



PROCOLOMBIA
EXPORTS TOURISM INVESTMENT COUNTRY BRAND



**Gobierno de
Colombia**

LEGAL GUIDE TO DO BUSINESS IN

COLOMBIA 

2023



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CHAPTER 2

*FOREIGN
EXCHANGE AND
INTERNATIONAL
INVESTMENT
REGIME*

COLOMBIA 

FOREIGN EXCHANGE AND INTERNATIONAL INVESTMENT REGIME

Executive summary

Five things that should be known about the foreign exchange and international investment regime:

1. The Colombian foreign exchange regime is free, what implies that there are no restrictions for currency negotiation and there is a flexible exchange regime and that the formalization of those transactions is not subject to prior authorization by any authority. The Colombian foreign exchange regime has determined a series of reporting or registration procedures and obligations for some specific exchange operations under foreign exchange control thus, to have statistics regarding the entrance and outcome of foreign currencies to the country, accurate registration of international investments, economic statistics, among others.
2. There is an obligation to perform any payment ("channel" is the way the Colombian foreign exchange regime define the

payment performed through the foreign exchange market) in foreign currency through the foreign exchange market (either through purchase or sale of foreign currency with Intermediaries of the Foreign Exchange Market or using a bank account opened abroad of Colombia and registered as a compensation account before the Colombian Central Bank owned by the resident) for the following foreign exchange operations, under foreign exchange control:

- Foreign investment in Colombia and Colombian investment abroad and their profits
- Imports of goods
- Exports of goods
- Foreign loans (active and passive) and inherent financial costs
- Warranties in foreign currency
- Derivatives operations.
- Financial investment and/or in assets located abroad of Colombia paid with currencies of the foreign exchange market.

3. In general, obligations resulting from transactions subject to registration may not be offset by each other, nor by any other type of obligations (except for some important expressly exceptions, as in the case of derivatives).
4. The registration of foreign investment at the Central Bank grants the holder, among others, “exchange rights” including the right to remit abroad the capital invested and its profits. The remittance amount results from the sale or liquidation of them as well as the right to reinvest.
5. Colombian residents may obtain foreign loans from nonresidents, or Intermediaries of the Foreign Exchange Market, and may also grant loans to any nonresident. Foreign Loans may be agreed, disbursed and paid in foreign currency or in local currency (COP).

2.1. General description of the foreign exchange and the international investment regime in Colombia

Colombia has a foreign exchange regime regulated by the Board of Directors of the Colombian Central Bank. The Superintendence of Companies and the Colombian Tax and Customs Authority (DIAN) jointly supervise compliance to this regime, depending on the nature of the operation, both with the power of imposing penalties or fines. The Colombian Government is the regulator of the international investment regime.

Foreign exchange regime is applicable to both residents in the country as well as those who do not reside in Colombia but carry out foreign exchange operations.

For the foreign exchange regime, are considered as residents in Colombia individuals national or foreigners that spent more than 183 days continuous or discontinuous in a period of 365 days, private or public entities and corporations domiciled in Colombia and branches of foreign entities incorporated in Colombia. There are considered as nonresidents, those that do not meet the mentioned criteria.

The foreign exchange regime is comprised by all the currencies that enter and outcome the country or the maintenance by residents of currencies abroad of Colombia and is divided in two markets (i) foreign exchange market and (ii) the non-regulated market or free market.

2.2. Foreign Exchange Market

The foreign exchange market consists of all foreign currencies or exchange transactions that must be channeled through authorized Intermediaries of the Foreign Exchange Market, or compensation accounts. Additionally, the currencies that do not need to be channeled through the foreign exchange market, but are voluntarily channeled through it, are also considered part of the foreign exchange market.

All the transactions that are executed through the Foreign Exchange Market must be registered with the Central Bank filing the required information in the relevant foreign exchange return either through an Intermediaries of the Foreign

Exchange Market, or by submitting this information directly to the Central Bank, that is, if channeled through a compensation account. The registration requirement allows the Central Bank to constantly monitor balance of payments for statistical purposes and to administrate the registration of certain foreign exchange transactions.

Pursuant to foreign exchange regime, the following transactions must be channeled through the foreign exchange market:

- **Foreign investments in Colombia and Colombian investments abroad and their profits**
- **Import of goods.**
- **Export of goods**
- **Foreign loans (active and passive) and inherent financial costs**
- **Warranties in foreign currency**
- **Derivatives transactions**
- **Financial investment and/or in assets located abroad of Colombia paid with currencies of the foreign exchange market**

2.3. Nonregulated Market or Free Market

The free market consists of all other operations that are not under the obligation to be channeled through the foreign exchange market, such as payments for services in foreign currency, and transfer of foreign currency for other types of transactions viz. donations.

This type of transaction does not have to be reported to the Colombian Central Bank or transferred using the foreign exchange market.

Nonetheless, these could be voluntarily channeled through the foreign exchange market through the means established above, reporting to the intermediary of the exchange market, or to the Central Bank directly. Depending on the way it is channeled, to file the correspondent foreign exchange return of services, transfers and other concepts in the operation.

2.4. International Investment regime in force in Colombia

International investments comprise (i) investment of resources from abroad, that is, foreign investments in Colombia and (ii) investment of Colombian resources abroad (Colombian investments abroad).

