This country-specific Q&A provides an overview of doing business in laws and regulations applicable in Colombia.

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1. Is the system of law in your jurisdiction based on civil law, common law or something else?

The system of law in Colombia is based on civil law.

2. What are the different types of vehicle / legal forms through which people carry on business in your jurisdiction?

The types of vehicles most used to carry on business in Colombia are the corporation (sociedad anónima), the simplified stock company (sociedad por acciones simplificada) and the branch of a foreign company.

The following table summarizes the main characteristics of these local vehicles, indicating similarities and differences:
### Incorporation

<table>
<thead>
<tr>
<th>Item</th>
<th>Corporation</th>
<th>Simplified Stock Company</th>
<th>Foreign Company Branch</th>
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<tbody>
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<td></td>
<td>By means of a public deed granted before a Colombian Public Notary and registered with the Chamber of Commerce.</td>
<td>By means of a private document registered with the Chamber of Commerce, unless assets are being contributed at the time of incorporation and the conveyance of such assets requires a public deed (e.g., real estate).</td>
<td>By means of a home-office board resolution incorporated into a public deed granted before a Colombian Public Notary and registered with the Chamber of Commerce.</td>
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### Number of partners/sharholders

- Minimum five shareholders, none of which may have 95% or more of the outstanding capital stock of the company.
- Minimum one shareholder, no maximum limitation provided by law.
- The foreign company is the sole owner (the branch is an extension of the foreign company).

### Liability of partners/sharholders

- Limited to the amount of the shareholder’s contributions, except in the following cases:
  1. Liability for outstanding obligations of a bankrupt affiliate if the actions by the parent company gave rise to the insolvency of said affiliate.
  2. Wilful misconduct or negligence that led to the deterioration of the company’s financial condition; and
  3. Overvaluation of contributions in kind.
- Limited to the amount of the shareholder’s contributions, except in cases of fraud or abuse by the company in detriment of third parties.
- A branch is not legally separate from the foreign company.

### Capital Contributions

- At the moment of incorporation, the shareholders must subscribe at least 50% of the authorized capital and pay at least one-third of the subscribed capital. The remaining two thirds must be paid within a year of incorporation.
- The subscription and payment of capital can be made under the conditions, in the proportion and terms established by the shareholders provided, however, that shareholders have a maximum term of two years since incorporation to pay for the subscribed shares.
- Allocated capital must be fully paid and its increase requires an amendment to bylaws and authorization by the foreign company’s competent corporate body. The increase of the supplementary investment does not require such an amendment and may be made in cash from abroad.

### Transfer of shares/stock

- Transfer is carried out by endorsing the certificates or issuing a letter of transfer and registering the new shareholder in the company’s stock ledger. The transfer may be subject to a right of first refusal in favor of the company and the shareholders, if expressly set forth in the bylaws.
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- Does not apply.

### Corporate purpose

- Corporate purpose must be narrowly defined.
- Corporate purpose may be broadly defined.
- Corporate purpose shall be narrowly defined within the foreign company’s corporate purpose.

### Term of duration

- Defined (but may be extended by the shareholders).
- May be indefinite.
- Defined (but may be extended by the home-office within the duration term of the foreign company).

### Legal Reserves

- 10% of the annual net gains, up to an amount equivalent to 50% of the subscribed capital.
- No legal reserve is mandatory, unless otherwise contemplated in the company’s bylaws.
- 10% of the annual net gains up to an amount equivalent to 50% of the assigned capital.

### 3. Can non-domestic entities carry on business directly in your jurisdiction, i.e., without having to incorporate or register an entity?

Non-domestic entities wishing to undertake a permanent activity in Colombia must channel their investments and conduct business through a local vehicle, such as a commercial company or a foreign company branch. The permanent activity concept, which is different from the notion of permanent establishment for tax purposes, includes but is not limited to the following activities:

1. Opening commercial establishments and/or business offices in Colombia.
2. Participating as a contractor in the performance of works or in the provision of services in Colombia.
3. Participating in any form or activities aimed at the management, use or investment of funds from private savings.
4. Carrying out activities related to extractive industries.
5. Obtaining a concession from the Colombian government or in any way participating in the exploitation thereof.
6. Conducting its shareholders’ or board of directors’ meetings, or its management or administration, in the national territory.

Colombian legislation does not provide specific criteria or a term of duration in order to determine whether an activity is permanent or not. Therefore, permanence will depend on the particular circumstances, such as the nature or scope of the activity, the infrastructure required in the country for its performance, its regularity and the recruitment of personnel in Colombia, among others.

### 4. Are there any capital requirements to consider when establishing different entity types?

Generally, Colombian legislation does not require a minimum capital contribution to incorporate commercial companies or register foreign company branches. The capital contribution is determined by the shareholders or partners or by regulation (such as in the financial sector), depending on the activities that the company plans to carry out in Colombia.

Section B2 explains in further detail the rules applicable to the time of payment of the capital of the different types of local vehicles used to carry on business in Colombia.
5. How are the different types of vehicle established in your jurisdiction? And which is the most common entity / branch for investors to utilise?

The incorporation of a local vehicle is, in general terms, simple and expeditious and does not require prior government authorization, except for special cases. Commercial companies and foreign company branches must register in the commercial registry kept by the corresponding Chamber of Commerce of the municipality where it is to be based. To register the vehicle, the incorporation documents must be submitted to the Chamber of Commerce along with, among others, the letters of acceptance of the persons appointed as directors, legal representatives, and statutory auditor (if required). Section B2 explains in further detail the incorporation documents required for the different types of local vehicles used to conduct business in Colombia.

The Chamber of Commerce also processes the National Tax Registry (“RUT” for its Spanish acronym) issued for the registration of the entity with the National Tax and Customs Office (“DIAN”, its Spanish acronym). The RUT contains general information of the taxpayer, as well as tax and customs responsibilities. In order to obtain the registration, the corresponding fees and taxes must be paid to the Chamber of Commerce.

