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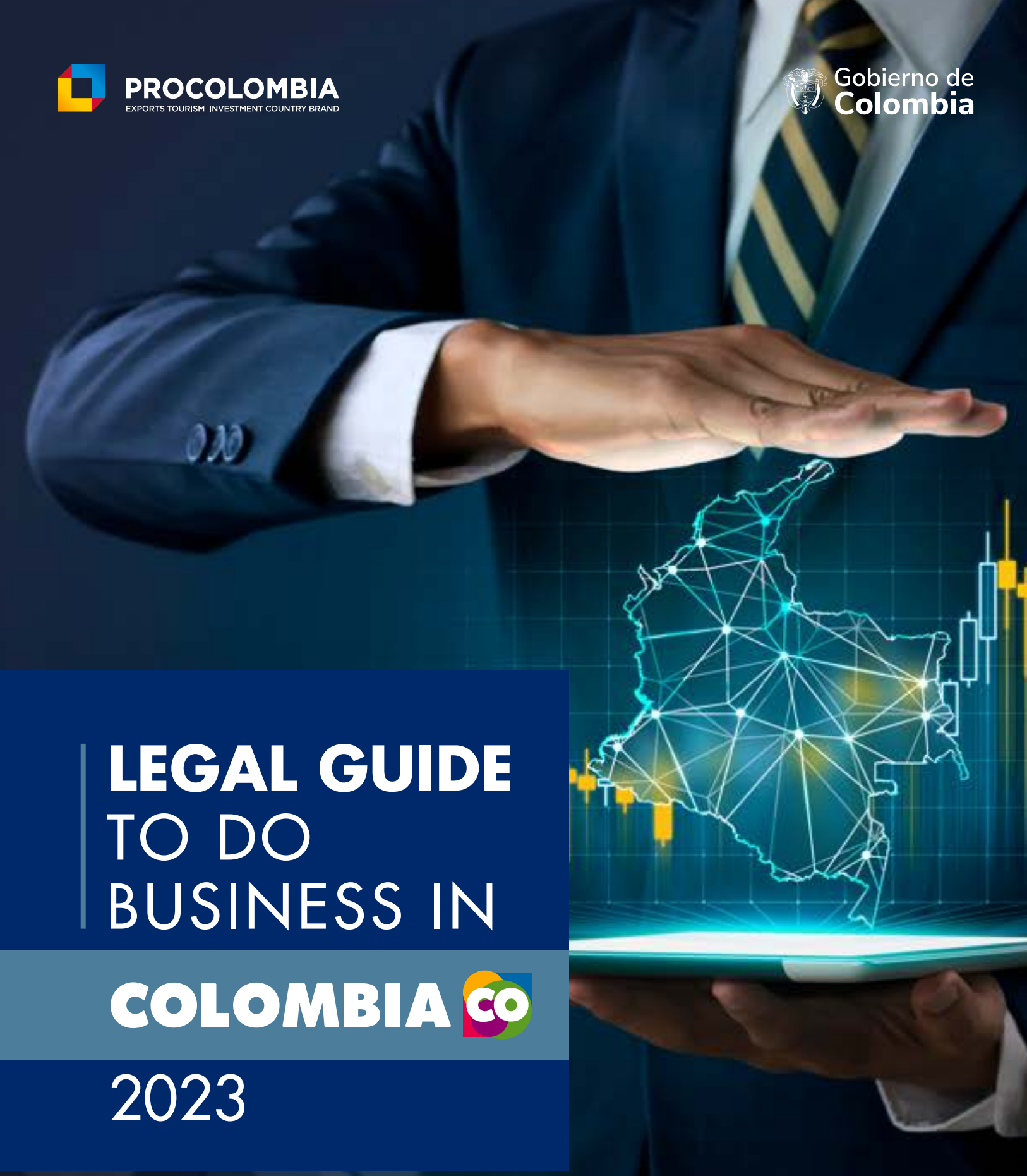

# LEGAL GUIDE TO DO BUSINESS IN COLOMBIA CO 2023

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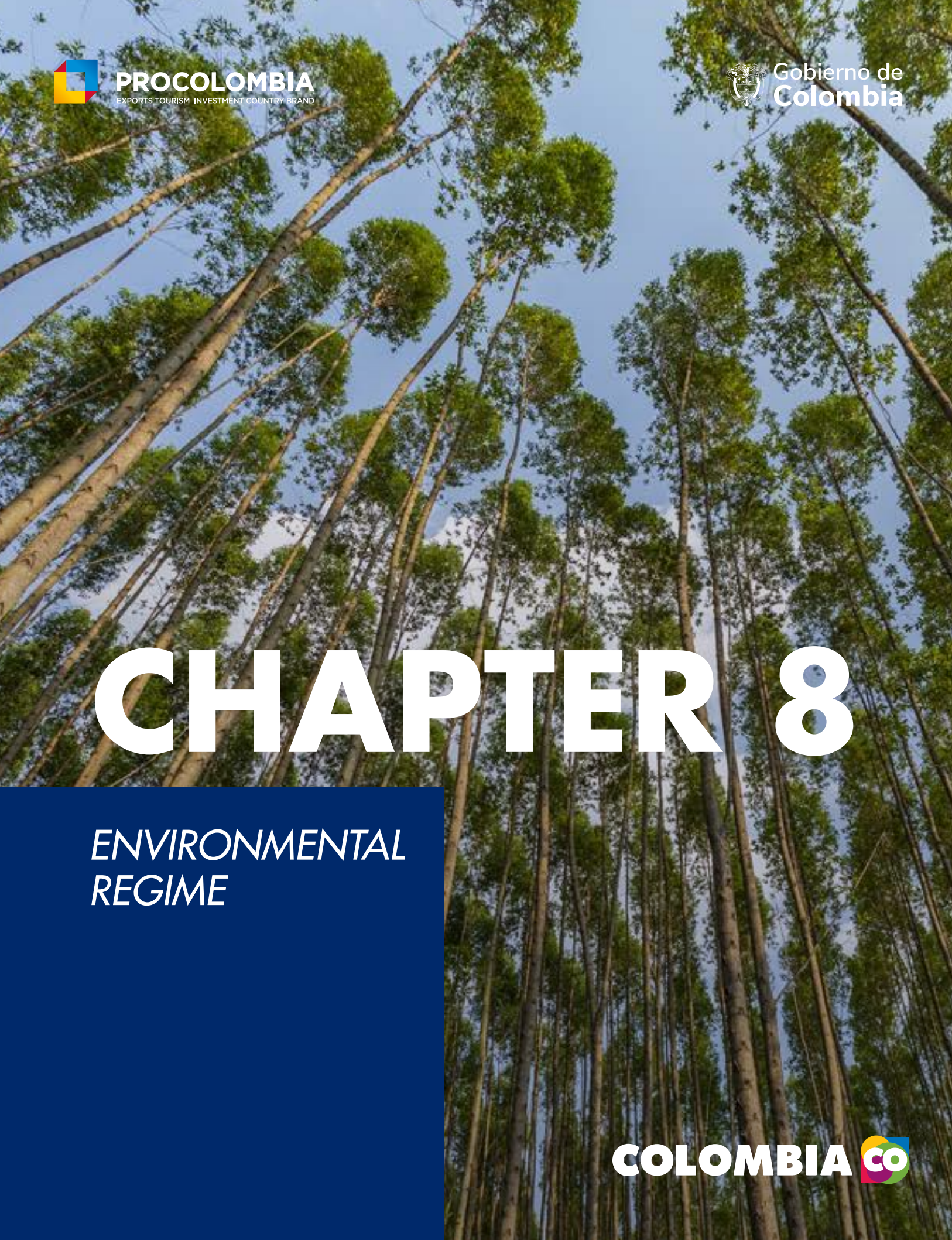