To qualify an operation as an international investment, it shall be considered:

- **That as of the date of the investment are complied with the requirements of the international investment regime applicable to the relevant transaction**
- **That the investor is or not a Colombian resident, as per the foreign exchange criteria**
- **That the assets established in the law as permitted destinations for foreign investment,**
- **That the investment is paid in foreign currency or acquired by virtue of an act, contract or lawful operation, and**
- **That is demonstrable that the resources are effectively addressed to an investment.**

2.5. Foreign Investment in Colombia

Foreign investment in Colombia consists of foreign direct investments, and portfolio investments.

Foreign investors in Colombia and Colombian investors abroad shall register their investments before the Central Bank. In the case of capital foreign investors, it is necessary the investors assign a representative in the country.

Registration of foreign capital investment in the Central Bank is automatic when is paid in foreign currency duly transferred using the foreign exchange market and with the filling of the International Investment Foreign Exchange Return including the minimum required information for this operation.

For the registration of the other investment modalities, it is required to submit the Foreign Investments Registry Return before the Central Bank through the New FX Information System. It is important to mention that documentation supporting the operation is not required, due to it may be subject to control of the authorities.

If the initial foreign direct investment in Colombia is derived from corporate re-organization (mergers and demergers), the Foreign Investments Registry Return shall be submitted to the Central Bank through the New FX Information System.

2.5.1. Foreign Direct Investment

The foreign direct investment is formalized in one the following vehicles:

- **In Colombian corporations: A company's capital contribution by means of the acquisition**

of shares, quotas in limited liability companies, or convertible bonds.

- **The acquisition of shares registered in the stock market (RNVE per its acronym in Spanish) when acquired with the intention to remain.**
- **In Colombian trusts: The acquisition of rights in trust agreements with trust companies, under the inspection and surveillance of the Colombian Financial Superintendence.**
- **In real state: The acquisition of real estate, directly or by means of trust agreements, or securities issued in connection with a real state securitization, or real estate investments trusts (REITs).**
- **Contributions in agreements without participation in the equity: Contributions to joint ventures and concessions, among other type of collaboration agreements, administrative services, licenses or agreements that generate technology transfer. As long as the latter do not represent a contribution to a company's capital and the income obtained from such investment is related to the company's profit.**
- **In Colombian branches: Assigned Capital or Supplementary investment to the assigned capital of the branches.**
- **In participation in Private Equity funds: Acquisition of participations in Private Equity funds.**
- **Intangible assets: Acquired with**

the purpose of being used for the reception of an economic benefit in the country.

Direct foreign investment could be made by virtue of any act, operation or lawful contract or with the payment of the investment with currencies, duly transferred using the foreign exchange market.

2.5.1.1. Foreign exchange registration proceedings

Foreign exchange in foreign currency

The foreign investments formalized in foreign currency, must be transferred through the foreign exchange market, using an intermediary of the foreign exchange market or a compensation account.

In this case, the registration of the international investment is automatic with the filling of the correspondent International Investment Foreign Exchange Return with an intermediary of the foreign exchange market or through the system of the Colombian Central Bank in case of use of a compensation account.

As per any lawful act, agreement or transaction - New FX Information System International investment registration system

The international investments not performed in foreign currency, originated in any lawful act, agreement or transaction, must be registered directly before the Colombian Central Bank through the New FX Information System – International investment registration system.

This proceeding is applicable in case or many acts, such as capitalization of foreign loans, advances for future capitalization, capitalization of imports

of goods debts, capitalization of profits among others, not limited transactions. To carry out operations in this system, the actors must create a user account.

For this purpose, during 2021, the FX Information System started operating. It seeks to gradually replace the Statistical Exchange System (SEC for its acronym in Spanish). This new system will be implemented through three phases, namely: (i) the first phase aimed at enabling a module for registration of international investments, not paid in foreign currency; (ii) second phase is aimed at enabling modules for foreign exchange return, clearance accounts and external indebtedness and (iii) the third phase will be aimed at enabling a module for other exchange operations.

Certain requests must be processed as “Special Requests”. These are petitions directly addressed to the Central Bank, since they cannot be made through the New FX Information System. These type of requests include: Unification of identifications, registration for capitalization of endorsements and guarantees informed by form No. 8, registration of capital recomposition, among others.

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2.5.2. Substitution of Direct Foreign Investment

Substitution of foreign investment can be understood as a transfer of ownership of foreign investment to other foreign investors, as well as change in the destination or company receptor of the investment. This procedure will only apply when there is a previous registration of the investment.

The substitution of foreign investment must be registered before the International

Exchange Department of the Colombian Central Bank by the grantor or the new investor, or through their respective agents or legal representatives, or by the legal representative or attorney in fact of the Colombian company where the investment is registered. This requires filing the information through the New FX Information System within the following six (6) months of the relevant transaction. These terms will be counted from the date of the operation.

If the substitution is derived from a reorganization process, filing before the Central Bank requires submitting the information through the New FX Information System within the following six (6) months after the for operations carried out.

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2.5.3. Cancellation of Direct Foreign Investment

The cancellation, whether total or partial, of a foreign direct investment must be reported by the investor or his agent to the International Exchange Department of the Colombian Central Bank submitting form the Investment Cancellation Return through the New FX Information System, within the next following six (6) months for operations carried out.

If cancellation of the foreign direct investment is consequence of corporative re-organization, (mergers and spin-off) the Investment Cancellation Return, shall be submitted to the Central Bank, through the New FX Information System. The period for submitting this form is within the following six (6) months for operations carried out.

