

GUIDE TO DOING BUSINESS IN COLOMBIA

Updated: June 2004

The “*Guide to Doing Business in Colombia*” presents an overview of some basic aspects of Colombian Law. It does not constitute a legal advice. The guide does not purport to be a complete report. The contents herein are for reference only. Prior to taking any action based on the information provided herein, it is necessary to request more detailed information and the assistance of a local attorney.

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I. THE COUNTRY AT A GLANCE

1. Name

República de Colombia.

2. Capital

Bogotá D.C.

3. Major Cities

Bogotá, Medellín, Cali, Barranquilla, Cartagena, Bucaramanga.

4. Languages Spoken

Spanish. In addition, there are also 200 indigenous languages that are spoken in each of the autonomous indigenous provinces.

5. Religion

Roman Catholic 90%

6. Current exchange rate for the U.S. dollar and the Euro

The Colombian currency is the peso. The exchange rate varies daily. The rate is commonly found in local papers or in currency exchange offices.

As of July 15, 2004, the currency exchange rate is as follows:

1 Us Dollar = 2,662.19 pesos.

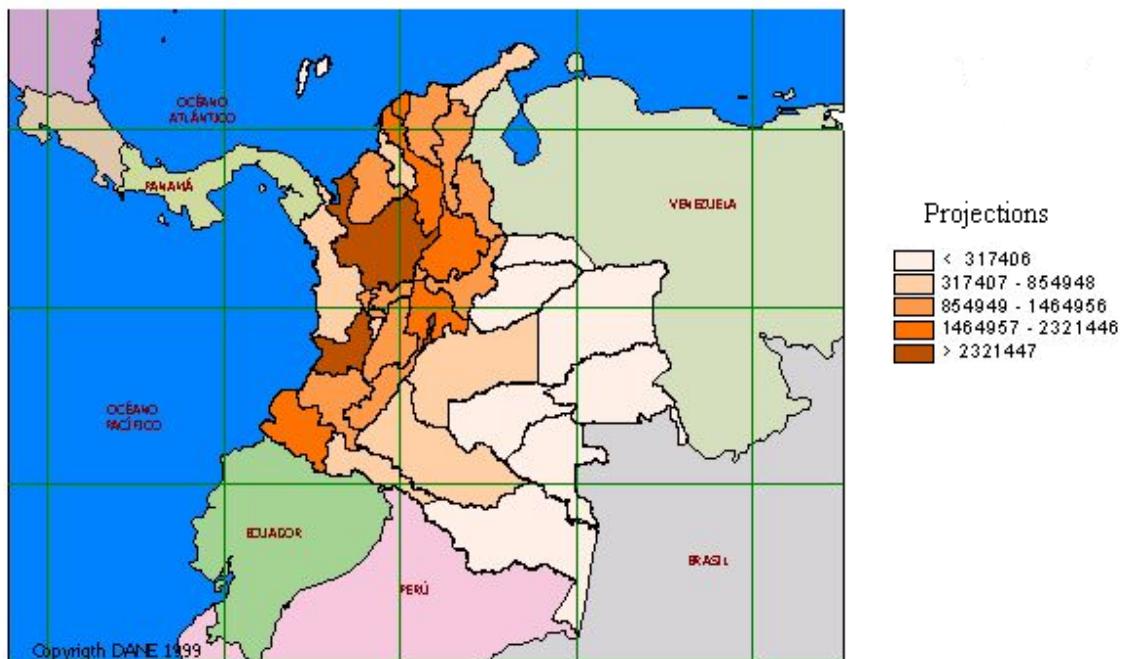
1 Euro = 3,301.12 pesos.

Please refer to Appendix I for a chart containing the average monthly and annual exchange rate since 1994.

7. Population and demography

Colombia has approximately 45,325,261 inhabitants as estimated by the Statistics National Department for the year ended 2004.¹

2004 Demographic Projections



Source: Statistics National Department (*Departamento Nacional de Estadística*).

As a result of the strong urbanization process experienced by the country in the last decade, more than two thirds of the population live in the metropolitan areas of the major cities. Bogotá alone has a population of more than eight million inhabitants.

Colombia's age structure is as follows:

Age	Male	Female
0- 4	2,444,329	2,342,923
5-9	2,425,708	2,327,731
10-14	2,369,933	2,281,159
15-19	2,193,508	2,123,987
20-24	2,052,441	2,014,664

¹ Source: DANE "Departamento Nacional de Estadística"; www.dane.gov.co

Age	Male	Female
25-29	1,903,024	1,910,513
30-34	1,702,738	1,760,752
35-39	1,647,323	1,741,359
40-44	1,421,559	1,527,308
45-49	1,153,734	1,265,838
50-54	930,609	1,035,582
55-59	693,113	770,654
60-64	498,509	555,575
65-69	366,119	430,072
70-74	265,296	330,827
75-79	179,062	236,219
80+	165,695	257,397
Total	22,412,700	22,912,560

Source: Statistics National Department “Departamento Nacional de Estadística”²

8. Location

The Republic of Colombia is located in the Northwest corner of South America, bordered by the Caribbean Sea, between Panama and Venezuela, and the Pacific Ocean between Ecuador and Panama.

With an extension of 1,138,910 square kilometers (439,736 sq. mi) Colombia is the largest country with Caribbean coastline. Its land boundaries are Venezuela 2,050 km (1,274 mi.); Brazil 1,643 km (1021 mi); Peru 1,496 km (930 mi.); Ecuador 590 km (367 mi.); and Panama 225 km (140 mi.), for a total of 6,004 km (3,732 mi.). Colombia's coastline area is 3,208 km (1994 mi.) (Caribbean Sea 1,760km (1094 mi.) and Pacific Ocean 1,448km (900 mi.)).

Colombian territory also includes the San Andres and Providencia island group (located in the Caribbean Sea), and the Gorgona and Malpelo islands (located in the Pacific Ocean).

Colombia is the only country in South America that has coastline in both the Atlantic and Pacific Oceans.

Please refer to Appendix II for an official map of the Republic of Colombia.

² www.dane.gov.co

9. Climate

Since Colombia is close to the equatorial line, there are no seasons, rather there are diverse climates in different regions of the country depending on the altitude.

The average temperature in Colombia is 22° Celsius (72° F). Nevertheless, due to Colombia's unique geographic location, the climate varies considerably from one place to another. In the flat coastal lowlands the temperature may rise up to 35° Celsius (95° F). In the central highlands the temperature may drop to 15° Celsius (59° F). At the central Andes Mountains the temperature oscillates between 14° and 18° Celsius (57° and 64° F), and in the eastern lowland plains the temperature rises up to 32° Celsius (90° F).

10. Environment

Partly because of Colombia's position as a land bridge between North and South America, nearly 14 percent of the species of flora and fauna described by scientists worldwide have settled in Colombia over the ages. Due to its specific location and geography, Colombia is the second most biologically diverse country in the world containing in its borders between 10% to 14% of the world's species.

Colombia has a far greater variety of birds than any other country in the world with 20% of the world species. The Country also has a great variety of vertebrate species (3rd in the world), with a total of 2,890 different species, and a great variety of mammals (4th in the world), with a total of 456 different species.

Colombia is also ranked third in the world in number of reptiles, with 517 known species, and first in number of known amphibious, with 583 different species.

Colombia's 46 national natural parks, wildlife sanctuaries and other reserves occupy an area measuring some 10 million hectares (24,710,437 acres), equivalent to 10 percent of the country's landmass.

More than two thirds of the total number of species of fish discovered in the world reside in Colombia's continental waters. The Country is also ranked fourth with 2.2% of the world's total water supply, that includes 1,200 permanent rivers, 1,640 lagoons and lakes and 1,940 swamps, which facilitates fishing and transportation activities alongside the territory.

11. Infrastructure

Colombia's infrastructure and transport facilities, both at the local and international level, have improved significantly in recent times largely due to several agreements signed by the government with the private sector in the recent years.

a. Roads

The national road system has been tremendously improved over the last few years. The government launched, through concession schemes, an aggressive road infrastructure development program during the years 2000 and 2001, that included the construction of more than 1,160 kilometers (721 mi.), the rehabilitation of more than 6,100 kilometers (3,790 mi) which represents one third of the total domestic road system.

b. Railways

Colombia's railway system comprises a total of 3,380 kilometers (2100 mi.) of which 3,230 kilometers (2007 mi.) are narrow gauge; and 150 kilometers (93 mi.) are standard gauge (the railway that connects "El Cerrejón" coal mines to the maritime port Puerto Bolívar). Currently only 1,746 kilometers (1085 mi.) are in use. Rolling stock consists of 34 engines and approximately 1,500 obsolete passenger and freight wagons.

The government is currently working on schemes to improve the efficiency of the railway system enabling it to compete with the road system.

c. Ports and Waterways

The government has encouraged port expansion programs and the privatization of access channels to increase the installed capacity of existing port facilities.

Today, Colombia's main ports and harbors are: Barranquilla, Buenaventura, Cartagena, Leticia, Puerto Bolívar, San Andrés, Santa Marta, Tumaco and Turbo.

Currently Colombia has 18,140 kilometers (11,272 mi.) of navigable river waters.

d. Airports

Colombia has 10 international airports, with the most traffic coming from Bogotá, Cali, Barranquilla, Medellín and Cartagena. In addition, Bogotá's El Dorado International Airport constructed a second runway in 1998 under a 17-year concession agreement. As

of today three international airports have been privatized, Cartagena and Barranquilla Airports in 1997 and the Cali Airport in 2000. Due to the successful results shown by the privatization of the above mentioned airports, the government announced that the Medellín and Bogotá Airports would be privatized in the near future.

Currently the aviation sector is comprised of more than 500 airports and landing strips, including 313 privately owned facilities.

e. Public Transportation

As of today, Medellín is the only Colombian city to have a metro system (inaugurated in 1995). On December 18, 2000 a new public transportation system called the *Transmilenio* began operation in Bogotá. This new system has been extremely successful as an exceptional and efficient transportation alternative. As of May 2004 the *Transmilenio* had transported over 656.549.636 passengers.³ Due to its tremendous success the government is planning on introducing the *Trasmilenio* public transportation system in cities such as Cali and Barranquilla.

12. Telecommunications

Since 1989, Colombia has experienced a significant political and legal change geared towards the acceleration of a free competition environment in the telecommunications sector. The more significant changes were introduced by Law 72 of 1989, followed then by Decree 1900 of 1990, which is deemed to be the legal framework in telecommunication services. These regulations set forth the basic principles for rendering telecommunication services in Colombia and eliminated most of the existing restrictions. Nonetheless, it is important to note that telecommunication services in Colombia are considered public services.

The aforementioned regulations established for the first time the possibility to render telecommunication services by private entities under a competition scheme closely regulated by the State. In fact, Decree 1900 formally opened the national long distance monopoly operator to competition by providing that carriers could, in the future, be granted a concession to provide long distance services. In 1998, the Ministry of Communications awarded the first long distance concession to *Empresa de Telecomunicaciones de Bogotá*, Bogotá's local service provider. A second license was awarded to *Orbitel*, a consortium comprised of economical groups Santo Domingo and Sarmiento and EPM (Medellin's local telephony company). Telecom, as the state-owned

³ Source: www.transmilenio.gov.co

monopoly was given a third concession. Each concession had a cost of US \$150 million and was awarded for an initial period of 10 years.

A Free Trade Agreement (FTA) with the United States will be a key factor in the development of the telecommunications market in Colombia, since it may open new opportunities to international operators for the rendering of services in the Colombian market and may grant them access to local networks and infrastructure.

Currently there is a free competition regime for telecommunication services except cellular, trunking, and some television services.

13. Water and Sewerage

In the last decade the government has given top priority to improving water and sewerage coverage and quality, which has required an estimated investment of more than \$2 billion (US) for the 1998-2007 period. Inefficient management and obsolete technology has given private investors the opportunity to assist the local and regional governments in Colombia with the construction, operation and maintenance of water treatment plants.

14. Electricity

Colombia's capacity to generate electricity is close to 13,000 MW with two thirds of the total being generated by hydroelectric plants. Nonetheless, the government expects to raise the percentage of the thermal generation to close to 40 percent given the vast coal, fuel and oil reserves of the country.

As in other public fields, the electric field has grown significantly as a result of several privatizations processes that the government has conducted over the past few years (in particular ISAGEN, the third largest energy company in Colombia).

In addition, in 1999 ISA (*Interconexión Eléctrica S.A.*), the largest national energy transmission company, owner of almost 75 per cent of the NTS (National Transmission System), was also subject to a privatization process by the government.

15. Oil and Gas

In terms of Gas projects, the government is encouraging industrial and residential use of gas and the participation of the private sector in local distribution activities.

With respect to the oil sector, a number of projects are expected in the exploration of oil, this is partly due to Colombia's high rank in terms of crude reserves. Additionally, up to 80% of the territory remains unexplored. ECOPETROL, the state-owned oil company, expects that Colombia will produce 1 million barrels of crude oil per day by the year 2010.

16. Public Utilities

Law 142 of 1994 established a new regime for public utilities, when it authorized private companies to render public utilities services. As a result, users have benefited with better quality and lower prices. The government continues to render services in regions where the private companies do not find it profitable to render its service. Both the private and public companies alike are strictly supervised by the Public Utilities Superintendence (*Superintendencia de Servicios Públicos Domiciliarios*).

II. GENERAL CONSIDERATIONS

1. Government

a. Political System⁴

Colombia's political system is formed by the three traditional branches; the judicial, the legislative and the executive. In addition there are some additional entities/administrative agencies that do not fall into the above mentioned branches. These include *Banco de la República* (Colombia's Central Bank), the National Planning Council, the National Electoral Council, the National Television Commission, the National Civil Commission, the Autonomous Corporation of the Magdalena River and the Office of the General Comptroller.

