavourably
- Registration: Foreign investment shall be registered before the Colombian Central Bank (Banco de la República)



Foreign exchange rights for having registered foreign investment in Colombia

- Properly registered foreign investment confers the following rights:
 - To send the net benefits of the investment abroad
 - To reinvest benefits generated by registered investment;
 - To send abroad the amounts received from (i) Sale of participation in companies; (ii) reduction of corporate capital of the company; or (iii) Liquidation of the company or portfolio



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Investment vehicles commonly used for channeling Foreign Investment

- With the purpose to channel investments in Colombia, it is possible to establish two types of entities:
 - Branch of foreign company, or
 - Commercial company: The most used commercial companies are:
 - **Simplified Stock Company (“S.A.S.”)**;
 - Limited Liability Company (“LTDA.”); and
 - Corporation (“SA”)
- The choice between branch and commercial company, depends among other factors on:
 - Limitation of responsibility
 - Benefits of tax and of social security that can be obtained for companies that do not exceed certain size (just applicable to companies)
 - Possibility to prove the experience of the parent company (limited to 3 years in the case of the companies) or its financial capacity, in public tenders



Comparative Table – Incorporation and operation

	Limited Liability Company (LTDA)	Corporation (SA)	Simplified Stock Company (SAS)	Subsidiary of foreign company
Regime of pluralities	minimum: 2 shareholders maximum: 25 shareholders	minimum: 5 shareholders maximum: unlimited	minimum: 1 shareholders maximum: unlimited	It is not required to have local partners, as it is governed by the law of the incorporation place of the parent company.
Nature	Civil or commercial, according to the business scope		Commercial	It is assimilated and understood as a commercial establishment of the parent company.
Process of incorporation	Public deeds, registered in the Commercial Registry before the chamber of commerce of the company's main address		Private document, registered in the Commercial Registry (if the initial contributions include real estate, public deeds are required).	Incorporation through public deeds given by public notary and registration before the respective chamber of commerce.
Capacity	Determined by the activities that are explicitly mentioned in the business scope in the articles of association		Possibility to establish an indefinite business scope	It is determined by the activities that are explicitly mentioned in the clause of business scope in the articles of association of the parent company.

Investment vehicles – Incorporation and operation

	Limited Liability Company (LTDA)	Corporation (SA)	Simplified Stock Company (SAS)	Subsidiary of foreign company
Responsibility of partners	Limited to the total amount of contributions except in the following events: (a) Labor obligations; (b) Tax obligations; (c) If the registered capital has not been paid entirely; (d) When the company is not identified with the acronym "Ltda."; (e) Overvaluation of contributions in kind.	Limited to the total amount of the contributions except in the following events: (a) When there are outstanding obligations of a subsidiary immersed in state of insolvency, if the actions of the parent company caused the insolvency of the subsidiary; (b) Criminal or culpable actions that deteriorate the common pledge of the creditors; (c) Overvaluation of contribution in kind.	Limited to the total amount of contributions except in the following events: (a) Raising the corporate veil when there is legal fraud or prejudice has been caused to third parties; (b) When there is an abuse of right by a shareholder, this one will take responsibility for the damages that his/her conduct causes.	The parent company of the subsidiary is responsible for the activities of the latter in Colombia. Consequently, if the capital of the subsidiary is not sufficient, the parent company may take responsibility.
Regime of contributions	Payment of contributions shall be entire and shall be made at the moment of the incorporation or of the capital increase.	It is possible to pay 1/3 of the value of the contribution at the moment of subscription. The remaining part can be deferred even for one year.	The payment of the contributions can be deferred even for a maximum period of two (2) years.	When the subsidiary is established, the total of the assigned capital shall be paid. In addition to the assigned capital, a supplementary capital can be used by the parent company for the channelling of resources in favor of the subsidiary, in order to develop its operations.