Please find listed below the reasons for cancellation of international investment in Colombia, among others:

- **Liquidation of the Colombian company subject to the foreign investment.**
- **Capital reduction, that derives in the reduction of the number of shares, or that of a branch.**
- **Re-acquisition of shares or quotas.**
- **When the foreign investor becomes a resident.**
- **Liquidation of the investor (in the event of a legal entity).**
- **Death of the foreign investor (in the event of a natural person).**
- **Total or partial termination of the agreement without any participation in the equity.**
- **The termination of the fiduciary business**
- **Total or partial liquidation of the private investment fund**
- **Sell the investment to a resident (transfer or allocation)**
- **Sell the real estate property.**
- **Corporate reorganization (mergers or spin-off)**

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2.6. Advances for Future Capitalizations

Advances for future capitalizations, carried out by non-residents in Colombian companies, are considered foreign loans for foreign exchange purposes. They must be informed through Form No. 6 "Foreign loan information granted to residents" before an Intermediary of the Foreign Exchange Market, prior to, or simultaneously with disbursement. Additionally, they must be informed by Form 43 "Advances for future capitalizations".

Disbursement and payment of these operations will be subject to rules of foreign loans established in the foreign exchange regime. In the event the nonresident capitalizes the resources, the Foreign Investments Registry Return shall be submitted before the Central Bank through the New FX Information System.

Advances for future capitalizations carried out after July 26th, 2017, must have been capitalized within the twelve (12) months after the channeling of the advance, and also reported the modification through the respective international investment Foreign Exchange Return.

If the capitalization is not completed in the deadline established between the parties, the amounts received shall be reimbursed through an intermediary of the exchange market, or through a compensation account of the company complying with the international indebtedness foreign exchange proceedings.

2.7. International investment not formalized

In case of as per the foreign exchange proceedings applicable to the date of formalization on the incomes as advances for future capitalization are registered under the international investment proceedings (different of the proceedings described in section 2.5.1.1) or for the acquisition to other type of assets, for the latter, the International Investment Foreign Exchange Return must be submitted, including the exchange number 4565 "Foreign investment not completed" based on the amount in Colombian pesos initially received. The remittance of the funds abroad is not subject to a deadline. This proceeding is also applicable in case of the excess of amounts formalized as international investment.

The remittance of a not formalized international investment abroad may be subject to the foreign exchange deposit when is enforceable (currently at the rate of 0%), thus is not an applicable proceeding.

2.8. Rights of Foreign Investors – Foreign Investment in Colombia

The foreign direct investment dully registered at the Colombian Central Bank grants the following exchange rights to the investor:

- **Transfer of profits of the investments.**
- **Reinvestment of the profits of the investment.**
- **Transfer of the amounts received as consequence of (i) sale of the investment, (ii) liquidation of the investment or (iii) the reduction of the capital of the company.**
- **Capitalization of amounts with exchange remittance rights product of obligations derived from the investment .**

2.9. Special Foreign Exchange Regime

2.9.1. General description

There is a special foreign exchange regime applicable to branches of foreign companies that engage in activities related to the exploration and exploitation of oil, natural gas, carbon, ferronickel, and uranium; or that provide services exclusively to the hydrocarbon sector dully authorized by the Ministry of Mining and Energy.

Branches of foreign companies in the sectors above, belong by default to the special regime from their due incorporation. Branches of foreign

companies aimed at the supply of services related to hydrocarbons only belong to the special regime once the “Certificado de dedicación exclusiva” (Certificate of exclusive activity) has been issued by the Ministry of Mining and Energy which shall be renewed each year.

The special foreign exchange regime provides:

- **To receive outside the country, directly by the main office, the profits of the sales.**
- **Celebrate and make payments and contracts in foreign currency in the country provided that the money is a consequence of their operations; and**
- **Record as investment supplementary to the assigned capital, capital available in the form of goods and services, according to the regulations of the Colombian Central Bank (besides the foreign currency availabilities).**

Under this special regime the branch shall not be able to complete operations in the exchange market except in the following cases:

- a. **When the branch is liquidated.**
- b. **In the case of local sales of oil, gas or services inherent to the hydrocarbon sector.**
- c. **Other sums received in legal currency related to its operation, including the resources of section a and b explained above, but not limited to them.**

These operations, as well as the refund of money aimed at assigned

or supplementary capital of branches of foreign companies in the sector of hydrocarbons and mining, shall be completed through an intermediary of the exchange market, to whom the International Investment Foreign Exchange Return with the minimum required information for this operation must be submitted.

Admitted and with current operations in the special exchange regime, branches of foreign companies that want to resign to the application of the regime, must address a written communication to the Foreign Exchange Department of the Colombian Central Bank.

The document must express the desire to leave the special exchange regime, according to the form provided by the Colombian Central Bank. Once the letter has been delivered to the Colombian Central Bank, the branch office will not be admitted into the special exchange regime for the following ten (10) years and therefore, the branch must operate under the general exchange regime.

2.9.2. Foreign Investment Registration Update

Branches of foreign companies subject to the special hydrocarbons and mining exchange regime must submit Registry of Supplementary Investment to the Assigned Capital Return and the Patrimonial Reconciliation Special Regime, to the Foreign Exchange Department of the Colombian Central Bank, through the New FX Information System. This proceeding is not subject to a deadline.

For these branches, the term to report the update of the equity accounts will be six (6) months as of December 31st of the corresponding fiscal year, by means on

June 30th of each year. This proceeding must be complied through the New FX Information System.