The most frequently used vehicles to undertake permanent business in Colombia are simplified stock companies, corporations, and foreign company branches. Section B2 summarizes their main characteristics and indicates its similarities and differences.

Simplified stock companies have become the legal vehicle of choice for the business community, particularly because of its flexibility in terms of the incorporation process, administration, and the ample freedom its shareholders have to establish the terms and conditions for its functioning and internal governance structure.

6. How is the entity operated and managed, i.e., directors, officers or others? And how do they make decisions?

In general, local vehicles are operated and managed in the terms and according to the rules set forth in their bylaws, except for foreign company branches, which should follow the rules established in the bylaws of the home-office. Except for the rules noted below, there is ample freedom to establish the terms and conditions for the operation and management of local vehicles.

All commercial entities must appoint at least one legal representative (authorized officer) and one or more alternates, except for the simplified stock companies that are not obliged to appoint an alternate. Generally, legal representatives are appointed by the shareholders or by the board of directors, if the company has a board. Decisions taken by legal representatives or by the general manager do not require special formalities nor are recorded in any corporate book. However, the bylaws may establish specific events in which the legal representative may require prior authorization of the shareholders or the board of directors to carry out or perform certain actions (e.g., entering into contracts exceeding a certain amount).

For corporations, the board of directors is a mandatory corporate body. For simplified stock companies, the board of directors is an optional corporate body. Decisions taken by the board of directors must be approved according to the majority rules established in the company’s bylaws. Board resolutions must be recorded in minutes, which must be also incorporated into the corresponding company’s minutes ledger.

Foreign company branches do not have their own corporate bodies because they are not separate legal entities from their home-office.

7. Are there general requirements or restrictions relating to the appointment of (a) authorised representatives / directors or (b) shareholders, such as a requirement for a certain number, or local residency or nationality?

The appointment of directors, legal representatives and statutory auditors of a local vehicle must be registered with the Chamber of Commerce. For such purposes, the document deciding the appointment (e.g., shareholders or board resolution) must be filed with the letter of acceptance, a copy of the appointed person’s identification document, and a copy of the professional card of the statutory auditor.

As a general rule, the shareholders, directors, or legal representatives of a local vehicle may be non-domiciled foreigners. The statutory auditors must be Colombian public accountants.

Corporations must have a board of directors formed by at least three members with their alternates. Simplified stock companies are not obliged to have a board of directors. All commercial companies must appoint at least one legal representative and one or more alternates, except for the simplified stock companies which are not obliged to appoint an alternate.
Doing Business In: Colombia

Section B2 explains in further detail the minimum and maximum number of shareholders required for corporations.

8. Apart from the creation of an entity or establishment, what other possibilities are there for expanding business operations in your jurisdiction? Can one work with trade/commercial agents, resellers and are there any specific rules to be observed?

Engaging dealers is an important mechanism for foreign businesses who wish to participate in the Colombian market without establishing a legal presence. In general, Colombian entities acting as dealers will be deemed as either distributors or commercial agents. As in many countries, Colombian law gives special protections to entities acting as commercial agents upon termination of the relationship.

Commercial factors often dictate the type of dealer a business will require, from simple buy-sell distributors who take the risk of resale, to agents developing business contacts on behalf of the principal. Whether such a dealer is protected by commercial agent legislation will depend on the activities of the dealer and the nature of the relationship between the parties.

In legal terms, an entity will be deemed as a commercial agent when it is acting:

1. On behalf of the principal;
2. Independently;
3. On a permanent basis; and
4. To promote the principal’s products or services.

Dealers acting as commercial agents are entitled to a commission for all sales they make within the relevant territory. They may also receive compensation for sales not completed due to the principal’s fault. Commercial agents may also be entitled to payment when the principal sells products directly to customers within the dealer’s territory. Principals can usually avoid this payment by expressly providing for a non-exclusive appointment.

Unless the written agreement expressly provides otherwise, a principal may not appoint more than one commercial agent in a specified geographical area for the same products or type of activity.

Conversely, dealers acting as distributors will only enjoy exclusivity if it is expressly granted in the written agreement.

Principals are under an obligation to pay termination benefits under all commercial agency agreements. These consist of a commercial severance and an equitable termination indemnity.

Unless expressly waived by the commercial agent, the principal will be required to make a commercial severance payment upon the termination of the commercial agency agreement, regardless of the reasons for termination. The amount of this payment is equal to the average monthly commission or profit received by the commercial agent over the last three years of the relationship, multiplied by the number of years during which the agreement was in effect. If the agreement was in effect for less than three years, the monthly average is calculated on all commissions and profits the agent received in connection with the commercial agency agreement. This severance is deemed to indemnify the agent for the loss of clientele primarily.

In addition to the foregoing payment, the principal must make a payment known as an “equitable termination indemnity” if:

1. The principal terminates the commercial agency agreement without just cause, or
2. The commercial agent terminates the commercial agency agreement with just cause.

This payment is intended to compensate the commercial agent for developing a market for the principal’s products. The amount of the payment is determined by independent experts on the basis of the duration, volume and importance of the local sales promoted by the commercial agent. This payment is one of the main...
causes of concern for principals under commercial agency agreements because of the uncertainty that it entails, as it is not easy to accurately predict the amount of the payment.

If a party terminates a distribution agreement that has a fixed term of duration before the expiration of the term, it will be liable for damages, consisting of actual damages (daño emergente) and loss of profit (lucro cesante). In distribution agreements, loss of profit is normally interpreted as the gross margin that a distributor would obtain from the distribution agreement until the end of its term, if it had not been terminated earlier (for indefinite duration agreements, it is a projection of expected margins for three to five years). The normal base for calculation of loss of profits in distribution agreements is the average gross margin for the period of three years before termination. In principle, Colombian law for distribution agreements grants no other form of indemnity (e.g., punitive or exemplary damages).

9. Are there any corporate governance codes or equivalent for privately owned companies or groups of companies? If so, please provide a summary of the main provisions and how they apply.

