

Colombia

RISK & COMPLIANCE REPORT

DATE: December 2018

Executive Summary - Colombia

Sanctions:	None
FAFT list of AML Deficient Countries	No
Higher Risk Areas:	US Dept of State Money Laundering Assessment Not on EU White list equivalent jurisdictions Failed States Index (Political Issues) (Average Score) International Narcotics Control Majors List
Medium Risk Areas:	Corruption Index (Transparency International & W.G.I.) World Governance Indicators (Average Score)

Major Investment Areas:

Agriculture - products:

coffee, cut flowers, bananas, rice, tobacco, corn, sugarcane, cocoa beans, oilseed, vegetables; shrimp; forest products

Industries:

textiles, food processing, oil, clothing and footwear, beverages, chemicals, cement; gold, coal, emeralds

Exports - commodities:

petroleum, coal, emeralds, coffee, nickel, cut flowers, bananas, apparel

Exports - partners:

US 39.4%, Spain 5.1%, China 4.9%, Netherlands 4.3% (2012)

Imports - commodities:

industrial equipment, transportation equipment, consumer goods, chemicals, paper products, fuels, electricity

Imports - partners:

US 30.2%, China 11.5%, Mexico 10.3%, Brazil 5.2% (2012)

Investment Restrictions:

Foreign investors face exceptions and restrictions in the following sectors: television concessions and nationwide private television operators, radio broadcasting, movie production, maritime agencies, national airlines, and shipping. Portfolio investment in financial, hydrocarbon, and mining sectors are subject to special regimes, such as investment registration and concession agreements with the Colombian government, but are not restricted in the amount of foreign capital permitted.

Prohibition on any foreign ownership interest in commercial ships licensed in Colombia. Restrictions on the the percentage of FDI in maritime entities to 30 percent, and foreign ownership in national airline or shipping companies to 40 percent.

Contents

Section 1 - Background	4
Section 2 - Anti – Money Laundering / Terrorist Financing	5
FATF status	5
Compliance with FATF Recommendations	5
US Department of State Money Laundering assessment (INCSR)	7
Report	10
International Sanctions	15
Bribery & Corruption	16
Section 3 - Economy	22
Banking	23
Stock Exchange	24
Section 4 - Investment Climate	25
Section 5 - Government	45
Section 6 - Tax	46
Methodology and Sources	47

Section 1 - Background

Colombia was one of the three countries that emerged from the collapse of Gran Colombia in 1830 (the others are Ecuador and Venezuela). A nearly five-decade long conflict between government forces and anti-government insurgent groups, principally the Revolutionary Armed Forces of Colombia (FARC) heavily funded by the drug trade, escalated during the 1990s. More than 31,000 former paramilitaries had demobilized by the end of 2006 and the United Self Defense Forces of Colombia as a formal organization had ceased to function. In the wake of the paramilitary demobilization, emerging criminal groups arose, whose members include some former paramilitaries. The insurgents lack the military or popular support necessary to overthrow the government, but continue attacks against civilians. Large areas of the countryside are under guerrilla influence or are contested by security forces. In October 2012, the Colombian Government started formal peace negotiations with the FARC aimed at reaching a definitive bilateral ceasefire and incorporating demobilized FARC members into mainstream society and politics. The Colombian Government has stepped up efforts to reassert government control throughout the country, and now has a presence in every one of its administrative departments. Despite decades of internal conflict and drug related security challenges, Colombia maintains relatively strong democratic institutions characterized by peaceful, transparent elections and the protection of civil liberties.



Section 2 - Anti – Money Laundering / Terrorist Financing

FATF status

Colombia is not on the FATF List of Countries that have been identified as having strategic AML deficiencies

Compliance with FATF Recommendations

The last Mutual Evaluation Report relating to the implementation of anti-money laundering and counter-terrorist financing standards in Colombia was undertaken in 2018. According to that Evaluation, Colombia was deemed Compliant for 9 and Largely Compliant for 14 of the FATF 40 Recommendations. It was deemed Highly Effective for 0 and Substantially Effective for 4 of the Effectiveness & Technical Compliance ratings.

Key Findings from Last Mutual Evaluation Report

Colombia has an reasonable understanding of its main domestic ML/TF risks. The country's understanding of risks relies particularly on the results of the 2013 and 2016 National Risk Assessments (NRAs).

The 2016 NRA has yielded reasonable findings with respect to the identification of the main ML threats and vulnerabilities.

The AML/CFT supervisory systems and tools are not entirely in line with the risk-based approach, and there are significant gaps in the supervision of designated non-financial businesses and professions (DNFBPs).

Colombia investigates and prosecutes ML effectively, but not in a manner that is commensurate with its ML risks

The main TF threat in Colombia is the proceeds-generating criminal activities of domestic organized armed groups (Grupos Armados Organizados—GAOS). The primary source of funds for domestic criminal organizations are drug trafficking and other criminal activities.

The financial intelligence produced by the Financial Analysis and Information Unit (Unidad de Información y Análisis Financiero—UIAF) is generally a key input to initiate investigations regarding predicate offenses and tracing assets, specially such financial intelligence generated upon the Fiscalía General de la Nación (FGN—Public Prosecutor's Office)'s request. However, while the FGN uses most of the UIAF's disseminations for preliminary inquiries, the financial intelligence disseminated spontaneously by the UIAF has led to less ML cases and no TF cases.

There are significant deficiencies in the customer due diligence (CDD) framework and its implementation, as well as the enhanced risk mitigation measures under the existing AML/CFT framework that negatively impact the overall effectiveness of preventive measures.

The UIAF can accede to various types of financial information that allows it to produce financial intelligence of good quality.

Overall, financial institutions have a reasonable understanding of the ML risks and of AML obligations. DNFBPs, except for casinos, have a lower level of awareness of ML/TF risks and obligations than financial institutions.

Confiscation and asset forfeiture are pursued as a priority policy objective. Law enforcement agencies (LEAs) are well trained and have adequate skills and resources to trace and recover proceeds of crime. Asset forfeiture (*extinción de dominio*) is being applied with important results. Colombia has an effective system for managing the proceeds of crime as well.

Colombia has a legal framework to apply targeted financial sanctions (TFS) related to TF, but its framework for TFS related to the financing of proliferation of weapons of mass destruction (WMD) has technical and operational deficiencies.

While basic information of legal persons is updated annually and accessible in the public registries and supervisors' databases, the authorities have difficulty obtaining accurate and up-to-date information on the beneficial ownership (BO) of complex corporate structures and when there is foreign ownership or control involved.

Overall, Colombia provides timely, good quality, and constructive mutual legal assistance and extradition. Its approach to international cooperation is proactive and collaborative. Constructive international cooperation is provided timely both upon request and spontaneously.

Risks and General Situation

Colombia's main ML threat comes from organized crime groups. The most vulnerable sectors are banking, gold mining, lawyers, real estate, accountants, statutory auditors (*revisores fiscales*), auditors and the real sector. Overall, financial institutions (banks, securities, and insurance firms, as well as savings and loans cooperatives) have a good understating of ML risks. DNFBPs generally have a lower level of understanding of ML risks than financial institutions, while both appear to have less understanding of TF risks. A risk-based approach (RBA) to AML/CFT supervision has been applied to varying degrees, and is the most advanced in the case of the Financial Superintendent of Colombia (*Superintendencia Financiera de Colombia—SFC*). Other supervisory agencies are still in the process of developing adequate supervisory frameworks and cannot yet demonstrate effectiveness in mitigating risks.

The main TF threat in Colombia are the proceeds-generating criminal activities of GAOS. GAOS have used drug trafficking, kidnapping, extortion, and other crimes as sources of income. While the authorities deem the risk for TF as medium to high, the assessment of TF risk in the NRA is insufficient. While there is better understanding of TF risks by LEAs, the TF factor is not sufficiently considered by supervisory agencies and awareness of TF risks affecting their sectors is generally low.

The Statutory Auditor is a delegate of the partners that conducts a continual inspection of the administration of a company and validate the reports they present, and must report on them at statutory meetings.

Colombia is categorised by the US State Department as a Country/Jurisdiction of Primary Concern in respect of Money Laundering and Financial Crimes.