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2.10. Portfolio Investment

The foreign exchange regime regulates registrations relating to the various forms of portfolio investments, defined as those made in securities registered with the National Securities and Issuers Registry ("RNVE" as per its acronym in Spanish), the participation in collective portfolios, as well as in securities listed in the securities quotation systems abroad.

As well as for Foreign Direct Investments, the portfolio investor shall require a representative in Colombia that is considered the administrator of the investment, a liable of the compliance of the foreign exchange, tax, regulatory and any other responsibility that may include the correspondent of inspection, review and control entity. Only the following can be administrator of the investment for foreign portfolio i) the stockbroker companies, ii) trust companies or investment management companies (all the foregoing controlled and examined by the Superintendence of Finance of Colombia).

The registration for foreign capital investment made by channeling currency will be carried out automatically, so long as the minimum data needed has been provided for the foreign exchange operations regarding international investments (Exchange Return).

Registration of foreign capital portfolio investment without currency channeling shall be understood as made in accord with an account entry in the centralized

local deposit of securities, in the cases established in the exchange regimen and with the Portafolio International Investment Statistics Report ["IPEXT as per its acronym in Spanish]

2.11. Colombian investment abroad

2.11.1. Investments of Colombian Capital Abroad

Colombian investments abroad are defined as shares, quotas, rights or other participations in the capital of companies, branches or any type of company, in any proportion, located outside of Colombia, acquired by a resident by paying in foreign currency or by virtue of an act, contract or legal operation.

In general, to register the investments of Colombian residents abroad with the Colombian Central Bank, the investor must undertake the remittance of funds through an intermediary of the exchange market. The International Investment Foreign Exchange Return with minimum required information for this operation must be submitted to the Central Bank, otherwise the title holder of the compensation account which receives the funds can report it on its monthly form.

In the specific case of investment without channeling foreign currencies, the investor must file the Foreign Investments Registry Return before the Central Bank through the New FX Information System.

2.11.1.1. Colombian investment abroad registration proceedings

Colombian investment abroad in foreign currency

The Colombian investment abroad formalized in foreign currency, must be transferred through the foreign

exchange market, using an intermediary of the foreign exchange market or a compensation account.

In this case, the registration of the international investment is automatic with the filling of the correspondent International Investment Foreign Exchange Return with an intermediary of the foreign exchange market or through the system of the Colombian Central Bank in case of use of a compensation account.

As per any lawful act, agreement or transaction - New FX Information System International investment registration system

The international investments not performed in foreign currency, originated in any lawful act, agreement or transaction, must be registered directly before the Colombian Central Bank through the New FX Information System – International investment registration system.

This proceeding is applicable in case or many acts, such as capitalization of foreign loans, advances for future capitalization, capitalization of imports of goods debts, capitalization of profits among others, not limited transactions. To carry out operations in this system, the actors must create a user account.

2.11.2. Substitution of Colombian Investment Abroad

Substitution of Colombian investment abroad means the change of holders by other resident investors and/or the change in the receiving company (company, branch or any type of company). The substitution of the Colombian direct investment abroad may conduct to a total or partial cancellation

of the initial registration and the issuing of a new registration. For this reason, the investor shall submit the information to the Central Bank through the New FX Information System.

The substitutions of Colombian investments abroad, derived from corporate re-organization processes, shall be registered through the New FX Information System.

The time for submitting the registration of the substitution of the Colombian investment is within the following six (6) months after the operation is carried out.

In the case of substitution of holders of the investment the registration must be submitted by the assignor investor and the assignee and his representatives.

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2.11.3. Cancellation of Colombian Investment Abroad

The cancellation, in whole or in part, of Colombian investment abroad, must be reported by the investor or his agent to the International Exchange Department of the Colombian Central Bank, by filing the Cancellation Investment Return through the New FX Information System, within the following six (6) months after the cancellation of the investment operations.

If cancellation of the Colombian investment abroad is derived from corporate re-organizational processes, a Cancellation Investment Return, shall be submitted within the same period provided above, through the New FX Information System indicating that

the cancellation was caused by a re-organizational process.

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2.11.4. Advances for Future Capitalizations

Advances for future capitalizations, carried out by residents in foreign companies, constitute foreign loans for foreign exchange purposes that must be informed with Form No. 7 “Foreign loan information granted to nonresidents”. That is, before the Intermediary of the Foreign Exchange Market, prior to or simultaneously with the disbursement, with purpose 44 “Advances for future capitalizations”. Sums of money derived from this operation will be subject to rules applicable to foreign loans.

In case the resources of the active foreign debt are fully or partially capitalized, the registration of the Colombian investment must be requested through the New FX Information System.

If the resources are not fully or partially capitalized, the income of currencies must be made through the foreign exchange market with the International Indebtedness Exchange Return.

2.11.5. Non performed Colombian Investment Abroad

When the Colombian investment abroad was not carried out, the Colombian investor shall return to the country the amounts transferred by this concept. For these purposes, the operation must be channeled through an intermediary of the exchange market, to whom the International Investment Foreign Exchange Return with minimum required

information for this operation must be submitted.

2.11.6. Financial Investment or in Assets Abroad

Colombian residents interested in financial investment or in assets abroad shall complete the amounts for these operations through the exchange market except when such operations are completed abroad with currencies not subject to the exchange market. This investment mode includes the following (by way of example): (i) purchase of securities abroad, (ii) purchase abroad with discount of the total or partial amount of private external obligations, external public debt and bonds, and securities of external public debt.