Colombian legislation does not establish mandatory governance codes or equivalent for privately owned companies or groups of companies.

10. What are the options available when looking to provide the entity with working capital? i.e., capital injection, loans etc.

The contribution regime (cash, in-kind and through the performance of work) for commercial companies is quite flexible and it allows for great diversity of shareholders and partners, provided that the contributions are convertible into monetary value. Cash contributions made by foreign investors must be registered as a foreign investment with the Colombian central bank (Banco de la República), as described in Section C10.

A foreign direct investment duly registered with the central bank grants the following exchange rights to the foreign investor:

1. Repatriation of returns of the investments.
2. Reinvestment, with repatriation rights of the returns of the investment.
3. Repatriation of the amounts received as a consequence of the:

i. Sale of the investment;
ii. Liquidation of the investment; or
iii. Reduction of the capital of the company.

Offshore financing is also common in Colombia. While there are generally no restrictions on the types of transactions or instruments that foreign lenders can use, they must ensure that the reporting, regulatory and exchange regimes are complied with.

Generally, there are no restrictions on foreign companies lending to Colombian legal entities and the terms of an offshore loan are freely negotiable. There are also no restrictions on Colombian companies granting loans to foreign companies. In both cases, lenders must ensure that any activities comply with the foreign exchange regime and are properly registered. If the parties are affiliates, a transfer price analysis should be considered for the charged interest.

Regulations currently allow foreign lenders to lend in Colombian pesos to Colombian residents and foreign lenders to receive Colombian pesos loans from Colombian residents, to facilitate financing to offshore sponsors or companies that invest in a business whose underlying revenues are denominated in Colombian pesos. Rules regarding the maximum interest chargeable should be observed.

Foreign loans are subject to reporting and regulatory requirements, including the foreign exchange regime. While foreign financial institutions are not restricted from providing facilities, they do require approval from the Colombian financial regulator before they may promote or advertise such services to Colombian entities.

Interest on loans is deductible during the respective taxable period, provided they meet legal requirements. For an interest-bearing loan between related parties, the income taxpayer can only deduct interest if the average amount of the loans does not exceed twice its net equity as of December 31 of the immediately preceding taxable year. Any interest on amounts exceeding this threshold will not be deductible.

Loans can be capitalized in exchange for shares following a corporate procedure and the corresponding registration with the Colombian central bank.

11. What are the processes for returning proceeds from entities? i.e., dividends, returns of capital, loans etc.
The shareholders or partners must approve distribution of profits. Profits are paid in proportion to the paid portion of the value of the stocks, shares or equity stake of each partner or shareholder, if the bylaws do not provide otherwise. Profits are distributed based on true and reliable financial statements prepared in accordance with International Financial Reporting Standards, after setting aside the legal, statutory, and occasional reserves (if applicable), as well as the appropriations for the payment of taxes. For the simplified stock company, the legal reserve is not mandatory, unless otherwise contemplated in the company's bylaws. If there are losses that reduce the company's equity below its capital it is not possible to distribute profits. Once the dividend is declared, it must be paid within one year for most types of companies and within the term indicated by the shareholders when approving the distribution of profits.

Provided that the foreign direct investment or the loan is duly registered with the Colombian Central Bank (Banco de la República), the process for returning proceeds or paying dividends and loans is not cumbersome and generally implies complying with legal formalities and delivering certain documentation to the local bank that is used by the local vehicle for its day-to-day operations. Generally, no governmental authorizations are required for this purpose.

12. Are specific voting requirements / percentages required for specific decisions?

For simplified stock companies, there are certain decisions that require unanimous consent, either to include these provisions in the bylaws or to eliminate them afterwards:

1. Establishing limitations for the transfer shares.
2. Expelling a shareholder, and
3. Subjecting shareholders' disputes to arbitration.

In the case of corporations, the following special majorities apply:

1. The decision to distribute less than 50% of the corporation's profits as dividends requires a majority vote from two or more shareholders representing 78% of the shareholders present at the corresponding meeting unless a higher majority is set forth in the bylaws.
2. Issuing shares without preferential rights requires a majority vote of 70% of the shareholders present at the corresponding meeting.
3. Paying dividends in shares requires a majority vote of 80% of the shareholders present at the corresponding meeting.

13. Are shareholders authorised to issue binding instructions to the management? Are these rules the same for all entities? What are the consequences and limitations?

Exceptionally, shareholders acting collectively through the company's general shareholders assembly may be entitled to issue binding instructions to the management only if the company's bylaws expressly contemplate this power.

Shareholders acting individually are not legally authorized to issue binding instructions to the management.

14. What are the core employment law protection rules in your country (e.g., discrimination, minimum wage, dismissal etc.)?

The following employees are protected against dismissal without just cause (in some special cases, dismissal may require prior judicial authorization):

1. Unionized employees with specific positions within the union.
2. Employees on maternal/paternal situations, during pregnancy period and 18 months after child's birth.
3. On a case-by-case basis, employees with special medical conditions, for example employees with medical leaves, medical recommendation or restrictions, loss in work capacity or similar situations.
4. Employees that are close (three years or less) to complying with legal requirements to be entitled to receive a pension.
5. Employees who started working before December 31, 1980.
6. On a case-by-case basis, employees that are head of households, when the employee is the primary provider in the household.
7. Employees that file a harassment complaint in the workplace, for six months after filing the complaint.

Additionally, as general principle, Colombian law prohibits discrimination. Employees should receive equal pay for equal services and employment agreements should not be terminated because of factors such as race, religion,
national origin, and alienage, among others. In the event of termination for any of said grounds, employees may be entitled to be reincorporated if declared by a labor judge.

Finally, Colombian law sets forth that not employee can be paid less than the minimum wage, which is fixed on a yearly basis. For year 2024, the minimum wage in Colombia is of COP 1.300.000 (approximately USD 344).

15. On what basis can an employee be dismissed in your country, what process must be followed and what are the associated costs? Does this differ for collective dismissals and if so, how?