OVERVIEW

Despite Colombia's fairly strict AML regime, the laundering of money, primarily from illicit drug trafficking and illegal mining, but also from domestic terrorist groups, continues throughout its economy and affects its financial institutions. Colombia's Congress passed a law in early 2017 to address inefficiencies in its asset forfeiture regime. The Colombian government should continue to pursue legal and administrative mechanisms to improve interagency cooperation in implementing an effective and efficient AML regime.

VULNERABILITIES AND EXPECTED TYPOLOGIES

Techniques and commodities used to launder illicit funds include: the smuggling of bulk cash, gasoline, liquor, and household appliances; wire transfers; remittances; TBML; casinos, games of chance, and lotteries; electronic currency; cattle; textiles; illegal gold mining; prepaid debit cards; and prepaid cellular minutes. Trading of counterfeit items is another method used to launder illicit proceeds. The 104 FTZs in Colombia are vulnerable due to inadequate regulation, supervision, and transparency.

Criminal organizations smuggle merchandise to launder money through the formal financial system using trade, the non-bank financial system, and the BMPE mechanism. Purchased goods are either smuggled into Colombia via neighboring countries or brought directly into Colombia's customs warehouses, avoiding taxes, tariffs, and customs duties. Counterfeit and smuggled goods are readily available in well-established black markets. Invoice-related TBML schemes are also used to transfer value. Evasion of the normal customs charges is allegedly facilitated by the complicity of corrupt customs authorities, according to government officials.

Money laundering also occurs through regional lotteries, called "Chance," which are easily exploitable due to weaknesses in the reporting system of these games to central government regulators.

KEY AML LAWS AND REGULATIONS

The AML legal regime and regulatory structure in Colombia generally meets international standards, and Colombia has enacted comprehensive CDD and STR regulations. Enhanced due diligence for PEPs, or public employees who manage public money, is required.

The Asset Forfeiture Law 1849 of 2017 was the seventh legal reform that modified the Statute of Asset Forfeiture. The new code has a total of 57 articles that change the criteria in all stages of the procedure, the most important of which will shorten the process by allowing

early disposition of some assets before a judge issues a final decision. The law also expands the Prosecutor's options in negotiating outcomes. Profits from the sale of seized goods will be distributed as follows: 25 percent for the judicial branch; 25 percent for the Attorney General's Office (AGO); 10 percent for the Colombian National Police to support investigations; and 40 percent for prison infrastructure. This law will provide more resources to the Colombian government to fight organized crime, drug trafficking, and corruption, as well as relieve it of the burden of managing the seized assets.

Colombia cooperates closely with United States law enforcement authorities in money laundering and asset forfeiture investigations, and exchange of information occurs regularly.

Colombia is a member of the GAFILAT, a FATF-style regional body.

AML DEFICIENCIES

Key impediments to an effective AML regime are underdeveloped institutional capacity, limited interagency cooperation, and inadequate expertise in investigating and prosecuting complex financial crimes. Although interagency cooperation is increasing, a reluctance to share information and bureaucratic stove piping continue to limit the effectiveness of Colombia's AML regime.

Despite improvements, regulatory institutions lack the analytical capacity and technological tools to effectively examine the vast amount of available data. Insufficient knowledge and training about financial crimes among Colombian judges is another key impediment to investigating and prosecuting money laundering crimes.

Colombian law restricts the disclosure of financial intelligence from Colombia's FIU, the Unit for Information and Financial Analysis (UIAF), to the AGO. The legal requirement that prosecutors conduct investigations means many cases already investigated by UIAF must be re-examined by the AGO, increasing case processing time and adding unnecessary work for prosecutors.

Lack of judicial sector familiarity with the asset forfeiture law, especially outside of Bogota, continues to challenge its effective use. The government reorganized the body in charge of managing seized assets to increase the speed with which these assets could be discharged; however, the AGO retains the right to seize certain assets using a separate legal procedure. A lack of sound practices, standards, and coordination between the AGO and the judicial system continues to be an impediment.

ENFORCEMENT/IMPLEMENTATION ISSUES AND COMMENTS

Colombian government counternarcotics efforts have traditionally focused on preventing narcotics trafficking, but fewer operational or intelligence efforts have been directed at tracking and seizing the proceeds of those drug sales, which make use of the same smuggling routes or other transfer methods.

Despite Colombia's robust legal and institutional AML infrastructure, key impediments are inadequate interagency cooperation, limited information sharing among relevant Colombian law enforcement and financial regulation agencies, an inefficient judicial system, and a lack of expertise and experience in investigating and prosecuting complex financial

crimes. Colombian policymakers recognize these challenges and have been working to address them.

Current Weaknesses in Government Legislation (2013 INCRS Comparative Tables):

According to the US State Department, Colombia does not conform with regard to the following government legislation: -

Arrangements for Asset Sharing - By law, regulation or bilateral agreement, the jurisdiction permits sharing of seized assets with third party jurisdictions that assisted in the conduct of the underlying investigation.

EU White list of Equivalent Jurisdictions

Colombia is not currently on the EU White list of Equivalent Jurisdictions

World Governance indicators

[To view historic Governance Indicators Ctrl + Click here and then select country](#)

Failed States Index

[To view Failed States Index Ctrl + Click here](#)

Offshore Financial Centre

Colombia is not considered to be an Offshore Financial Centre

US State Dept Narcotics Report 2017:

Colombia is the world's top producer of cocaine, as well as a source country of heroin and marijuana. Although the Colombian government continues to counter the production and trafficking of illicit drugs through eradication operations, aggressive interdiction, and law enforcement activity, potential pure cocaine production in 2015 (the most recent year for which data is available) surged 60 percent to 495 metric tons (MT), 185 MT above 2014 production. The rise is attributed to the largest single-year increase of coca cultivation in Colombia ever recorded (immediately following the second largest single-year increase in more than a decade). The United States estimates the quantity of coca cultivation increased 42 percent in 2015 to 159,000 hectares (ha) from 112,000 ha in 2014, a nearly 100 percent increase since 2013.

The Colombian government reported seizing 421 MT of cocaine and cocaine base in 2016, a 124 MT increase over 2015. The Colombian government also eliminated tons of potential cocaine through manual eradication of 17,642 ha of coca during 2016. Colombia suspended aerial eradication in October 2015, making 2016 the first full year without aerial eradication.

According to the U.S. Drug Enforcement Administration (DEA), approximately 90 percent of the cocaine samples seized in the United States in 2015 and subject to laboratory analysis were of Colombian origin.

Conclusion

Colombia continues to take steps to combat the drug trade. These efforts have kept hundreds of metric tons of drugs each year from reaching the United States and other markets and helped Colombia take important strides towards reaching a just and lasting peace. Building on these gains, Colombia is also exporting security expertise and training to international partners. Peace accord implementation will require the Colombian government to devote unprecedented resources to enhance government presence, improve security, increase public services, build infrastructure, and generate licit economic opportunities in regions historically influenced by organized criminal groups. While the Government of Colombia continues to pursue robust interdiction efforts against trafficking organizations and criminal networks, the preliminary estimated coca cultivation and cocaine production figures for 2016 indicate a dramatic increase in cultivation and cocaine production. The U.S. government continues to encourage the Colombian government to implement whole-of-government counternarcotics and economic development activities, including eradication, in areas of significant coca cultivation.

While Colombia expects to pay for the great majority of its post-accord needs, it will look to the international community for critical catalytic assistance. On February 4, 2016, the Administration of President Obama announced a framework for bilateral relations looking toward a post-peace accord era known as "Peace Colombia," and a budget request of \$450 million for fiscal year 2017 to support ongoing U.S. assistance to Colombia.

US State Dept Trafficking in Persons Report 2016 (introduction):

Colombia is classified a Tier 1 country.