The Colombian residents that acquire those investments using currencies of the foreign exchange market, the registration of the transaction before the Colombian Central Bank is automatic with the filling of the International Investment Foreign Exchange Return and those investments and its profits are obliged to be repatriated through the foreign Exchange market upon liquidation.

In the event of acquisition of such investments with currencies of the free market, the transaction is not registered before the Colombian Central Bank and is exempt of the liability of repatriation through the foreign Exchange market.

2.12. Infringement of the International Investments Regime

The breach of any of the obligations of the international investment's regime, or its extemporaneous fulfillment constitutes an infringement to the international exchange regime and may cause sanctions

by the Superintendence of Corporations, that are legally established at the rate of maximum the 200%, however normally would not exceed the 5%.

2.13. Foreign Loans

Foreign loans are classified in active loans and passive loans. The first of them corresponds to loans granted by non-Colombian residents to Colombian residents and the second of them, credits granted by residents to nonresidents.

The entrance and exit of foreign currency in connection with foreign indebtedness must be completed through the foreign exchange market and registered before the Central Bank before its disbursement. The breach of this obligation may be considered an infringement of the foreign exchange regime. In case of indebtedness derived from foreign trade operations or relating to the use of compensation accounts, such a breach may cause the imposition of penalties by the Superintendence of Corporations or by the National Tax Administration (Dirección de Impuestos y Aduanas Nacionales – DIAN) when foreign loans derive from foreign trade transactions or involve an individual Colombian resident.

2.13.1. Loans Granted to Residents (Passive Credits).

Residents and intermediaries of the exchange market may obtain credits in foreign currency from: (i) other intermediaries of the exchange market and (ii) from nonresidents. It is also possible for them to obtain other resources in foreign currency through international capital markets. These loans could be stipulated, disbursed and paid in

legal or foreign currency, as agreed by the parties.

Foreign loans must be reported to the Colombian Central Bank by means of filing a foreign loan registration Form No. 6 “Report of foreign debt granted to residents” with an Intermediary of the Foreign Exchange Market. Additionally, a copy of the relevant loan agreement must be submitted. Disbursement of the loan may be registered through Form No. 6 “Report of foreign debt granted to residents” if the registration of the loan and the disbursement takes place at the same time.

On the other hand, the remittance of funds related to of foreign currency for the payment of capital or interests of debt must be reported to the Colombian Central Bank by means of filing the International Indebtedness Exchange Return with the minimum required information for this operation.

For the registration of the foreign indebtedness report (Form No. 6), when the foreign exchange loans have been granted by nonresidents who have not been previously assigned code by the Colombian Central Bank, the resident must, beforehand, request the code to the foreign exchange intermediary. The latter will require the documentation that supports the financial references, and compliance of regulations for the prevention of money laundry in the nonresident’s country.

For the disbursement and the channeling of credits in foreign currency obtained by residents, the law provides a requirement: previous to each disbursement, there will be an establishment of a deposit in the

Central Bank through the intermediary of the exchange market involved in the credit, in the conditions and time provided by Central Bank. Currently, the deposit for external indebtedness is 0%, which means it's non-applicable in practice.

The law provides particular rules regarding loans disbursed and/or payable in pesos, including that any transfer of funds must be completed using a bank account opened in Colombia by the foreign entity or individual, with the exclusive purpose of being used in foreign loan transactions.

2.13.2. Loans Granted to Nonresidents (Active Credits)

The international exchange regime allows Colombian residents and intermediaries of the exchange market, to grant loans in foreign currency to nonresidents without taking into account the term and destination of the currencies (please note that it is permitted to grant loans in foreign currency to other residents, unless the lender is an intermediary of the foreign exchange market). These credits could be stipulated, disbursed and paid in legal or foreign currency, as agreed by the parties.

The loan granted must be reported to the Colombian Central Bank at the same time as the disbursement, by filing exchange Form No. 7 "Report of foreign debt granted to nonresidents" upon the remittance of the funds from Colombia. Additionally, a copy of the relevant loan agreement must be submitted.

Any other movement associated with the credit, such as payment of the capital or interest of the loan, must also be reported to the Colombian Central Bank by submitting the International

Indebtedness Exchange Return with the minimum required information for this operation.

The law provides particular rules regarding loans disbursed and/or payable in pesos, including that any transfer of funds must be completed using a bank account opened in Colombia by the foreign entity or individual, with the exclusive purpose of being used in foreign loan transactions.

2.13.3. Modifications to the External Indebtedness Report (active and passive loans)

In case of modification to the conditions of a credit granted to residents or by residents, it will be necessary to complete, with an intermediary of the exchange market, a new Form N° 6 "Report of external indebtedness granted to residents" or a Form N° 7 "Report of foreign debt granted to nonresidents" ticking the box "modification." It will be necessary to include information related with the date of the modification as well as the number of identifications of the credit assigned by the intermediary of the exchange market and the respective modifications.

Modifications to the conditions of a credit may be reported within the following fifteen (15) days of the operation, however, it can be done outside this time frame without constituting an infringement to the international exchange regime.

The breach of any of the obligations of the foreign loan regime, or its extemporaneous fulfillment constitutes an infringement to the foreign exchange regime and may cause sanctions by the Superintendence of Corporations (in case of corporations), that are legally

established at the rate of maximum the 200%, however normally would not exceed the 5%, in case individuals may be the 100%.