PROCOLOMBIA
EXPORTS TOURISM INVESTMENT COUNTRY BRAND
Gobierno de Colombia
CHAPTER 8
ENVIRONMENTAL REGIME
COLOMBIA CO

# COLOMBIAN ENVIRONMENTAL REGIME

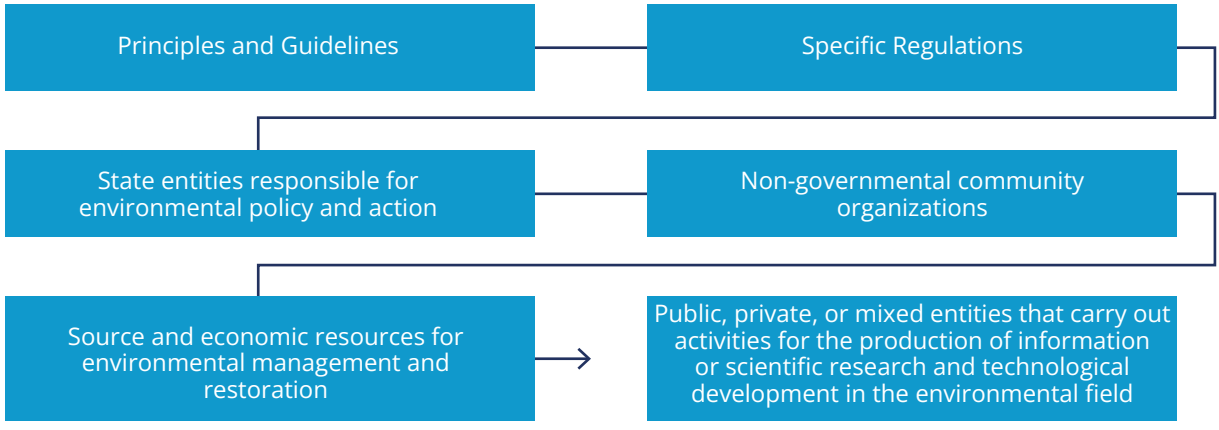
## 8.1. THE NATIONAL ENVIRONMENTAL SYSTEM– SINA

As Jurisprudence and Doctrine have denominated it, since the Political Constitution of 1991, this has been recognized as the Ecological Constitution of Colombia, under the conception of being a Charter that welcomes and promotes the protection of renewable natural resources and the environment and coined the concept of sustainable development that since the mid 80's, was already gaining strength worldwide.

In this way, the structure of the Colombian State, since the Political Constitution of 1991, has been strengthening and adjusting to the reality of territorial development and management, which clearly has to contemplate each of the environmental determinants of each region. In 1993, the Congress of the Republic issued Law 99 of 1993, which is well recognized as the Law that created and organized the National Environmental System – SINA for its acronym in Spanish.

The SINA is composed by the following elements:

**Figure 1.**




Source: Own elaboration

Based on the above, it is necessary that any natural or legal person wishing to develop a project of a different nature in Colombia takes into account the following relevant aspects of the Colombian environmental regime:

### 8.1.1. Principles of environmental law of greater recognition in doctrine and jurisprudence in Colombia

In this regard, it is essential to point out that the Principles of Environmental Law were proclaimed in 1992, in the Rio de Janeiro Declaration, whose objective was to establish a new and equitable global alliance, always seeking to reach international agreements in which the interests of all are respected.

Based on this, 27 principles were proclaimed, of which we consider it essential to mention those that have had the greatest development or legal, doctrinal and/or jurisprudential recognition in Colombia, all of which are included in Law 99 of 1993.

#### 8.1.1.01. Precautionary Principle

In the Rio Declaration, it is recognized as Principle 15, which basically states that where there are threats of serious or irreversible damage, lack of scientific information or certainty should not be used as a reason for postponing effective measures to prevent environmental degradation.

#### 8.1.1.02. Prevention Principle

Due to its name, it is often confused with the Precautionary Principle. However, this is based on the knowledge that the activity, work or project to be carried out may cause damage. Therefore, the authorities are called upon to adopt measures to avoid or mitigate the cause of the damage.

#### 8.1.1.03. Polluter pays principle

This principle has been disseminated and recognized as the one that gives an economic value to the environmental impact, trying to anticipate the cost of the use and exploitation of natural resources whose application has been recognized in Colombia by the application of fees or internalization of costs normally in the Environmental Impact Study (EIA for its acronym in Spanish).

#### 8.1.1.04. Principle of Environmental Impact Assessment

This Principle is fundamental in Colombia, especially for the development and execution of those works, activities, and projects that may generate an impact that, due to its magnitude, is subject to the decision of the environmental authority approval. Therefore, it is the basis for the creation and existence of the Environmental License.

#### 8.1.1.05. In Dubio Pro Natura Principle

Based on the Precautionary Principle, in which it has been widely recognized that “in the face of scientific doubt and uncertainty about risks to the environment, it must be resolved in favor of nature, which has been jurisprudentially called in dubio pro natura or in dubio pro ambiente, which is applied when there is no certainty about the impact of a certain activity

on the environment and the certainty of the impact is legally assumed to be negative"[1].

#### 8.1.1.06. Principle of Sustainable Development

In the Rio Declaration, it has been described as follows: In order to achieve sustainable development, environmental protection must be an integral part of the development process and cannot be considered in isolation[2].

### 8.1.2. Normative Principles

According to Law 99 of 1993, the exercise of environmental functions by territorial entities shall be subject to the principles of regional harmony, gradation of regulations, and subsidiary rigor.

#### 8.1.2.01. Principle of Regional Harmony

The Departments, Districts, Municipalities, Indigenous Territories, as well as the regions and provinces to which the law gives the character of territorial entities, shall exercise their constitutional and legal functions related to the environment and renewable natural resources in a coordinated and harmonious manner, subject to the superior norms and the guidelines of the National Environmental Policy, to guarantee unified, rational and coherent management of the natural resources that are part of the physical and biotic environment of the natural patrimony of the nation.

#### 8.1.2.02. Principle of Regulatory Gradation

In regulatory matters, the rules issued by the territorial entities concerning the environment and renewable natural resources shall respect the superior nature and hierarchical preeminence of the rules issued by authorities and entities of higher hierarchy or of greater scope in the territorial understanding of their competences. The functions in environmental and renewable natural resources matters, attributed by the Political Constitution to the Departments, Municipalities and Districts with special constitutional regime, shall be exercised subject to the law, regulations and policies of the National Government, the Ministry of the Environment and the Regional Autonomous Corporations (CARs for its acronym in Spanish).