In any termination scenario, employers must pay all employment rights applicable in the final liquidation of labor accruals, including vacations, unemployment aid, semester bonus, overtime work, among others.

1. Individual dismissal:

   i. Termination of the employment agreement without just cause: This is available to employers at any time, provided that the employee is not protected against dismissal. In this scenario, the employer must pay a legal statutory severance which value varies depending on salary, seniority and type of agreement (e.g., fixed or indefinite term duration). For employees protected against dismissal, we recommend terminating the employment agreement by mutual consent and entering into a settlement agreement.

   ii. Termination of the employment agreement for cause: Applicable when an employee does not comply with certain obligations or breaches prohibitions applicable to the employment relationship. Employer does not have to pay a statutory severance.

The employee’s obligations and prohibitions must be set forth in the workplace regulations and/or the employment agreement and/or policies or codes of the employer and failure to comply with them must be classified as serious breach in said documents.

2. Employer must guarantee employees due process rights.

Collective dismissal: Employers must obtain authorization from the Ministry of Work to conduct a collective dismissal. A collective dismissal occurs when, within a six month period, the employer terminates without just cause a certain percentage of employment agreements. The percentage of employment agreements that can be terminated without constituting a collective dismissal varies depending on the total number of employees. Terminations by mutual consent or with cause do not count to determine a collective dismissal.

16. Does your jurisdiction have a system of employee representation / participation (e.g., works councils, co-determined supervisory boards, trade unions etc.)? Are there entities which are exempt from the corresponding regulations?

Yes. The following are the most relevant systems of employee representation or participation:

1. The most common representation are unions, which are organized to enter into collective bargaining agreements with the employer.
2. Employees could also be represented within the company as non-unionized employees and enter into collective pacts with employers.
3. Employee’s representation in labor coexistence committees, which investigates labor harassment complaints.
4. Employee’s representation in health and safety committees.

No entities are exempt from regulations 1 to 3. Entities will less than 10 employees are exempt from regulations connected with 4.

17. Is there a system governing anti-bribery or anti-corruption or similar? Does this system extend to nondomestic constellations, i.e., have extraterritorial reach?

Bribery is penalized pursuant to the Colombian Criminal Code, under different conducts such as bribe solicitation from a public official and bribery through an offer or payment of value to corruptly delay or omit an official act or to actually carry out an otherwise legitimate act. Even though companies are not criminally liable in Colombia, they can be jointly and severally liable for any damage caused by its employees and executives, pursuant to the criminal procedures against such individuals.

Further, transnational bribery is a criminal offence in Colombia, in line with the OECD Anti-Bribery Convention, to which Colombia is a party. This law sets forth that transnational bribery takes place when someone gives, promises, or offers money or anything of value to a
foreign public official, in exchange for an omission or delay of any act of that official, and in relation to international business transactions.

In Colombia, commercial companies, sole proprietorships, and branches of foreign companies that met certain legal and financial thresholds are required to implement:

1. A business transparency and ethics program (PTEE for its acronym in Spanish) aimed at training the company's employees, officers and shareholders in the management and prevention of corruption and transnational bribery and to strengthen the company's commitment to the prevention of such activities; and

18. What, if any, are the laws relating to economic crime? If such laws exist, is there an obligation to report economic crimes to the relevant authorities?

The Colombian Criminal Code defines the crimes against the economic and social order. The criminal code categorizes the criminal behaviors as follows: hoarding, speculation, and other infractions; crimes against the financial system; illegal urbanization; smuggling; money laundering; and other offenses.

There is no legal obligation for private individuals to report economic crimes to the relevant authorities. However, every person has a duty to report this kind of activities to the authorities. Therefore, whoever, by reason of his office, position, or activity, has knowledge of a crime against the economic order has the duty to report it.

In addition, in accordance with the provisions set forth by Chapter XIII of the Basic Legal Circular of the Superintendence of Companies, any activity related to corruption or transnational bribery must be reported to the Secretariat for Transparency and the Superintendence of Companies, respectively.

19. How is money laundering and terrorist financing regulated in your jurisdiction?

Money laundering is defined in the Colombian Criminal Code as the acquisition, investment, transportation, custody or administration of money or goods with the purpose of hiding or concealing its illicit origin. Whoever engages in these activities can be subject to imprisonment from 10 to 30 years and fines of up to approximately USD 16.8 million (at current exchange rates).

Please refer to section C6-17 for additional comments on the obligations from a commercial law perspective in this regard.

20. Are there rules regulating compliance in the supply chain (for example comparable to the UK Modern Slavery Act, the Dutch wet kinderarbeid, the French loi de vigilance)?

Colombian law sets forth the applicable rules to ensure the security of the logistics chain and prevent transnational crimes and it also contains provisions guaranteeing the adoption of good practices promoted by the Organization for Economic Cooperation and Development-OECD, by regulating an adequate risk assessment and analysis, in any type of public or private certification (as required by the OECD). In addition, regarding human rights violations during supply chain processes, Colombia has ratified several international treaties whereby the state is obliged to respect human rights and dignity.

21. Please describe the requirements to prepare, audit, approve and disclose annual accounts / annual financial statements in your jurisdiction.

Commercial companies and branches must close their books and issue certified and audited general purpose financial statements at least once a year, as of 31 December. Such annual financial statements must be prepared in compliance with International Financial Reporting Standards.

If the company is not required to have a statutory auditor, the company's legal representative and public accountant sign the annual financial statements. If the company is required to have a statutory auditor, the company's statutory auditor must also sign the annual financial statements. The shareholders approve the annual financial statements in the annual meeting.

For mergers, spin-offs, conversion or the reimbursement of capital contributions, special-purpose financial statements have to be issued and approved by the shareholders, although general financial statements (e.g.,
those with a December 31 cut-off date) can sometimes be used for this purpose as well.

The annual financial statements shall be deposited in the Chamber of Commerce of the company’s domicile if the company is not under the obligation to submit them to the Superintendence of Companies. For tax control purposes, corporate groups that are registered at the commercial registry of the Chambers of Commerce must submit their consolidated financial statements to the Colombian tax authority no later than June 30 of each year.