2.14. Import of Goods

Colombian residents must conduct, through the foreign exchange market, the payment of their imports. For these purposes, they must be channeled through an intermediary of the exchange market, to whom the Import of Goods Exchange Return with minimum required information for this operation must be submitted, unless the operation is channeled through a compensation account, in which case the Form No. 10 is enough.

Imports of Good may be paid with currencies of the free market as described above, funds in legal currency paid to a general-purpose bank account opened by the nonresident (seller), credit cards issued in Colombia or abroad, debit cards or transfer of funds. There are also allowed the payments using residents and nonresidents aggregator payment service providers.

Currencies for the payment of the import shall be channeled by the importer and it shall be paid directly to the creditor, its assignee, or residents and nonresidents in charge of collection or international payments. Residents cannot canalize payment of importations done by others.

For foreign trade operations that are paid through resident aggregator payment service providers, it will not be required that the subjects that are related as importers in the information of the Import of Goods Exchange Return match the information contained in customs documents.

It is important to mention that importers may channel through the exchange market, payments amount higher or lower than the value of the nationalized merchandise, provided that there are justified reasons such as, damaged merchandise, and prompt payments and discounts by concept of defects in the merchandise.

In case of situations that avoided importers the observance of the obligation of payment abroad, such as fortuitous case or force majeure, inexistence etc., the channeling through the exchange market shall not be required. Without prejudice of the above, the importer shall keep the documentation supporting such facts in case those are required in the future by the competent authority.

On the other hand, it is important to mention that is possible to: (i) make early payments of imports when the currencies are channeled through the exchange market before the shipment of the merchandise and (ii) to obtain financing of the imports after the shipment without the requirement of reporting such operations to the Central Bank as external debt operations.

In the case of credits in foreign currency obtained by importers of the intermediaries of the exchange market, or of nonresidents' payment of their obligations, it shall be necessary to report such operation to the Central Bank as a passive external indebtedness.

The breach of any of the obligations may cause sanctions by the Colombian Tax Authority, that are legally established at the rate of 100%.

2.15. Export of Goods

Colombian residents must channel foreign currency received from their exports through the foreign exchange market as an advanced payment for the export when they are channeled through the foreign exchange market before the shipment of the goods. It is included the cash received directly from the foreign buyer, that must be transferred through the foreign exchange market within the six months following the date of receipt.

The export of goods is an operation of mandatory completion through an intermediary of the exchange market, to whom the Export of Goods Exchange Return minimum required information for this operation must be submitted, unless the operation is channeled through a compensation account, in which case the Form No. 10 is enough.

Exports of goods may be paid with currencies of the foreign exchange market as it is described above, in Colombian pesos transferred from a general-purpose bank account opened by the nonresident (buyer), credits cards owned by the buyer abroad. There are also allowed the reception of payments using residents and nonresidents aggregator payment service providers.

Currencies must be channeled through the foreign exchange regime by the exporter. Such currencies may have their origin in the debtor, its assignee, or those in charge of operations of international payments. Similarly, this is true for residents and nonresidents.

For foreign trade operations that are paid through resident aggregator payment service providers, it will not

be required that the subjects that are related as exporter in the information of the minimum data (payment service providers) match the information contained in customs documents.

In cases where some situations had avoided exporters the meeting of the obligation of the reimbursement of currencies (force majeure, fortuitous events, inexistency, etc.) such channeling shall not be mandatory. In any case, it is necessary to have all required documentation.

It is important to mention that exporters may channel through the exchange market, payment amounts higher or lesser to the value of the nationalized merchandise provided that there are justified reasons such as, damaged merchandise, and prompt payment and discounts by concept of defects in the merchandise.

In this kind of operations, the advanced payments before the shipment of the goods are allowed, as well obtaining financing and pre-financing of exportations after the shipment. The breach of any of the obligations may cause sanctions by the Colombian Tax Authority, that are legally established at the rate of 100%.

2.16. Warranty in foreign currency

The foreign exchange regime includes the execution of warranties in foreign currency as operations of mandatory channeling through the foreign exchange market and in this sense, such operations must observe the exchange regulations.

2.16.1. Warranties in foreign currency granted by Colombian residents.

Colombian residents are permitted to grant endorsements and warranties in foreign currencies to back-up any obligations abroad. These operations must be informed to the Colombian Central Bank only in case of execution of the warranty. Once the warranty is made effective, and the beneficiary is a nonresident it shall be necessary that the resident channel the respective currencies.

It is important to consider that:

- **If the endorsed one is a resident and the beneficiary is a non-resident, once the warranty is effective, the resident must channel the currencies with the exchange Return in the same form of the principal obligation. The debt that is a consequence of the execution of the warranty is considered an internal debt and in principle must be paid in Colombian pesos.**
- **If the endorsed and the beneficiary are non-residents, once the warranty is effective, the operation must be registered as an active passive loan by filing exchange Form No. 7 "Report of foreign debt granted to nonresidents" the payment must be channeled through the foreign exchange market, using the International Indebtedness Return with the minimum required information for this operation.**

2.16.2. Warranties in foreign currency granted by non-residents.

Residents and nonresidents may grant sureties and warranties in foreign currency generally to secure any obligation in Colombia or abroad. The intermediaries of the foreign exchange market may also do so to ensure those operations that the foreign exchange regime allows securing.

The report, performance and restitution of these sureties must be made through the foreign exchange market pursuant to the proceedings provided in the regulations of international exchanges.