(i) Judicial Branch

Pursuant to article 116 of the Constitution of Colombia, the administration of justice in Colombia is divided into five coequal supreme judicial entities:

1. The Constitutional Court (*Corte Constitucional*) guards the integrity and supremacy of the Constitution, rules on constitutionality of laws, amends the Constitution, and international treaties. The judges of the Constitutional Court are nominated by the President, selected by the Senate and may serve one eight years term;
2. The Supreme Court of Justice (*Corte Suprema de Justicia*) is highest court of criminal, civil and commercial law. The judges of the Supreme Court are selected from the nominees of the Higher Council of Justice and may serve one eight-year term;
3. The Council of State (*Consejo de Estado*) is the highest court of administrative law. The judges of the Council of State are selected from the nominees of the Higher Council Justice and serve for one eight-year term;
4. The Higher Council of Justice (*Consejo Superior de la Judicatura*) which administers and disciplines the civil judiciary; members of the disciplinary chamber resolve jurisdictional conflicts arising between other courts. The

⁴ Colombia's Constitution represents the main source of law. Colombia's current constitution was enacted on 1991 and superseded that of 1886 that did not contain the political, economic and social needs of a merging country such as Colombia. Colombia is a Civil Law governed country.

members to the Higher Council of Justice are elected by the Congress for one eight-year term and,

5. The Office of the Attorney General (*Fiscal General de la Nación*) which is the highest criminal office, the Attorney General is elected by the Supreme Court of Justice for one four-year term.

(ii) Legislative Branch

The legislative branch is the Congress, formed by the House of Representatives and the Senate, whose members are popularly elected every four years.

The primary function of the Congress is to pass, amend, revoke or repeal laws. It is also responsible for the issuance of codes for all branches of legislation; grants authorization to the government to enter into contracts; authorizes the government to declare war; approves the presence of foreign military troops in the national territory; appoints the judges of the Constitutional Court; negotiates public goods; establishes the national budget; approves and rejects treaties entered into by the government with other States or with international organizations; issues laws pertaining to matters of economic intervention; and regulates the Colombian Central Bank.

The legislative branch is also entitled to regulate commercial policy, modify tariffs, fees and other provisions pertaining to the customs regime. It also regulates the financial and insurance activities, among others.

Currently, the Senate is made up of 102 seats and the House of Representatives by 166 seats.

(iii) Executive Branch

The Executive Branch is made up of the President, the Vice-President, the officers and the directors of administrative agencies.

The President is the Head of the State and the executive branch, the head of the government and the highest administrative authority. The President is popularly elected for one four year-term. It is worth noting that the Congress is currently studying an amendment of the Constitution by means of which reelection of the President would be allowed.

The main function of the Vice-President is to replace the President during his/her temporary or permanent absence. In addition, the President may command/delegate special duties to the Vice-President. The Vice-President is popularly elected for one four year-term, together with the President.

The Officers of the administrative agencies/departments are elected and removed by the President. Their main function is to administrate a specific public service.

The Directors of the administrative departments are also elected and removed by the President. Their main function is to present before the Congress projects, programs and general plans of the administrative area to which they belong⁵.

In addition to the above, governor's and mayors' offices, as well as the Superintendencies, public establishments/agencies and state-owned industrial and commercial corporations are part of the Executive Branch.

b. Judicial System:

(i) Division

As mentioned in Section 1 a. (i) of this chapter, the judicial branch in Colombia is divided into five coequal entities: the Constitutional Court, the Supreme Court of Justice, the Council of State, the Higher Council of Justice, and the Office of the Attorney General.

(ii) Enforceability of Foreign Judgments

The courts of Colombia will give effect to and enforce a judgment obtained in courts outside of Colombia or an arbitration award obtained in a foreign arbitration proceedings through a procedural system provided for under Colombian law known as "*exequatur*", which is subject to the provisions of Article 693 of the Colombian Civil Procedure Code and which requires that there be reciprocity in the recognition of foreign judgments between the courts of the relevant jurisdiction and the courts of Colombia and subject to compliance with the provisions of Article 694 of the Colombian Civil Procedure Code.

The *exequatur* proceeding describes two different scenarios as follows:

- (i) When there is a treaty, entered into between the foreign country where the judgment to be enforced was issued and Colombia, in which the parties mutually

⁵ Law 489 of 1998.

recognize the validity and enforceability of the judgments granted abroad (Diplomatic Reciprocity).

- (ii) In the event there is no treaty between Colombia and the foreign country where the judgment was issued, judgments of foreign tribunals will have the same effects in Colombia as those recognized in that country with respect to Colombian judgments (Legal Reciprocity). Therefore, if the country where the judgment was granted does not recognize the enforcement of Colombian judgments, said judgment will not be recognized in Colombia.

Both possibilities have the following requirements, established in Article 694 of the Civil Procedure Code (CPC), to enforce a foreign judgment in Colombia:

- That the judgment does not refer to property rights of assets located in Colombia at the time at which the foreign procedures took place.
- That the judgment is not opposed to Colombian laws or other rules of public order (public policy), except for laws on civil procedure.
- That the judgment is final and binding in accordance with the laws of origin, and that an authenticated copy is submitted.
- That the matter is not of the exclusive jurisdiction of the Colombian Tribunals.
- That there is no procedure in course or a final and binding judgment with respect to the same matter in Colombia.
- That if the judgment has been issued in contentious proceedings, the defendant has been duly notified of the procedures and has had the right to defend itself, in accordance with the laws of origin, which is presumed by the fact that the judgment is final and binding.
- That the *exequatur* has been granted.

- **Procedural steps necessary to enforce a foreign judgment in the Colombian Courts**

For the *exequatur* to take place in Colombia the judgment or arbitration award must be submitted by the interested party before the Civil Chamber of the Colombian Supreme

Court of Justice. The party against whom the judgment or arbitration award was granted must be called to the proceedings.

If the judgment or arbitration award is not worded in Spanish, an official translation must be presented, duly authenticated and legalized.

By virtue of the provisions in Articles 693 and 694 of CPC, the *exequatur* procedure seeks to establish whether or not the foreign judgment or arbitration award can be enforced in Colombia. According to the decision T-716/1996 issued by the Colombian Constitutional Court⁶,

“the petitioner only has to demonstrate the existence either, of a diplomatic or a legal reciprocity between Colombia and the foreign country. (...) If the foreign judgment accomplishes these requirements and those established in Article 694 of the CPC the exequatur must be approved by the Court”.

Therefore, the task of the Colombian Supreme Court is to determine whether or not the foreign judgment or arbitration award meets the requirements of the Civil Procedure Code. The Supreme Court does not have authority to review the substantial part of the foreign judgment or arbitration award. Hence, the review by the Supreme Court is focused on procedural issues and it will not interfere with the substantial decisions adopted by the foreign judge or arbitrators. As a result, the decision and the costs awarded by the foreign court will remain as ruled by that court or arbitrators.

The Supreme Court reviews the fulfillment of the above mentioned conditions and declares a term for the parties to request evidence.

Once the parties have requested the evidence the Supreme Court will order the necessary procedures to obtain the evidence requested.

Subsequently, the parties present their final arguments. Thereafter the Supreme Court will determine if it grants or denies the *exequatur*.

Once the *exequatur* has been granted, the plaintiff must seek enforcement of the judgment through the executive proceeding contemplated by Colombian law.

2. Economy

⁶ Dated December 16, 1996.

Colombia is showing signs of economic recovery after suffering, between 1997 and 1999, the worst economic crisis in seventy (70) years.

Since May 26, 2002, when Alvaro Uribe Vélez won the presidency in a landslide victory, the country has been infused with new vigor and has demonstrated that it is one of the most optimistic, stable and recovered countries of the region.

According to the biannual report presented by the Colombian Central Bank before the Congress on March 2004, the economic variables show that Colombia pushed for growth in 2003: GDP growth was approximately 3.74% for the year 2003⁷, 1.5 % more than the other countries of the region.

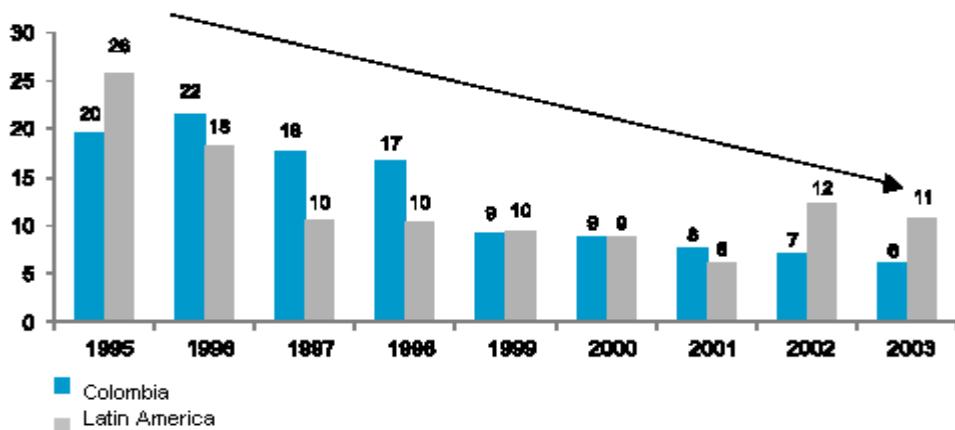
Additionally, in December 2002, inflation reached its lowest value in 33 years (7.0%) and the interest rates remained stable and low. This tendency remained equal for the year 2003 (6.48%) and the first trimester of 2004, where the inflation reached its lowest value.⁸

Three sectors played a major role in the country's economic rehabilitation: (i) electricity, gas, water, transport, (ii) storage and (iii) communications. With increases of 6.3%, 3.2% and 3.8% respectively for the third quarter of year 2003, these areas contributed in almost 50% of the total GDP growth.

⁷ Banco de la República, Bi-annual report presented before the Congress on March 2004.

⁸ Source: www.coinvertir.gov.co

COLOMBIA VS. LATIN AMERICA: ANNUAL INFLATION



3. Banking System

The financial system is integrated by the following public and private entities:

a. The Colombian Central Bank

The Colombian Central Bank (*Banco de la República*) is the Federal Reserve System of the nation and is a fully independent agency by constitutional order. Its Board of Directors is responsible for the overall management of the economy: supervising and regulating international reserves, conducting the country's monetary policies, credit and exchange, maintaining the internal and external payment stability of the financial market.

The Colombian Central Bank's main objective is to regulate the inflation. Colombia's inflation has dropped in recent years, from drastic double digits of close to 25% to single digits of 6.49% in 2003⁹.

b. Commercial/Credit Banks

⁹ Report of the Board of Directors of the Banco de la República to Congress, March 2004, p.1.

The main business of the banks is to take deposits in current accounts, and lend the funds in the market¹⁰.

c. Financial Corporations

The purpose of Financial Corporations is to promote the incorporation of new companies, and reorganize, merge, and transform/convert or expand any type of company.

d. Commercial Finance Companies

Commercial Finance Companies borrow money to finance the sale of goods and services. All lease companies are included under this category.

e. Trust Companies

Pursuant to Colombian regulations, trust companies may engage in any kind of commercial trust. As is customary under a trust (or with a trust company), the Trustor/Grantor conveys his assets to the Trustee (the trust company) which manages or uses them for a purpose previously established by the Trustor/Grantor.

f. Pension and Severance Funds Management Companies

The pension and severance management companies have the sole purpose of managing two kinds of mandatory savings plans for employees¹¹: pension and.

The Pension and Severance Fund Management Companies may invest the funds received in securities that are profitable, safe and liquid; always subject to the guidelines set forth by the Banking Authority.

g. Bonded Warehouses¹²

¹⁰ Recently, Decree No. 777 of 2003 regulated housing leases. Pursuant to the Decree, banks and financial corporations are entitled to enter into real estate leasing agreements for housing purposes. Pursuant to the Decree, the asset subject to the lease must belong to the banks or financial corporations at the commencing of the lease agreement and the banks must submit before the Banking Superintendence a projection of the amount of rent that lessee is expected to pay. The lessor must provide property insurance against earthquakes and domestic fires.

¹¹ Please refer to Section VIII for more information in connection with labor matters.

¹² Previously licensed by the Banking Superintendence.

By means of article 33 of Decree 663 of 1996, Bonded Warehouses are engaged in the deposit, maintenance and custody, management and distribution, purchase and sale of local and foreign goods, on behalf of their clients.

h. Capitalization Companies

Capitalization Companies are engaged in the promotion of savings through the issuance of special monetary instruments.

i. Insurance Entities

Insurance Entities are engaged in the customary insurance transactions. They are also empowered to perform reinsurance activities. However, in the case of life insurance companies, their corporate purpose shall be exclusively the engagement in such type of insurance.