Colombia is a source, destination, and transit country for men, women, and children subjected to sex trafficking and forced labor in Colombia and in Asia, the Caribbean, Europe, Mexico, and Central and South America. Groups at high risk for trafficking include internally displaced persons, Afro-Colombians, Colombians with disabilities, indigenous Colombians, and Colombians in areas where armed criminal groups are active. Sex trafficking of Colombian women and children occurs within the country and Colombian women and children are found in sex trafficking around the world, particularly in Latin America, the Caribbean, and Asia. Authorities reported high rates of children exploited in prostitution in areas with tourism and large extractive industries. Sex trafficking in mining areas sometimes involves organized criminal groups. Transgender Colombians and Colombian men in prostitution are vulnerable to sex trafficking within Colombia and in Europe. Colombian labor trafficking victims are found in mining, agriculture, and domestic service. Colombian children working in the informal sector, including as street vendors, are vulnerable to labor trafficking. Colombian children and adults are exploited in forced begging in urban areas. Illegal armed groups forcibly recruit children to serve as combatants and informants, to cultivate illegal narcotics, or exploit them in sex trafficking. Organized criminal groups and other individuals force vulnerable Colombians, including displaced persons, into prostitution and criminal activity—particularly to sell and transport illegal narcotics and serve as lookouts and assassins. Such groups use false job opportunities, and feigned friendship or romance to recruit victims and threats to maintain control over them. Colombia is a destination for foreign child sex tourists, primarily from North America and Europe.

The Government of Colombia fully meets the minimum standards for the elimination of trafficking. Authorities continued to investigate and prosecute trafficking cases and reported increased efforts to pursue sex trafficking cases. The government appointed 14 new prosecutors to handle the caseload associated with trafficking and related crimes, conducted awareness campaigns, and provided identified victims some services. The government strengthened internal coordination to combat trafficking. However, the government did not demonstrate progress in identifying victims from vulnerable populations, or prosecute and convict labor traffickers. Officials treated some trafficking cases as other crimes, which hindered efforts to identify and assist victims and hold traffickers criminally accountable.

US State Dept Terrorism Report 2016

Colombia is currently identified by the US Secretary of State as a Safe Haven for International Terrorism

Overview: Colombia experienced a significant decrease in terrorist activity in 2016, according to Defense Ministry statistics, due in large part to a bilateral cease-fire between government forces and Colombia's largest terrorist organization, the Revolutionary Armed Forces of Colombia (FARC). Congressional approval of a peace accord between the

government and the FARC on November 30 put in motion a six-month disarmament, demobilization, and reintegration process. In contrast to 2015, since August, there has been only one lethal confrontation between the military and FARC forces, resulting in the death of two guerrillas. Anecdotal reports from mayors and military contacts confirmed some FARC members continued extortion activities.

Talks between the government and the other major terrorist organization in Colombia, the National Liberation Army (ELN), were announced on October 10. Earlier in the year, President Santos ordered the military to intensify strikes against the ELN to push negotiations, while the ELN continued to conduct kidnappings, assassinations, and bombings. Colombian military statistics show a 94 percent increase over 2015 in the number of ELN members who demobilized.

Overall, the number of members of the FARC and ELN who were either killed in combat, captured, or demobilized, decreased compared to 2015. The number of civilian deaths from conflicts with guerilla organizations also decreased significantly. Colombian-U.S. counterterrorism cooperation remained strong. While Colombia has openly condemned ISIS and its objectives, it is not a member of the Global Coalition to Defeat ISIS.

Legislation, Law Enforcement, and Border Security: The investigation and prosecution of terrorism cases in Colombia is governed by Section 906 of Colombia's Criminal Procedure Code. The purpose of Section 906 is to develop an evidence-based justice system with a "beyond a reasonable doubt" standard of proof. Most terrorism cases are prosecuted under legal statutes also used for narcotics trafficking and organized crime.

The Attorney General Office's specialized Counterterrorism Unit has prosecutors assigned at the national level in Bogotá and in conflict-heavy regions. The unit has developed expertise in investigating and prosecuting acts of terrorism with the Attorney General's Technical Criminal Investigative Body, Colombia's National Police (CNP), and the country's military forces. The Attorney General's Office also has specialized prosecutors embedded with CNP anti-kidnapping and anti-extortion units throughout the country to handle kidnapping-for-ransom and extortion cases. Such efforts are now focused on the investigation and prosecution of ELN and other armed groups, as opposed to the FARC.

The U.S. Department of Justice, through its International Criminal Investigative Training Assistance Program, continued to work with the Attorney General's Office and other agencies on the development of a Standards and Training Commission to develop minimum standards for investigators, forensic experts, and criminal analysts. Forensic labs are in the process of securing international accreditation.

The CNP has specialized counterterrorism units in the Intelligence, Anti-Kidnapping, and Judicial Police Directorates, all with advanced investigation techniques and crisis response capabilities. Law enforcement units displayed effective command and control within each organization and were properly equipped and supported. Counterterrorism missions are demarcated to a limited extent between law enforcement and military units. No single agency has jurisdiction over all terrorism-related investigations and post-incident response, sometimes resulting in poor information sharing and cooperation.

In 2016, Colombian authorities continued to operate military task forces to enhance coordination in countering terrorism. The CNP managed fusion centers to ensure all operational missions coordinated intelligence, investigations, and operations under the command of regional police commanders. Additionally, the National Police Intelligence Directorate continued to operate a 24-hour Citizen Security Center tasked with detecting, deterring, and responding to terrorist attacks, among other crimes.

Colombian border security remained an area of vulnerability. Law enforcement officers faced the challenge of working in areas with porous borders and difficult topography plagued by the presence of illegal armed groups and illicit drug cultivation and trafficking. The CNP lacked the manpower to enforce uniform policies for vehicle or passenger inspections at land border crossings. Biometric and biographic screening was conducted only at international airports. The Colombian government does not use advance Passenger Name Records. Of a total force of 184,000 officers, the CNP has 1,577 officers assigned to Customs Enforcement (air, land, and seaports and borders) duties.

Colombia remained a transit point for the smuggling of third-country nationals who may seek to enter the United States illegally. Compared to 2015, Colombia saw a 387 percent increase in undocumented migrants in 2016, primarily Haitians and Cubans attempting to transit to the United States. Porous borders with Ecuador and Venezuela facilitated the movements of third-country nationals, and existing maritime narcotics smuggling routes facilitated their onward movement to Central America. While Colombian immigration regularly detained third-country nationals who have entered the country illegally, the entity lacked both the personnel and enforcement authority to adequately respond to possible threats, and the financial resources to repatriate migrants.

Colombia continued cooperation and information sharing with the Panamanian National Border Service, while improved relations with neighboring Ecuador led to some increased cooperation on law enforcement issues. Following Venezuela's unilateral border closure in August 2015, the Colombian and Venezuelan governments began to reopen border posts on August 13. On December 12, Venezuelan President Nicolas Maduro again ordered the closure of the border for 72 hours (which was subsequently extended) in a stated effort to crackdown on currency smuggling. Colombia and Venezuela continued to improve coordinated security and law enforcement efforts, including expanding the Bi-National Joint Command and Control Center to include a Bi-National Center for Fighting Transnational Organized Crime, increasing troops along the border, and considering proposals for maritime and fluvial cooperation.

Significant actions against terrorism in 2016 included:

- Jairo Alirio Puerta Peña (aka Omar Cuñado), a FARC member allegedly linked to massacres in Chocó in 2002 and Antioquia that left hundreds of civilians dead, was sentenced in June to three years and six months in prison for the crime of aggravated rebellion.

Law enforcement cooperation between Colombia and the United States remained strong. Evidence sharing and joint law enforcement operations occurred in a fluid and efficient manner. Colombia continued to participate in the State Department's Antiterrorism Assistance program, which provided instruction and resources to assist Colombia in building advanced, self-sustaining CNP capabilities to secure borders from terrorist transit, to

investigate terrorists and terrorist incidents, and to protect critical infrastructure. Colombia continued to establish itself as a regional provider of law enforcement and counterterrorism training, particularly with regard to anti-kidnapping efforts and dignitary protection.