#### 8.1.2.03. Principle of Subsidiary Rigor

The rules and measures of environmental police, that is to say, those that the environmental authorities issue for the regulation of the use, management, exploitation and mobilization of renewable natural resources or for the preservation of the natural environment, whether they limit the exercise of individual rights and public liberties for the preservation or restoration of the environment, or require a license or permit for the exercise of a certain activity for the same reason, may be made successively and respectively more rigorous, but not more flexible, by the competent authorities at the regional, departmental, district or municipal

[1] RODRÍGUEZ, Gloria A. Fundamentals of Colombian Environmental Law. National Environmental Forum and Friedrich-Ebert-Stiftung in Colombia. First Edition, 2022

[2] In this regard, it should be pointed out that the concept of Sustainable Development was born in the mid 80's, conceived in the report prepared by the Brundtland Commission and called "Our Common Future", in which it was presented as "the development that meets the needs of present generations without compromising the ability of future generations to meet their own needs".

level, to the extent that the hierarchy of norms is lowered and the territorial scope of competences is reduced, when special local circumstances so warrant, in accordance with law.

The Administrative Acts issued in this way must be reasoned.

Concerning the Regulatory Principles, special reference will be made to the Principle of Regulatory Gradation and the Principle of Subsidiary Rigor due to the jurisprudential development that this has had in Colombia.

### 8.1.3. Entities that make up the SINA

**(a) The Ministry of Environment and Sustainable Development (MADS),** is the governing body for the management of the environment and renewable natural resources, responsible for promoting a relationship of respect and harmony between man and nature and for defining the policies and regulations to which the recovery, conservation, protection, planning, management, use and exploitation of renewable natural resources and the environment of the Nation will be subject, to ensure sustainable development; it is also the coordinator of the National Environmental System (SINA).

**(b) The National Environmental Licensing Authority (ANLA),** is the environmental authority that exercises permitting and sanctioning powers with respect to projects, works and activities under its jurisdiction. It is responsible for ensuring that projects, works or activities subject to environmental licensing, permits or procedures comply with environmental regulations, in such a way that they contribute to the sustainable development of the country.

**(c) Regional Autonomous Corporations (CARs),** Autonomous Corporations for Sustainable Development and municipalities, districts and metropolitan areas whose urban population exceeds one million inhabitants within their urban perimeter, which act as environmental authorities exercising permitting and sanctioning powers with respect to projects, works or activities subject to their competence and jurisdiction.

The CARs are public entities, made up of territorial entities that due to their characteristics geographically constitute the same ecosystem or form a geopolitical, biogeographical or hydrogeographical unit, charged by law with managing, within the area of their jurisdiction, the environment and renewable natural resources and promoting their sustainable development, in accordance with legal provisions and the policies of the Ministry of the Environment.

**(d) Scientific entities attached and linked to the Ministry of Environment and Sustainable Development:**

- **The Institute of Hydrology, Meteorology and Environmental Studies,**
- **IDEAM;**
- **The Marine and Coastal Research Institute "José Benito Vives de Andreis", INVEMAR;**
- **The Alexander Von Humboldt Biological Resources Research Institute;**
- **The Amazonian Institute of Scientific Research "Sinchi";**
- **The Pacific Environmental Research Institute "John Von Neumann".**

### 8.1.4. National System of Protected Areas (SINAP)

It is the set of protected areas, social and institutional actors, strategies, and management instruments that contribute to the fulfillment of the country's general conservation objectives.

Taking into account that the Convention on Biological Diversity entered into force in Colombia in 1995 and that due to the biological, topographic, and natural resource diversity in the Colombian territory, the SINAP was created, whose main focus is the protection and conservation of certain areas with natural and cultural connotations that have great ecological value.

In the SINAP, the National Natural Parks Unit of Colombia plays a leading role, being in charge of:

i. **Coordinating the conformation, operation and consolidation of the National System of Protected Areas, in accordance with the policies, plans, programs, projects and regulations that govern said System and**

ii. **Granting permits, concessions and other environmental authorizations for the use and exploitation of renewable natural resources in the areas of the National Natural Parks System and issuing a concept within the framework of the environmental licensing process for projects, works or activities of projects, works or activities in the areas of the National Natural Parks System, , in accordance with the activities permitted by the Constitution and the law, among others.**

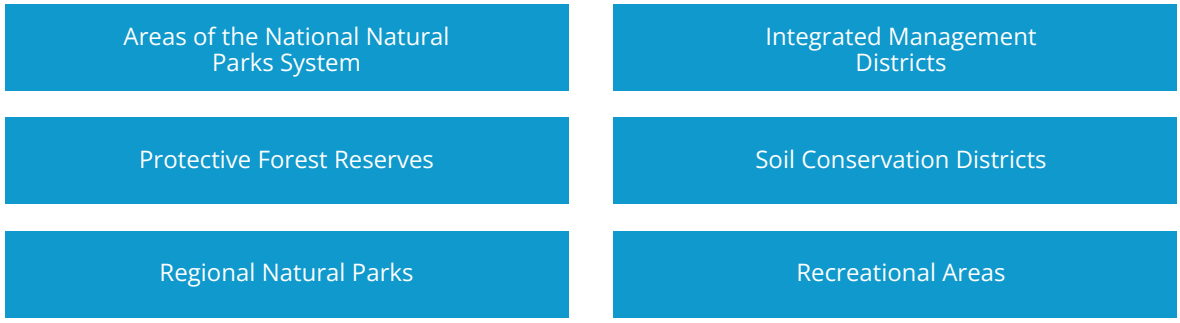
Protected areas are classified as public and private:

#### 8.1.4.01. Public protected areas:

a. National Natural Parks System.
b. Protective Forest Reserves.
c. Regional Natural Parks.
d. Integrated Management Districts.
e. Soil Conservation Districts.
f. Recreation Areas.

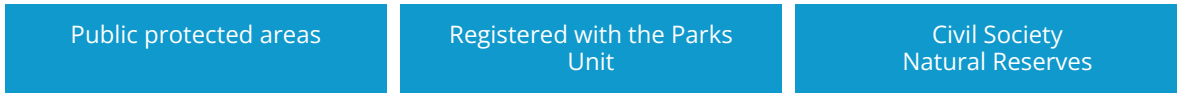
### 8.1.4.02. Private protected areas: Civil Society Nature Reserves.

**Figure No. 2. Protected Area Categories**




Source: Own elaboration

**Figure No. 3. Protected areas of a private nature**




Source: Own elaboration

The main aspect to highlight is that all extractive activities are prohibited in natural parks (national and regional), which are the strictest conservation category of the SINAP. Such activities are also prohibited in protective forest reserves.

### 8.1.4.03. Protected Area Concept

A geographically defined area that has been designated or regulated and managed to achieve specific conservation objectives (Law 165 of 1994).

### 8.1.5. Main Objectives of SINAP

a. **Ensure the continuity of natural ecological and evolutionary processes.**
b. **Guarantee the supply of environmental goods and services essential for human well-being.**
c. **Guarantee the permanence of the natural environment or of some of its components, as the foundations for the maintenance of the country's cultural biodiversity and the social valuation of nature.**

### 8.1.6. Other areas of special environmental protection

These are not part of the areas of the Protected Areas System; however it is important to highlight that there are other figures with legal recognition in Colombia, some of them are still subject to declaration, zoning and establishment of Environmental Management Plans for the proper use and exploitation of renewable natural resources associated with each of them, therefore it is essential to mention them and make a brief description:

**(a) Forest Reserves of Law 2 of 1959.** Seven forest reserve zones were created: i) Pacific Forest Reserve Zone, ii) Amazon Forest Reserve Zone, iii) Central Forest Reserve Zone, iv) Sierra Nevada de Santa Marta Forest Reserve Zone, v) Cocuy Forest Reserve Zone, vi) Magdalena River Forest Reserve Zone, and vii) Serranía de los Motilones Forest Reserve Zone.