Sureties or warranties granted by nonresidents do not require any report to the Colombian Central Bank (except for those granted by or in favor of intermediaries of the foreign exchange market, which are subject to their own registry rules), unless there are executed.

Likewise, warranties in foreign currency may be granted in order to back the compliance with other sureties, among them, those ordered by a third party other than the secured (ordering party). The rules corresponding to the foreign exchange regime are applicable to international indebtedness relationships between the contracting parties for the execution and restitution of sureties.

In the event of execution of a warranty, if the guarantor is a nonresident in Colombia, is required to register the transaction as a passive foreign loan, by filling a Form No. 6 "Report of foreign debt granted to residents" with an Intermediary of the Foreign Exchange Market. Any sum related to the execution of the warranty and its restitution, must be formalized in an International Indebtedness foreign exchange return.

In any case of the execution of a warranty in foreign currency is advisable to define the debt relation created and to register an active or passive international loan operation. It shall be reported by any of the interested parties, at the latest at the time of execution of the surety/warranty. For such purpose, the provisions of the international indebtedness exchange control regime shall be applied.

The execution and restitution of warranties in foreign currency may be made in foreign currencies or legal tender, as agreed by the parties. Except for declared cases, the performance and restitution of the surety must be made through the foreign exchange market by any of the interested parties. This requires the supply of the international indebtedness foreign exchange return with the minimum information of the transaction, by the debtor in case of a passive loan or the creditor in case of an active loan.

Please note that no external loan transaction may be generated between branches of foreign companies and their parent companies arising from the execution of sureties or warranties.

Branches of foreign companies belonging to the special foreign exchange regime may be secured. Or they may be beneficiary of sureties or warranties in foreign currency, granted by intermediaries of the foreign exchange market, residents and nonresidents. Resources in foreign currencies resulting from the execution or restitution of these sureties or warranties must be drafted or received by the non-regulated market accounts of the branches, or the accounts abroad of their main offices abroad.

The capitalization of warranties in foreign currency registry reported with Form No. 8 "Report of endorsements and warranty

bonds in foreign currency" must be made through a Special Request.

The breach of any of the obligations of the foreign loan regime, or its extemporaneous fulfillment constitutes an infringement to the foreign exchange regime and may cause sanctions by the Superintendence of Corporations (in case of corporations), that are legally established at the rate of maximum the 200%, however normally would not exceed the 5%, in case individuals may be the 100%.

2.17. Derivatives

Transactions related to derivatives have to be completed through the foreign exchange market, therefore, such operations have to be informed and registered before the Colombian Central Bank.

Derivative transactions may be registered daily before the Colombian Central Bank, pursuant to the regulations provided by such entity. In some cases, such registration is the main requirement to enable early terminations and accelerations (close-out netting) under insolvency circumstances (however, in other cases the registration before an independent transaction system is also necessary).

For derivatives executed with financial entities incorporated in Colombian and recognized as Intermediaries of the Foreign Exchange Market: to be a foreign entity which has either entered with an intermediary of the exchange control market into a master agreement (such as an ISDA Master Agreement) with a close-out netting clause with an FX Intermediary for the purposes of entering into OTC Derivatives.

For derivatives executed with the rest of the Colombian residents: (i) to be

a non-financial foreign entity that has executed Derivatives transaction in the year immediately preceding the date of the proposed transaction in an aggregate nominal amount exceeding USD 1 billion (USD 1,000,000,000) or to be a foreign chamber of compensation and liquidation in case of negotiation of the derivative in the stock market or novation of a precedent transaction.

2.17.1. Authorization to Carry Out Derivative Transactions on Commodities

Residents and Intermediaries of the Foreign Exchange Market may enter into derivative transactions on commodities with authorized foreign agents.

Duly authorized Intermediaries of the Foreign Exchange Market may also enter with residents or other Intermediaries of the Foreign Exchange Market derivative transactions on commodities stipulated in foreign currencies.

In the event of derivative transactions on commodities with authorized foreign agents, compliance may be financial or effective. Money obligations resulting from the transaction may be paid in legal tender or in foreign currencies, as agreed by the parties.

In case of derivative transactions on commodities between Intermediaries of the Foreign Exchange Market and residents; or, between other Intermediaries of the Foreign Exchange Market, compliance must be financial, and the payment in legal tender.

2.17.2. Authorization to Enter into Derivative Transactions

Colombian residents and Intermediaries of the Foreign Exchange Market may

enter into financial derivative transactions with other Intermediaries of the Foreign Exchange Market and agents abroad duly authorized.

Authorized intermediaries of the Foreign Exchange Market may enter with residents, or other Intermediaries of the Foreign Exchange Market' financial derivative transactions stipulated in foreign currency.

In the event of financial derivative transactions entered into between residents or Intermediaries of the Foreign Exchange Market and authorized foreign agents, compliance may be financial or effective and the payment of the transaction shall be in legal tender or in foreign currencies, as agreed by the parties.

In case of financial derivative transactions begun among residents and Intermediaries of the Foreign Exchange Market, or between Intermediaries of the Foreign Exchange Market, compliance may be financial or in cash, and the payment shall be in legal tender. For derivatives of cash compliance peso-foreign currency or foreign currency-foreign currency, the payment shall be made with the exchange of legal tender and/or foreign currencies, as applicable.