Countering the Financing of Terrorism: Colombia is a member of the Financial Action Task Force of Latin America, a Financial Action Task Force-style regional body. Colombia's Financial Information and Analysis Unit is a member of the Egmont Group of Financial Intelligence Units. Colombia stands out as a regional leader in the fight against terrorist financing, and has become a key part of a regional financial intelligence unit initiative aimed at strengthening information sharing among Latin American countries

International Sanctions

None applicable

Bribery & Corruption

Index	Rating (100-Good / 0-Bad)
Transparency International Corruption Index	37
World Governance Indicator – Control of Corruption	44

Corruption is a serious obstacle for companies operating or planning to invest in Colombia. Corruption permeates several sectors of the Colombian economy. The same applies to government hierarchy where corruption cases in the high echelons are as big an obstacle for a transparent and efficient administration as it is for a competitive investment climate. The large networks of clientelism are particularly manifested in the public contracting sector. The Colombian Penal Code and the Anti-Corruption Act criminalizes several forms of corruption including active and passive bribery, extortion, abuse of office and the bribery of foreign officials. Gifts and facilitation payments are also prohibited under Colombian laws. Nonetheless, these practices are widespread. The government generally implemented anti-corruption laws effectively, despite some instances of official impunity being reported.

Information provided by GAN Integrity.

US State Department

Corruption is a significant challenge in Colombia. According to the World Economic Forum's Global Competitiveness Index (2013-2014), corruption is the biggest problem for doing business in Colombia. The Colombian Attorney General estimates that corrupt activity drains \$2.1 billion per year from the country's economy. According to the "AmericasBarometer 2013" published by the Latin American Public Opinion Project, the perception of corruption in Colombia reached 81.7 percent, its highest level since the study was first carried out in 2004. Similarly, the latest Survey of Colombian Companies' Anti-Bribery Practices, carried out in 2012, found that 94 percent of businesspeople believed their peers offered bribes and that 58 percent of companies lacked mechanisms for reporting cases of bribery. Responders said that corruption increases the cost of projects almost 15 percent, particularly for government contracts.

President Santos has demonstrated his commitment to prosecute corrupt officials and tackle fraud and bribery in the use of public funds. In 2011, he signed the Anti-Corruption Statute, a comprehensive policy giving the government new tools to crackdown on corruption, including stiffer penalties. Santos has also uncovered multiple high-profile scandals involving the public sector since taking office, and numerous officials have been dismissed, taken to court, or put in jail. In 2013, the Customs and Tax Office (DIAN) was involved in a high-profile corruption case that is still pending in which a number of employees nationwide stole approximately \$90 million.

Colombia has adopted the OECD Convention on Combating Bribery of Foreign Public Officials and is a member of the OECD Anti-Bribery Committee. It has signed and ratified the

UN Anticorruption Convention. Additionally, it has adopted the OAS Convention against Corruption.

The CTPA protects the integrity of procurement practices and criminalizes both offering and soliciting bribes to/from public officials. It requires both countries to make all laws, regulations, and procedures regarding any matter under the CTPA publicly available. Both countries must also establish procedures for reviews and appeals by any entities affected by actions, rulings, measures, or procedures under the CTPA.

Corruption and Government Transparency - Report by Global Security

Political Climate

The Republic of Colombia is the fourth largest country in South America. Despite offering very attractive investment opportunities, Colombia has until recently been unable to unfold its full market potential due to decades of political instability. The country has been witness to the continent's longest running armed conflict between the government, left-wing guerrilla insurgencies, and right-wing paramilitary forces, which, coupled with corrupt politics and the emergence of violent drug cartels, have greatly jeopardised the country's security situation. Over the last decade, however, during the two-term presidency of Álvaro Uribe (2002-2010), Colombia was applauded at home and abroad for making major improvements in enhancing security, boosting investor confidence, and increasing the level of trust in its legal system, according to Kroll Tendencias. Since the election of President Juan Emanuel Santos in 2010, Colombia's inflow of foreign investment and growth rates have continued to surge, leading some analysts to dub the country "the new Brazil" and rank it among the most attractive investment destinations in the region, according to a 2012 article by Financial Times. Nonetheless, many observers evaluate that Colombia still has a long way to go in fighting corruption, promoting transparency, enhancing the credibility of the judiciary, and in resolving conflicts by institutional means rather than resorting to the forms of violence that have marred the country throughout its history. While Alvaro Uribe's government made important strides in the areas of security and investment confidence, it was also criticised for a lack of social reform and a genuine will to curb corruption, as several corruption scandals took place during his presidential terms, according to the Bertelsmann Foundation 2012.

In 2010, the Santos administration presented the Anti-Corruption Statute, which was approved by Congress in May 2011. The Statute presents a comprehensive policy that gives the government new tools to crack down on corruption through reforming the anti-corruption agency, regulating lobbying activities by firms in Congress, regulating public procurement, and stricter penalties for those found guilty, as reported by the US Department of State 2013. The Statute also provides for the creation of a Citizen's Committee for the Fight Against Corruption, composed of representatives from business associations, NGOs and the media. The President signed a decree in December 2010, creating a Transparency Secretariat within the Office of the President. During Santos' presidency, several high-profile corruption scandals have been uncovered, resulting in dismissals, court cases and prison terms. Since 2010, four former ministers, three former security directors of the administrative department and other government officials have been removed from office and faced corruption charges. Among them, was the former mayor of Bogotá who was indicted for fraudulently awarding USD multi-million public works contracts to companies and local

businessmen in exchange for kickbacks. According to Global Integrity 2011, Colombia has a very strong legal framework to counter corruption, and it has ratified the Inter-American, the United Nations and the OECD anti-corruption conventions.

In spite of the myriad of laws and other integrity mechanisms aimed at containing corruption, the measures adopted have not had a profound effect on corruption due to the absence of effective monitoring mechanisms, a non-transparent public procurement system, pressure by illegal paramilitary groups, and several other factors, according to the Bertelsmann Foundation 2012. Furthermore, corruption is a persistent attribute of Colombian politics and administrative agencies are still plagued by corrupt practices, mishandling of resources and nepotism, while many local politicians still employ illegal methods to win elections to public offices. Most observers agree that corruption represents a major problem in Colombia and incurs high costs for the state and society in general. According to an October 2011 article by Colombia Reports, it is estimated that the country loses almost USD 5 billion to corruption every year. Evidence also suggests that citizens are frequent victims of corruption, with 38% of the surveyed households in Transparency International's Global Corruption Barometer 2010-2011 claiming that bribes are needed when obtaining a routine government service. The same survey also reveals a general distrust in the political system, as political parties, public officials and parliament are considered the most corrupt institutions in the country. According to the regional poll Latinobarómetro 2011 (in Spanish), 63% of households believe democracy is endangered by the failure to reduce corruption. On a positive note, compared to other Latin American countries, significantly fewer Colombians have reported to engage in petty corruption.

Business and Corruption

Colombia has witnessed a rapid economic growth and a surge in foreign direct investment in recent years. Even with growth slowing during the global economic crisis, the country did not witness a recession. This is also supported by the Heritage Foundation 2013, which reports that Colombia is positioned to become South America's second-largest economy. Since the 1990's the government of Colombia started actively encouraging foreign direct investment in the country through economic liberalisation reforms, and with the election of President Santos in 2010, efforts to open up the economy have continued to progress. According to the Bertelsmann Foundation 2012, private enterprise has been supported by tax cuts, a stable macroeconomic environment and security improvements, rendering Colombia one of the most investor-friendly countries in South America. Nevertheless, there are huge regional disparities attributed to varying institutional frameworks and performances. Also, legal requirements are not uniformly adopted, resulting in cumbersome processes that drive some entrepreneurs towards bribery.