22. Please detail any corporate / company secretarial annual compliance requirements?

The following are the annual compliance requirements in Colombia:

1. Renewal of the Company’s commercial registration and of its commercial establishments before the Chamber of Commerce.
2. Summon and hold the annual meeting of the Board of Directors (if applicable) and the annual shareholders or partners meeting to discuss the matters described in Section C7-23.
3. File the financial statements with their notes, management report and the statutory auditor’s report and other documents with the Superintendence of Companies, if permanently supervised or controlled by the Superintendence of Companies or if the company has received a special request for information. Controlling companies must also submit consolidated financial statements to the Superintendence of Companies, if permanently supervised or controlled by the Superintendence of Companies or if they have received a special request for information.
4. File with the Superintendence of Companies the shareholder minutes of the meeting in which the financial statements as of December 31, 2022, and the management report were approved, if permanently supervised or controlled by the Superintendence of Companies.
5. File the business practices report as of December 31, 2022, if permanently supervised or controlled by the Superintendence of Companies.
6. File the financial statements, notes and report with the Chamber of Commerce (unless these have been delivered to the Superintendence of Companies).
7. Renew the Public Contracting Register (only for existing and current registrations) within the first five business days of April.
8. Register databases in the National Database Registry (“RNBD”) of the Superintendence of Industry and Commerce when the relevant threshold is met.
9. Implement or update, as applicable, the SAGRILAFT, including, among others, the appointment of a compliance officer when the requirements are met, when the relevant legal thresholds are met.
10. Implement or update, as applicable, the PTEE, including, among others, the appointment of a compliance officer when the requirements are met.
11. File report 75 for entities obliged to implement a SAGRILAFT and/or a PTEE program.
12. File the suspicious activity report (ROS for its acronym in Spanish) and/or absence of suspicious activity report (A-ROS for its acronym in Spanish) for entities obliged to implement a SAGRILAFT program.
13. For entities obliged to implement a SAGRILAFT and/or a PTEE program, the compliance officer must submit a management report that must be reviewed by the ultimate decision-making body.
14. Update the UBO registration, as explained in detail in Section C7-24.
15. In addition, the Superintendence of Companies is in the process of implementing a Sustainability Report requirement. To date, this report is not mandatory, but it is expected to become mandatory soon.

23. Is there a requirement for annual meetings of shareholders, or other stakeholders, to be held? If so, what matters need to be considered and approved at the annual shareholder meeting?

The shareholders or partners must hold an annual meeting within the term set forth in the bylaws. The matters to be considered at the annual meeting are at least the following:

1. Appointment of board members, legal representatives, and statutory auditor.
2. Approval of the annual management’s report.
3. Approval of the statutory auditor’s opinion to the annual financial statements.
4. Approval of the annual financial statements.
5. Approval of the project for the distribution of profits.

24. Are there any reporting / notification / disclosure requirements on beneficial ownership / ultimate beneficial owners (UBO) of entities? If yes, please briefly describe these requirements.

The local vehicle’s Ultimate Beneficial Owner (“UBO”) must be registered in the Single Registry of Ultimate Beneficial Owners managed by the Colombian tax authority. The UBO must be an individual. Identification of the final parent company is not sufficient to comply with Colombian rules.

In order to make this registration, a thorough analysis of the company’s group structure needs to be conducted. The analysis is aimed at confirming if any individual falls within the following descriptions:

1. An individual, acting individually or jointly, who is the direct or indirect owner of 5% or more of the capital or voting rights of the legal entity, and/or benefits from 5% or more of the assets, yield or profits of the entity; and
2. An individual who, individually or jointly, exercises direct or indirect control over the legal entity by any means other than those established in section 1 above; or

If no UBO is identified under the previous two items, the individual who holds the position of legal representative of the Colombian entity must be registered, unless there is another person with a position of greater authority in terms of the management functions and administration of the legal entity, in which case this person must be registered.

25. What main taxes are businesses subject to in your jurisdiction, and on what are they levied (usually profits), and at what rate?

Companies are subject to different types of taxes depending on their activity and location. The following are the main taxes, as well as their applicable taxable bases and rates:

1. Income tax: It is levied on the income obtained by the company each fiscal year. The taxable base is the taxable income, which is calculated by subtracting deductible costs and expenses from gross income. The 2024 income tax rate is 35%.

2. Withholding tax: This is a mechanism set up for the anticipated collection of taxes that applies to payments for salaries, fees, leases, among others. The rate varies according to the economic activity and the type and beneficiary of the payment, and range from 1% to 35%.

3. Value-added Tax (VAT): Applies to the sale of goods and services. The taxable base is the sales value of the goods or rendered services. The general rate is 19%, although there are special rates for certain goods and services.

4. Industry and commerce tax (ICA): Municipal tax levied on commercial, industrial and service activities carried out by companies. The taxable base varies according to the rates established by each municipality and is applied on gross income or net income.

26. Are there any particular incentive regimes that make your jurisdiction attractive to businesses from a tax perspective (e.g. tax holidays, incentive regimes, employee schemes, or other?)

Colombia offers several special tax incentive regimes to attract investment, especially in strategic sectors for the country’s economic development. Some of the most relevant regimes are:

1. Free Trade Zones: These are geographically delimited areas in the Colombian territory that have a special tax and customs regime. Companies that have this status can access tax benefits such as the application of a preferential (lower) income tax rate, 0% VAT and tariffs on foreign goods, 0% VAT on domestic goods, among others.

2. Double taxation treaties: Colombia has entered into different double taxation treaties.

3. Zones Most Affected by Armed Conflict Regime (ZOMAC): This regime offers tax incentives to companies that operate in areas most affected by armed conflict, such as a special income tax rate for a determined period of time.