III. ORGANIZATIONS & TREATIES

1. Colombia is an active member of the international community. It is a member of, among others, the following international organizations:
 - UN (United Nations)
 - OAS (Organization of American States)
 - WTO (World Trade Organization)
 - IMF (International Monetary Fund)
 - The World Bank Group
 - IBRD (International Bank for Reconstruction and Development)
 - IFC (International Finance Corporation)
 - IDA (International Development Association)
 - MIGA (Multilateral Investment Guarantee Agency)
 - ICSID (International Centre for Settlement of Investment Disputes)
 - IADB GROUP (Inter-American Development Bank)
 - MIF (Multilateral Investment Fund)
 - IIC (Inter-American Investment Corporation)
2. Additionally, the following are some international treaties, conventions and agreements related to international trade and investment, that Colombia is a party to and has ratified:
 - WTO Agreement
 - GATT 1994 (General Agreement of Tariffs and Trade)
 - GATS (General Agreement on Trade in Services)
 - TRIPS (Trade-Related Aspects of Intellectual Property rights)
 - TRIMS (Trade-Related Investment Measures)
 - CISG (Convention on the International Sale of Goods)
 - Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention of 1958)
 - Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards
 - Convention on International Civil Aviation (Chicago Convention of 1944)
 - Convention for the Unification of Certain Rules Relating to International Carriage by Air (Warsaw Convention of 1929)
 - Hague Convention Abolishing the Requirement of Legalization on Foreign Public Documents (Apostille Convention).
 - Kyoto Protocol

3. On the regional side Colombia is a member and has signed the following:

- The CAN (Andean Community of Nations), which is a sub-regional Customs Union similar to the European Union, and include countries such as Venezuela, Ecuador, Peru and Bolivia.
- The Free Trade Agreements with Mexico and Venezuela (The Group of Three or G-3).
- The Economic Complementation Agreements, as a member of the CAN, with Mercosur, Argentina and Brazil.
- The Economic Complementation Agreements with Chile and Nicaragua.
- The Partial Scope Agreements with Costa Rica, El Salvador, Guatemala, Honduras and Panama.
- The Preferential Arrangement with CARICOM (Caribbean Community).

Colombia is currently negotiating the entering into a Free Trade Agreement (FTA) with the United States of America.

IV. ESTABLISHING A BUSINESS IN COLOMBIA

1. Anti-trust law

According to Colombian law, any type of local integration of the business of two or more companies that participate in the same or complementary markets requires a pre-merger filing before the Colombian antitrust authority, which is the Department of Industry and Commerce (*Superintendencia de Industria y Comercio*) (“SIC”)¹³.

However, the SIC issues a General Authorization Regime for those integration transactions that presents pursuant to which any transaction in the form of a merger, consolidation, integration or acquisition of control among companies (or “enterprises” which is the exact term used by the law and which is a broader term than “companies”) that meets any of the following thresholds would require a clearance from the SIC¹⁴:

- a. The entities involved in the transaction jointly have a market share equal to or above 20% of the relevant market in Colombia; or
- b. The aggregate assets in Colombia owned by the entities involved in the transaction exceed an amount of approximately US\$ 6,629,629¹⁵. In connection with this second threshold, the assets that must be taken into account are the assets located in Colombia which are dedicated the relevant market business and which are controlled directly or indirectly by the companies involved in the merger.

The SIC determines if the transaction has any adverse effect on the relevant market, and particularly if it limits the production, provision, distribution or consumption of raw materials, products, goods or services, whether national or foreign, or if it infringes in any way competition regulations.

An undue restriction of competition in the local market is the only basis for the SIC to object a transaction involving a merger or other form of integration. With regards to that restriction, Colombian law¹⁶ provides two cases where a merger, consolidation or integration is considered to be a restriction:

¹³ Colombian law sets forth the principle that companies engaged in the same line of business involving the production, supply, distribution or consumption of a given good, raw material, product, merchandise or service, and whose individual assets considered jointly amount to or exceed a certain amount, are under the obligation to inform the SIC of any merger, consolidation or integration, regardless of the manner in which such integration is to be carried out.

¹⁴ External Circular No. 5 dated May 5, 2003.

¹⁵ Equivalent to 50,000 minimum monthly wages.

¹⁶ See Decree 1302 of 1964, section 5.

- a. Whenever the transaction has been preceded by any kind of agreement between the parties to impose prices to their consumers or suppliers, as well as to divide the market or limit their production or distribution; or
- b. Whenever the market conditions are so special that the merger, consolidation or integration would generate unfair prices harming consumers.

However, pursuant to Colombian regulations¹⁷, the SIC cannot object to an integration, merger, consolidation or take-over if the interested parties are able to evidence that the underlying transactions will result in material improvements and cost reductions that would not be achieved otherwise, provided further that there can be assurance that the supply of products or services to the market will not be reduced.

The filing before the SIC, and the ‘no objection’ response, must be obtained prior to the integration being effective. Once the filing is made, the SIC has authority to raise objections relating to the transaction within the 30 working days following the date when the required documentation and information was filed. Within such 30 days period, the SIC is entitled to request additional information from the interested parties, in which case this period would be interrupted until the requested information has been filed with the SIC¹⁸. If the SIC does not raise objections to the transaction within the aforementioned period, then the interested parties may proceed to complete the proposed transaction.

The filing of information with the SIC, for its review of the proposed integration, is mandatory and if avoided may result in severe monetary penalties to the parties of the transaction. Below you will find a description of the possible sanctions and effects for not filing the anti-trust report in Colombia:

- a. Fines for the participant companies of up to approximately US\$ 230,000¹⁹ and fines of up to approximately US\$ 35,000²⁰ for the officers and fiscal auditors of those companies that tolerated the conduct.
- b. The transaction may be voided for violating antitrust laws, at the request of a party bearing legal interest through a judicial declaration/proceeding.

¹⁷ Decree 2153 of 1992.

¹⁸ See Decree 1302 of 1964, section 6.

¹⁹ Equivalent to 2,000 minimum monthly wages at an average exchange rate of Col\$2,900.

²⁰ Equivalent to *circa* 300 minimum monthly wages.

2. Environmental

a. Regulations

In 1991, Colombia incorporated into its Constitution international principles for the environmental protection. It is said that the Constitution of 1991 qualifies as a “green constitution” due to the degree and importance of references made concerning environmental principles and the rights given to nationals seeking to protect the environment from the government and the judiciary. For instance, the Constitution expressly states that a healthy environment is considered as a fundamental right; citizens may seek protection of this right by means of class actions and *acción de tutela* (guardianship), among others.

Those principles included in the Constitution gave rise to a proliferation of environmental regulations in the decade following its enactment. Among those regulations, Law 99 of 1993 introduced the most significant changes to the environmental laws then in effect. For example, Law 99 of 1993 (i) created the Environmental, Housing and Territorial Development Agency as the maximum authority in these matters, (ii) introduced the concept of Environmental License and (ii) regulated the liability arising from violations or other actions against the environment.

b. Controls - Competent authorities and types of control

In Colombia, the use of renewable natural resources or the performance of any activity that may affect the environment is subject to strict controls. Consequently, subjects/nationals/citizens must apply for licenses, permits or authorizations before the environmental authorities prior to the execution of certain activities.

The Environmental License is the main administrative mechanism to control the use and exploitation of environment and natural resources. As a general rule, the Environmental License is required to commence any project, operation or activity bearing environmental impact. The Environmental License is granted by different governmental entities, depending on the distribution of territorial jurisdictions and magnitude of the projects. Those governmental authorities are (i) the Environmental, Housing and Territorial Development Agency and (ii) the Regional Environmental Authorities (CAR). Some activities that require an Environmental License are: the exploration and exploitation of mines, transport and storage of oil, projects that affect natural parks, and construction of international airports.

From the procedural point of view it is important to note that (i) in those events in which the location of the project, operation or activity creates a controversy as to which CAR should issue the Environmental License, the Environmental, Housing and Territorial Development Agency has the power to solve such a controversy and (ii) if the competent authority, whether the CAR or the Environmental, Housing and Territorial Development Agency, denies the Environmental License, the petitioner may appeal the decision before the administrative courts.

The application for the Environmental License must be exhaustive as to the extent of the project, operation or activity and shall include a request for all the relevant permits and authorizations required for the use of the relevant natural resource. The activity of the holder of an Environmental License is limited to the precise terms and conditions of such license. Therefore, when applying for the Environmental License any omission of the petitioner in connection with any specific permit or authorization for the use of the relevant natural resource, may have the effect of preventing the performance of the activity and the petitioner may need to request an amendment of the Environmental License.

c. Permits and Authorizations applicable to each natural resource

The authorizations or permits required in order to perform an activity bearing environmental impact are classified according to the natural resource that is to be used, exploited or that may be affected. Accordingly, different regulations apply to the discharge of atmospheric emissions, liquid waste and water use, and noise.

- Atmospheric emissions: Decree 948 of 1995, regulates the prevention and control of atmospheric contamination and incorporates provisions regarding air quality. According to this decree, any source of air emission must be registered with the competent environmental authority in order to obtain the relevant permit or authorization pursuant to the maximum allowable emission standards. The permit shall identify the project, the authorized emission and its quantity and quality characteristics.
- Water: According to Colombian law, water is a public good and any private use is subject to governmental control. The use of water is currently regulated by Decree 1541 of 1978. This decree establishes two types of permits that may be granted in connection with the use of water: (i) concessions granted by the competent CAR, and (ii) permits for liquid residues granted by the CAR. These permits must include the obligations of the beneficiary, its duration, and causes for an eventual

revocation. The residue permit must additionally specify the type of residue, quantity and quality applicable, as well as the system to treat it.

- Noise: Resolution 8321 of 1983 issued by the Department of Health, regulates the maximum levels of noise emission permitted. In order to perform any activity the relevant person must comply with the maximum noise levels established in the mentioned Resolution. However, special permits to allow a person or company to exceed the maximum levels may be issued.

d. Retributive and compensatory rates and costs of an Environmental License

According to Colombian regulations, the direct or indirect use of water, air, and soil for the purposes of disposing of any waste, is subject to payment of rates that are meant to compensate damages caused to the environment. The Environmental, Housing and Territorial Development Agency ruled on the collection of the retributive rates for water pollution by means of Decree 901 in 1997.

The granting of an Environmental License is also subject to the payment of some fees by the petitioner. These fees are calculated based on the value or investment of the project, operation or activity to be developed. The law establishes clear formulas for the calculation of those fees.

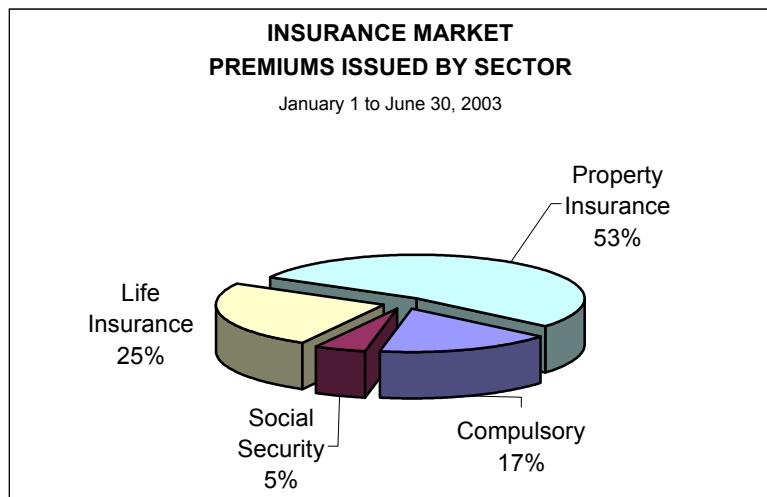
e. Sanctions

There are several persuasive methods available to governmental authorities to secure compliance with environmental laws. Among these instruments, the environmental authorities may impose sanctions, penalties or fines, due to the non-compliance of the conditions set up in the Environmental License or any other violation to environmental regulations, permits, or authorizations including the commencing of activities without the relevant Environmental License, permit or authorization, when required. Furthermore, certain violations to environmental laws are considered criminal offenses, such as illicit holding or handling of hazardous substances, illicit use of the biological natural resources, invasion of areas of special ecological importance, illicit exploration and/or exploitation of mines.

3. Insurance

The Insurance business is an activity considered of public interest and therefore heavily regulated in Colombia. The Financial System Statute provides which entities can carry out insurance business and be intermediaries in the industry. Additionally, insurance

entities are subject to special capital, net worth and investment requirements. Insurance entities and intermediaries are subject to the supervision of the Banking Authority (*Superintendencia Bancaria*).



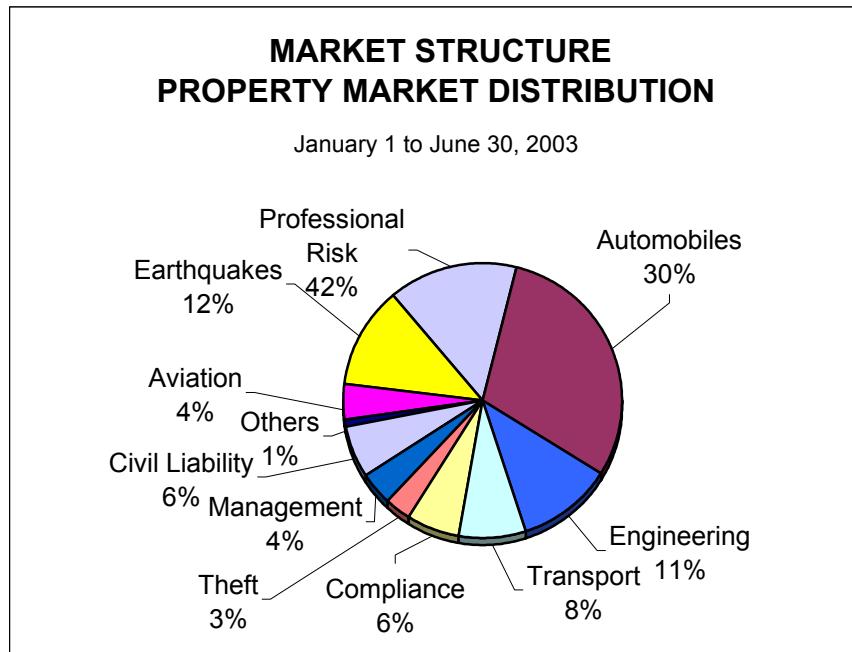
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a. Authorized Insurance Entities

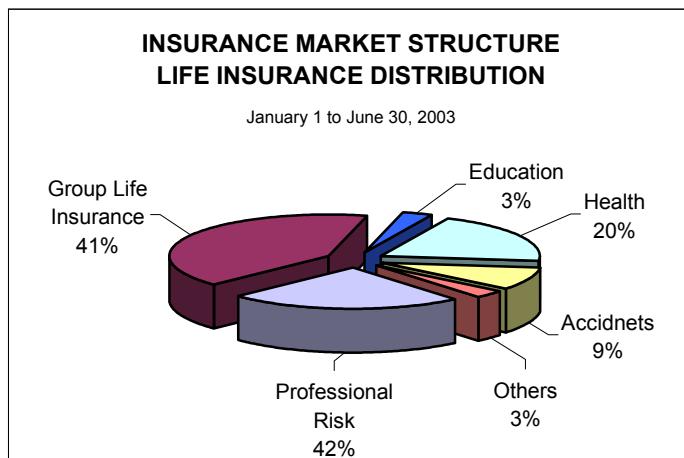
Pursuant to the Financial System Statute, only insurance companies or cooperatives duly incorporated in Colombia with the prior authorization of the Banking Authority are authorized to carry out insurance business in Colombia.