Despite the many positive market developments occurring in recent years, many recent surveys identify corruption to be a serious threat to business operations in the Colombian market. According to the World Economic Forum's Global Competitiveness Report 2012-2013, surveyed business executives identify corruption, inefficient government bureaucracy and inadequate supply of infrastructure as the most problematic factors for doing business in Colombia. This is supported by the Bertelsmann Foundation 2012, which reports that the system of infrastructure, particularly in remote areas, is a large impediment for business development, and that it is kept underdeveloped due to corruption, the persistence of armed conflict, and financial mismanagement. According to the World Bank & IFC Enterprise

Surveys 2010, companies report that bribes or gifts are expected when interacting with tax inspectors, when bidding on public tenders and when applying for various licences and permits. However, while more than half of the surveyed companies identify corruption as a major constraint, less than 3% expect to make unofficial payments to 'get things done'. Nonetheless, other sources point to the use of bribery and 'grease money' to resolve administrative processes with public officials as a much larger problem. For example, a 2011 joint study (in Spanish) by the International Council of Swedish Industries, the National Association of Colombian Employers (ANDI) and the Ideas for Peace Foundation points to bribery and extortion as considerable problems for companies in the Colombian market, which can result in large operational and reputational costs. A 2010 business survey by Transparencia Por Colombia, carried out among Colombian businesses, also helps shed some light on the extent of corruption on the Colombian market. Of the surveyed companies, 93% acknowledged that bribery took place during operations, and that the largest proportion of these bribes was used to facilitate administrative processes, as political contributions, as gifts, and smaller amounts as donations and representation expenses. If bribes were not paid, 61% of the surveyed businesses were afraid that they would lose business opportunities or contracts, and 37% said that they would face too cumbersome and costly administrative procedures. Finally, according to the Kroll Global Fraud Report 2010-2011, 94% of surveyed businesses in Colombia claimed to be affected by fraud, with the most prevalent area of fraud being in procurement (24%); and information theft, loss and attack (21%). Very interestingly, this survey also reveals that much of the experienced fraud was inflicted by internal sources; 42% of companies said that the biggest driver of increased fraud exposure was high staff turnover, and 97% were prepared to invest in new fraud prevention measures in the coming year. According to the Bertelsmann Foundation 2012, the large informal sector in Colombia is also an obstacle for legitimate business development. Colombia has the highest rate of informal employment in South America ranging from 40-60%. This situation negatively affects productivity as not only a large number of firms do not meet taxation requirements, but foreign businesses are also competing against informal and unregistered firms.

Bidding on public tenders is an area of special concern for companies, as more than 30% of the companies surveyed in the Enterprise Surveys 2010 report to give gifts to secure a government contract. As a result of the anti-corruption agenda of the government, several high-ranking officials have been exposed for being involved in corruption, especially in the area of abuse of office in connection with the awarding of governmental contracts to private companies. Some of the officials that have been charged with public procurement corruption include the former mayor of the capital of Bogota, the Minister of Transport and a former Colombian congressman. In order to effectively reduce the risk of corruption in the procurement process, companies are advised to use a specialised public procurement due diligence tool. Investors are also advised to be prepared to deal with demands for bribes and other forms of corruption by strengthening and developing internal policies, codes of conduct, procedures and instructions (see integrity system for practical tools). It is also recommended that companies conduct extensive due diligence when planning to invest or already doing business in Colombia. Companies can also consult with Transparencia por Colombia's private sector transparency programmes, Rumbo Empresas and Rumbo Pymes (for SMEs and sub-suppliers) – all in Spanish. Both programmes are self-managed and aim at strengthening managerial and ethical business practices as well as establishing a network through which ethical dilemmas can be discussed.

Regulatory Environment

The regulatory and legal court system in Colombia are generally considered to be transparent and consistent with international norms, as reported by the US Department of State 2013. Additionally, the Heritage Foundation 2013 reports that the overall regulatory framework has become more efficient, and business procedures have become streamlined. The Santos administration has put emphasis on improving the regulatory efficiency and enhancing financial sector competitiveness. For instance, to start a business in Colombia a company must go through 8 procedures, taking an average of 13 days with no minimum capital required as reported by the World Bank & IFC Doing Business 2013. Nevertheless, the Heritage Foundation 2013 notes that institutional shortcomings undermine prospects of long-term economic development. These shortcomings have been further exacerbated by a weak implementation and enforcement of anti-corruption legislation, as well as the vulnerability of the judicial system to political influence. This is also supported by the US Department of State 2013, which notes that the enforcement of these regulations is ineffective due to the lack of coordination and insufficient resources within the judiciary. As such, the settling of commercial disputes becomes complicated and time-consuming. The source also points to other weaknesses the country faces which include security issues, a weak protection of property rights, infrastructure deficiencies and complex tax and labour systems.

Market-based competition within Colombia is given great importance by the government and several institutions are charged with overseeing and regulating fair business practices, such as the Superintendence of Industry and Commerce (the SIC, in Spanish). Nevertheless these efforts are hampered by a lack of coordination between the national and local level and an uneven distribution across the country. Another hurdle to competitiveness in Colombia is the abuse of office for private gain. According to the Bertelsmann Foundation 2012, private interests are able to influence decision-making by redirecting it to fit particular goals. As such, private interest groups or individuals are able to block or substantially modify proposed laws or regulations that negatively impact their interests. Even though Colombia allows foreign companies to invest in the country under the same conditions as national companies, complicated and time-consuming government bureaucracy continues to pose an obstacle to doing business in the country. Furthermore, the same report notes that legal requirements are not adopted uniformly, resulting in cumbersome processes, which drive some entrepreneurs toward bribery. Corruption constitutes a major challenge to businesses in Colombia. In fact, according to the World Economic Forum Global Competitiveness Report 2012-2013, companies identify corruption as the most problematic factor for doing business in the country, followed by inefficient government bureaucracy. However, the OECD Investment Review: Colombia 2012 reports that one of the focus areas of the government is to simplify procedures and remove unnecessary administrative burdens to investors. For this purpose, the government has put in place an 'anti-burden-policy', aimed at simplifying procedures and barriers for a range of public services and to improve communication between government entities and citizens. The program also manages the Single Information System of Procedures and Services portal (In Spanish) which provides information on procedures of national and territorial entities and proposes initiatives to streamline procedures and tracks their impact.

In 2005, Colombia's Congress passed a comprehensive free trade zone modernisation law that opens investment to international companies, and as of 2011, there were 91 free trade

zones in Colombia. These initiatives will allow companies a series of benefits, such as a preferential corporate income tax rate, exemptions from customs duties and value added taxes on imported materials. In December 2012, Colombia became adherent to the OECD Declaration on International Investment and Multinational Enterprises. As an adherent to the Declaration, Colombia pledges its support for an open environment for international investors and encourages responsible investment by multinational companies as a means to encourage growth and prosperity. Property rights in Colombia are shaped by two contradictory features. Property rights in cities and property rights in the rural areas. According to the Bertelsmann Foundation 2012, property rights in urban areas are generally well defined and properly enforced by the government; however, property rights in rural areas are not protected. This is due to the internal conflict, particularly in resource-rich zones, where land has been taken over for large-scale production of narcotics. Colombia has ratified the New York Convention 1958 (UNCITRAL) as well as the Inter-American Convention on International Commercial Arbitration, and is a member of the International Center for the Resolution of Investment Disputes (ICSID). Access the Lexadin World Law Guide for a collection of legislation in Colombia.

Section 3 - Economy

Colombia's consistently sound economic policies and aggressive promotion of free trade agreements in recent years have bolstered its ability to weather external shocks. Colombia depends heavily on energy and mining exports, making it vulnerable to a drop in commodity prices. Colombia is the world's fourth largest coal exporter and Latin America's fourth largest oil producer. Economic development is stymied by inadequate infrastructure, inequality, poverty, narco-trafficking and an uncertain security situation.

Declining oil prices have resulted in a drop in government revenues. In 2014, Colombia passed a tax reform bill to offset the lost revenue from the global drop in oil prices. The SANTOS administration is also using tax reform to help finance implementation of a peace deal between FARC and the government. Colombian officials estimate a peace deal may bolster economic growth by up to 2%.

Despite austerity measures put in place by the SANTOS administration, GDP and foreign direct investment fell in 2015, while the El Niño weather phenomenon caused food and energy prices to rise, with inflation spiking to 6.8%. In order to combat inflation, the Central Bank raised interest rates four times during the last four months of 2015, ending the year with a 25 basis point increase to 5.75%. Unemployment has continued to decrease and hit a record low of 8.9% in 2015, but the rate is still one of Latin America's highest. Nevertheless, Colombia's GDP growth rate makes it the region's best performer among large economies in 2015.

Real GDP growth averaged 4.8% per year from 2010-2014, continuing a decade of strong economic performance, before dropping in 2015. All three major ratings agencies upgraded Colombia's government debt to investment grade in 2013 and 2014, which helped to attract record levels of investment, mostly in the hydrocarbons sector. However, Standard & Poor's downgraded its long-term outlook from stable to negative in early 2016. The change, due largely to falling government revenues, could cause Colombia to lose its investment-grade bond status.

