

V. Foreign investment in Colombia

This chapter describes the general foreign investment regime in Colombia, in accordance with the regulations applicable to that subject, and indicates the relevant principles, the obligations which apply to the foreign investor in Colombia and the kinds of investment which are allowed, along with the mechanisms and alternatives for undertaking such investments.

Table 5.1. Concepts of foreign investment

Term	Definition
Foreign investment	Direct or portfolio investment of foreign capital made in Colombian territory (including duty-free zones) by persons who do not reside in Colombia. The credits and operations which imply indebtedness do not constitute foreign investment.
Colombian residents	(i) Natural persons who live in Colombian territory; (ii) foreign natural persons who reside in Colombia for more than six (6) continuous or discontinuous months in a period of twelve (12) months; (iii) legal entities domiciled in Colombia; and (iv) branches of foreign companies established in Colombia Thus, the notion of residency found in the immigration regime is not the same as the one which applies to foreign investment and taxes.
Investor of foreign capital	Natural persons or legal entities which are title-holders of direct or portfolio foreign investment.

A. Foreign Investment Registry

The Colombian Statute on International Investments (Decree 2080, of 2000) lays down the obligation to register the initial or additional capital investments made in Colombia with the Banco de la República. This registration, undertaken by the foreign investor, grants the investor the exchange rights conferred on him or her by Colombian law.

In accordance with the above, the registration of the foreign investment is undertaken:

- At the Banco de la República through an authorized foreign exchange intermediary or through a compensation account¹ (“cuenta corriente de compensación.”)
- By the foreign investor, proxy or the person who represents his or her interests.

In turn, the terms and conditions for registering the foreign investment depend on whether it is a direct or portfolio investment, and the form in which it is undertaken.

In principle, the registration of the foreign investment is automatically done through the presentation of what is known as the currency declaration for international investments (“declaración de cambio por inversiones internacionales”), submitted on Form No. 4 of the Banco de la República to:

- An intermediary from the foreign exchange market, or
- Through compensation account (“cuentas corrientes de compensación”)

For cases when the registration is not automatic, one needs to present the registration application, along with supporting documents, to the Banco de la República.

- A maximum extension of three (3) months beyond the term stipulated for each kind of investment is allowed.
- The registration of foreign investment in Colombia must be updated annually within the stipulated terms and in accordance with the requisites established by the Banco de la República.
- Cancellation of the registration of foreign investment should be undertaken at the Banco de la República in the following cases:
 - Sale of the investment to residents of the country.
 - The partial or total liquidation of the investment, reduction of capital, reacquisition of shares or the sale of real estate.

The title-holder of the foreign investment who transacts or sells his or her investment must present the corresponding income tax declaration and complementary documents, along with the liquidation and payment of the tax caused by the respective operation. The income tax declaration and

¹ A compensation account (“cuenta de compensación”) is a current account opened by a natural person or legal entity in a foreign financial entity, through which one channels flows of currency arising from foreign exchange operations which obligatorily must be channelled through the exchange market, as well as freely-held currency which one wishes to voluntarily handle through the intermediation of the exchange market.

complementary documents are obligatory in all cases, for every transaction or sale of his or her investment

B. Foreign exchange rights granted by the registry of the investment

The foreign investment registry grants the investment's title-holder the following foreign exchange rights:

- i. Remittance to foreign countries of the proven net profits which the investment periodically yields.
- ii. Reinvestment or retention of non-distributed profits with the right of transfer.
- iii. Capitalization of the amounts with transfer rights, resulting from the obligations derived from the investment.
- iv. Remittance to foreign countries, in freely convertible currency, of the yield of:
 - The alienation of the investment in Colombia.
 - The liquidation of companies or portfolios.
 - The reduction of the capital of the companies.

C. Types of investment

The following types of foreign investment may be made in Colombia.

- i. Transfers of foreign currencies: through the foreign exchange market for the purpose of making direct capital contributions, or to acquire rights to and/or shares in the capital of companies
- ii. In species
 - Directly, with the handing over or transference of a tangible or intangible good;
 - Indirectly, with the capitalization of a sum in favor of the investment.
- iii. With resources in Colombian currency deriving from local credit operations undertaken with credit establishments and destined for the acquisition of shares through the public stock market.