Notwithstanding the above, foreign insurers may sell insurance business in Colombia with the prior authorization of the Banking Authority on a case-by-case basis. The Authority grants such authorization based upon reasons of general interest.

The Banking Authority has stated that in order to grant the authorization it will take into account the situation of the Colombian market, the offer of insurance products by Colombian insurers, the cost of insurance premiums, their coverage at a national, regional and worldwide level and the reinsurance market.



Source: Fasecolda



Source: Fasecolda

b. Authorized Reinsurance Entities

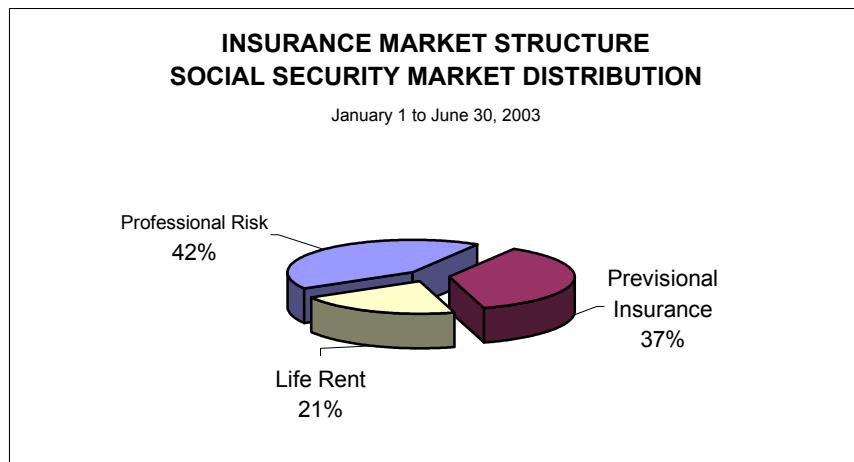
The Reinsurance business is only available to (i) Colombian insurance companies, (ii) Colombian reinsurance companies and (iii) foreign re-insurers (a) registered before the

Banking Authority at the Registry of Foreign Re-insurers and Re-Insurer's Brokers (REACOEX) or (b) which have incorporated a representative office in Colombia.

Registration in REACOEX is made at the request of the interested party by submitting certain information and documents concerning the credentials of the interested party. The Banking Authority will grant the registration if the relevant company meets the set as to solvency, experience in the industry and professional requirements.

Re-insurers can establish representative offices in Colombia to undertake reinsurance underwriting activities. Such representative offices are subject to prior approval from the Banking Authority and thereafter to its supervision.

Representative offices are entitled to underwrite risks on behalf of their home offices but cannot, under any circumstances, undertake directly or indirectly any insurance activities.



Source: Fasecolda

c. Authorized Entities to Intermediate Insurance

The intermediation of insurance is an activity subject to the supervision of the Banking Authority. Only insurance agencies, agents and insurance brokers duly authorized by the Banking Authority are entitled to promote insurance business in Colombia and such intermediaries can only perform intermediation in the insurance business and activities related thereto.

The violation of insurance regulations such as the promotion by an insurance intermediary of insurance activities carried out by an unauthorized foreign insurer may lead to unfavorable consequences for said intermediary.

d. Restrictions

The Colombian insurance industry is still very protectionist. The Financial System Statute provides that assets located in Colombia, as well as Colombian residents in respect of their persons, must be insured with (i) Colombian insurers duly authorized to operate in Colombia or (ii) foreign insurers, provided that the party seeking to insure a risk with a foreign insurance underwriter obtains the prior approval from the Banking Authority.

V. STRUCTURES FOR A BUSINESS IN COLOMBIA

1. Government participation and restrictions

Colombia's government owns and participates in different kinds of companies in the national, regional and city levels. This government ownership of companies is permitted by the Constitution²¹. The level of participation of the government varies. In some cases companies are wholly owned, in others the government has major participation while in others, though not often, it is simply a minor player. The companies in which the government participates are usually the ones that develop activities related to public utilities such as, health, electricity and telecommunications. Nevertheless, it may also participate in any other sector of the economy. The ownership and participation of government in entities is basically a consequence of old policies which aimed at a centralized and protectionist government.

Since the 1990's there has been a trend of the government to privatize the companies it owns as well as to reduce its participation in others. As a result, a number of public or government owned companies have ended up in the hands of private entities. Such has been the case with companies that engage in public utilities like electricity, telecommunications, public transportation and water. The major reason for this trend is that the government needs to reduce its costs and expenses while in other cases it has been convenience that has caused such privatizations.

It is fair to say that as of the early 1990's the government has tended to be reluctant to participate in the ownership or operation of entities, preferring entities to operate independently.

Notwithstanding the latter, there are a few areas where the government is overzealous of its monopoly and allows absolutely no private participation. Such is the case of activities related to defense, the armed forces and the production of distilled liquors.

There are some business restrictions that the Constitution establishes. Some are related to the development of financial activities that involve the receipt of money, such as banks, brokerage and insurance companies amongst others. In these activities, the law established some specific requirements that the companies that wishes to engage in such businesses must fulfill in order to obtain the necessary permissions to operate in Colombia.

²¹ Article 334 of the Colombian Constitution.

2. Implications of having permanent business in Colombia

If a company wishes to engage in permanent businesses in Colombia it must observe some rules in order to avoid any mishaps.

Given the amplitude of the term “permanent businesses”, the Colombian Commercial Code opted to list some of the most common activities that are considered permanent. This list is not exhaustive and therefore allowing other activities to be considered permanent as well, analyzed on a case-by-case basis. The Colombian Commercial Code considers as permanent activities the following:

- (i) The opening of an establishment of a business office in the territory of the Republic of Colombia. The law specifically mentions that these include technical or consultancy businesses;
- (ii) To intervene as contractor in the performance of constructions or in the rendering of services;
- (iii) To participate in any way in activities that have as a corporate purpose the use, exploitation or investment of funds that originate from private savings. These activities include banking, brokerage and life insurance;
- (iv) To engage in any of the branches or services of the mining extraction industry;
- (v) To obtain from the Republic of Colombia a governmental concession or its assignment thereto, or to participate in any way in its exploitation;
- (vi) If the operations of the corporate bodies of the company take place in the Colombian territory.

If a foreign company wishes to engage in permanent business in Colombia it may establish a branch located in the Colombian territory (please refer to Section 3 (g) of this chapter for information in this connection). The company may also establish a Colombian company/corporation to expound its activity. Both are viable options allowed by Colombian law.

3. Investment methods

a. General Comments

As a general rule, in the by-laws of a Colombian company (that is, any company incorporated under Colombian Law), its shareholders or partners must establish among other things, (i) the corporate purpose of the company, which shall be express, and (ii) the term of duration of the company. If such is not established, the company can be declared non-existent.

The only exception to the above mentioned rule is the sole proprietorship, in which the by-laws can state as corporate purpose “the performance of any legal activity” and the term of duration can be indefinite.

b. Corporation

The capital of a Corporation is divided into shares, which are freely negotiable by endorsement, unless the by-laws provide for a right of first refusal in favor of the shareholders. The Corporation requires that there be at least 5 shareholders, none of whom can own directly more than 94.99% of the outstanding shares of the Corporation. There is no limit to the number of shareholders of the Corporation.

The Corporation requires a Board of Directors composed of at least three principal members and their respective alternates. The powers of the Board of Directors typically include (i) the appointment of general managers and officers of the Corporation, (ii) the authority to issue shares subject to pre-emptive rights in favor of the remaining shareholders, and (iii) the power to approve certain acts of the general managers as provided for in the by-laws of the Corporation.

Nevertheless, the most important decisions such as (i) distribution of profits, (ii) capitalization, and (iii) waiver of preemptive rights, should remain at all times in the hands of the Shareholders Assembly. Such powers cannot be assigned to the Board of Directors.

The Securities Authority (*Superintendencia de Valores*) is currently working on a draft law whereby it wishes to regulate certain matters pertaining to corporations that trade their shares in the stock exchange.

c. Limited Liability Company (LLC)

The Limited Liability Company (“LLC”) requires at least two partners and may not have more than 25 partners. The capital of a LLC is divided into quotas of capital. The transfer of quotas implies an amendment of the by-laws of the LLC and must be executed as a public deed before a local notary public.

The LLC does not require a Board of Directors. The LLC is deemed to be managed directly by the partners, although they are entitled to delegate their authority to general managers.

A LLC does not require a fiscal auditor except either (i) if its gross assets exceed the sum of *circa* USD\$ 539,00 or (ii) if its gross income exceeds the sum of *circa* USD\$ 323,000, both for year 2003.

In a LLC the partners are, as a general rule, only liable to the extent of their equity contributions to the company, with the exception of taxes, where the partners are jointly and severally liable with the company for taxes not paid by it, and moneys owed to employees and not paid by the company (e.g salaries, fringe benefits, vacations, indemnities, etc).

d. Limited Partnerships

The Limited Partnerships are formed by two types of partners: (i) the managing or general partners, who are joint and severally liable, and (ii) the limited partners, whose liability is limited to their contributions.

There are two types of limited liability partnerships:

- (i) The Simple Partnership, whose name is formed by the complete name, or by the surname of one or more general partners followed by the expression “ & Compañía” and then by the abbreviation “S. en C.” Its capital is divided into quotas of equal value. In the Board of partners, the partners have as many votes as do the quotas they own. As a general rule, the limited partners will only liable to the extent of their equity contributions to the company, with the exception of taxes, and amounts owed to employees and not paid by the company (e.g salaries, fringe benefits, vacations, indemnities, etc), where they will be jointly and severally liable with the company.
- (ii) The Stocks Partnership, whose name is formed by the complete name, or by the surname of one or more general partners followed by the expression “ & Compañía” and

then by the abbreviation “S. en C.A.”. Its capital is divided into shares of equal value. The limited partners will only liable to the extent of their equity contributions to the company.

e. Unlimited Liability Company (ULC)

The Unlimited Liability Company (“ULC”) is a Company administered by all its partners, or by a manager elected unanimously by the partners. Under Colombian law, the partners of an ULC are jointly and severally liable for the transactions of the partnership. The ULC requires at least two partners. Colombian law does not provide for a maximum limit on the number of partners of the ULC.

The Company’s business name shall be made up of the full name or surname of one or more partners followed by the words “and company”, “brothers” and “sons”, or similar expressions.

Any Company may become a partner of an ULC provided the decision is approved unanimously by the partners or shareholders. Likewise, unanimity is also required for the following decisions: (i) total or partial assignment of the interests held by a partner in the general partnership; (ii) assignment of administrative and control functions to a person alien to the ULC; (iii) exploitation by one of the partners, on its own behalf or for third parties, directly or indirectly, of the same type of business in which the URL is engaged, and (iv) be part of other companies engaged in the same type of business of the ULC and participate in their management.

f. Sole Proprietorship (*Empresa Unipersonal de Responsabilidad Limitada* or EURL)

Colombian law provides that any individual or company, meeting the requirements to participate in commerce, may incorporate a sole proprietorship.

The rules of the LLC are applicable to the sole proprietorship, with the following exceptions:

- The corporate name of the sole proprietorship must always be followed by the letters E.U, otherwise the entrepreneur will be held liable without limitation for all liabilities of the EURL.
- The term of the sole proprietorship may be indefinite and its corporate purpose may include the possibility of performing any lawful commercial act.

- The entrepreneur of the EURL cannot enter into any kind of agreements or contracts with the EURL. Any such transaction will be deemed to be null and void.

g. Branches or Representative Offices

Under Colombian law, a branch of a foreign company has the same legal personality of its parent company. A branch is an extension of its parent company, hence, it only has an assigned capital, a defined business purpose and its own officers and statutory auditors.

It is important to point out that the parent company is liable for all of the operations and transactions of its Colombian branch.

h. Joint Ventures

The regulation of Joint Ventures in Colombia is limited to certain economic fields such as petroleum and communications²². Nonetheless, Joint Ventures are valid under the contractual principles of Colombian law. Joint Ventures are commonly used in Colombia.

i. Andean Multinational Enterprise (EMA)

The Andean Multinational Enterprise (*Empresa Multinacional Andina*) (EMA) was created by the Andean Community under Decision 292 of 1991²³.

Pursuant to Andean Regulations the EMA must be incorporated as a corporation and shall fulfill all requirements established by the relevant legislation.