The SANTOS Administration's foreign policy has focused on bolstering Colombia's commercial ties and boosting investment at home. Colombia has signed or is negotiating Free Trade Agreements (FTA) with more than a dozen countries; the US-Colombia FTA went into force in May 2012. The US and Colombia have benefitted from the FTA, but Colombia's ability to take full advantage of its enhanced access to American markets continues to be constrained by lack of export diversification. Nontariff measures remain a point of contention for bilateral trade relations. Truck scrappage regulation, and restrictions on liquor, pharmaceutical, and ethanol imports are top irritants in the bilateral trade relationship. Colombia is a founding member of the Pacific Alliance - a regional trade block formed in 2012 by Chile, Colombia, Mexico, and Peru to promote regional trade and economic integration. In 2013, Colombia began its accession process to the OECD.

Agriculture - products:

coffee, cut flowers, bananas, rice, tobacco, corn, sugarcane, cocoa beans, oilseed, vegetables; shrimp; forest products

Industries:

textiles, food processing, oil, clothing and footwear, beverages, chemicals, cement; gold, coal, emeralds

Exports - commodities:

petroleum, coal, emeralds, coffee, nickel, cut flowers, bananas, apparel

Exports - partners:

US 27.5%, Panama 7.2%, China 5.2%, Spain 4.4%, Ecuador 4% (2015)

Imports - commodities:

industrial equipment, transportation equipment, consumer goods, chemicals, paper products, fuels, electricity

Imports - partners:

US 28.8%, China 18.6%, Mexico 7.1%, Germany 4.2% (2015)

Banking

Colombia's financial system operates under the supervision of the Financial Superintendent, created in 2005 from the merger of the Banking Superintendent and the Stock Exchange Superintendent. The financial system is relatively large in comparison with the nation's gross domestic product. It has many highly sophisticated institutions with state-of-the-art technology. However, financial services are still very costly and intermediation remains the most important financial activity.

Following the 1998-1999 financial crises, almost half of banking and non-banking institutions were closed, taken over, or forced to merge. Many weaker financial institutions merged or are now affiliated with more experienced and financially sound owners. Still, experts consider that the sector has not reached its ideal size. The presence of foreign banks has intensified competition and investment in advanced technologies and government authorities have made significant efforts to improve the health of the financial sector. The largest foreign investment in the sector was Spanish-owned BBVA Bank's acquisition of Granahorrar, which had been taken over by the government during the 1998-1999 crises. In 2006, British-owned HSBC purchased 100 percent of Banistmo Bank. In 2008 U.S.-owned GE Money acquired a 40 percent stake in Banco Colpatria.

Commercial banks are allowed to complete all authorized credit operations, with the exception of leasing operations and real sector investments. Only commercial banks provide checking accounts. Within this group, some institutions specialize in housing and construction financing (mortgage banks). Commercial banks dominate the financial market, accounting for over 80 percent of the financial system's assets.

Colombia has not reached the banking coverage of developed countries. However, almost all financial entities are expanding the infrastructure and coverage of their banking services, and access to virtual banking has improved significantly.

In 2009 a new law reforming the financial sector was passed. The reforms increased protection for financial customers, including requirements that financial institutions properly disclose the costs associated with their operations. They also forbid

agreements in which consumers waive their rights and provisions shifting the burden of proof to consumers. The reforms create Advocate for Financial Consumers positions, which every financial institution must have and who are responsible for ensuring that financial institutions do not violate consumers' rights. The new law also introduces greater flexibility to the pension fund system by creating the multi-fund structure to allow for various risk investment profiles. It allows foreign banks and foreign insurance companies to operate locally without having to incorporate a Colombian entity, although they do have to set up a branch in Colombia, subject to all relevant legal requirements. Finally the law establishes mechanisms to promote microfinance, securitization and the development of capital markets.

Stock Exchange

In 2001, stock exchanges in Bogotá, Cali and Medellín were merged to create the Bolsa de Valores Colombia (BVC), located in Bogotá. The BVC is regulated by the Financial Superintendent, which oversees market intermediaries, brokers' fees, and financial disclosures of listed companies.

The Capital markets legislation enacted in 2005 has helped to deepen the capital markets through improved corporate governance, protection of the rights of minority shareholders, and more transparent information standards. Market capitalization has risen from USD 14.1 billion in 2003, to USD 138 billion, as of November 2009. New financial regulations passed in Law 1328 of 2009 are likely to increase activity in the capital markets, as pension funds will now be able to use a multi-fund scheme, which will allow individuals to choose their pension funds in accordance with their risk profile.

Executive Summary

With increased security, a market of 48 million people, an abundance of natural resources, and an educated and growing middle-class, Colombia is an attractive destination for foreign investment. The Colombian government has taken significant steps to open the country to global trade and investment. In 2015, Colombia had the fourth largest GDP in Latin America after Brazil, Mexico, and Argentina and has sustained an average growth rate over four percent for the past decade. In the World Bank's 2016 Ease of Doing Business Report, Colombia ranked 54 out of 189 countries and fourth in the region, behind Mexico, Chile, and Peru. Colombia has weathered low world oil prices and a significant devaluation of the peso to remain among the more attractive investment destinations in South America.

Colombia's legal and regulatory systems are generally transparent and consistent with international norms. The country has a comprehensive legal framework for business and foreign direct investment (FDI), and the U.S.-Colombia Trade Promotion Agreement (CTPA), which took effect on May 15, 2012, has strengthened bilateral trade and investment. Through the CTPA and several international conventions and treaties, Colombia's dispute settlement mechanisms and intellectual property rights protections have improved. However, piracy and counterfeit products are a major problem and among the primary reasons Colombia remains on the U.S. Trade Representative's Special 301 Watch List.

The Colombian government has made a concerted effort to develop efficient capital markets, attract investment, and create jobs. Sound fiscal and macroeconomic management has allowed Colombia to claim the triple crown of seeing its credit ratings increased to 'Investment Grade' level by Standard and Poor's, Moody's, and Fitch Ratings. Nevertheless, S&P recently downgraded Colombia's long-term outlook from stable to negative. Restrictions on foreign ownership in specific sectors still exist, and FDI fell 26 percent in the first three quarters of 2015 relative to 2014, largely due to reduced investment in the extractives industry. Colombia's average annual unemployment rate continued its downward trend in 2015 and reached 8.9 percent. However, about 47 percent of the workforce is in the informal economy according to the National Administrative Department of Statistics (DANE). Colombia enjoys a skilled workforce throughout the country, as well as managerial-level employees who are often bilingual.

Security in Colombia has improved significantly in recent years, with the percentage of kidnappings down 93 percent since 1999. Colombian government figures show that the number of terrorist acts decreased 42 percent from 2014 to 2015 and homicides continued a downward trend, decreasing five percent. Since November 2012, the Colombian government and the Revolutionary Armed Forces of Colombia (FARC) have been conducting peace negotiations in Havana, Cuba. Significant progress has been achieved in the negotiations and the Colombian government expects to conclude a comprehensive agreement in 2016. Even so, an active domestic insurgency is still taking place alongside powerful narco-criminal group operations, posing a threat to commercial activity and investment, especially in rural zones where government control is weaker.

Many majority state-owned enterprises, including Ecopetrol and ISA, are considered models of professional management, competition, and excellent corporate governance. However, corruption remains a significant challenge in Colombia. Though Colombia rose for the second consecutive year in the World Economic Forum's Global Competitiveness Index

(2015-2016), the report cited security and corruption as among the biggest challenges for doing business in Colombia. The Colombian government continues to work on improving its business climate, but over the past year U.S. and other foreign investors have voiced growing complaints about non-tariff and bureaucratic barriers to trade and investment at the national, regional, and municipal levels.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2015	83 of 168	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	54 of 189	doingbusiness.org/rankings
Global Innovation Index	2015	53 of 143	globalinnovationindex.org/content/page/data-analysis
U.S. FDI in partner country (\$M USD, stock positions)	2015	\$7,085	http://bea.gov/international/factsheet/factsheet.cfm?Area=204
World Bank GNI per capita	2014	\$7,970	data.worldbank.org/indicator/NY.GNP.PCAP.CD

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

The Colombian government actively encourages FDI. In the early 1990s, the country began economic liberalization reforms, which provided for national treatment of foreign investors, lifted controls on remittance of profits and capital, and allowed foreign investment in most sectors. Colombia imposes the same investment restrictions on foreign investors that it does on national investors. Generally, foreign investors may participate in the privatization of state-owned enterprises without restrictions. All FDI involving the establishment of a commercial presence in Colombia requires registration with the Superintendence of Corporations ('Superintendencia de Sociedades') and the local chamber of commerce. All conditions being equal during tender processes, national offers are preferred over foreign ones. Assuming equal conditions among foreign bidders, those with major Colombian national workforce resources, significant national capital, and /or better conditions to facilitate technology transfers are preferred.

