



Bundesministerium
für Wirtschaft
und Energie



Legal Framework for Foreign Investors in Colombia – Renewable Energy

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Durchführer



Foreign Investors in Colombia Legal Framework



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- I. Main Principles that Regulate Foreign Investment in Colombia.
- II. Free Trade Agreement European Union – Colombia/Peru (Law 1669, 26/07/2012)
- III. General Law regarding Foreign Investment in Colombia and for Colombian Capital Internationally. (Decree 2080, 18/10/2000)
- IV. Corporate Issues
- V. Tax Issues

I. Main Principles that Regulate Foreign Investment in Colombia



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1. National Treatment Principle (Art. 100 CPE) (Art. 2 Decree 2080)
2. Most Favored Nation (FTA EU/ Colombia- Peru)
3. No Expropriation without due Compensation (Art. 58 CPE)
4. Free Transfer of Investments, Profits or Earnings (Art. 11 Decree 2080)

II. Free Trade Agreement European Union – Colombia/Peru (Law 1669, 26/07/2012)



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Entered into effect on 1/8/2013

Deals with various issues including:

- Market Access for Goods (MFN/ Elimination of Customs Duties and None Tariff Measures)
- Trade in Services, Establishment and E- Commerce
- Current Payments and Movement of Capital
- Government Procurement
- Intellectual Property
- Competition
- Conflict Resolution

II. Free Trade Agreement European Union – Colombia/Peru (Law 1669, 26/07/2012)



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1. Trade in Services, Establishment and E- Commerce
 - a. Some services and industries are excluded, energy from renewable resources are not. (Art. 111)
 - b. National Treatment (Art. 113)
 - c. Migration rules for service providers, ex pat company employees and business people. (Art. 122 – 128)
 - d. Limitations (Art. 112)
 - No limitation regarding the number of establishments in the country.
 - No limitations regarding the total value of the transactions or assets.
 - No limitation regarding the total amount of operations.
 - No limitation regarding the total amount of people to be employed.
 - No limitation regarding foreign capital in respect to share participation or total value of investment.
 - No restriction regarding types of establishments in order to perform commercial activities.

II. Free Trade Agreement European Union – Colombia/Peru (Law 1669, 26/07/2012)



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2. Current Payments and Movement of Capital

- The Parties guarantee the free movement of capital from direct investments in entities, investments and other transactions regarding establishments and services, the liquidation and repatriation of investments and benefits from said investments. (Art. 169)
- Exceptional Cause: In case of serious difficulties in foreign exchange policies or monetary policy in Colombia. Measures cannot be longer than 1 year. (Art. 170)

III. General Law regarding Foreign Investment (Decree 2080, 2000)



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Regulates foreign investment capital in Colombia including free zones, by none residents in Colombia, as well as investments made by a resident outside Colombia or in free zones. (Art. 1)

Foreign investment can be direct foreign investment or investment in portfolio. (Art.3)

Foreign investment does not require authorization (Art. 7) but registration of the foreign investment is mandatory, not doing so is considered a foreign exchange infraction. (Art. 8).

Guarantees foreign exchange rights - the same conditions for the disbursement of investment and profits at the time of the registration and cannot be changed in less favorable manner. (Art. 11)

III. General Law regarding Foreign Investment (Decree 2080, 2000)



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The registration of the foreign investment before the Banco de la República, gives the investor the following rights: (Art. 10)

1. Reinvest profits or retain the none distributed profits with the right to send it outside of the country.
2. Capitalize the amounts product of the obligations born from the investment.
3. Send outside of the country net proven profits.
4. Send outside of the county the amounts received as a product of the sale of the investment within the country or due to the liquidation of the company or portfolio or reduction of its capital.

Any controversies are to be subject to Colombian law and arbitration, unless international treaties or conventions are in effect. (Art. 14).

IV. Corporate Issues (Commerce Code)



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In general, foreign investors in Colombia do not require a local partner in order to invest in the country, except for certain regulated or restricted industries.

The most common types of entities used for foreign investment are the following:

1. Limited Liability Companies - Sociedad de Responsabilidad Limitada.
2. Corporations – Sociedades Anónimas
3. Joint Stock Company - Sociedad por Acciones Simplificada (Law 1258, 2008).
4. Branch of a Foreign Company – Sucursal de Sociedades Extranjeras.

IV. Corporate Issues (Commerce Code)



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	Limited Liability	Corporations	Joint Stock Co.	Branch of Foreign
Form of Incorporation	Public Document	Public Document	Private Document	Foreign Resolution into Public Document
Number of partners/ shareholders	2 to 25	At least 5, none with more than 95% of the capital	At least 1 shareholder and no maximum	Not applicable
Responsibility of partners/ shareholders	Responsible up to the amount of their contribution, unless otherwise established.	Responsible up to the amount of their contribution.	Responsible up to the amount of their contribution.	Foreign company responsible for the branch, therefore liable if branch's capital is not sufficient.
Capital	Must be paid in total at incorporation or increase in capital.	50% of the authorized capital and at least 1/3 of value of each share. Rest to be paid in a year.	As established by the partners but not longer than 2 years.	Must be paid at incorporation in Colombia.
Transfer of quotas or shares	Requires bylaws reform.	Shares can be freely transferred, no bylaws reform.	Shares can be freely transferred, no bylaws reform.	Not applicable.