For the purposes of the development of activities, works and projects of public utility and social interest, the Law has established the figure of subtraction of forest reserve areas, a procedure that is currently regulated by articles 7 and 8 of Resolution 1526 of 2012 and Resolution 110 of 2022.

Regarding the forest reserves created by Law 2 of 1959, these may be subject to temporary or definitive subtraction of area, to allow activities considered of public utility or social interest and other types of activities, such as public infrastructure.

There are other areas that, despite not being categorized as protected areas, are of special ecological importance, which is why they have legal and regulatory restrictions that prevent the development of certain types of projects, works or activities, as they are strategic ecosystems, such as, for example, moorlands and wetlands.

Due to the above, the due diligence exercice is essential to identify overlaps in the area of interest.

**(b) Moorland or paramo ecosystems.** Paramos or moors are considered strategic ecosystems especially for their role in the regulation of the hydrological cycle that sustains the supply of water resources for human consumption and development of economic activities of more than 70% of the Colombian population. These territories are also characterized by their high biotic and sociocultural richness.

The function of delimiting the páramos was granted to the Ministry of Environment and Sustainable Development since Law 1450 of 2011 and Law 1753 of 2015, a function recently ratified by Law 1930 of 2018. In compliance with the above, today, 36 of the 37 páramos in the country have been delimited.

**(c) Wetlands.** Wetlands are "those extensions of marshes, swamps, peat bogs or waters of natural or artificial regime, permanent or temporary, stagnant or flowing, fresh, brackish or salt, including extensions of marine water whose depth at low tide does not exceed six meters" (Fide Scott and Carbonell 1986). (Fide Scott and Carbonell 1986)

**Classification or types of wetlands in Colombia:** Mangroves, swamps, marshes, salt marshes, estuaries, lagoons, natales, guandales, cananguchales, peat bogs and thermal waters, among others, are part of the 55 types of wetlands that will be included in the classification (Alexander Von Humboldt Institute).

**(d) Watersheds.** The first normative reference in Colombia is found in Article 83 of Decree 2811 of 1974 (Natural Resources and Environment Code) and characterizes them as inalienable and imprescriptible assets of the State.

Additionally, it refers to them as a strip parallel to the line of maximum tides or that of the permanent bed of rivers and lakes, up to thirty meters wide.

Based on the Decree 2245 de 2017, the environmental authorities must adequately manage and delimit the water courses and define the order of priorities

in the exercise of delimiting the water courses in their jurisdiction.

### 8.1.7. Permits, Authorizations and Concessions Regime.

Based on the celebration of the United Nations Conference on the Environment in 1972 in Stockholm, in December 1974, Decree-Law 2811 of 1974 was issued, by means of which the "National Code of Renewable Natural Resources and Environmental Protection" was dictated, which is still in force.

In spite of being a regulation that is about to turn 50 years old, it has been considered that this Code was quite avant-garde for its time, which knew how to conceive the reality of natural resources and the environment in Colombia, as well as the adequate mechanisms for their protection, preservation, conservation, use and management, establishing, among other things, a series of permits, which are still in force today.

The Colombian State has sought to develop an environmental policy in accordance with the Colombian ecosystemic reality.

Based on the above, permits, authorizations and concessions are the mechanism through which the State authorizes the use and exploitation of natural resources. The most widely recognized or applied in Colombia are:

a. **Single, isolated and/or persistent Forest Harvesting Permit.**
b. **Groundwater/Surface Water Permit or Concession.**
c. **Wastewater discharge permit.**
d. **Selective collection and environmental management of waste: light bulbs, tires, batteries, computers.**
e. **Authorization for the transboundary movement of hazardous waste.**
f. **Authorization for export of biological diversity specimens.**
g. **Authorization for the construction of works that occupy the bed of a stream or water reservoir.**
h. **Authorization to grant the right to use the Colombian Environmental Seal.**
i. **Atmospheric Emissions Permit.**
j. **Groundwater prospecting and exploration permit.**
k. **Study permit for the collection of specimens of wild species of the Biological Diversity for environmental studies.**
l. **Permit for suppliers of marking elements of the National Identification and Registration System for Wildlife Specimens in "Ex situ" conditions.**
m. **Post-consumer product return management plans for used lead acid batteries.**
n. **Post-consumer return management plans for expired drugs or medicines.**
o. **Environmental management plans for packaging waste.**
p. **Pesticide post-consumer product return management plans.**

### 8.1.8. Environmental License

Following Decree 2811 of 1974, for the execution of works, the establishment of industries or the development of any other activity that, due to its characteristics, may produce serious deterioration to renewable natural resources or the environment, or introduce considerable or notorious modifications to the

landscape, it will be necessary to carry out a prior ecological and environmental study and, in addition, obtain a license.

Nowadays, this figure is regulated in Law 99 of 1993, Decree 1076 of 2015 (which includes Decree 2041 of 2014).

### 8.1.8.01. What is the Environmental License?

According to Decree 1076 of 2015, the "Environmental License" is the authorization granted by the competent environmental authority for the execution of a project, work or activity, which in accordance with the law and regulations, may produce serious deterioration to renewable natural resources or the environment or introduce considerable or notorious modifications to the landscape.

The competent environmental authority authorizes the execution of a project, work or activity from its installation to its abandonment and dismantling, and subjects its owner to the implementation of measures for the prevention, mitigation, correction, compensation and management of the environmental effects generated.

Generally, only those projects, works or activities that the law indicates should require an environmental license.

### 8.1.8.02. Main features of the Environmental License

a. **The environmental license must be obtained prior to the exercise of rights arising from permits, authorizations, concessions, contracts, and licenses issued by authorities other than environmental authorities.**
b. **The environmental license may be assigned in whole or in part.**
c. **The environmental license may be integrated with another, as long as the object of the projects to be integrated is the same, their areas are adjacent, and they could have been advanced in the same process.**
d. **The environmental license is normally granted for the useful life of the project, work or activity and will cover the phases of construction,assembly,operation, maintenance, dismantling, final restoration, abandonment and/ or termination.**
e. **The same project, work or activity shall not require more than one environmental license.**
f. **For the development of projects, works and activities related to mining and hydrocarbon exploitation, the competent environmental authority will grant a global environmental license covering the entire requested exploitation area.**
g. **All environmental permits required for the development of the project, work or activity, as long as they have been requested within the licensing process, will be included in the respective environmental license. The term of the environmental license, as well as of the environmental permits included therein, will be equal to the duration of the project.**
h. **If after five (5) years the project has not been built or executed, the environmental license**

may lose its validity and for this reason the environmental authority must declare the loss of validity of the license.