Payments corresponding to premiums, fees, margins, collateral deposits and other revenues and expenses relating to derivative transactions entered into between residents and Intermediaries of the Foreign Exchange Market, or between them, shall be in legal tender.

For transactions between residents and authorized foreign agents, such payments may be made in legal tender or foreign currencies, as agreed by the parties.

Entities under supervision by the Superintendence of Finance in Colombia, are allowed to celebrate credit default swaps with authorized foreign agents duly authorized, provided that those derivatives follow the foreign exchange regulations.

2.17.3. Treatment of derivatives executed by branches subject to the foreign exchange special regime.

Derivative transactions, in foreign currencies, formalized between Intermediaries of the Foreign Exchange Market and branches of the hydrocarbons and mining sector subject to the special regime, must be paid as follows:

- a. **In the event of derivatives with effective compliance peso-foreign currency or foreign currency-foreign currency, the transactions must be paid by exchange of legal tender and foreign currency and two foreign currencies, as applicable.**
- b. **In the event of derivatives with financial compliance, the transactions must be paid in legal tender.**

These transactions may have cash compliance when made to hedge transactions. With the latter, these branches have access to the foreign exchange market (in accordance with their special regulations, namely foreign exchange revenues from foreign investment as assigned capital, or investment supplementary to the assigned capital, or expenditures when they receive the product of their sales in pesos, or the branch is liquidated) and transactions entered into the foreign exchange.

These transactions must be made exclusively on behalf of the branch in Colombia. Therefore, the branch may not enter into transactions on behalf of the account of its main office abroad, and that office may not enter into transactions on behalf of the account of the branch in Colombia.

The breach of any of the obligations may cause sanctions by the Colombian Tax Authority, that are legally established at the rate of 100%.

2.18. Compensation Accounts

Compensation accounts are savings or checking accounts opened by Colombian residents in financial institutions abroad of Colombia and registered with the Colombian Central Bank, with the purpose of perform transactions under foreign exchange control.

Incomes and outcomes in compensation accounts may be caused in payment of obligations derived from exchange operations, subject or not to channeling through the exchange market. This is also true for obligations derived from internal operations (payments in foreign currency between residents). In any case, it is important to take into account that through these accounts only can be used for transactions of the owner of the bank account.

2.18.1. Registration of the Compensation Accounts in the Central Bank

Registration of the compensation accounts in the Central Bank shall be done as follows:

- **Directly by the interested person, through the submission**

of Form N° 10 “registration/report of movements and/or cancellation of compensation accounts” in the Colombian Bank account system.

- At least, within the month following to the moment where the first operation through the exchange market took place or that of the payment of the first operation between residents.

2.18.2. Obligations Derived from the Registration of a Compensation Account

Once the account is registered, its holder shall inform to the Central Bank on a monthly basis, the operations done during the month immediately previous through Form N° 10 which shall be sent by electronic means.

The obligation of informing the movements of the compensation account (i) shall exist until the date of cancellation of the compensation account and (ii) must be done without prejudice of the fact that the account had or did not have movements. The infringement of this obligation constitutes a violation of the international exchange regime and may be subject to penalties by the DIAN.

Additionally, the holder of the account shall report every three months to the DIAN, to meet the operations of surveillance by this entity. This can be achieved by submitting “Información Exógena Cambiaria”.

The Central bank will proceed with the cancelation of the registry of the compensation account if the account does not have any movement for twelve (12) continuous months.

The breach of any of the obligations may cause sanctions by the Colombian Tax

Authority, that ranges as per the type of infraction.

2.19. Payments in Foreign Currency Between Colombian Residents

As a general rule, except for some very specific cases, payments in foreign currency between residents are forbidden, except for:

- Companies (including branches of foreign entities subject to the special foreign exchange regime and Colombian corporations) carrying out exploration and extraction of oil, natural gas, carbon, ferronickel, and uranium, or engaging exclusively in the provision of services related to the oil and gas sector, which are only permitted to execute payments in foreign currency among themselves with funds resulting from their operation.
- Payments performed through compensation account registered in the Central Bank. In this case the compensation accounts must be owned by both the payer and the recipient.
- Payments expressly authorized by the foreign exchange regime: purchases of goods from free trade warehouses, freight and international transport tickets, personal expenses incurred through international credit cards, premiums for insurance denominated in foreign currency as referred to in Decree 2821/1991 and its corresponding regulating norms and for the payment of

reinsurance obligations abroad or to make payments abroad or in the country of the value of the claims that insurance companies established in Colombia must cover in foreign currency, in accordance with to be determined by the National

Government regarding provisions of article 14 of Law 9/1991.

The breach of any of the obligations may cause sanctions by the Colombian Tax Authority, that are legally established at the rate of 100% to each party.

Regulatory Framework

STANDARD	SUBJECT
Law 9/1991 (modified)	Framework Law on international exchange.
Decree 1068/2015 and Decree 119/ 2017	Regulations on foreign investment and relevant rules on exchange transactions.
External Resolution 1/2018 (as amended)	Foreign exchange regime.
Regulatory Circular DCIP 83 (modified)	Foreign exchange regulation.
Circular Regulatoria DOAM-144 (modificac- da)	Foreign exchange regulation (only for deriva- tive transactions).
Decree 1746/1991	Enforcement regime applicable to the Super- intendence of Companies for foreign exchan- ge operations supervised by such entity.
Decree 2245/2011	Enforcement regime applicable to the Colom- bian Tax Authorities for foreign exchange operations supervised by such entity.

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