D. Types of foreign investment in Colombia

The types of foreign investment are those covered by the Colombian regime on the matter, and are outlined in Table 5.2

Table 5.2. Types of foreign investment

Type of investment	Description
<p>Direct</p>	<p>(i) Acquisition of shares in or any contribution to the capital of a company</p> <p>(ii) Acquisition of rights in “patrimonios autónomos”</p> <p>(iii) Acquisition of real estate or real estate securitization titles.</p> <p>(iv) Contributions of acts or contracts when they do not represent a share in the company.</p> <p>(v) Investments in the assigned capital, or as an investment supplementary to the assigned capital, of branches established in Colombia.</p> <p>(vi) Acquisition of shares in private capital funds</p>
<p>Portfolio investments: institutional funds and individual funds</p>	<p>This kind of investment is undertaken, through foreign capital investment funds, in shares, bonds obligatorily convertible into shares and other securities inscribed in the National Registry of Securities and central bank.</p> <p>These funds are defined under Colombian law as “patrimonios” organized under any scheme (mercantile fiduciary contracts, fiduciary assignments, custodial contracts and similar ones) in Colombia or abroad, with resources contributed by one or more entities, including foreign natural or legal entities, for the purpose of realizing investments in the public securities market. The acquisition of shares</p>

	<p>through these funds is subject to the rules which regulate public share offers for local investors, without prejudice to the rules applicable to a given kind of investment.</p> <p>The administration of the funds is the responsibility of an international administrator and a local administrator (fiduciary companies and stockbrokers). It is the latter's job to represent the fund in all matters deriving from the investment and answer for compliance with all of the applicable legal requisites and regulations.</p> <p>Foreign capital investment funds may be of two classes:</p> <p style="text-align: center;">i. Institutional Funds.</p> <p>These are funds of foreign capital whose resources come from private or public offerings of share quotas or units abroad and whose main purpose is to undertake investments in the world's capital markets. These funds may operate in Colombia once the local administrator submits the required documents to the Financial Superintendency, in accordance with the regulations, and obtains the tax identification number ("NIT").</p> <p style="text-align: center;">ii. Individual Funds</p> <p>These are funds of foreign capital which are invested in negotiable securities in the public securities market to channel liquidity without that being their main purpose. The establishment of these kinds of funds does not require a special authorization, apart from the norms</p>
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	which regulate the local administrators.
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E. Kinds of Colombian investment in foreign countries

Table 5.3 shows the kinds of Colombian investment that may be made abroad

Table 5.3 Kinds of Colombian investment in foreign countries

Kind of investment	Description
Direct	These are made by residents in Colombia and destined for the capital of a foreign company. Their movements must be registered with the Banco de la República, using Form No. 4.
Financial investments or investments in foreign assets	This kind of investment, which may be affected by the foreign exchange or free market, includes: <ul style="list-style-type: none"> • The purchase of securities issued abroad or assets located abroad. • The purchase of private foreign debts, public foreign debts or public debt titles. • Transfers to foreign countries deriving from offerings to Colombian residents of titles issued by foreign companies or governments, or guaranteed by the latter, authorized by the Financial Superintendency.

F. Principles of the Foreign Investment Regime

The principles which regulate foreign investment in Colombia are outlined in Table 5.4

Table 5.4. Principles of foreign investment

Principle	Definition
Equal treatment	Foreign and national investment receives the same treatment. Foreign investment receives neither a more

	favorable nor a discriminatory treatment.
Universality	<p>Foreign investment is authorized without limits in all sectors of the economy, except for</p> <ul style="list-style-type: none"> • National defence and security activities. • The processing, disposal and discarding of toxic, dangerous or radioactive wastes not produced in the country. • Private vigilance and security companies
Automaticity	<p>The foreign investments require a prior authorization or recognition by ministries or superintendencies, when they are under the special regimes of the following sectors:</p> <ul style="list-style-type: none"> • Mining • Hydrocarbons • Insurance • Television • Financial
Stability	<p>Except when the foreign reserves are lower than the equivalent of three (3) months of imports, the conditions in force on the date of registering the investment may not be modified at the time of the (i) reimbursement; and/or (ii) remittance of profits in a way that unfavourably affects the investor.</p>

G. Applicable legal framework

- 1991 Colombian Constitution (article 189, numeral 11)
- Law 9, of 1991 (article 15)
- Law 31, of 1992 (article 59)
- Decree 2080, of 2000.

Available at: www.senado.gov.co/, section “Consulta de leyes” (Consulting the laws)

- International Exchange Regime: International Exchange Statute (Circular 8, of 2000) and Manual on international Exchange (Regulatory manual DCIN 83). Available at: www.banrep.gov.co (“Estatuto de Cambios Internacionales” and “Manual de cambios internacionales”).

Warning

Although Colombia is not a country with foreign exchange restrictions, compliance with the norms on foreign investment and international exchange is fundamental for obtaining the rights guaranteed to the foreign investor. Thus, we recommend that investors seek the advice of experts on the subject in order to properly register and channel the flow of foreign currency for foreign investment into and out of the country.

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