Other Investment Policy Reviews

The Organization for Economic Cooperation and Development (OECD) last reviewed Colombia's investment policy in April 2012 (<http://www.oecd.org/countries/colombia/colombia-investmentpolicyreview-oecd.htm>) and found that Colombia made significant progress promoting investment liberalization and improving its investment climate through important policy reforms. In October 2015, the OECD Investment committee approved continuing the accession process pending the

March 2016 revision from the OECD Working Group on International Investment Statistics (WGIIS).

The World Trade Organization (WTO) conducted a fourth trade policy review of Colombia in June 2012 (http://www.wto.org/english/tratop_e/tp_r_e/tp365_e.htm), its first in six years. It found that Colombia continued its trade policy of increased openness and emphasized greater integration with Latin America, the Caribbean, and the rest of the world by negotiating preferential agreements to increase external trade and foreign investment flows.

Laws/Regulations on Foreign Direct Investment

Colombia has a comprehensive legal framework for business and FDI which incorporates binding norms resulting from its membership in the Andean Community of Nations as well as other free trade agreements and bilateral investment treaties. Colombia's judicial system defines the legal rights of commercial entities, reviews regulatory enforcement procedures, and adjudicates contract disputes in the business community. The judicial framework includes the Superintendence of Industry and Commerce (SIC), the Council of State, the Constitutional Court, the Supreme Court of Justice, and the various departmental and district courts, which are also overseen for administrative matters by the Superior Judicial Council. The 1991 Constitution provided the judiciary with greater administrative and financial independence from the executive branch. However, except for the SIC's efficient exercise of judicial functions, the judicial system in general remains hampered by time-consuming bureaucratic requirements and corruption.

Business Registration

New businesses have to first register with the chamber of commerce of the city in which the company will reside. They must also obtain a tax identification number from the Colombian tax authority. Colombia fell five spots from 84 on the 2015 Doing Business report in terms of starting a business. According to the report, starting a company in Colombia requires eight procedures and takes an average of 11 days, and there is no simplified business creation process. Information on starting a company can be found at www.ccb.org.co/en/Creating-a-company/Company-start-up/Step-by-step-company-creation and www.dian.gov.co.

Industrial Promotion

Procolombia is the Colombian government entity that promotes international tourism, foreign investment, and non-traditional exports in Colombia. Procolombia assists foreign companies that wish to enter the Colombian market and addresses specific needs, such as finding contacts in the public and private sector, organizing visit agendas, and accompanying companies during visits to Colombia. All services are free of charge and confidential. Business process outsourcing, software and IT services, cosmetics, health services, automotive manufacturing, textiles, graphic communications, and electric energy receive special priority. The Invest in Colombia web portal offers detailed information for opportunities in agribusiness, manufacturing, and services in Colombia (www.investincolombia.com.co/sectors).

The CTPA entered into force on May 15, 2012 and improves legal security and the investment environment while eliminating tariffs and other barriers to trade in goods and services. The agreement grants investors the right to establish, acquire, and operate investments on an equal footing with local investors as well as investors of other countries with bilateral

investment treaties or investment chapters in free trade agreements with Colombia. It also provides U.S. investors in Colombia protections that foreign investors have under the U.S. legal system, including due process and the right to receive fair market value for property in the event of an expropriation.

Limits on Foreign Control and Right to Private Ownership and Establishment

Foreign investment in the financial, hydrocarbon, and mining sectors is subject to special regimes, such as investment registration and concession agreements with the Colombian government, but are not restricted in the amount of foreign capital. The following sectors require that foreign investors have a legal local representative and/or commercial presence in Colombia: travel and tourism agency services; money order operator; customs brokerage; postal and courier services; merchandise warehousing; merchandise transportation under customs control; international cargo agents; public service companies including sewage and water works, waste disposal, electricity, gas and fuel distribution, and public telephone service; insurance firms; legal services; and special air services including aerial fire-fighting, sightseeing, and surveying.

Foreign investors face specific exceptions and restrictions in the following sectors:

Media: Only Colombian nationals or legally constituted entities may provide radio or subscription-based television services. For National Open Television and Nationwide Private Television Operators, only Colombian nationals or legal entities may be granted concessions to provide television services. Colombia's national, regional, and municipal open-television channels must be provided at no extra cost to subscribers. Foreign investment in national television is limited to a maximum of 40 percent ownership of the relevant operator. Satellite television service providers are only obliged to include within their basic programming the broadcast of government-designated public interest channels. Newspapers published in Colombia covering domestic politics must be directed and managed by Colombian nationals.

Accounting, Auditing, and Data Processing: To practice in Colombia, providers of accounting services must register with the Central Accountants Board; have uninterrupted domicile in Colombia for at least three years prior to registry; and provide proof of accounting experience in Colombia of at least one year. No restrictions apply to services offered by consulting firms or individuals. A legal commercial presence is required to provide data processing and information services in Colombia.

Banking: Foreign investors may own 100 percent of financial institutions in Colombia, but are required to obtain approval from the Financial Superintendent before making a direct investment of ten percent or more in any one entity. Portfolio investments used to acquire more than five percent of an entity also require authorization. Foreign banks must establish a local commercial presence and comply with the same capital and other requirements as local financial institutions. Foreign banks may establish a subsidiary or office in Colombia, but not a branch. Every investment of foreign capital in portfolios must be through a Colombian administrator company, including brokerage firms, trust companies, and investment management companies. All foreign investments must be registered with the Central Bank.

Fishing: A foreign vessel may engage in fishing and related activities in Colombian territorial waters only through association with a Colombian company holding a valid fishing permit. If a ship's flag corresponds to a country with which Colombia has a complementary bilateral

agreement, this agreement shall determine whether the association requirement applies for the process required to obtain a fishing license. The costs of fishing permits are greater for foreign flag vessels.

Private Security and Surveillance Companies: Companies constituted with foreign capital prior to February 11, 1994 cannot increase the share of foreign capital. Those constituted after that date can only have Colombian nationals as shareholders.

Telecommunications: Barriers to entry in telecommunications services include high license fees (USD150 million for a long distance license), commercial presence requirements, and economic needs tests. While Colombia allows 100 percent foreign ownership of telecommunication providers, it prohibits "callback" services.

Transportation: Foreign companies can only provide multimodal freight services within or from Colombian territory if they have a domiciled agent or representative legally responsible for its activities in Colombia. International cabotage companies can provide cabotage services (i.e. between two points within Colombia) "only when there is no national capacity to provide the service" according to Colombian law. Colombia prohibits foreign ownership of commercial ships licensed in Colombia and restricts foreign ownership in national airlines or shipping companies to 40 percent. FDI in the maritime sector is limited to 30 percent. The owners of a concession providing port services must be legally constituted in Colombia and only Colombian ships may provide port services within Colombian maritime jurisdiction; however, vessels with foreign flags may provide those services if there are no Colombian-flag vessels capable of doing so.

Privatization Program

Colombia has privatized state-owned enterprises under article 60 of the Constitution and Law No. 226 of 1995. This law stipulates that the sale of government holdings in an enterprise should be offered to two groups: first to cooperatives and workers' associations of the enterprise, then to the general public. During the first phase, special terms and credits have to be granted, and in the second phase, foreign investors may participate along with the general public. Colombia's main privatizations have been in the electricity, mining, hydrocarbons, and financial sectors, and in January 2016, the government sold its majority stake in Isagen, the country's third-largest energy generator, to Canadian firm Brookfield Asset Management for USD 2 billion. The government has attached a high priority to stimulating private sector investment in roads, ports, electricity, and gas infrastructure concessions and is increasingly utilizing public-private partnerships (PPPs) as the favored option for infrastructure development.