Simplified Stock Company SAS

- Advantages:
 - Only company type that may have a solo shareholder
 - It is possible to have undetermined business scope
 - Unlimited period of duration is possible
 - Responsibility of shareholders limited to the total amount of their contributions (except legal fraud or damaging to third parties), by the labour, tax or any other obligations which the company incurs
 - The payment of the registered contributions can be realized within the following two years from the moment of the incorporation or capitalization



Simplified Stock Company SAS (2)

- It is allowed to regulate the transmission of shares and even prohibit it for a period of up to 10 years, which is extendable for same or inferior periods
- Shareholders are allowed the creation of corporate governance in accordance with their needs, and can also decide on the rules that restrain the different bodies of administration and control of the Company
- While in a corporation there are a lot of restrictions for the agreements between shareholders, in a SAS shareholder agreements not only have few substantial restrictions, but also can give more legal certainty to the shareholders who sign on the level of executability of what is agreed



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Employment contracts

- Employment contracts, according to their duration, are:
 - Indefinitive period
 - Fixed period
 - For the duration of the contracted work or labor
 - Temporary, accidental or transitory
- The existence of the employment contract does not require any formality. It is presumed that the contract exists when the following three elements coincide:
 - provision of services in person;
 - under subordination and dependence of the employer; and
 - in exchange for a remuneration
- The ordinary maximum workday is of eight hours per day and weekly 48 hours



Foreign employees

- Foreign employees have the same rights and obligations as Colombian employees
- When a foreign person performs an employment contract in Colombia, additional migratory obligations shall be met
- Foreigners bonded by employment contracts in Colombia, will be voluntary members of the social security system in pensions



Salaries and social services

- Payments resulting from the labor relationship:
 - Salary: ordinary or integral
 - Agreements of salary exclusion
 - Travel expenses
- Social services:
 - Unemployment assistance
 - Interests to the unemployed
 - Bonus of services
 - Transportation subsidy
 - Footwear and clothing of labor



Contributons to the integral system of social security

Systems	Contributions (% of the salary)	
	Employee	Employer
Pensions	4%	12%
Health	4%	8.5%
Occupational risks	N/A	Between 0.348% and 8.7%
Pension Solidarity Fund	1% - 2%	N/A



Parafiscal contributions

Entity	% of the Wages	
	<10 MLMW	> 10 MLMW
FAMILY COMPENSATION FUND	4%	4%
NATIONAL LEARNING SERVICE (SENA)	0%	2%
COLOMBIAN FAMILY WELFARE INSTITUTE (ICBF)	0%	3%



Migratory regime

- Work permit:

- Foreigners willing to work in Colombia shall have a work permit issued by the migratory authority (Migración Colombia). There are different types of visas depending on the activities to be developed in Colombia: execute contracts, provide services, work or carry out business, commercial, corporate or investment activities in Colombia

- Visitors permit:

- Thanks to agreements signed by Colombia, the citizens of more than 90 countries, denominated as foreigners of not restricted nationalities, do not need Visa as visitors or to carry out the prior procedures before the Colombian authorities



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Environmental regime

- The Colombian environmental legislation establishes as duty of the State and individuals:
 - To protect the natural wealth of the Nation, in order to guarantee the protection of rights such as to have a healthy environment;
 - To protect the existence of the ecological equilibrium and the rational use and exploitation of the natural resources;
 - To protect public security and health;
 - The prevention of foreseeable disasters



Environmental Licenses

- The National Authority of Environmental Licenses (ANLA), the regional autonomous corporations (CAR) and some municipalities and districts are the entities in charge of authorizing environmental licenses for:
 - The execution of works;
 - The establishment of industries; or
 - The development of any kind of activity that may produce grave damage to renewable natural resources or the environment or bring in considerable or obvious modifications to the landscape
- According to general rule, only the works, projects or activities expressly indicated in the valid regulation require environmental license, which shall be granted prior to the start of the project, work or activity



Environmental permits

- The environmental license includes all permits, authorizations and/or concessions for the use of resources

- However, if the project, work or activity is not subject to environmental license, it is necessary to obtain each one of the permits that are required separately:
 - Air
 - Water
 - Dangerous garbage and waste
 - Visual outdoor advertising
 - Forest exploitation



Consultations with indigenous, raizal, roma and Afro-Colombian communities

- All project, work or activity to be developed within:
 - Indigenous protections
 - Areas inhabited permanently by indigenous communities, allotted in collective property to black, raizal or roma communities