IV. Corporate Issues (Commerce Code)



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	Limited Liability	Corporations	Joint Stock Co.	Branch of Foreign
Foreign Investment	Any capital contribution automatically registered before the Central Bank.	Any capital contribution automatically registered before the Central Bank.	Any capital contribution automatically registered before the Central Bank.	Any capital contribution automatically registered before the Central Bank.
Dividends	If duly registered, the investor can remit dividends based on the financial statements.	If duly registered, the investor can remit dividends based on the financial statements.	If duly registered, the investor can remit dividends based on the financial statements.	If duly registered, the investor can remit dividends based on the financial statements.
Repatriation of Capital	In case of liquidation or capital reduction, if registered before the Central Bank, can be repatriated.	In case of liquidation or capital reduction, if registered before the Central Bank, can be repatriated.	In case of liquidation or capital reduction, if registered before the Central Bank, can be repatriated.	In case of liquidation or capital reduction, if registered before the Central Bank, can be repatriated.
Tax Obligations	Partners jointly liable for none payment of taxes in proportion to their participation.	When there is tax abuse or defraud than the corporate veil can be lifted and shareholders will be jointly liable.	When there is tax abuse or defraud, than the corporate veil can be lifted and shareholders will be jointly liable.	Foreign company is jointly and unlimited liable for tax obligations.



V. Tax Issues



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- I. Colombia and Germany are currently negotiating a Double Taxation Treaty, but it still has not concluded.
- II. Law 1715 (May 13, 2014), which regulates none conventional renewable energy to the national energy system provides for certain tax exemptions or deductions:
 - VAT: the equipment, elements, machinery and national or imported services for the pre-investment or investment, production and usage of none conventional sources shall be excluded from VAT. (Art. 12)
 - Custom Duties: Owners of new investments or projects as well as generation projects, shall be exempt from custom duties for the import of machinery, equipment, materials, supplies which are to be used exclusively for the pre-investment or investment in renewable resources. (Art. 13)

VI. Tax Issues

“Guía Legal para Hacer Negocios en Colombia 2016”, PROCOLOMBIA



CONCEPTO	GENERALIDADES
IMPUESTOS NACIONALES	
Impuesto sobre la renta.	Tarifa general: 25%. Usuarios industriales y operadores de Zonas Francas: 5%. Sociedades extranjeras sin sucursal ni establecimiento permanente en Colombia: 39% para 2015. 40% para 2016. 42% para 2017. 43% para 2018. A partir de 1 de enero de 2019 será de 33%.
Ganancias ocasionales.	Grava algunos ingresos específicos, tales como la utilidad obtenida en enajenación de activos fijos, herencias y loterías. Tarifa: 10%.
Impuesto sobre la renta para la equidad (CREE), en beneficio de los trabajadores, la generación de empleo y la inversión social.	Consiste en un impuesto similar al impuesto sobre la renta, con algunas diferencias en las deducciones y amortizaciones aplicables. Tarifa: 9%.
Sobretasa al impuesto sobre la renta para la equidad (CREE).	A partir del 1 de enero de 2015, las empresas con ingresos superiores a COP 800.000.000 (aprox. USD 267.000) deben pagar una sobretasa del 5% adicional, la cual será incrementada anualmente hasta llegar al 9% en 2018. A partir del año gravable 2019, esta sobretasa será eliminada.
Gravamen a los movimientos financieros (GMF).	Grava la realización de transacciones financieras a una tarifa del 0,4%. Esta tarifa se reducirá al 0,3% en 2019; 0,2% en 2020; y 0,1% en 2021. A partir del 1 de enero de 2022 el impuesto será eliminado.
Impuesto al valor agregado – (IVA).	Grava la venta, la importación de bienes y la prestación de servicios en el territorio nacional. Tarifa general: 16%. Tarifas especiales: 0% / 5%.

VI. Tax Issues

“Guía Legal para Hacer Negocios en Colombia 2016”, PROCOLOMBIA

CONCEPTO	GENERALIDADES
Impuesto al consumo.	Grava ciertos sectores: vehículos, telecomunicaciones, comidas y bebidas. Tarifas: 4%, 8%, 16%.
IMPUESTOS LOCALES	
Impuesto de industria y comercio (ICA).	Entre 0,2% y 1.4% de los ingresos de la compañía dependiendo del municipio en el cual desarrolle sus operaciones.
Impuesto predial.	De 0,3% a 3,3% del valor de la propiedad, dependiendo del municipio en el cual se encuentre ubicado el predio.
Impuesto de registro.	De 0,1% a 1%, según el acto.
MECANISMOS TRIBUTARIOS	
Compensación de los excesos de renta presuntiva sobre la renta líquida.	Se permite su compensación dentro de los cinco años siguientes.
Compensación de pérdidas fiscales.	Compensación en años futuros, sin limitaciones temporales ni porcentuales (para pérdidas generadas a partir de 2007).
Descuentos tributarios.	Se prevén descuentos tributarios (tax credits) por ciertas operaciones. Destacamos las siguientes: i) Por impuestos pagados en el exterior. ii) Por aportes parafiscales en la generación de nuevos empleos formales. iii) Por el IVA pagado en importación y adquisición de maquinaria y equipo para industrias básicas. iv) Dos puntos del IVA en el impuesto de renta por la adquisición o importación de bienes de capital gravados a la tarifa del 16% (maquinaria y equipos por ejemplo).
Convenios para evitar doble imposición en renta (CDI) vigentes con: Canadá, Chile, Corea del Sur, España, India, Suiza, México, Portugal y la Comunidad Andina de Naciones (Bolivia, Ecuador y Perú).	Ver el Capítulo Primero de esta “Guía Legal para Hacer Negocios en Colombia 2016”, sobre protección a la inversión extranjera.
Precios de transferencia.	Aplica para transacciones con partes relacionadas en el exterior, incluyendo sucursales y establecimientos permanentes y operaciones entre Zonas Francas y vinculados en el territorio aduanero nacional.



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Vielen Dank!
¡Muchas Gracias!