

VII. Foreign Exchange Regime

A. Relevant Concepts

For a better understanding of the Foreign Exchange Regime which applies in Colombia, table 7.1 explains some of the most relevant terms used in the subject.

Table 7.1. Relevant Concepts in the Foreign Exchange Regime

Term	Definition
Exchange Market	This is the market made up of foreign currencies which must be channelled through intermediaries in the exchange market or compensation accounts ¹ (“cuentas corrientes de compensación”).
Free Market	This is the market made up of foreign currencies which do not have to be transferred or negotiated through the exchange market. The foreign currencies which form part of the free market are those which Colombian residents receive for the kinds of operations which do not have to be channelled through the exchange market.
Exchange Market Operations	The following operations must obligatorily be channelled through the exchange market: (i) the import and export of goods; (ii) foreign debt operations; (iii) foreign capital investments in Colombia; (iv) investments of Colombian capital abroad; (v) a number of financial investments in securities issued abroad or investments in assets located abroad; (vi) collaterals and guarantees in foreign currencies; and (vii) derivatives operations.
Intermediaries of the Exchange Market	<p>Entities authorized to channel currencies for: (i) exchange market operations and (ii) operations which are voluntarily channelled by that market</p> <p>The following are intermediaries of the exchange market.</p> <ul style="list-style-type: none"> • Commercial and mortgage banks. • Financial corporations • Commercial financing companies • The National Energy Financier (Financiera Energética Nacional or FEN). • The Colombian Foreign Trade Bank (Banco de Comercio Exterior de Colombia or Bancoldex). • Financial cooperatives • Stockbrokers companies. • Money-exchanges.
Exchange Declaration	This is a form issued by the Banco de la República which documents and formalizes exchange operations which must be channelled through the exchange market.

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.

	<p>It is submitted by the interested party to: (a) the intermediaries of the exchange market, if the exchange declaration is presented to them, or (b) electronically, to the Banco de la República, when it is done through compensation accounts.</p>
<p>Current and Special Compensation Accounts</p>	<p>Current compensation accounts: Current accounts in foreign currency held abroad and registered with the Banco de la República. Through clearing accounts one may pay or receive sums from (i) imports; (ii) exports; (iii) foreign investment in Colombia; (iv) profits; (v) foreign credits; (vi) capital and interests; and (vii) free market obligations.</p> <p>Special compensation accounts: of restricted use, these current accounts allow, in an exceptional way, for the payment of obligations in foreign currency of Colombian residents who are not subject to any of the special exchange regimes.</p>

Because of the above conditions, it is recommended, among other things, that the investor

- Assures himself or herself of the proper channelling and registration of exchange operations.
- Counts on estimates of the working capital the company in Colombia will need to comply with the legal requirements about possible sources of capital.
- Ensure that there is a complete congruence between the documents which uphold the import/export operations, and those which document the transference of foreign currencies deriving from the same.
- Keep an adequate record in case there occur operations which turn into foreign debt and thus must be reported.

B. Sanctions

The following authorities are responsible for controlling and sanctioning foreign exchanges:

The Superintendency of Companies (Superintendency de Sociedades) for operations of:

- Foreign investment
- Foreign indebtedness for the working capital handled by companies in general.

The Directorate of National Taxes and Customs (“DIAN”) for:

- Foreign trade operations
- Foreign debt deriving from foreign trade operations.

C. Related Entities

Financial Superintendency

The administrative agency responsible for overseeing the provision of public credit services, it acts as an entity of control and regulation.

Website: www.superfinanciera.gov.co

Colombian Foreign Trade Bank (Banco de Comercio Exterior de Colombia – “Bancoldex”)

An intermediary in the exchange market, it is a legally-authorized credit establishment linked to the Colombian Ministry of Trade, Industry and Tourism (article 21 of Law 7, of 1991). It is a second-tier bank, that is, it does not grant financing directly to the public, but channels credit through other institutions into the financial system. Its main purpose is to finance working capital and fixed asset requirements for viable projects or companies of all sizes and in all sectors of the Colombian economy, with the exception of the agriculture and stock-rearing sector.

Website: www.bancoldex.com

National Energy Financer (Financiera Energética Nacional – “FEN”)

An intermediary of the exchange market, it is a legally-authorized financial corporation linked to the Colombian Ministry of Mines and Energy (Laws 11, of 1982, and 25, of 1990). Created to support the development of the Colombian energy sector through the offer of financial, fiduciary and exchange products and services, it simultaneously aims, in its operations, for an adequate balance between growth, profitability and risk.

Website: www.fen.gov.co

D. Applicable legal framework

- 1991 Colombian Constitution (articles 150, 189, 371, 372 and 373).
- Law 9, of 1991 (article 15).
- Law 31, of 1992 (article 59).
- Decrees 1735 and 2520, of 1993

Available at: www.senado.gov.co/ , sección Consulta de leyes.

- International Exchange Regime: Statute of International Exchanges (Circular 8, of 2000) and Manual of International Exchanges (Regulatory Circular DCIN 83). Available at: www.banrep.gov.co.

Warning

While Colombia is not a country with exchange restrictions, compliance with the norms in the field is fundamental if one wishes to obtain the rights to effect the giros of capital which are authorized for foreign investors and Colombians in their international operations. Thus, the interested parties are recommended to seek the advice of experts in these matters, in order to ensure an adequate flow of currency into and out of the country for different international commercial enterprises and operations.

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