- All project, work or activity shall have a prior process of consultation, through which there will be an analysis of the economic, environmental, social and cultural impact of the corresponding project, in order to guarantee the participation of the community in the use, administration and conservation of the natural resources



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Regime and conducts

- Colombian rules regulate:
 - Protection of competition
 - *A priori* Merger control

Protection of competition

Prohibited conducts:

- Agreements that have the objective or effect to limit the competition (collusion, cartel)
- Unilateral actions (abuse of dominant position)

A priori Merger control

- Prior to the execution of the agreement
- It is activated when there is acquisition of direct or indirect control
- Process depending on the percentage of participation of the undertakings in the market, and on the level of incomes and assets

Penalty regime

- To each offender and for each violation.
 - Companies: Fines up to €23 millions (100,000 SMMLV) or up to 150% of the benefit derived from the conduct.
 - Individuals: Fines up to €475,000 (2,000 SMMLV) to the natural persons who authorize, execute or tolerate the conducts of violation of the mentioned rules.
- Authority of protection of the competition: Superintendence of Industry and Commerce



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Anti-corruption regulation

- Law 1474, 2011 includes measures for the reduction and chase of the corruption. Some of them are:
 - Strengthening of disciplinary punishments and sanctions to those who commit actions of corruption
 - Strengthening of processes of investigation and judgement
 - The actions of corruption result in:
 - Penal responsibility
 - Disciplinary responsibility
 - Tax responsibility
 - Natural and legal persons are subject to be condemned for crime of corruption



Crimes of bribe

- Transnational bribe (Article 433 of the Penal Code): *“Whoever gives or offers a foreign public official, for his own benefit or that of a third party, directly or indirectly, any money, object of financial value or any other good in exchange for committing, omitting, or delaying any action related to a financial or commercial transaction, shall incur in imprisonment for a period of 9 to 15 years and a fine of 100 to 200 current minimum legal monthly wages.(...)”*.
- Corruption in the private sector (Article 250A of the Penal Code): *“Whoever directly or through intermediary person promising, offers or gives to directors, administrators, employees or consultants of a company, association or foundation a gift or any benefit not justified in order that he or a third party is favored, which damages to the entity, shall incur in imprisonment for a period of 4 to 8 years and a fine of 10 to 1,000 current minimum legal monthly wages.*
With the same punishments, the director, administrator, employee or consultant of a company, association or foundation that, directly or through intermediary, receives, applies or accepts a gift or any benefit not justified, which damages to the entity, shall be penalized”.



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Customs regulation

- The valid Customs Regulation in Colombia is included in the Decree 2685 of 1999. However, in order to update the rules in the framework of the current dynamic of the foreign trade, since several years ago there exists an initiative to implement a new Customs Regulation, which will respond to the same change of the reality of the foreign trade, which can be reflected in the following table:

Year	Importations (CIF)	Exportations (FOB)
2010	USD\$11.757 millions	USD\$ 13.158 millions
2014	USD\$64.029 millions	USD\$ 54.795 millions

The new Regulation abandons the supervising character of the previous one in order to take in some easier guidelines, as well as in keeping with the global economic situation.

Additionally, it harmonizes the rule with the international agreements signed in the last years by Colombia.



Commercial Agreements

- The geographic position of Colombia is privileged for the businesses to have access to the Pacific and Atlantic, as well as to have various agreements of commercial and customs preferences that serve as regional spearhead.
- Currently, Colombia has valid commercial agreements with the following countries:

USA

CAN (Bolivia, Ecuador and Peru)

Canada

European Union

MERCOSUR (Argentina, Brasil, Uruguay and Paraguay)

Chile

El Salvador, Guatemala and Honduras

Mexico

Cuba

EFTA (Switzerland, Liechtenstein, Norway and Iceland)

Nicaragua

CARICOM (Caribbean Community)

Venezuela

- Colombia has signed Agreements with Korea, Costa Rica, Panama, Israel and the Pacific Alliance, and is in negotiations with Japan and Turkey.