4. Simplified Regime: It is a simplified tax system put in place to facilitate compliance with tax obligations for small and medium-sized companies. The main advantage of this regime is the simplification of tax obligations, since it allows companies to pay a single tax that includes income tax, sales tax (VAT) and
Industry and commerce tax (ICA).

5. Use of Non-Conventional Energy Sources: Tax incentives exist to encourage the generation of energy from clean and renewable sources, and reduce the country’s dependence on fossil fuels. The following are the main tax incentives:
   i. Sales tax (VAT) exemption on the acquisition of goods and services necessary for the development of energy from non-conventional sources projects.
   ii. Income tax deduction of 50% of the value of the investment made in energy generation projects from non-conventional sources.
   iii. Exemption from payment of import duties on machinery, equipment, materials and inputs necessary for the production of energy from non-conventional sources.
   iv. Accelerated depreciation incentive for machinery, equipment and civil works necessary for the development of non-conventional energy generation projects, with a maximum annual depreciation rate of 33.33%.

6. Hotel and Tourism Sector: Granted to support the development of projects for the construction and improvement of hotel and tourism infrastructure such as services for new hotels (built, remodeled or expanded), new theme parks, and new ecotourism and agro tourism projects, which would have a reduced income tax rate of 15% for a period of 10 years, from the date of beginning the respective service.

27. Are there any impediments / tax charges that typically apply to the inflow or outflow of capital to and from your jurisdiction (e.g., withholding taxes, exchange controls, capital controls, etc.)?

   1. Tax on dividends paid to foreign companies: The withholding tax applicable to payment of dividends to foreign companies is 20%. Tax residents of countries with which Colombia has a double taxation treaty in place, may request a reduction of this rate to between 0% to 10%.
   2. Withholding tax for payments abroad: Payments made abroad for services, royalties, commissions, leases and other similar concepts are subject to a 20% income tax withholding.

3. Foreign exchange regime: Colombia has a robust exchange regime, whereby the investment of foreign companies in Colombia, or of a Colombian investor abroad is subject to exchange controls before the central bank (Banco de la República), as described in Section C10. The Colombian foreign exchange regime has in place controls for the registration and reporting of foreign currency transactions, including the obligation to declare all foreign currency purchase and sale transactions and the prohibition of cash transactions above certain limits established by law. The system is based on a free floating exchange rate regime, but establishes controls and restrictions on certain transactions to ensure the stability and transparency of the foreign exchange market.

4. Undercapitalization regime: The deduction of interest paid by a Colombian company to a foreign related company is limited under thin capitalization rules to prevent Colombian companies from transferring profits to their shareholders or related companies abroad through the payment of interest.

28. Are there any significant transfer taxes, stamp duties, etc. to be taken into consideration?

   1. Registration Tax: It is a tax levied for the registration of acts and documents in the public instruments office. The registration tax applies to documents/acts:
      i. That transfer or affect the ownership of real estate, as well as to documents that establish or modify liens, mortgages, among others; and
      ii. That are corporate documents subject to registration with the Chamber of Commerce such as directors’ appointments, bylaw amendments, and powers of attorney, among others. The tax rate varies according to the amount and nature of the act and is applied on the total value of the act or document.
   2. Property Tax: This tax is levied annually on the owners of real estate, both urban and rural, at rates that vary for each municipality and for
the type of real estate. It is calculated on the cadastral value of the property, which is determined by the respective cadastral authority.

3. Stamp tax: It applies on documents or acts formalized by public deed, which correspond to acts of sale or transfer of real estate for a value exceeding 20,000 Tax Value Units ("UVTs") (approximately USD 235,000), corporate amendments, establishment of mortgages on any of the aforementioned goods, etc. The rate will be 1.5% (on the value exceeding 20,000 UVTs), and 3% (on the value exceeding 50,000 UVTs).

29. Are there any public takeover rules?

Yes, some of the most relevant rules are as follows:

1. Mandatory offer threshold: Public tender offers ("OPAs" for its acronym in Spanish) are mandatory when:
   
i. Any person (or group of persons sharing the same beneficial owner) intends to acquire shares representing 25% or more of the voting shares of a public company in Colombia.
   
ii. Any person (or group of persons sharing the same beneficial owner) who already owns 25% or more of the voting shares of the relevant company intends to increase its voting shares by more than 5%.
   
iii. Any person (or group of persons sharing the same beneficial owner) acquires voting shares representing 25% or more of the public company as a result of a merger, in Colombia or abroad (in which an "ex-post" public tender offer must be launched within three months of the transaction, unless the purchaser divests the relevant shares within three months of the merger).
   
iv. Any person (or group of persons sharing the same beneficial owner) holds more than 90% of the shares of the public company, if:
      a. This threshold was reached by other means than a public tender offer for all of the shares in the company;
      b. The minority shareholders owning at least 1% of the voting shares of the target company request the launch of a public tender offer (in which case the public tender offer must be launched within three months of the date on which the 90% threshold was exceeded); and
      c. The shareholders of the public company decide to delist the company by a majority shareholder vote (as opposed to a unanimous shareholder vote).

2. Requirements: The bidder must file a formal request before the Superintendence of Finance ("SFC") and a notice before the stock exchange (Bolsa de Valores de Colombia or "BVC"), providing both entities with a draft of the offering memorandum and the notice of its intention to make the public tender offer, which must include:
   
i. The name and principal place of business of the target company.
   
ii. The name, identification, principal place of business, main corporate activity and corporate structure of the bidder (by providing a list of individuals or companies that are subordinated to the bidder or are part of the same business group).
   
iii. The minimum and maximum number of shares that the bidder will accept (with at least a 20% margin between the two figures).
   
iv. Information on shares that the bidder already has in the target company and any prearranged transactions or other agreements between the bidder and the management of the target company or other shareholders.
   
v. The offer price for the shares.
   
vi. The date by which the offer must be accepted.
   
vii. Settlement terms, form of payment and guarantees.
   
viii. The name of the exchange broker to be used in the operation.
   
ix. A brief description of the tax, foreign exchange and foreign investment regimes applicable to the securities offered as payment (if applicable).
   
x. Information on the methodology used to value the securities offered as payment (if any).
   
xi. Certificate by the bidder and its investment bank on the accuracy of the offering memorandum and information on the authorizations obtained to issue the offer; and
   
xii. Any other information requested by the SFC.