The EMA must be located in the territory of the member countries of the Andean Community, that is Colombia, Venezuela, Ecuador, Peru or Bolivia.

For all purposes the name of the Company must be followed by the abbreviation EMA.

The EMA's capital must be divided into shares, which must be denominated in the local currency of the where incorporated, or in the currency allowed by the relevant local laws.

The contributions made by national investors of two or more member countries must add up to more than 60% of the capital stock of the Company.

²² Law 37 of 1993.

²³ The Andean Community is formed by Bolivia, Colombia, Ecuador, Peru and Venezuela

The managers of the Company must be, at least, one director of each member country (but only from those countries where and investment of at least 15% of the Company's total equity comes from).

For administrative purposes, the sub-regional majority must be established in each of the corporate departments (i.e. technical, administrative, financial and commercial).

The Company's by-laws must provide a right of first refusal in favor of the shareholders. Nonetheless, any shareholder may resign to the right of first refusal²⁴.

Within the sixty (60) days following the incorporation/transformation of a Company into an EMA, the corresponding national body (i.e. the Chamber of Commerce) shall notify the Andean Board for its registration. Once registered, the Andean Board must notify the other Country members of such registration within the next thirty (30) days²⁵.

j. Trust and other fiduciary entities

Trust Companies may engage in any kind of commercial trust business.

Trust companies, like the rest of the companies in financial system, are licensed and supervised by the Banking Authority, which is in charge of approving the types of operations that the financial entities may undertake.

4. Regime of Incorporation

a. General Regulations

In order to incorporate a Corporation, LLC, Limited Partnership or an ULC, the founding partners/shareholders must appear before a local notary public in order to execute the founding charter, which must contain the by-laws of the Company. The founding partners/shareholders must appear either in person or by means of a duly empowered attorney-in-fact²⁶.

The Notary Public issues copies of the incorporation deed (*escritura de constitución*) which must subsequently be registered at the Chamber of Commerce having jurisdiction in the place where the Company is to have its primary location.

²⁴ Article 1, Decision 292 of 1991.

²⁵ Article 29, Decision 292 of 1991.

²⁶ Colombian Commercial Code, Articles 110 and 111.

Those partners/shareholders that do not appear in person must execute a power of attorney which, in the case of foreign individuals or companies, must be properly certified by a Notary Public in the country of origin, by the competent authority and be legalized in accordance with the formalities required to that effect.

The power of attorney must provide sufficient authority for the attorney-in-fact to form the new Company, execute the founding deed, obtain a tax identification number (*Número de Identificación Tributaria or NIT*) from the Colombian Tax Administration for the relevant investor and register the investment before the Central Bank (*Banco de la República*).

It is important to note that the obtaining of a NIT does not imply that the investor obtaining it will be required *per se* to file an income tax returns in Colombia.

b. Special Regulations

In addition to the general rules, Colombian law provides a special set of rules for the incorporation of a branch of a foreign company, a sole proprietorship and a trust or other type of fiduciary entities:

i. Incorporation of a Branch

In order to incorporate a branch, it is necessary to file, before a local notary public, copies of (i) the parent company's founding charter, (ii) the parent company's by-laws, (iii) a resolution from the parent company ordering the opening of the branch, and (iv) a certificate of incorporation and a good standing certificate of the parent company.

The notary public will issue copies of the deed containing the foregoing documents. One copy of said deed must be registered with the local Chamber of Commerce.

All documents to be filed with the local notary public must be either original counterparts or certified copies; the signatures appearing on each document must be certified by a notary or other relevant authority in the country of origin of the parent company and the signature of such authority must be legalized in order to fulfill the Apostille formalities, if the country of origin is a party to the Apostille Convention.

If the country of origin is not a party to said convention, the signature of the relevant authority would need to be certified by a Consulate of Colombia. Upon making its legalization, the Consulate must additionally issue a certificate evidencing that the

company exists and is in good standing in accordance with the laws of the relevant jurisdiction.

ii. Incorporation of a Sole Proprietorship

The Sole Proprietorship may be incorporated either by public deed or by private document. If the EURL is incorporated by means of a private document, it is necessary to file such document before a notary public for its recognition. Once the document is recognized by a notary public, it must subsequently be registered at the Chamber of Commerce having jurisdiction over the place where the EURL is to have its principal domicile.

Upon the registration of the EU before the chamber of commerce the EURL will obtain a tax identification number (NIT) from the Colombian Tax Administration.

iii. Incorporation of a Trust and Other Fiduciary Entities

In order to incorporate a trust company or another type of fiduciary entity, the founding shareholders must file before the Banking Authority a chart containing the draft companies' by-laws, the minimum required capital²⁷, the curriculum vitae (cv) of each of the shareholders and of the person that is to be the general manager of the trust, a financial analysis that demonstrates the viability of the Company and the additional information required by the Banking Authority.

Within the following five (5) days upon receipt of all documents requested, the Banking Authority will publish a notice in a well known, firmly established newspaper, in order for third parties to object the incorporation of the trust. This procedure shall be done twice with a seven (7) day period in between.

Once the above mentioned procedure is completed, the Banking Authority will have a six (6) month period to approve or reject the incorporation of the trust.

Once the Banking Authority has approved the incorporation of the trust, it may be incorporated by means of the same procedure established for the Corporations²⁸.

²⁷ Colombian law provides a minimum permanent required capital of approximately USD 1,266,000 for year 2004. This amount is adjusted each year by the DANE (National Statistics Department) with the Consumer Price Index.

²⁸ For information in this connection, please refer to Section VII 3. b. above.

VI. TERMINATION OF A BUSINESS

Colombian insolvency laws provides for *concordato*²⁹, reorganization and compulsory liquidation. Law 222 of 1995 is applicable to *concordatos* and compulsory liquidations of commercial companies, cooperatives, corporations and branches of foreign companies, provided that these entities are not subject to a special regime.

Law 550 of 1999 governs reorganizations of any domestic or foreign enterprise operating on a permanent basis in Colombia, whether its capital is held by private or state owned entities. Law 550 does not apply to companies controlled by the Superintendence of Solidarity Economy (*Superintendencia de Economía Solidaria*) devoted to financial, savings and credit activities, nor to companies subject to the supervision of the Banking Authority, the Securities Authority, Stock Exchanges and to stockbrokers registered with the National Securities Registry and Intermediaries. Reorganization proceedings will apply in lieu of the *concordato* proceedings for a period of five (5) years starting as of January 1st, 2000.

Additionally, the Financial System Statute provides for the taking of control by the Banking Authority and compulsory administrative liquidation of the entities subject to the supervision of said Authority and the securities regulations providing for the taking of control and liquidation of entities subject to the supervision of the Securities Authority (*Superintendencia de Valores*).

Finally, the taking control of and liquidation of public utilities companies subject to the supervision of the Department of Public Services is subject to the provisions of Law 142 of 1994 and the Financial System Statute.

Below are the relevant features of Law 550 proceedings and compulsory liquidation proceedings of private entities.

1. Law 550 proceedings

a. Summary

- The relevant authority must decide whether the company qualifies for these proceedings and if so, appoints a promoter. The promoter is an

²⁹ *Concordato* proceedings are a form of reorganization proceeding that have been suspended by Law 550 of 1999 until December 2004. The Superintendence of Companies is currently preparing a draft insolvency law, which is expected to come into effect on January 2005. Thus, it is probable that *Concordato* proceedings will be eliminated from Colombia law.

independent person who will actively participate as a facilitator of the process. The promoter assists the parties in various tasks, beginning with the gathering of all information relevant to the negotiation, analysis and preparation of the restructuring agreement and is involved in all financial, administrative, accounting, and legal aspects of the agreement. The promoter is not the manager of the company.

- The promoter determines and apportions the voting rights of each creditor and establishes the existence and amount of the liabilities of the company that will be included in the restructuring agreement. The promoter is given four months upon its appointment to comply with this task.
- Once the voting rights of the creditors are determined and finally settled, the company and the creditors will have four months to negotiate and execute the restructuring agreement. Failure to reach an agreement shall force the relevant authority to bring the company into mandatory liquidation proceedings.
- A restructuring agreement shall be approved with a simple majority of the affirmative voting rights of creditors, which represent at least three different classes of creditors. The classes of creditors are the following: (a) internal creditors, (b) employees and pensioners, (c) official/public entities, (d) financial institutions and other entities subject to the supervision of the Banking Authority, and (e) the remaining external creditors.
- Once the agreement is approved, a Creditors' Committee (each class of creditor must be represented in the committee) is created in order to supervise the performance of the agreement.
- The restructuring agreement deals, among various issues, with the following:
 - (a) Formation and operating rules for the Creditors' Committee.
 - (b) The order, terms and conditions under which the liabilities of the company are to be paid.
 - (c) The company's information disclosure practices.

- (d) The obligations arising from the company's Corporate Governance Code. Law 550 establishes that the restructuring agreement must include a corporate governance code for the enterprise (*código de conducta empresarial*), in which the parties must include, among others, rules about transactions between related parties, treatment of the cash flow and non-operational assets and implementation of accounting standards.
 - (e) The rules to construe, interpret or amend the restructuring agreement.
 - (f) Rules applicable to the payment of obligations to stockholders, officers, and controlling companies, which will not enjoy any privilege unless otherwise agreed to with the unanimous consent of the remaining creditors.
 - (g) Rules applicable to the distribution of profits and payment of dividends while the agreement is in force.
 - (h) Rules applicable to the payment of pensions, if the company has any pension obligations.
 - (i) Rules applicable to events of default, the way in which they may be cured and the consequences of such default.
 - (j) Payments in kind, conversions of debt into equity or into risk bonds, which require the consent of the relevant creditor.
- The restructuring proceedings are concluded when the restructuring agreement is approved. Within the 10 days following the approval of the agreement, a notice of such approval must be registered before the Chamber of Commerce in the location of the debtor and of its branches, and the agreement must be handed over to the Superintendence of Companies.

b. Important features of a restructuring proceeding for a creditor

- Payment of debt due prior to the filing of Law 550 proceedings (called "pre-filing debt") will be stayed during these proceedings and will become subject to negotiations between the debtor and its creditors.

- No execution proceedings for collection may be brought against the debtor with respect to pre-filing debt and proceedings of that nature that may be pending at the time the restructuring proceedings commenced are immediately stayed.
- All monies owed by the debtor after the initiation of restructuring proceedings (called “post-filing debt”) will be deemed “administrative expenses” which must be paid as they become due during the proceedings. Administrative expenses will have priority for payment in the event of the liquidation of the company. If a debtor defaults in paying “post-filing” debt, then, the relevant creditor is entitled to commence execution proceedings and restitution proceedings against the debtor, these are not subject to any stay. Furthermore, if the debtor fails to pay “post-filing” debt for more than 90 days, the creditor has the right to ask the relevant authority to put the debtor into mandatory liquidation.
- After filing for restructuring proceedings, a debtor must continue to perform those activities corresponding to the ordinary course of its business and must therefore pay its administrative and operating expenses, which, pursuant to Law 550, enjoy priority for their payment. However, all debt service payments are suspended for debt incurred prior to the commencement of the proceedings.
- Creditors that benefit from a security interest granted by or created over the assets of a third party after January 1, 2000, are required to choose between (i) enforcing only such security interest, or (ii) participating in the restructuring agreement. In the former, creditors may initiate collection proceedings against the guarantor before the competent authority. In the latter, the creditor cannot file any action against the guarantor for the debts included in the restructuring agreement, unless provided otherwise in such agreement.
- A creditor cannot terminate a contract and/or request the restitution of tenancy of any asset solely on the grounds that a debtor has entered into Law 550 proceedings. Article 15 of Law 550 renders ineffective any provision of a contract the purpose of which, directly or indirectly, is to prevent a debtor from participating in Law 550 proceedings by means of early termination clauses. Such provision has unfavorable consequences for a creditor.

2. Compulsory liquidation

a. Summary

- The Superintendence of Companies issues a resolution ordering the initiation of the liquidation and appointing a liquidator from a list of people that have been requested by be included therein for such purpose.
- The Superintendence of Companies appoints an advisory board (the “Advisory Board”) to the liquidator consisting of one representative of each of the (a) public entities, (b) workers, (c) financial entities, (d) secured creditors other than financial entities, (e) partners, and two representatives of unsecured creditors.
- The liquidator calls upon those which may have any claims against the debtor, to become parties to the liquidation proceedings. To become a party to those proceedings, a creditor must file evidence of the existence of its credit. The Superintendence of Companies makes available the list of liabilities to the parties and grants them the opportunity to object any of them. Once the objections have been resolved, the Superintendence of Companies issues a writ that contains all the liabilities of the debtor duly rated and classified.
- The liquidator must prepare an inventory of any and all corporate assets, which must be verified by the Advisory Board and approved by the Superintendence of Companies. Then, the Advisory Board appoints the persons in charge of valuing the assets that made up the inventory. The valuation of the inventory is submitted to the Superintendence for its approval and the Superintendence of Companies, prior to such approval, makes available such inventory to the parties for amendments, additions or clarifications.

Once the valuation of the inventory has been approved, the liquidator will proceed to sell the assets of the debtor to pay the creditors in accordance with the rating and classification provided for in the writ and the priority for payments set forth in the Civil Code.