Benefits

- The customs duty, which depends on the sub shipment of the goods and of the place of origin, has tariffs of 0%, 5%, 10%, 15% and 20%. The general tariff of Sales Tax which is caused in the importation is of 16%. However, there are some regimes that have important benefits.
 - Free-zones: delimitation in Colombia that, for some purposes, it is considered as out of the customs territory, which implicates i) that the purchase of raw materials, parts, consumables and goods from foreign providers or within the country is exempt of customs tax, ii) to have an only tariff of income tax of 15% (for the new Free-Zones, it is added a tariff of CREE of 9%) and iii) to have more flexible procedures.
 - Benefits in importation of heavy machine for basic industry and of capital assets
 - Authorized Economic Operator: user with a special condition that allows the reduction of times in customs controls and reduction of the total amount of the global guarantees made before the National Tax and Customs Bureau (DIAN)
 - Permanent Customs Users (UAP) and Highly Exporting Users (ALTEX): users with benefits that allows them to reduce times in the tax procedures.



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Tax - Generalities

Concept	Generalities
Income Tax	<ul style="list-style-type: none">• General tariff: 25%• Industrial users and operators of frank areas: 15%• Foreign companies without subsidiary or permanent establishment in Colombia: 33%
Income Tax for the equity CREE	9%
Occasional profits	10%
Tax discounts	<p>Tax discounts (<i>tax credits</i>) are expected for certain operations. We highlight the following:</p> <ul style="list-style-type: none">• For tax paid abroad• For parafiscal contributions in the generation of new formal employments• For the VAT paid in importation of machinery and equipment for basic industries

Tax - Generalities

Concept	Generalities
Prices of transfer	Applicated for transactions with related parties abroad, including subsidiaries and permanent establishments and operations between frank areas, and bonded in the national customs territory
Sales Tax	General tariff 16% Special tariffs 0% - 5%
Tax on consumption Sectors of vehicles, telecommunications, foods and drinks	4%, 8%, 16%
Tax on Financial Movements ("GMF")	0.4%
Tax of industry and commerce (ICA)	0.2% to 1.4%

Tax benefits to small companies (1)

- Companies that can be benefited:
 - Total assets inferior to 5000 SMLMV. (\$3.080.000.000 ≈ 1.200.000 €)
 - Maximum 50 employees
- Benefits:
 - Progressive payment of the income tax for the first 5 years
 - Progressive payment of parafiscal contributions to the SENA, ICBF and to the family compensation fund for the first 5 years
 - With the tax reform of 2012, the benefits of the law were reduced to create the income tax for the equity “CREE” to a tariff of 9% (8% from 2016) on which there’s no benefit
 - The benefits in parafiscal are relevant just for employees that earn less than 10 minimum salaries as for the inferior salaries, the contributions to the SENA and ICBF were eliminated



Tax benefits to small companies (2)

- Progressiveness:
 - 0% the first 2 years
 - 25% 3rd year
 - 50% 4th year
 - 75% 5th year
 - 100% from 6th year
- Effective Tariffs:

BENEFIT PROGRESSIVENESS									
	INCOME	CREE	INCOME +CREE	PARAFISCAL					
				LESS THAN 10 SMLMV			MORE THAN 10 SMLMV		
				SENA	ICBF	FC FUND	SENA	ICBF	FC FUND
Ordinary Tariff	25.0%	9.0%	34.0%	0.0%	0.0%	4.0%	2.0%	3.0%	4.0%
Effective Tariff Year 1	0.0%	9.0%	9.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Effective Tariff Year 2	0.0%	9.0%	9.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
Effective Tariff Year 3	6.3%	9.0%	15.3%	0.0%	0.0%	1.0%	0.5%	0.8%	1.0%
Effective Tariff Year 4	12.5%	9.0%	21.5%	0.0%	0.0%	2.0%	1.0%	1.5%	2.0%
Effective Tariff Year 5	18.8%	9.0%	27.8%	0.0%	0.0%	3.0%	1.5%	2.3%	3.0%

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Protected aspects

Intellectual property in Colombia gives right to use the invention, design or distinctive sign, and to prohibit its use by third parties.

- Trademarks
- Commercial slogans
- Invention patents
- Utility models
- Industrial designs
- Copyright
- Designations of origin

Competent authorities:

- Superintendence of Industry and Commerce - Industrial Property Office
- National Copyright Directorate