### 8.1.8.03. Some of the projects requiring environmental licenses and competent authorities

Section 2 of Decree 1076 of 2015, indicates the projects, works and activities subject to environmental licensing, namely:

a. Exploratory perforation of hydrocarbons.
b. Exploitation and pipeline transportation of hydrocarbons.
c. Mineral exploitation.
d. Construction and operation of energy generation plants, hydroelectric plants, and renewable energy generation projects.
e. Construction of power lines for transmission and distribution of energy.
f. Constructions of the sea and riparian ports and projects of road and rail infrastructure.
g. Manufacturing facilities for the fabrication of certain chemical substances.
h. Treatment, and recovery of hazardous waste.
i. Construction and operation of plants whose purpose is the use and recovery of biodegradable organic solid waste greater than or equal to twenty thousand (20,000) tons/year.
j. Construction and operation of sanitary landfills.
k. Projects that affect areas of the National Natural Parks System.

### 8.1.8.04. Process for obtaining an Environmental License

Obtaining the environmental license must be done through an administrative process regulated by law, which can be initiated in two ways:

#### 8.1.8.04.1. Projects requiring Environmental Diagnosis of Alternatives:

For some projects, works or activities, as established by law, an Environmental Diagnosis of Alternatives (DAA for its acronym in Spanish) must be presented, except when the competent environmental authority certifies that the presentation of the DAA is not required. The purpose of this is to present the competent environmental authority with sufficient information to evaluate the different alternatives for the development of the project, work or activity, considering the geographical setting and its environmental and social characteristics, and a comparative analysis of the effects and risks inherent to the project, work or activity.

The projects, works or activities that must consult the competent environmental authority and require the presentation of the DAA, are:

1. Seismic exploration of hydrocarbons that requires the construction of roads for vehicular traffic.

2. The transportation and conduction of liquid or gaseous hydrocarbons, which are developed outside the fields; of exploitation that imply the construction and assembly of infrastructure of conduction

lines with diameters equal to or greater than six (6) inches (15.24 centimeters), except in those cases of new lines whose route is to be carried out through existing rights of way or easements.

3. Liquid hydrocarbon delivery terminals, understood as the storage infrastructure associated with pipeline transportation.

4. The construction of refineries and petrochemical developments.

5. Construction of dams, dams or reservoirs.

6. The construction and operation of electric power generating plants.

7. Projects for the exploration and use of virtually polluting alternative energy sources that come from biomass for power generation with installed capacity greater than ten (10) MW, excluding those that come from solar, wind, geothermal and tidal energy sources. (Added Decree 2462 of 2018, art. 1).

8. Laying of new transmission lines of the National Transmission System.

9. Nuclear power generation projects.

10. The construction of ports.

11. Construction of airports.

12. The construction of highways, tunnels and other associated infrastructure of the national, secondary and tertiary road network.

13. The construction of second roads.

14. The execution of works in the national fluvial network, except for deepening dredging.

15. The construction of railroad tracks and variants of these.

16. Projects requiring transfer from one basin to another.

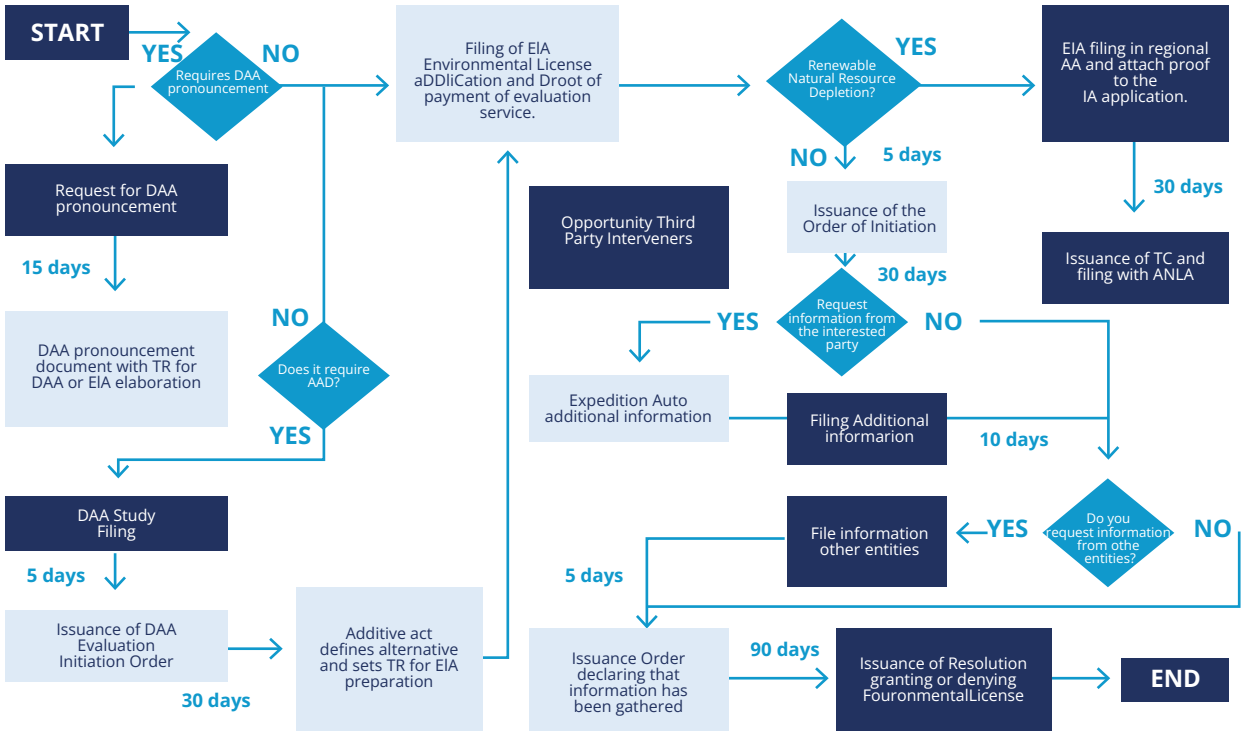
Once the competent environmental authority makes a decision regarding the viable alternative among those presented in the Environmental Impact Assessment (EIA for its acronym in Spanish), the environmental license applicant must submit to the competent environmental authority the Environmental Impact Assessment (EIA).

The EIA must include the information detailed in the applicable regulations, including, among others, the respective Environmental Management Plan (PMA for its acronym in Spanish), which, in turn, must be prepared based on the terms of reference published by the Ministry of Environment and Sustainable Development, or the terms of reference prepared by the competent environmental authority for the specific project, work or activity; and the indication of all environmental permits required for the development of the respective project, work or activity.

### 8.1.8.04.2. Projects that do not require an Environmental Alternatives Diagnosis:

For projects that do not require the presentation of the Environmental Assessment of Alternatives (DAA), the process will begin with the presentation of the Environmental Impact Assessment (EIA) and the continuity of this will be as previously described.

**Figure 4 . Environmental licensing process**




Source: ANLA

Thus, in general terms, the environmental licensing procedure in Colombia is carried out in the following stages:

a. **Environmental license application:** To the competent environmental authority, indicating the location of the project, its characteristics, and possible environmental impacts.

b. **Environmental impact assessment:** The environmental authority reviews the application and requests the applicant to submit an environmental impact assessment (EIA) that evaluates the potential environmental impacts of the project and proposes mitigation measures.

c. **Evaluation and approval of the EIA:** it includes an oral hearing meeting before the competent environmental authority, in which said authority will request for a single time the information required for the comprehensive evaluation of the project. If the project is found to be viable and adequate measures have been taken to mitigate environmental impacts, the environmental license is approved.

d. **Compliance with conditions:** once the environmental license has been granted, the company or project must comply with all the conditions established in the license, such as the implementation of environmental monitoring

programs, investments in mitigation measures, and compliance with the established deadlines.

e. **Supervision and monitoring:** the environmental authority is responsible for supervising and monitoring compliance with the conditions of the environmental license. The interested party or project owner must pay for environmental assessment and monitoring services in accordance with the fees set by the National Government, and submit semi-annual or annual environmental compliance reports[3]. In case of non-compliance, the environmental authority may impose sanctions, revoke the license, or take other measures to protect the environment.