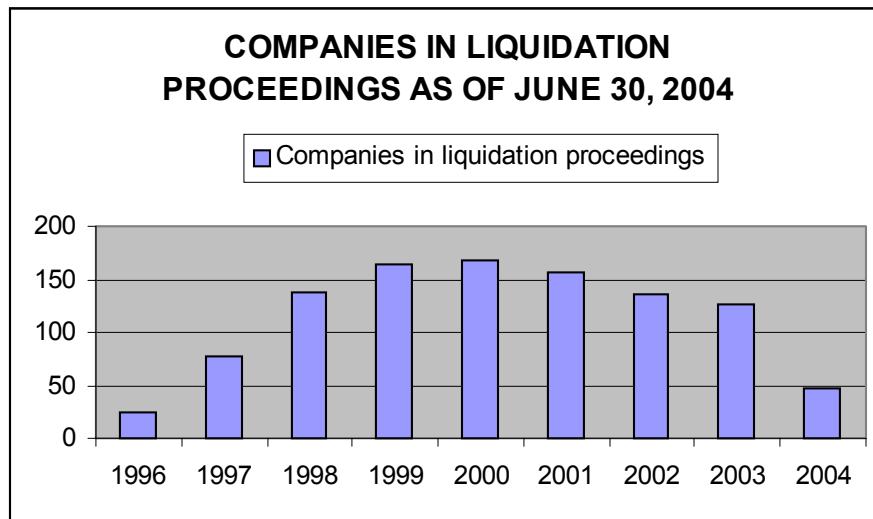
It is worth pointing out that all the above is only applicable to mandatory liquidation proceedings and is in no manner similar to the procedure to be followed for the voluntary liquidation of a company.

b. Important features of a compulsory liquidation for a creditor

- Debtor's pending obligations become due and payable immediately.
- All payments made by creditors to the debtor must be made directly to the liquidator.
- Creditors must submit their claims only before the liquidator. All collection proceedings against the debtor must be incorporated into the liquidation proceedings.
- The liquidator must restitute all property excluded from the liquidation estate to its owners, once the Advisory Board has granted an approval to that effect. For such purposes, the interested party must submit evidence of its rights over the relevant property.
- During mandatory liquidation proceedings, the assets of the company are attached; therefore, if the liquidator needs to sell any asset he must obtain a prior authorization of Superintendence of Companies and the Advisory Board.
- Mandatory liquidation proceedings of private companies results in the termination of contracts.

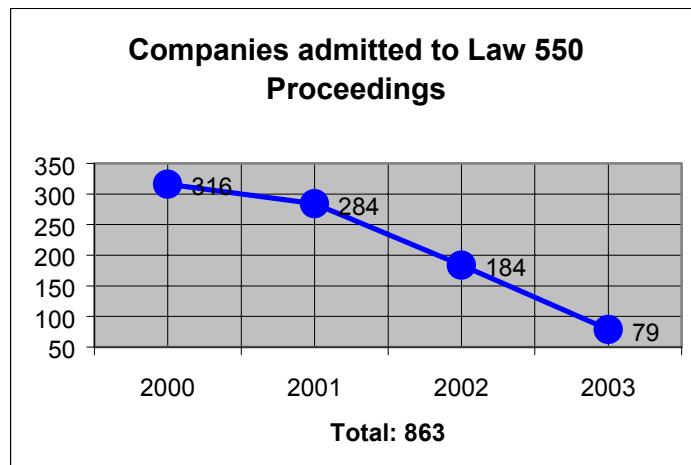
3. The Figures

According to the information provided by the Superintendence of Corporations, an example of the recovery of Colombia's economy is shown in the number of companies that enter on a yearly basis into mandatory liquidation proceedings. While in the year 2000 the number of companies that entered into mandatory liquidation proceedings rose up to 167, in 2003 the number of companies that entered into mandatory liquidation proceedings was reduced to 127 companies. Moreover, as of June 30, 2004, there were only 47 companies that had entered into mandatory liquidation proceedings.



Source: Superintendence of Corporations.

In addition, as a result of the economic recovery, the total number of companies that have entered into restructuring proceedings has been reduced from 316 companies in 2000 to less than 80 companies as of August, 2003³⁰.



4. New Trends

³⁰ Source: Newspaper “La República”. Article dated September 3, 2003.

Since Law 550 (that regulates restructuring proceedings) is only in effect until December 31, 2004, the Superintendence of Companies is considering a new law that provides for new reorganization and liquidation proceedings.

Such project of law deals with cross border insolvency issues based upon the United Nations Commission on International Trade Law (UNCITRAL) model.

The latest draft of such project, prepared by the Superintendence of Companies, follows a trend initiated by Law 550 of 1999, whereby the proceedings are increasingly more creditor friendly rather than debtor friendly.

For instance, it is stated in the draft that the creditors will determine whether the company will be subject to a restructuring proceeding or shall be subject to mandatory liquidation proceedings. Under Law 550 of 1999, the Superintendence of Companies makes such decision.

Furthermore, the aforementioned Superintendence is reviewing, amongst several issues, the manner in which creditors will be grouped and the majorities that will be required to approve a restructuring agreement.

VII. LABOR

1. Employment Regulations.

a. Governing Laws

Labor relationships in Colombia have been governed since 1965 by the *Código Sustantivo de Trabajo* (the “CST”), that has been amended by a series of subsequent laws, the most important of which are Laws 50 of 1990 and 789 of 2002.

Along with the above mentioned regulations, employer-employee relations are also governed by Law 100 of 1993, which consequently also governs the Social Security System as subsequently amended by Law 797 of 2003

Furthermore, after the Constitution was enacted in 1991, labor, liberty to chose occupation or profession, and liberty to form unions became recognized as constitutional rights, granting the highest form of protection to employees’ rights.

b. Wages & Salaries

Every employee is entitled to receive, as a compensation for their services, a salary that must be equal or superior to the minimum legal monthly wage (*Salario Mínimo Mensual Legal Vigente* or “SMLMV”, its acronym in Spanish). The amount of said salary is determined on a yearly basis by the National Government³¹.

In addition, pay for overtime, nighttime (as defined in subsection c. below) and Sunday or holiday work are compensated with a surcharge over the basic salary, as described below:

³¹

Evolution of the minimum monthly legal salary

YEAR	SMLMV (Col\$)	SMLMV (US DOLLARS)	EXCHANGE RATE*
2004	\$358,000	\$132.48	\$2,702.25**
2003	\$332,000	\$115.36	\$2,877.79
2002	\$309,000	\$123.36	\$2,504.68
2001	\$286,000	\$128.25	\$2,229.89
2000	\$260,100	\$124.57	\$2,087.92
1999	\$236,460	\$134.60	\$1,756.69
1998	\$203,826	\$142.89	\$1,426.42

Source: *Departamento Administrativo Nacional de Estadística* (“DANE”).

* The average exchange rate corresponds to the annual average exchange rate for each calendar year.

**Average exchange corresponding to the first semester of year 2004.

Nighttime: paid with an additional 35% surcharge.

Daytime: paid with an additional 25% surcharge.

Nighttime overtime: paid with an additional 75% surcharge.

Sunday or holiday: paid with an additional 75% surcharge. If said work is also overtime work or nighttime work, the corresponding surcharges must also be paid.

When an employee earns a salary that is equal or superior to 13 SMLMVs (approximately USD 1722.27), said salary may be converted, if employer and employee agree, to an “Integral Salary” that compensates beforehand all the fringe benefits and surcharges that must be paid by the employer, except vacations.

Salaries must always be paid in Colombian Pesos. If the salary has been established in a foreign currency, it will be paid in Colombian Pesos, using the official exchange rate (*Tasa Representativa del Mercado*) of the day of payment.

c. Work Hours

Pursuant to Colombian Law, labor hours are limited to 48 hours per week, distributed in a maximum of 6 days per week. With the proper authorization, granted by the Department of Social Protection (*Ministerio de Protección Social*), an employee is entitled to work up to 12 hours of overtime per week. Employees in positions of management and confidence are not subject to said restrictions.

Work performed between 6:00 a.m. and 10:00 p.m. is considered daytime work. Work performed between 10:00 p.m. and 6:00 p.m. is considered nighttime work.

In order to achieve continuous activities, employers and employees may agree to adopt special shifts, as follows:

- i. A special 36 hours/6 days a week, 6 hours a day shift, without nighttime or Sunday/holiday work surcharges
- ii. A flexible daytime 48 hours/6 days a week shift, with 4 to 10 working hours per day, without overtime work charges.

Compulsory holidays are observed on January 1st and 6th, March 19th, May 1st, June 29th, July 20th, August 7th and 15th, October 12th, November 1st and 11th and December 8th and 25th. Additionally, there are 5 religious holidays on dates specified by the Catholic Church.

d. Vacations and Sick Leaves

Every employee is entitled to a 15 business days period of paid vacations per year, and proportionally for fraction thereof. Due vacations may not be accumulated for more than three (3) years.

There is no minimum sick leave in Colombia.

e. Fringe Benefits

Under Colombian labor law every employer has the obligation to grant to all of its employees, except for those that are being paid with an “Integral Salary” certain benefits, additional to their salaries, which are known as legal fringe benefits. The following are said benefits:

- i. **Transportation Aid.** It is a fixed sum of money³² established by the national government, on a yearly basis, that has to be paid monthly by the employer to all the employees whose salary is up to two (2) times the minimum monthly legal salary.
- ii. **Footwear and Dress.** It is an endowment of one pair of shoes and one labor dress that has to be provided three times a year to every employee in accordance with the task to be performed.

³²

Evolution of the transportation aid (“TA”)

Year	TA (Col\$)	TA (USD)	Exchange Rate*
2004	\$41,600	\$ 15.39	\$2,702.25
2003	\$37,500	\$13.03	\$2,877.79
2002	\$34,000	\$13.57	\$2,504.68
2001	\$30,000	\$13.45	\$2,229.89
2000	\$26,413	\$12.65	\$2,087.92
1999	\$24,012	\$13.66	\$1,756.69
1998	\$20,700	\$14.51	\$1,426.42

Source: *Departamento Administrativo Nacional de Estadística* (“DANE”).

* The average exchange rate corresponds to the annual average exchange rate for each calendar year.

** Average exchange corresponding to the first semester of year 2004.

iii. **Severance Aid.** Employers must make an annual direct deposit to a severance fund (an independent financial institution), on behalf of every employee, of a sum of money equivalent to one month of salary for each year of service.

iv. **Interest on severance.** Employers must pay every year in the month of January to all of its employees a sum equivalent to 12% of the severance aid for each year.

v. **Service Bonus.** All employees are entitled to the payment of fifteen (15) days of salary in June and 15 days of salary in December.

2. Additional Regulations

a. Social Security

With the approval of Law 100 of 1993, the General Social Security System (the “SGSS”, its acronym in Spanish) was created, comprising the General Pensions System (the “SGP”, its acronym in Spanish), the General Health Social Security System (the “SGSSS”, its acronym in Spanish) and the General Professional Risks System (the “SGRP”, its acronym in Spanish). Pursuant to said Law, every employer must affiliate its employees to the SGP, SGSSS and SGRP, deduct from the employee’s salary the amounts established by law and pay a percentage of the employee’s salary in order to complete the contribution, according to the parameters listed in the charts “Contribution vs. Salary” and “Contribution Employee-Employer” below.

Contribution vs. Salary

System	Employee % of Salary	Employee % of Salary
General Pensions System (SGP)*	3.375%	10.125%
General Health Social Security System (SGSSS)	4%	8%
General Professional Risks System (SGRP)	-	From 0.375% to 8.7%

* Pursuant to Law 797 of 2003, the percentages for the contribution to the SGP will vary in the future, according to the employee’s salary. Please see chart ahead for details.

Contribution Employee-Employer

System	Employee % of Contribution	Employee % of Contribution
General Pensions System (SGP)*	25%	75%
General Health Social Security System (SGSSS)	33.3%	66.6%
General Professional Risks System (SGRP)	-	100%

* Pursuant to Law 797 of 2003, the percentages for the contribution to the SGP will vary in the future, according to the employee's salary. Please see chart ahead for details.

Contributions to the General Pensions System (SGP) (as a percentage of the salary)

YEAR	Salary (Expressed in Minimum monthly Wages - SMMLVs)							
	Up to 4	More than 4 up to 16	More than 16 up to 17	More than 17 up to 18	More than 18 up to 19	More than 19 up to 20	More than 20	
2003	13.5 %	14.5 %	14.7 %	14.9 %	15.1 %	15.3 %	15.5 %	
2004	14.5 %	15.5 %	15.7 %	15.9 %	16.1 %	16.3 %	16.5 %	
2005	15 %	16 %	16.2 %	16.4 %	16.6 %	16.8 %	17 %	
2006	15.5 %	16.5 %	16.7 %	16.9 %	17.1 %	17.3 %	17.5 %	
2007	15.5 %	16.5 %	16.7 %	16.9 %	17.1 %	17.3 %	17.5 %	
2008	16.5 %	17.5 %	17.7 %	17.9 %	18.1 %	18.3 %	18.5 %	

b. Payroll Fees

Employers are required by law to make some additional payments, calculated as percentages of the total value of the company's payroll. Said payments must be made to a *Caja de Compensación Familiar* ("CCF"), to the *Servicio Nacional de Aprendizaje* (the "SENA") and to the *Instituto Colombiano de Bienestar Familiar* (the "ICBF"), according to the parameters listed in chart "Payroll Fees".

Payroll Fees

ENTITY	% OF PAYROLL
CCF	4%
SENA	2%
ICBF	3%
<i>TOTAL</i>	9%

c. Apprenticeship Contracts

Every employer with more than 15 employees must hire apprentices, with a ratio of 1 apprentice for every 20 employees and an additional apprentice when there are less than 20 but more than 10 employees as a remainder.

If the employer does not wish to hire the apprentices required by law, it is possible to replace the quota with the payment of a monthly sum equivalent to 5% of the total number of employees multiplied by 1 SMLMV.