As soon as the above information is filed before the SFC, the BVC will suspend trading of the shares until the day after the publication of the OPA notice. The SFC has five business days to provide comments to the documentation.

3. Pricing rules: No minimum pricing rules apply to an
OPA unless the bidder has purchased shares within three months prior to submitting the request for authorization to the SFC (in which case, the offer cannot be less than the highest price paid during those three months) or if there is an agreement to carry out prearranged transactions (in which case, the price cannot be less than the price set forth in such agreement). Applicable regulations provide that the OPA notice must clearly indicate either:

i. The price at which the shares offered in payment shall be delivered as well as the applicable exchange ratio (i.e., the number of shares delivered in payment for each share to be acquired); or the manner in which the price and the exchange ratio are able to be calculated.

ii. If the relevant shares are acquired by way of a merger (or otherwise indirectly, if applicable), the minimum price of the OPA must be determined by an independent valuation performed by a professional firm, engaged by the bidder and provided by the SFC. The price offered for the shares cannot be less than the value assigned for the shares in the merger and may only be paid in cash.

iii. If the obligation to carry out an OPA is triggered by the decision to delist the shares, the minimum price of the OPA must have to be established by an independent valuation performed by a professional firm, hired and paid for by the public company and approved by the SFC.

iv. If the obligation to carry out an OPA is triggered by the decision to delist the shares, the minimum price of the OPA would have to be established by an independent valuation performed by a professional firm, hired and paid for by the public company and approved by the SFC.

4. Committed funding: Committed funding is required before announcing an OPA. The bidder must launch the OPA through a brokerage firm and establish a performance guarantee, covering a certain percentage of the value of the transaction. The guarantee can be in the form of a stand-by letter of credit or a bank guarantee, among other options.

5. Announcing and making the offer: The OPA notice must be posted three times in the finance section of a national newspaper. The first within the five days following the expiration of the SEC’s term to make comments to the draft of the public tender offer notice and offering memorandum. The other postings cannot be spaced more than five calendar days apart. The public tender offer notice must also be posted in the official information bulletins issued by the BVC, on each day from the date the public tender offer notice is first published until the day set for acceptances.

6. Acceptances of the OPA must be made on the date set-out in the public tender offer notice, at a special two-and-one half hour round, under an open outcry system. If the number of acceptances meets the minimum amount of shares indicated by the bidder, then all acceptances are deemed to be final. If not, the bidder is not required to purchase the shares (but may freely elect to do so).

If more acceptances are received than the maximum offer was made for, then the right to sell shares is allocated proportionally among those who accepted.

Agreements in which one party (the bidder) agrees to launch a public tender offer and another party (the shareholder) commits to accept the public tender offer must be disclosed to the SFC, the BVC and the market in general at least one month before the date on which they are to be perfected. This must include an indication of the main terms and conditions of the exchange or trading system of the transaction as well as the proposed date and time of the transaction.

7. Offer conditions: Once an OPA is launched, it is irrevocable and cannot be made subject to pre-conditions. However, it is common for the bidder’s obligation to launch the tender offer to be subject to the satisfaction of pre-conditions, such as securing antitrust clearance. In practice, once the offer is launched, the only condition to which the bidder’s obligation to purchase the shares can be subject is that the acceptances received shall be at least equal to the minimum number of shares set out in the notice.

30. Is there a merger control regime and is it mandatory / how does it broadly work?

In Colombia, parties to a transaction that, regardless of the legal structure of the deal, involve companies active in the same economic activity or at different levels of the same value chain and meet certain financial thresholds, are subject to pre-merger control obligations and are prevented from closing the transaction prior to receiving authorization from the Colombian antitrust authority.

The type of applicable merger control procedure to be carried out by the parties to the transaction depends on the resulting market shares of the parties in the relevant markets, post-transaction. If the resulting market shares
is equal or higher than 20% in one or more relevant markets, the parties will need to apply for a full review procedure. Otherwise, they can apply for an expedited review or implied approval.

In the full merger control procedure, the Colombian antitrust authority will have an initial term of 30 business days to review the initial submission (phase 1). The period will start running when the authority confirms that the submission fulfils the formal requirements. After the end of phase 1, the SIC can move to a second phase if it decides that it needs to perform a more substantial analysis before deciding on the transaction. Otherwise the SIC should approve the transaction in phase 1.

Merger control filings (both the expedited and the full review) are subject to filing fees.

31. Is there an obligation to negotiate in good faith?

In the pre-contractual phase, the parties must act in good faith and must pay for any damages caused when they do not comply with this duty. The pre-contractual phase includes several steps that will be taken before the contract is executed, including commercial offers, counter-offers, negotiations and bidding processes. Precedents in Colombia have established the following behaviors that must be complied with to determine if the parties have acted in good faith:

1. Provide accurate and sufficient information—a key factor influencing the decision to execute a contract.
2. Not creating false expectations about the execution of a contract, if they know that the contract will not be executed.
3. Be bound by confidentiality obligations regarding the information obtained in a negotiation phase even if a contract is not executed as a result of that process.

It is common for companies to execute separate confidentiality agreements at the outset of negotiations before entering a more detailed memorandum of understanding or letter of intent as the negotiations progress. Such documents frequently contain provisions regarding exclusivity, which are heavily negotiated.

32. What protections do employees benefit from when their employer is being acquired, for example, are there employee and / or employee representatives’ information and consultation or co-determination obligations, and what process must be followed? Do these obligations differ depending on whether an asset or share deal is undertaken?

Colombian law does not contemplate employee consultations or co-determination obligations when companies are being acquired, either by way of a share deal or an asset deal.

A share acquisition does not trigger any benefits or protections for employees because no legal employer substitution takes place as the employer does not change.