Likewise, it is reminded that if with the execution of the project, work or activity the owner evidences the need to carry out activities involving the archaeological, paleontological, historical and cultural heritage of the Nation, he/she must request the respective authorization from the Colombian Institute of Anthropology and History (ICANH for its acronym in Spanish) to carry out the respective excavations and/or intervene in the archaeological heritage.

This institute oversees protecting, investigating, and disseminating Colombia's cultural and archaeological heritage, so it is necessary to obtain its authorization before carrying out any activity involving the manipulation or intervention of these elements.

Among the activities that require authorization from ICANH are the exploration, excavation, collection, extraction, transfer, exhibition, sale, commercialization, and export of cultural and archaeological goods.

It is important to note that the lack of authorization to carry out these activities may result in sanctions and fines, in addition to being considered a crime against the country's cultural heritage.

### 8.1.8.05. Similarities and differences between permits, authorizations/concessions, and environmental licenses.

#### 8.1.8.05.1. Similarities

1. They are granted by the Environmental Authority.
2. They are prior to the development of the project, work, or activity.
3. Their issuance is regulated by a legal procedure.
4. They are issued though Administration Acts.
5. There is a possibility for citizen participation in the procedures established for their issuance.
6. They may be challenged for nullity at any time under Article 73 of Law 99 of 1993.
7. They are modifiable.
8. They do not grant unmodifiable acquired rights.
9. Non-compliance with them may generate sanctioning processes.

[4] Law 633 of 2000. Article 96. The environmental authorities shall charge for the evaluation services and follow-up services of the environmental license, permits, concessions, authorizations and other environmental control and management instruments established in the law and regulations. (Regulated by Resolution 1280 of 2010).

### 8.1.8.05.2. Differences

1. The Environmental License requires the submission of a DAA and/or an EIA. Permits do not require a DAA or EIA.
2. The Environmental License is required for projects, works, or activities previously established by the regulations; permits.
3. The Environmental License includes the permits "implicitly."
4. The environmental permit can only regulate the use and exploitation of a renewable natural resource.
5. The validity of the Environmental License is for the useful life of the project, while the validity of permits depends on the resource, unless they are granted within the License.
6. A project, work, or activity subject to environmental licensing only requires an Environmental License, while a project, work, or activity that does not require an Environmental License may require one or more permits, depending on the renewable natural resources affected.

### 8.2. Prior consultation with communities in the project area

The Ministry of the Interior in Colombia is responsible for listing those areas in which the prior consultation process must be carried out and currently, by means of an administrative act, determines whether prior consultation is appropriate for the execution of projects, works or activities.

In this sense, it is important to verify and identify if within the areas of interest there is the presence of ethnic communities, including indigenous, Afro-Colombian, Raizal and Rom communities, considering the fundamental right of the communities to be consulted, and the owner must demonstrate good faith by approaching and reaching agreements with the aforementioned groups.

According to the jurisprudence of the Colombian Constitutional Court, prior consultation does not entail or imply a veto right of the ethnic communities in relation to the execution of the project, work, or activity. However, in the event that it is not possible to obtain the free, prior and informed consent of the ethnic communities, the proportionality test has been employed as a criterion used by the Colombian Constitutional Court.

In any case, the free, prior, and informed consent of the ethnic community must be obtained, and if this is not obtained, the protection of the community will prevail when the work, activity or project has implications related to: (i) a resettlement of the ethnic communities; (ii) the management or disposal of toxic waste in their territory; and/or the execution of measures that imply a high social, cultural and environmental impact that puts their subsistence at risk.

### 8.3. Citizen participation

Any natural, legal, or private person, without the need to demonstrate any legal interest, may intervene in administrative proceedings initiated for the issuance, modification or cancellation of permits or licenses.

The mechanisms for citizen participation in environmental matters are:

a. **Intervention in environmental administrative proceedings.**
b. **Participation of Afro-descendant and indigenous communities in environmental decisions that may affect them.**
c. **The ´tutela´action (special and preferred judicial action), popular, group, compliance, special nullity actions.**
d. **Public hearings, administrative hearings on environmental decisions in process.**
e. **Decisions terminating an action, for the issuance, modification, or cancellation of a license, shall be notified to any person requesting it in writing.**

### 8.4. Environmental sanctioning regime

#### 8.4.1. Administrative liability and environmental sanctioning regime

The function of administrative sanctions and preventive measures in environmental matters is:

a. **Administrative sanctions in environmental matters have a preventive, corrective and compensatory function, to guarantee the effectiveness of**

the principles and purposes set forth in the Constitution, the International Treaties, the law and the Regulations.

b. Preventive measures, on the other hand, have the function of preventing, or avoiding the continuation of the occurrence of an event, the performance of an activity or the existence of a situation that threatens the environment, natural resources, the landscape, or human health.

### 8.4.2. An environmental infraction is any action or omission that:

a. Constitutes a violation of the norms contained in the Renewable Natural Resources Code.
b. Constitutes a violation of other environmental regulations in force.
c. Constitutes a violation in the administrative acts issued by the competent environmental authority.
d. Constitutes damage to the environment (if there is damage, a causal link between the two).

If the environmental violation is proven within the framework of the administrative investigation carried out by the competent environmental authority, and if the alleged violator does not disprove the presumption of guilt or malice, he will be definitively sanctioned.

### 8.4.3. Preventive measures

At any time, the environmental authority is empowered to impose preventive measures, which, according to the environmental sanctioning regime, preventive measures are:

a. Written reprimand;
b. Preventive seizure of products, elements and by-products of wild fauna and flora;
c. Suspension of work or activity when damage or danger to the environment, natural resources, landscape, or human health may result, or when the project has begun without an environmental permit, concession, authorization or license or in non-compliance with them.

### 8.4.4. Sanctions

In accordance with the environmental sanctioning regime, the environmental authority may impose the following sanctions on the environmental violator:

a. Successive fines.
b. Revocation or expiration of the environmental license or permit.
c. Temporary or permanent closure of the establishment, and demolition of works as a preventive measure.
d. Demolition of the work at the violator's expense.
e. Definitive confiscation of specimens, exotic wildlife species, products and by-products, elements, means or implements used to commit the infraction.
f. Restitution of specimens of wild fauna and flora species.
g. Community work according to conditions established by the environmental authority.

In addition to the administrative sanction, the violator may be civilly and/or criminally liable for the damages caused by the act or omission.