3. Labor Availability

Colombia has abundant unskilled and semi-skilled labor availability for work throughout the country. It has equally abundant skilled and managerial level employees, in many cases bilingual.

4. Labor Permits

Labor permits are not required in Colombia, except for underage³³ labor. Minors between 14 and 17 years are entitled to work if they are authorized by the local Labor Inspector (an official of the Department of Social Protection), upon request by their parents. Said authorization implies no costs, and the processing time depends on each Labor Inspector.

5. Safety Standards

Pursuant to Colombian Labor Law, every employer must supply its employees with all necessary equipment and keep the facilities in which they will perform their tasks in

³³ Underage age is under the age 18 years.

good working condition, in order to preserve the employees' health. Employers must also require medical examinations of their employees at the moment of hiring.

Additionally, every employer that has more than 10 employees must prepare internal Hygiene and Industrial Safety regulations, that must be approved by the Department of Social Protection (*Ministerio de Protección Social*). Certain types of work, such as mining, chemical industry-related work and air transportation industry-related work, among others, have special regulations and safety standards.

6. Unions

Pursuant to Colombian Labor Law, any group of 25 or more workers, regardless of whether they are employees of the same company or not, may constitute a labor union. Employees of companies with fewer than 25 employees may affiliate themselves to other labor unions.

There is no strong labor union culture in Colombia. Less than 20% of the total labor force of the country belongs to labor unions. The largest and most influential unions in the country are controlled by public employees, particularly in the state-owned oil industry.

The right to constitute labor unions is protected by the Constitution, and the officials of the unions have a special legal protection that prevents them from being fired and, in some cases, allows them to dedicate all their time to union issues while being paid by the employer.

Strikes are recognized as a legal instrument in order to obtain better working conditions. Strikes in sectors considered Essential Public Services, such as the Central Bank and some Social Security-related activities, are illegal.

7. Hiring and Firing Requirements

a. Hiring Requirements

When hiring a new employee, an employer must order a medical exam, in order to determine his general health state. The employer, however, is not entitled to request AIDS or pregnancy tests as a condition for admission.

Pursuant to Colombian Labor Law, it is possible to hire independent contractors, as long as they act with absolute independence when rendering their services. If any given

contract includes the three basic elements of a labor contract (personal activity of the employee, continuous subordination or dependence, and salary) it will be considered as such, regardless of the name or type of contract.

If a foreign company hires an employee in Colombia and the contract is executed in Colombia, it will follow the same rules established for labor contracts executed by national companies. In the event of labor relationships that take place in Colombia, regardless of the origin of the employer and the place of execution of the contract, the same rules will apply.

If a Colombian Company wishes to hire a non-national, it will have to certify that the legal national-foreign employees ratio is respected³⁴, which will allow the employee to obtain a Temporary Work Visa. Foreign employees have the same rights as Colombian employees.

b. Trial Period

Pursuant to Colombian Labor Law, trial periods may not exceed two (2) months for indefinite term contracts and no more than 1/5 of the total term of fixed term contracts. During the trial period, an employee may be dismissed by the employer without the payment of the legal indemnification.

c. Firing Requirements.

Pursuant to Colombian Labor Law, labor contracts may be terminated without previous notice by any of the parties. If the contract is terminated by the employer, the effects of the termination varies depending on whether the contract is terminated with just cause or not, and on the type of contract.

A contract might be terminated with just cause by the employer in case of employee's violation of legal and contractual obligations or internal regulations. In any other event, the contract will be terminated without just cause, and the employer will have to pay the legal indemnification. The amount of the indemnification will depend on whether the contract is a fixed term contract or an indefinite term contract

Fixed term contracts can be terminated if, prior to the expiration date, the employer gives a thirty (30) days notice to the employee stating its decision not to extend the contract. The termination without previous notice, entitles the employee to the payment

³⁴ Pursuant to Colombian Labor Law, in companies with more than 10 employees, Colombian nationals must occupy at least 80% of all managerial level positions and 90% of non-managerial level positions.

of an indemnification equivalent to the salaries corresponding to the time remaining until the completion of said term.

If the employer terminates an indefinite term contract without just cause, the employee is entitled to be compensated in accordance with the following rules:

- i. Employees that earn a monthly salary lower than or equal to ten (10) SMLMVs³⁵:
 - Thirty (30) days of salary for the first year of service.
 - Twenty (20) additional days of salary for every additional year of service and proportionally for fraction thereof.
- ii. Employees that earn a monthly salary higher than ten (10) SMLMVs:
 - Twenty (20) days of salary for the first year of service.
 - Fifteen (15) additional days of salary for every additional year of service and proportionally for fraction thereof.
- iii. Employees that have been employed for more than 10 years of continuous services by their employer at the date in which Law 789 of 2002 came into force (December 27, 2002), will continue to be protected by Article 6º of Law 50 of 1990, as described below.
 - Employees with 10 or more years of service, 45 days of salary for the first year plus 40 additional days for each subsequent year and proportionally for fractions thereof, regardless of their salary.

d. Collective dismissals

Pursuant to Colombian Labor Law, an employer that wishes to collectively dismiss its employees will require authorization from the Department of Social Protection to do so.

The event of a collective dismissal is determined by the proportion of employees dismissed, starting with 30% of the employees within a six month period in companies with 11 to 49 employees and down to 5% of the employees within a six month period in companies with 1000 employees or more.

³⁵ 2003: COL \$3.320.000 (approximately USD \$1.140).

Notwithstanding the above, if the employees are dismissed with just cause, such event will not be considered a collective dismissal.

VIII. IMMIGRATION REQUIREMENTS

1. Immigration Controls.

The authority in charge of the processing and approval of visas is the Department of Foreign Affairs (*Ministerio de Relaciones Exteriores*). The authority in charge of controlling immigration and foreigner is the Administrative Department of Security (*Departamento Administrativo de Seguridad*, or DAS).

Entry permits are not required in Colombia, except for very special cases, given that the document that authorizes entry, when required, is the visa. Citizens of the Countries listed below may enter the country as tourists or visitors without a visa³⁶.

Andorra	Germany	Norway
Antigua & Barbuda	Greece	Panama
Argentina	Grenada	Paraguay
Australia	Guatemala	Peru
Austria	Guyana	Portugal
Bahamas	Honduras	Republic of Korea
Barbados	Hong Kong –SAR.	Saint Kitts & Nevis
Belgium	Indonesia	Saint Lucia
Belize	Island	Saint Vincent & the Grenadines
Bolivia	Israel	San Marino
Brazil	Italy	Singapore
Canada	Jamaica	Slovakia
Chile	Japan	Spain
Costa Rica	Liechtenstein	Sweden
Cyprus	Lithuania	Switzerland
Denmark	Luxembourg	Taiwan
Dominica	Malaysia	Trinidad & Tobago
Dominican Republic	Malta	Turkey
Ecuador	Mexico	United Kingdom
El Salvador	Monaco	United States of America
Finland	Netherlands	Uruguay
France	New Zealand	Venezuela

Exit permits are not required. However, foreigners must present their passport at the moment of departure.

³⁶ Source: Ministry of Foreign Affairs.

2. Immigration Requirements/Formalities

a. General Requirements

Except for citizens of the countries listed above, entry of non-nationals into Colombian territory is authorized by a visa. In order to obtain a visa, certain documents must be presented, depending on the type of visa. However, there are some documents that must be presented regardless of the type of visa:

- i. Valid passport and a copy thereof.
- ii. Application form duly signed.
- iii. Two color photos in light background (3 x 3 cms).
- iv. A power of attorney, if the foreigner does not intend to file the application in person.

b. Residence Visas

Residence visas are permanent visas that can be obtained in three (3) different ways:

- i. Residence Visa as a relative of a Colombian citizen: Former Colombians that have given up their Colombian Nationality in order to obtain another nationality
- ii. Qualified Resident Visa: Foreigners that have lived in the country for more than 5 continuous years with a temporary visa
- iii. Investor Resident Visa: Foreigners that invest in Colombia according to the laws that define “foreign investment”.

Each specific type of residence visa requires particular documents. However, besides the general requirements, all applicants for residence visas must file police certificates (a document that states that the individual does not have a criminal record) issued by the competent authority of the last country of residence.

c. Temporary Work Visas

As indicated by its name, Temporary Work Visas will not be granted for an indefinite period; the maximum validity of this type of visa is two (2) years. In order to obtain a

Temporary Work Visa, the following documents must be filed, in addition to those listed in Section VIII. 2. a. above

- i. Two (2) copies of the labor contract or professional services contract.
- ii. A commitment note whereby the Company accepts to pay the expenses of repatriating the employee and his/her family back to his/her country of origin or of last residence.
- iii. A certificate of good standing (incorporation) and incumbency of the Company, issued within the three (3) months prior to the filing.
- iv. A certificate issued by the Department of Labor in Colombia within the three (3) months prior to the filing, evidencing that by the execution of the contract with the employee, the Company does not violate the ratio of national/foreign employees provided for by the Colombian Labor Code.
- v. Legalized copy of the professional diploma, or certificate proving experience or fitness, or a professional card, or license for engaging in his/her profession. The professional diploma must be validated by Colombian authorities (*Instituto Colombiano para el Fomento de la Educación Superior* or ICFES).

d. Other Types of Visas

Visas may also be granted in the following categories:

- i. Business Visa
- iii. Temporary Entrepreneurial Visa
- iv. Temporary Special Visa
- v. Temporary Visitor Visa
- vi. Tourist Visa

The processing time of a visa application may vary from consulate to consulate and depends mainly on the type of visa that is requested. In most of the cases, a visa application will be processed in no longer than five (5) business days. The fees involved in the process of application for a visa vary from no charge, for the courtesy visa, to USD \$375, for the Investor Resident Visa.

IX. INTELLECTUAL PROPERTY

1. Legal Regime

The following is a brief overview of the legal rules applicable to intellectual property matters in Colombia.

a. Trademarks, Patents and Know-How

In Colombia, trademarks (including other distinctive signs such as commercial names and slogans), patents and know-how, are protected by Decision 486 of 2000 of the Andean Community (“Decision 486”)³⁷.

Decision 486 sets forth the Industrial Property common regulations applicable to all countries that are members of the Andean Community (namely Bolivia, Colombia, Ecuador, Peru and Venezuela). In Colombia, the governmental agency in charge of industrial property is the Department of Industry and Commerce (*Superintendencia de Industria y Comercio* or SIC), the same entity that is in charge of antitrust enforcement and consumer protection.

Most issues in connection with industrial property are carefully regulated by Decision 486, including both substantial matters and provisions applicable to procedures.

Trademarks are only protected through registration, as well as patents. Any act or agreement in connection with both trademarks or patents, such as licenses, transfers, or even location or name modifications of the owner of the trademark or patent, must be registered before the SIC in order to be valid and binding for third parties.

Know-how, on the other hand, is protected as “Industrial Secret” and no registration is necessary. However, the controller of the know-how must observe a series of requisites in order to achieve protection. Basically, it is necessary that the information that constitutes the know-how is not of public knowledge, that the controller of the information makes reasonable efforts to keep the information confidential, and that the information has additional value as a consequence of its secrecy.

Decision 486 also contains regulations regarding other relevant industrial property issues, such as a special chapter devoted to the legal actions that can be undertaken

³⁷ Decision 486 entered into force on December 1, 2000, and is regulated by External Resolution No. 10 of August 6, 2001.

against industrial property infringement and unfair competition in connection with industrial property.

b. Copyrights

In Colombia, Copyrights are regulated by Decision 351 of the Andean Community, Law 23 of 1982, Law 44 of 1993 and Law 599 of 2000 (Criminal Code).

The definition of “work”, as protected creation, is very wide, and includes any scientific, literary or artistic creation despite of the chosen medium of expression. Furthermore, software is also considered a protected work subject to copyright protection.

Copyright protection is granted without registration. However, in order to prove authorship of any given work, it is possible for authors to register their creations before the National Copyright Registry to be enforceable vis-à-vis third parties.

Any act or contract regarding protected works, such as licenses or transfer agreements, must comply with certain formalities and must be registered before the National Copyright Registry.

(i) Domain Names

The “.co” is the country code level domain assigned for Colombia by the ICANN. The “.co” is administered by University of Los Andes, a private university in Colombia, who grants the registration of domain names for a two year period.

The applicant of a domain name must evidence that it is the applicant or holder of the trademark that composes the domain name. The above, to avoid further disputes with the owners of the trademark rights. The University of Los Andes does not adhere to the Uniform Dispute Resolution Policy (UDRP), and does not assume any responsibility for any intellectual property infringement.

2. International Treaties Applicable in Colombia

a. Industrial Property

The following are the most important Industrial Property - related treaties to which Colombia is a party:

- Decision 486 of the Andean Community: Common Provisions on Industrial Property (Effective December 1, 2000).
- Agreement on Trade-Related Aspects of Intellectual Property Rights – TRIPS (1994).
- Strasbourg Agreement Concerning the International Patent Classification (1994).
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Trademarks (1979) – Eighth Edition.
- Locarno Agreement: Establishes an International Classification for Industrial Designs (1968) – Ratified by Colombia on September 17, 1976.
- Paris Convention for the Protection of Industrial Property (1967) – Ratified by Colombia on September 3, 1996.
- General Inter-American Convention for Trademark and Commercial Protection (Washington, 1929) – Ratified by Colombia on February 20, 1929.
- Bolivarian Convention for Patents of Inventions (1911).
- Industrial Property Convention, signed with France (1901).
- Decision 345 of the Cartagena Agreement: Common Provisions for the Protection of Rights of the Developers of Vegetal Varieties.
- Patent Cooperation Treaty (PCT) – Ratified by Colombia on February 28, 2001.

b. Copyrights

The following are the most important Copyright related treaties to which Colombia is a party:

- Decision 351 of the Cartagena Agreement: Common Provisions on Copyright and Neighboring Rights (1993).
- Berne Convention for the Protection of Literary and Artistic Works – Ratified by Colombia on March 7, 1988.
- Rome Convention: International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961).
- Phonograms Convention (Geneva) for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (1971) – Ratified by Colombia on May 16, 1994.
- WIPO Copyright Treaty (1996) – Ratified by Colombia on March 6, 2002.
- WIPO Performances and Phonograms Treaty (1996) – Ratified by Colombia on May 20, 2002.