In an asset acquisition, an employer substitution (whereby employment contracts are transferred by operation of law, without requiring the employees “consent) takes place if the following requirements are met:

1. There is a change of an employer for another, for any reason;
2. There is a continuity of the business carried out by the seller, which means that the purchased assets must be related to the activity or business in which the employees that will be “transferred” are involved; and
3. The employees continue rendering their personal services for the business initially carried out by the seller (current employer) to the purchaser (new employer).

When the above requirements are met and there is an employer substitution the following employee special protections operate automatically by virtue of the law:

1. Purchaser must recognize to the transferred employees the salary and employment entitlements in the same terms and conditions they were receiving them from seller (previous employer) on the date of the substitution; however, buyer can legally negotiate with the transferred employees (with their consent) a new structure of employment conditions and benefits.
2. Even though purchaser undertakes all employment obligations and liabilities related to the transferred employees, seller—as the former employer—will remain jointly and severally liable with purchaser for all obligations and liabilities due and actionable up to the date of the employer substitution.
3. The employer substitution operates regardless of the will of the seller and purchaser, or even of the employees, and does not require any agreement with the employees or notification to local public entities. The employer substitution does not trigger the payment of any indemnity or severance.

33. Please detail any foreign direct investment restrictions, controls or requirements? For example, please detail any limitations, notifications and/or approvals required for corporate acquisitions.

Foreign investors are required to register their investments with the central bank, either directly or through the local financial institutions through which the funds are transferred. The registration of foreign investment requires the foreign investor to provide information on the investment including, among others, participation, value, type of investment and beneficiary of the investment. Depending on the type of investment, deadlines for registration will vary.

If the foreign investment is not registered correctly and/or in a timely manner, this could entail the initiation of an investigation by the Superintendence of Companies and could result in the imposition of a fine to the investor of up to 200% of the amount of the investment (in practice, fines rarely exceed 10% of such amount).

Furthermore, failure to comply with this obligation entails for the following rights to be restricted to the foreign investor:

1. Reinvest profits or retain undistributed profits with the right to draw in the surplus.
2. Capitalize the investment with the right to draw.
3. Remit abroad in freely convertible currency the verified net profits generated periodically by the investment.
4. Remit abroad in freely convertible currency the sums received as a result of the alienation of the investment within the country, or the liquidation of the company or portfolio or the reduction of its capital.

Foreign capital investment in Colombia will be treated for all purposes in the same way as the investment of nationals. If a foreign investor acquires a Colombian entity, the transfer of shares is subject to registration with the Central bank, whether as a substitution (if the acquisition was carried out between a foreign entities) or as an initial registration (if the acquisition was carried out between a foreign entity and a national entity).

34. Does your jurisdiction have any exchange control requirements?

The central bank monitors the sale and purchase of currencies and implements reporting and regulatory requirements. Foreign exchange transactions need to be performed through market intermediaries (i.e., local financial institutions) and registered at the central bank. These operations include the purchase and/or sale of currencies for direct foreign investment, payment of imports, offshore loans, funding of offshore accounts registered with the Colombian central bank and flexible accounts, among others. Capital repatriations are also subject to exchange regulations.

35. What are the most common ways to wind up / liquidate / dissolve an entity in your jurisdiction? Please provide a brief explanation of the process.

The legal extinction of a company or a branch occurs as a consequence of the dissolution and subsequent liquidation. Therefore, the dissolution marks the initiation of the winding up process, which ends with the actual liquidation of the entity and the cancellation of the commercial registration of the company.

The dissolution of commercial companies can derive from, among others, the following grounds:

1. Expiration of the term provided for its duration if it is not validly extended before its expiration.
2. The impossibility of fulfilling its corporate purpose, due to the termination thereof, or due to the extinction of the thing or things whose exploitation constitutes its purpose.
3. The reduction of the number of associates to less than the number required by the law for their formation or operation or by an increase that exceeds the maximum limit set forth by law.
4. A decision of the partners/shareholders made in accordance with the law and the bylaws.
5. A decision of the competent authority in the cases provided by the law.

Since they are an extension of the foreign company and depend on it to survive, branches of foreign companies must be dissolved and liquidated when the foreign company is liquidated.
When the company or branch has been dissolved and is in process of liquidation, it shall include in its name the expression “in liquidation” or otherwise it shall be liable for any damages that may be caused by its omission.

In the same sense, its corporate purpose is restricted to the single objective of liquidating the assets to pay any outstanding liabilities. Within the winding up process, and provided that all the form and time requirements are met, creditors are entitled to file their claims and obtain payment of their credits in the order and with the priority and preferences established by the law.

The following steps are required to voluntarily dissolve and liquidate a company:

1. Hold shareholders’ meeting to dissolve the company and appoint liquidators. The shareholders’ assembly must hold a meeting by which the dissolution of the company is approved and the liquidator is appointed. The minutes of the meeting must be registered before the Chamber of Commerce. Afterwards, a notice must be published in a widely circulated newspaper in Colombia and the liquidator must notify the tax authority about the liquidation.
2. Notify creditors and local tax office.
3. Prepare liquidation inventory.
4. Shareholders must meet and approve the liquidation inventory. If the company has no liabilities within the month after the decision to dissolve the company, the shareholders are able to approve the liquidation of the company based on this liquidation inventory and can proceed to de-register the company. Otherwise, the liquidation inventory is used to pay all liabilities or collect all payables and a final liquidation will be prepared and approved in a different meeting before the shareholders can finally liquidate and de-register the Company.
5. Collect any debts and pay any liabilities and make arrangements for ongoing litigation.
6. Prepare final liquidation accounts with the balance payable to the shareholders.
7. Shareholders must approve the final liquidation accounts.
8. Register the shareholders’ resolution at the Chamber of Commerce and cancel the trade register.
9. File all tax returns of the company and the shareholder.
10. Repatriate any amounts due to the shareholders, if applicable.
11. Close bank accounts.
12. Close foreign investment registrations; and
13. Close tax registrations.

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