## 8.5. Regulatory framework

| STANDARD | REGULATED SUBJECT |
|---|---|
| **PRINCIPLES AND INSTITUTIONAL FRAMEWORK** | |
| **Political Constitution** | Right of all people to a healthy environment. Obligation of the State and individuals to protect and conserve natural resources. |
| **Decree Law 2811 of 1974**<br><br>**(Partially amended by Law 2099 of 2021)** | Renewable Natural Resources Code - establishes detailed rules on the handling and renewable natural resources, such as forests, soils, water and theatmosphere. |
| **Law 99 of 1993** | It contains the basic principles and creates the environmental institutional framework through the National Environmental System (SINA). |
| **Law 1955 of 2019**<br><br>**Partially regulated by Law 2214 of 2022**<br>**Added by Law 2195 of 2022**<br>**Partially added Law 2099 of 2021**<br>**Added by Decree 800 of 2020**<br>**Amended by Decree 575 of 2020**<br>**Added by Decree 538 of 2020**<br>**Amends Law 1951 of 2019**<br>**Amends Law 1801 of 2016** | National Development Plan (2018 - 2022) - establishes mechanisms for intervention in rural territories and establishes other relevant provisions on environmental matters. |
| **Amends Law 1508 of 2012**<br>**Adds Law 1508 of 2012** | |

| STANDARD | REGULATED SUBJECT |
|---|---|
| **Decree 1076 of 2015**<br><br>**Added by Decree 1785 of 2021**<br>**Added by Decree 1630 of 2021**<br>**Superseded by Decree 690 of 2021**<br>**Added by Decree 690 of 2021**<br>**Amended by Decree 644 of 2021**<br>**Added by Decree 644 of 2021**<br>**Added by Decree 281 of 2021**<br>**Added by Decree 1585 of 2020**<br>**Amended by Decree 1540 of 2020**<br>**Amended by Decree 1210 of 2020**<br>**Amended by Decree 446 of 2020**<br>**Amended by Decree 1532 of 2019**<br>**Amended by Decree 1532 of 2019**<br>**Superseded by Decree 1532 of 2019**<br>**Added by Decree 1532 of 2019**<br>**Added by Decree 1468 of 2018**<br>**Added by Decree 1390 of 2018**<br>**Added by Decree 1235 of 2018**<br>**Added by Decree 1090 of 2018**<br>**Amended by Decree 1007 of 2018**<br>**Amended by Decree 703 of 2018**<br>**Added by Decree 356 of 2018**<br>**Added by Decree 284 of 2018**<br>**Amended by Decree 50 of 2018**<br>**Added by Decree 2245 of 2017**<br>**Added by Decree 1573 of 2017**<br>**Amended by Decree 1155 of 2017**<br>**Amended by Decree 926 of 2017**<br>**Added by Decree 585 of 2017**<br>**Added by Decree 415 of 2017**<br>**Added by Decree 251 of 2017**<br>**Amended by Decree 250 of 2017**<br>**Amended by Decree 75 of 2017**<br>**Added by Decree 2141 of 2016**<br>**Amended by Decree 2099 of 2016**<br>**Added by Decree 2220 of 2015**<br>**Amended by Decree 1956 of 2015**<br>**Amended by Decree 1850 of 2015** | Sole Regulatory Decree of the Environment and Sustainable Development Sector (compiles all Decrees related to environmental issues). |
| **Decree 1299 of 2008 (compiled in Decree 1076 of 2015)** | The obligation is created under certain circumstances to have an Environmental Management Department in certain companies at the industrial level. |
| **Decree 2372 of 2010 (compiled in Decree 1076 of 2015)**<br>**Regulates Law 99 of 1993** | Regulates the SINAP. |

| STANDARD | REGULATED SUBJECT |
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| MADS Resolution 415 of 2010 | Regulates the Single Registry of Environmental Violators (RUIA for its acronym in Spanish). |
| MADS Decree 870 of 2017 | Payment for Environmental Services (PES) and other incentives are established. |
| MADS Resolution 097 of 2017 | Creates the Single Registry of Ecosystems and Environmental Areas (REAA), whose objective is to identify and prioritize ecosystems and environmental areas of the national territory, in which PES and other conservation incentives may be implemented, which are not registered in the Single National Registry of Protected Areas (RUNAP). |
| **ENVIRONMENTAL LICENSING** | |
| Decree 1076 of 2015<br><br>Added by Decree 1785 of 2021<br>Added by Decree 1630 of 2021<br>Superseded by Decree 690 of 2021<br>Added by Decree 690 of 2021<br>Amended by Decree 644 of 2021<br>Added by Decree 644 of 2021<br>Added by Decree 281 of 2021<br>Added by Decree 1585 of 2020<br>Amended by Decree 1540 of 2020<br>Amended by Decree 1210 of 2020<br>Amended by Decree 446 of 2020<br>Amended by Decree 1532 of 2019<br>Amended by Decree 1532 of 2019<br>Superseded by Decree 1532 of 2019<br>Added by Decree 1532 of 2019<br>Added by Decree 1468 of 2018<br>Added by Decree 1390 of 2018<br>Added by Decree 1235 of 2018<br>Added by Decree 1090 of 2018<br>Amended by Decree 1007 of 2018<br>Amended by Decree 703 of 2018<br>Added by Decree 356 of 2018<br>Added by Decree 284 of 2018<br>Amended by Decree 50 of 2018<br>Added by Decree 2245 of 2017<br>Added by Decree 1573 of 2017<br>Amended by Decree 1155 of 2017<br>Amended by Decree 926 of 2017<br>Added by Decree 585 of 2017<br>Added by Decree 415 of 2017<br>Added by Decree 251 of 2017<br>Amended by Decree 250 of 2017 | Environmental licensing regime. |

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| **Amended by Decree 75 of 2017**<br>**Added by Decree 2141 of 2016**<br>**Amended by Decree 2099 of 2016**<br>**Added by Decree 2220 of 2015**<br>**Amended by Decree 1956 of 2015**<br>**Added by Decree 1850 of 2015** | |
| **PROTECTED AREAS** | |
| **Law 2 of 1959** | Establishes forest reserve areas. |
| **Decree 2372 of 2010 (compiled Decree 1076 of 2015)** | Establishes the legal regime of the areas belonging to the SINAP. |
| **MADS Resolution 110 of 2022** | Establishes the regime for the subtraction of forest reserve areas of Law 2 of 1959. |
| **Law 1930 of 2018** | Law for the protection of moorlands. |
| **WATER** | |
| **Law 9 of 1979** | Establishes the National Sanitary Code. |
| **Law 373 of 1997** | Establishes the program for the efficient use and saving of water. |
| **Decree 1541 of 1978 (compiled Decree 1076 of 2015)** | Use of non-maritime waters - concessions. |
| **Decree 155 of 2004 (compiled Decree 1076 of 2015)** | On water use fees and adopting other provisions. |
| **Decree 1575 of 2007** | Establishes the system for the protection and control of the quality of water for human consumption. |
| **Decree 3930 of 2010 (compiled Decree 1076 of 2015)** | Water use and liquid waste - dumping permits. |
| **Decree 2667 of 2012 (compiled Decree 1076 of 2015)** | The retributive rate for the direct and indirect use of water as a receptor of punctual discharges is regulated. |
| **Decree 1090 of 2018 (compiled Decree 1076 of 2015)**<br><br>**Adds Decree 1076 of 2015 Environment and Sustainable Development Sector.** | The Efficient Water Use and Saving Program is regulated. |