There are no substantive prior approvals by national investment boards for the protection of industrial property.

3. Notarization Requirements for the Legalization of Documents

Currently, there are two applicable sets of rules for legalization requirements, which are as follows:

- (i) Pursuant to the Hague Convention (dated 5 October 1961) for Abolishing the Requirement of Legalization for Foreign Public Documents (the “Convention”), which became enforced in Colombia on January 30, 2001, documents produced in another contracting state are to be legalized as per the Convention, that is, public documents must contain the *Apostille* to be duly legalized. In order for the Convention to be applicable to private documents, these must be converted into public documents by being notarized.
- (ii) For documents issued or obtained in non-contracting states, which are to be used in Colombia, the following procedure is applicable:
 - Any signature must be legalized by a public notary or equivalent functionary of the country of origin of the document.
 - The signature of the public notary must be legalized by its local superior authority, if there is one.
 - The national authority of the country of origin must certify that the superior authority that authenticated the notary’s signature was authorized to do so.
 - The local Colombian Consul must certify that the national authority that certified the signature of the notary is a national officer entitled to do so (called “short consularization”).
 - In the event that the document is produced on behalf of a corporation or entity, the Colombian Consul must also certify that the entity is duly incorporated and that the entity’s officer that produces the document is entitled to do so (called “long consularization”).

Once in Colombia, documents must be officially translated into Spanish and the legalization procedures must be completed before the Department of Foreign Affairs. Finally, prior to filing before the competent authorities.

4. Regulatory Guidelines for Licenses

According to Decision 486, all trademark and patent licenses must be registered before the SIC in order to be valid and binding before third parties.

In the event of licensed trademarks, the licensor is jointly and severally liable for the quality of the products marked with the licensed trademark.

Unfair Competition regulations provide that license agreements may not include any unfair competition clauses or provisions that restrict free competition.

Moreover, Decision 291 of 1991 of the Andean Community provides that the following clauses are prohibited in Agreements involving technology transfer, trademarks and patents:

- (i) Clauses by which the provision of technology or the use of the trademark requires the receiving party to purchase, from a specific source, intermediate products, raw goods or other technologies; or requires the receiving party to permanently use personnel designated by the company that provides the technology;
- (ii) Clauses by which the company providing the technology or granting the trademark license reserves the right to establish the sale or resale prices of the products that are manufactured using said technology;
- (iii) Clauses that contain restrictions referring to the volume and structure of production;
- (iv) Clauses that prohibit the use of technology developed by competitors;
- (v) Clauses that establish total or partial purchase options in favor of the supplier of the technology;
- (vi) Clauses that require the purchaser of the technology to transfer the inventions and improvements obtained by virtue of the use of said technology;
- (vii) Clauses that provide for a payment by the holders of patents or trademarks, for such patents and trademarks that have expired or have not been used; and
- (viii) Other clauses that have an equivalent effect.

5. Antitrust or Competition Law Applicable to Licenses

Pursuant to Decision 486, the SIC will not register any license agreement containing clauses that may constitute or promote unfair competition and/or that are contrary to antitrust regulations.

6. Agreements Between Foreign Corporations and their Wholly Owned Subsidiaries

The most common agreements related to industrial property rights entered into by foreign corporations with their subsidiaries are:

- Trademark and Patent Licenses.
- Technical Assistance Agreements.
- Technology Transfer Agreements.

It is also common that corporations not interested in a centralized administration of their industrial property portfolios transfer the local registered trademarks to their subsidiaries.

X. APPENDICES

APPENDIX I – Average Monthly and Annual Exchange Rate Since 1994

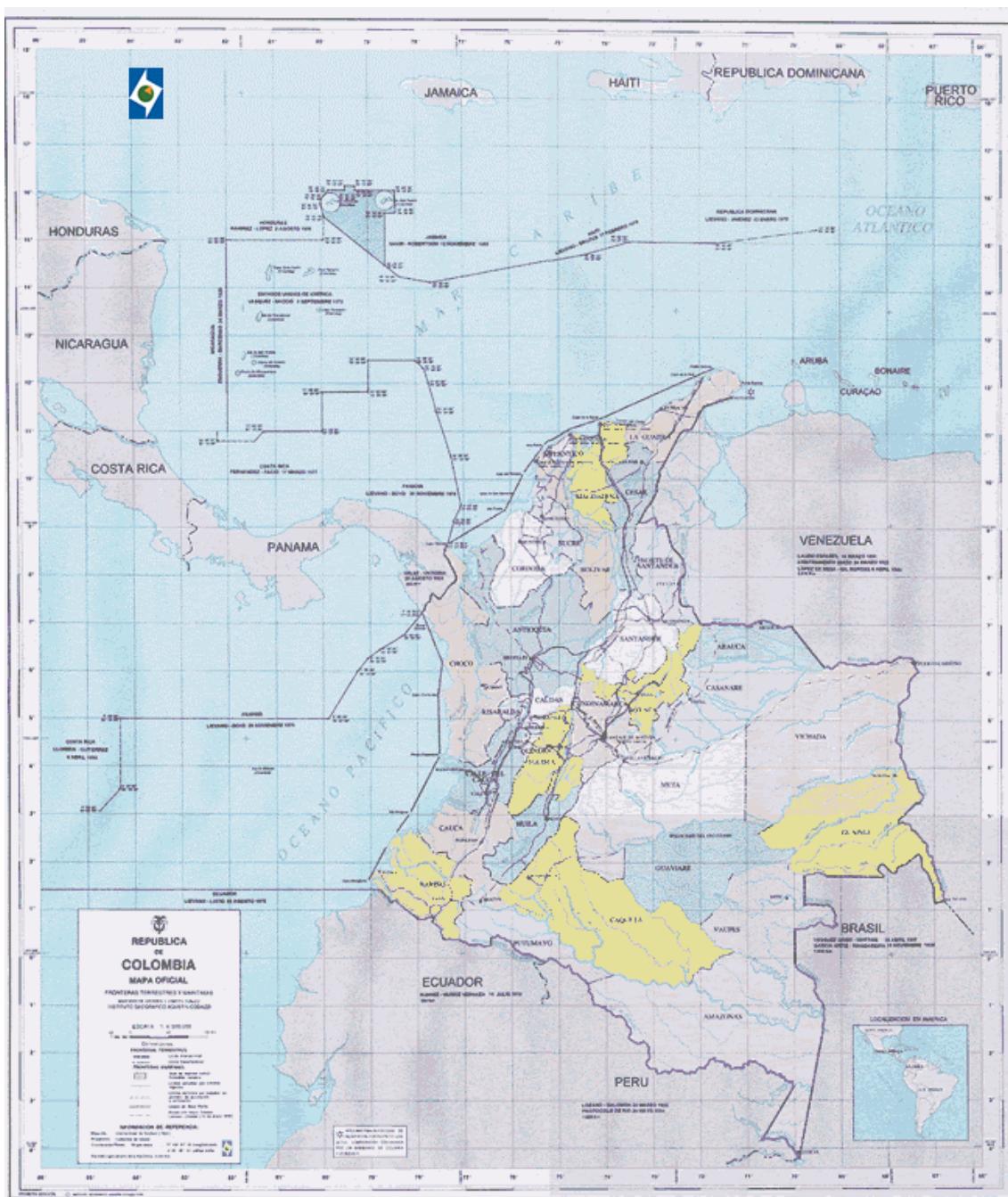
Average Monthly and Annual Exchange Rate (Colombian Pesos per USD 1)								
	1994	1995	1996	1997	1998	1999	2000	2001
January	816.15	846.63	1,011.19	1,027.06	1,323.16	1,570.01	1,923.57	2,241.40
February	817.67	850.90	1,029.64	1,074.24	1,346.12	1,567.07	1,950.64	2,243.42
March	819.76	865.83	1,044.98	1,062.16	1,357.10	1,550.15	1,956.25	2,278.78
April	829.87	873.39	1,050.93	1,060.65	1,360.65	1,574.67	1,986.77	2,323.10
May	841.43	876.95	1,066.24	1,075.18	1,386.28	1,641.33	2,055.69	2,346.93
June	830.94	874.86	1,071.96	1,082.37	1,386.61	1,693.99	2,120.17	2,305.66
July	819.06	893.22	1,064.10	1,102.40	1,371.54	1,818.63	2,161.34	2,304.28
August	814.82	935.10	1,044.84	1,132.70	1,390.46	1,876.93	2,187.38	2,288.90
September	830.06	964.17	1,040.84	1,222.49	1,520.52	1,975.64	2,213.76	2,328.23
October	839.32	984.96	1,015.78	1,262.89	1,587.38	1,978.71	2,176.61	2,320.65
November	830.03	1,000.58	998.18	1,294.56	1,562.71	1,944.64	2,136.63	2,310.47
December	829.37	988.15	1,000.79	1,296.70	1,524.56	1,888.46	2,186.21	2,306.90
Average Annual Rate	826.56	912.78	1,036.55	1,141.08	1,427.04	1,758.58	2,087.42	2,299.77

	2002	2003	2004
January	2,274.96	2,913.00	2,749.14
February	2,286.70	2,951.86	2,717.94
March	2,282.33	2,959.01	2,670.80
April	2,263.11	2,926.62	2,639.60
May	2,310.24	2,858.94	2,719.43
June	2,364.25	2,826.95	2,716.56
July	2,506.72	2,858.82	

	2002	2003	2004
August	2,647.22	2,867.29	
September	2,751.23	2,840.08	
October	2,827.86	2,876.20	
November	2,726.66	2,844.55	
December	2,814.89	2,807.20	
Average Annual Rate	2,507.96	2,877.79	

Source: Banco de la República. www.banrep.gov.co

APPENDIX II - Official Map of the Republic of Colombia



Source: Instituto Geográfico Agustín Codazzi – <http://www.igac.gov.co>

APPENDIX III - Treaties

The following is a list of some of the treaties, agreements, conventions and arrangements to which Colombia is a Party, in addition to those mentioned in Section III of this Document:

Name of Organization, Treaty, Convention or Agreement	Abbreviation	Effective Date
United Nations	UN	November 5, 1945
Organization of American States	OAS	April 30, 1948
Community of Andean Nations	CAN	May 26, 1969
World Trade Organization	WTO	April 30, 1995
General Agreement on Tariffs and Trade	GATT	April 30, 1995
General Agreement on Trade in Services	GATS	
Trade-Related aspects of Intellectual Property rights	TRIPS	April 30, 1995
Trade-Related Investment Measures	TRIMS	April 30, 1995
Convention on the International Sale of Goods	CISG	August 1, 2002
Convention on the Recognition and Enforcement of Foreign Arbitral Awards	New York Convention of 1958	September 25, 1979
International Monetary Fund	IMF	December 27, 1945
	World Bank Group	
International Bank for Reconstruction and Development	IBRD	December 24, 1946
International Centre for Settlement of Investment Disputes	ICSID	August 14, 1997

Name of Organization, Treaty, Convention or Agreement	Abbreviation	Effective Date
Multilateral Investment Guarantee Agency	MIGA	November 30, 1995
International Finance Corporation	IFC	July 20, 1956
International Development Association	IDA	June 16, 1961
Inter-American Development Bank	IADB Group	
Multilateral Investment Fund	MIF	
Inter-American Investment Corporation	IIC	
	Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards	October 9, 1981
Convention on International Civil Aviation (Chicago 1944)	Chicago Convention	Law No. 12 of 1947
Convention for the Unification of Certain Rules Relating to International Carriage by Air	Warsaw Convention	Law No. 95 of 1965
Hague Convention Abolishing the Requirement of Legalization on Foreign Public Documents	Apostille Convention	January 30, 2001
The Group of Three (Colombia, Mexico and Venezuela)	G3	January 1, 1995
Complementation Agreement signed between CAN and MERCOSUR	CAN-MERCOSUR	December 6, 2002
Complementation Agreement signed between CAN and Argentina	CAN-Argentina	August 1, 2000

Name of Organization, Treaty, Convention or Agreement	Abbreviation	Effective Date
Complementation Agreement signed between CAN and Brazil	CAN-Brazil	August 16, 1999
Economic Complementation Agreement No. 24 signed between Colombia and Chile	Colombia-Chile	January 1, 1994
Economic Complementation Agreement No. 6 signed between Colombia and Nicaragua	Colombia-Nicaragua	September 2, 1985
Partial-Scope Agreement No. 7 signed between Colombia and Costa Rica	Colombia-Costa Rica	September 2, 1985
Partial-Scope Agreement No. 8 signed between Colombia and El Salvador	Colombia-El Salvador	September 2, 1985
Partial-Scope Agreement No. 5 signed between Colombia and Guatemala	Colombia-Guatemala	September 2, 1985
Partial-Scope Agreement No. 9 signed between Colombia and Honduras	Colombia-Honduras	September 2, 1985
Partial-Scope Agreement No. 29 signed between Colombia and Panama	Colombia-Panama	January 18, 1995
Preferential Arrangement signed between Colombia and CARICOM	Colombia-CARICOM	December 12, 1994