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| **Decree 050 of 2018 (compiled in Decree 1076 of 2015) Amends Decree 1076 of 2015 Environment and Sustainable Development Sector** | Creates the Regional Environmental Councils of the Macrobasins (CARMAC) and the Water Resource and Dumping Management. |
| **MADS Resolution 2115 of 2007** | The characteristics, basic instruments and frequencies of the control and surveillance system for the quality of water for human consumption are indicated. |
| **MADS Resolution 1207 of 2014 Repealed by resolution 1256 of 2021** | Provisions on the reuse of treated wastewater |
| **MADS Resolution 0631 of 2015**<br><br>**Amended by resolution 2969 of 2015** | The parameters and maximum permissible limit values for point discharges to surface water bodies and public sewage systems are established. |
| **MADS Resolution 883 of 2018** | By which the parameters and maximum permissible limit values for point discharges into marine water bodies are established. |
| **MADS Resolution 1257 of 2018** | Regulates the minimum content of the Program for Efficient Water Use and Saving. |
| **OUTDOOR VISUAL ADVERTISING** | |
| **Law 140 of 1994** | Regulates Outdoor Visual Advertising. |
| **AIR** | |
| **Decree 948 of 1995 (compiled in Decree 1076 of 2015)** | Prevention and control of atmospheric pollution and protection of air quality. |
| **MADS Resolution 619 of 1997** | Partially establishes the factors from which an atmospheric emission permit is required for stationary sources. |
| **MADS Resolution 909 of 2008 Validity** | Establishes the norms and standards for admissible emissions of pollutants into the atmosphere from stationary sources. |
| **MADS Resolution 910 of 2008** | Regulates the permissible levels of pollutant emissions that land mobile sources must comply with. |
| **MADS Resolution 935 of 2011** | Methods for the evaluation of pollutant emissions from stationary sources and determines the number of tests or runs for the measurement of pollutants in stationary sources. |

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| **ODORS** | |
| **MADS Resolution 1541 of 2013** | Permissible immission levels and the evaluation of offensive odor emissions. |
| **NOISE** | |
| **MADS Resolution 627 of 2006** | Establishes the national standard for noise emission and environmental noise. |
| **SOIL** | |
| **Law 388 of 1997**<br>**Amended by Law 2079 of 2021**<br>**Added by Law 2079 of 2021**<br>**Amended by Decree 2106 of 2019** | Territorial development, which includes the environmental component as a basis for land use planning. |
| **FLORA** | |
| **Decree 1791 of 1996 (compiled Decree 1076 of 2015)** | Forest harvesting regime. |
| **FAUNA** | |
| **Decree 1608 of 1978 (compiled Decree 1076 of 2015)** | Regulates the National Code of Natural Resources and Law 23 of 1973 regarding wildlife. |
| **HAZARDOUS WASTE AND RESIDUES** | |
| **Law 9 of 1979**<br>**mended by Decree 2106 of 2019**<br>**Modificado por art. 36 de Decreto 126 de 2010**<br>**Modified by art. 36 of Decree 126 of 2010**<br>**Partially regulated by Decree 2493 of 2004**<br>**Partially regulated by Decree 1546 of 1998**<br>**Partially regulated by Decree 374 of 1994**<br>**Partially regulated by Decree 1172 of 1989**<br>**Partially regulated by Decree 305 of 1988**<br>**Partially regulated by Decree 704 of 1986** | It dictates sanitary measures. |

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| **Law 142 of 1994**<br><br>**Partially added Law 2099 of 2021**<br>**Amended by Decree 819 of 2020**<br>**Partially regulated by Decree 549 of 2007**<br>**Regulated by Decree 1713 of 2002**<br>**ulated by Decree 847 of 2001**<br>**Partially amended by Law 632 of 2000**<br>**Regulated by Decree 302 of 2000**<br>**Regulated by Decree 3087 of 1997**<br>**Regulated by Decree 1538 of 1996**<br>**Regulated by Decree 605 of 1996**<br>**Regulated by Decree 565 of 1996**<br>**Partially regulated by Decree 1429 of 1995**<br>**Regulated by Decree 2785 of 1994** | Establishes the regime of domiciliary public services. |
| **Law 1252 of 2008** | Prohibitive environmental regulations concerning hazardous waste. |
| **Decree 4741 of 2005 (compiled in Decree 1076 of 2015)** | Integrated waste and hazardous waste management. |
| **Decree 2981 of 2013** | Provision of public sanitation services. |
| **MADS Resolution 1362 of 2007** | Establishes the requirements and procedure for the registration of hazardous waste generators. |
| **POST-CONSUMER MANAGEMENT PLANS** | |
| **MADS Resolution 1675 of 2013** | Pesticide containers. |
| **MADS Resolution 0371 of 2009** | Expired medicines or drugs. |
| **Resolution 0372 of 2009, modified by MADS Resolution 361 of 2011** | Used lead acid batteries. |
| **MADS Resolution 1326 of 2017** | Used tires. |
| **MADS Resolution 1511 of 2010** | Bulbs. |
| **MADS Resolution 1512 of 2010** | Computers and peripherals. |

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| **Resolution 1407 of 2018, as amended by MADS Resolution 1342 of 2020** | Containers and packaging |
| **Resolution 851of 2022** | Electrical and Electronic Equipment (AEE for its acronym in Spanish) and systems for the collection and management of Waste Electrical and Electronic Equipment (RAEE for its acronym in Spanish). |
| **CHEMICALS** | |
| **Law 55 of 1993** | Safety in the use of chemicals products at work. |
| **Decree 1609 of 2002 (compiled in Decree 1079 of 2015)** | Regulates the handling and automotive land transportation of dangerous goods by road. |
| **ENERGY** | |
| **Law 697 of 2001** | Rational and efficient use of energy, promoting the use of alternative energies. |
| **Law 1715 of 2014<br>Partially amended by Law 2099 of 2021<br>Amended by Decree 2106 of 2019** | Promotion and incentives for non- conventional energy sources. |
| **Decree 3450 of 2008 (compiled in Decree 1073 of 2015)** | It dictates measures tending to the rational and efficient use of electric energy. |
| **ENVIRONMENTAL SANCTIONS** | |
| **Penal Code** | Contemplates crimes against the Environment. |
| **Law 1259 of 2008** | Establishes in the national territory the application of the environmental comparendo to violators of the rule of sanitation, cleanliness, and debris collection. |
| **Law 1333 of 2009** | Whereby the environmental sanctioning procedure is established. |
| **Law 1453 of 2011** | Reform of the Criminal Code, the Code of Criminal Procedure, the Code of Childhood and Adolescence, and the rules on forfeiture of ownership. |
| **Law 1801 of 2016** | Establishes the Police Code. |
| **Decree 3678 of 2010 (compiled in Decree 1076 of 2015)** | Establishes the criteria for the imposition of the sanctions established in Article 40 of Law 1333. |
| **MADS Resolution 2086 of 2010** | Methodology for the assessment of fines established in numeral 1 of Article 40 of Law 1333. |

It is important to clarify that, in addition to the national regulatory framework contained in the aforementioned regulations, the Regional Autonomous Corporations and the Urban Environmental Authorities are empowered, by virtue of the principle of subsidiary rigor, to issue more restrictive regulations within the scope of their jurisdiction. For this reason, it is advisable for the investor to identify and define the national and regional environmental regulatory framework applicable to its project, work or activity.

E L H

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