The Colombian government has prioritized its fourth generation infrastructure program (4G) focused on highway construction with PPP opportunities valued at USD 17 billion. In order to attract investment and promote PPPs, on November 22, 2013, the Colombian government signed a new infrastructure law clarifying provisions for frequently cited obstacles to participate in PPPs including environmental licensing, land acquisition, and the displacement of public utilities. The new law puts in place a civil procedure that facilitates land expropriation during court cases, allows for expedited environmental licensing, and clarifies that the cost to move or replace public utilities affected by infrastructure projects falls to private companies.

Municipal enterprises operate many public utilities and infrastructure services. These municipal enterprises have engaged private sector investment through concessions. There are several successful concessions involving roads. These kinds of partnerships have helped promote reforms and create a more attractive environment for private, national, and foreign investment.

Screening of FDI

According to the Constitution and foreign investment regulations, foreign investment in Colombia receives the same treatment as an investment made by Colombian nationals. Any investment made by a person who does not qualify as a resident of Colombia for foreign exchange purposes will qualify as foreign investment. Foreign investment is permitted in all sectors, except in activities related to defense, national security, and toxic waste handling and disposal. There are no performance requirements explicitly applicable to the entry and establishment of foreign investment in Colombia. However, there are export incentives relating to the operation of free trade zones.

Competition Law

The SIC is Colombia's national competition authority and has been strengthened over the last five years with more staff, economists, and lawyers. While the SIC issued landmark fines in 2015, particularly against a sugar cartel, some experts have expressed concern with Colombia's sliding competitiveness. Discriminatory practices in the issuing and enforcement of regulations has affected market access and created non-tariff barriers to trade, especially in the sectors of pharmaceuticals, trucks, and liquors. According to the OECD's January 2015 Economic Survey, the competition law of 2009 improved competition policy settings, but the SIC could be even more effective if it were more politically independent.

2. Conversion and Transfer Policies

Foreign Exchange

No restrictions apply to transferring funds associated with FDI. However, foreign investment into Colombia must be registered with the Central Bank to secure the right to repatriate capital and profits. Except for special exceptions, direct and portfolio investments are considered registered when the exchange declaration for operations channeled through the official exchange market is presented. The official exchange rate is determined by the Central Bank based on free market flows of the previous day. Colombia does not manipulate its currency to gain competitive advantages.

Remittance Policies

If investments are registered, repatriation is permitted without restriction. The government permits full remittance of all net profits regardless of the type or amount of investment. Foreign investments must be channeled through the foreign exchange market and registered with the Central Bank's foreign exchange office within one year to be able to repatriate or reinvest the proceeds. There are no restrictions on the repatriation of revenues generated from the sale or closure of a business, reduction of investment, or transfer of a portfolio. Colombian law authorizes the government to restrict remittances in the event that international reserves fall below three months' worth of imports, and reserves have been well above that for decades.

3. Expropriation and Compensation

Article 58 of the Constitution governs indemnifications and expropriations and guarantees owners' rights for legally-acquired property. For assets taken by eminent domain, Colombian law provides a right of appeal both on the basis of the decision itself and on the level of compensation. The Constitution does not specify how to proceed in compensation cases, which remains a concern for foreign investors. The Colombian government has sought to resolve such concerns through the negotiation of bilateral investment treaties and strong investment chapters in free trade agreements, such as the CTPA.

4. Dispute Settlement

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

The judicial system generally operates without government interference. In 2012, Law 1564 gave the SIC, National Copyrights Directorate, and Colombian Agriculture Institute authority to judge civil commercial cases about intellectual property rights (IPR). Specialized labor courts exist within the regular judicial system to hear administrative labor cases. Only courts can order the reinstatement of a worker claiming to have been unjustly fired. In accordance with local legislation, the judgment in a foreign country has force in Colombia granted by the respective international treaties existing with that country.

Bankruptcy

Colombia's 1991 Constitution grants the government the authority to intervene directly in financial or economic affairs, and this authority provides solutions similar to U.S. Chapter 11 filings for companies facing liquidation or bankruptcy. Colombia's bankruptcy regulations have two major objectives: to regulate proceedings to ensure creditors' protection, and to monitor the efficient recovery and preservation of still-viable companies. This was revised in 2006 to allow creditors to request judicial liquidation, which replaces the previous forced auctioning option. Now, inventories are valued, creditors' rights are taken into account, and either a direct sale takes place within two months or all assets are assigned to creditors based on their share of the company's liabilities. The insolvency regime for companies was again revised in 2010 to make proceedings more agile and flexible and allow debtors to enter into a long-term payment agreement with creditors, giving the company a chance to recover and continue operating. Bankruptcy is not criminalized in Colombia. In 2013, a bankruptcy law for individuals whose debts surpass fifty percent of their assets value entered into force.

Restructuring proceedings aim to protect the debtors from bankruptcy. Once reorganization has begun, creditors cannot use collection proceedings to collect on debts owed prior to the beginning of the reorganization proceedings. All existing creditors at the moment of the reorganization are recognized during the proceedings if they present their credit. Foreign creditors, equity shareholders including foreign equity shareholders, and holders of other financial contracts, including foreign contract holders, are recognized during the proceeding. Established creditors are guaranteed a vote in the final decision. According to the Doing Business 2016 report, Colombia takes an average of 1.7 years—the same as OECD high income countries—to resolve insolvency.

Investment Disputes

There were three pending investment disputes last year. First, a case involving a U.S. fast food company operating in Colombia since 1999. The company purchased land to build a restaurant, but the government seized the property during an investigation of the prior landholder for drug trafficking and money laundering. The second case, started in 1994, involves a U.S. marine salvage company. The company has sued the Colombian government through different venues for not allowing it to access its property in Colombian territory on grounds of national patrimony protection. The last case involves a U.S. plane allegedly abandoned in Colombian territory in 2010. The U.S. owner has been trying to claim his property since 2012. Colombian authorities maintain that the plane is now the property of the Colombian government, according to national regulations on abandoned aircraft.

International Arbitration

Foreign judgments are recognized and enforced in Colombia once an application is submitted to the Civil Chamber of the Supreme Court. In 2012, Colombia approved the use of the arbitration process when new legislation based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law was adopted. The new statute stipulates that arbitral awards are governed by both domestic law as well as international conventions (New York Convention, Panama Convention, etc.). This has made the enforcement of arbitral awards easier for all parties involved. Arbitration in Colombia is completely independent from judiciary proceedings, and once arbitration has begun, the only competent authority is the arbitration tribunal itself. The CTPA protects U.S. investments by requiring a transparent and binding international arbitration mechanism and allowing investor-state arbitration for breaches of investment agreements if certain parameters are met. The judicial system is notoriously slow, leading to many foreign companies to include international arbitration clauses in their contracts.

ICSID Convention and New York Convention

Domestic law allows contracting parties to agree to submit disputes to international arbitration, provided that the parties are domiciled in different countries, the place of arbitration agreed to by the parties is a country other than the one in which they are domiciled, the subject matter of the arbitration involves the interests of more than one country, and the dispute has a direct impact on international trade. The law lets parties set their own arbitration terms including location, procedures, and the nationality of rules and arbiters. Foreign investors have found the arbitration process in Colombia complex and dilatory, especially with regard to enforcing awards. In October 2012, the new National and International Arbitration Statute, modeled after the UNCITRAL Model Law, took effect. Colombia is a member of the New York Convention on Investment Disputes, the International Center for the Settlement of Investment Disputes (ICSID), and the Multilateral Investment Guarantee Agency.

Duration of Dispute Resolution – Local Courts

According to the Doing Business 2016 report, the time from the moment a plaintiff files the lawsuit until actual payment and enforcement of the contract averages 1288 days. Traditionally, most court proceedings are carried out in writing and only the evidence-gathering stage is carried out through hearings, including witness depositions, site inspections, and cross-examinations. The Colombian government has accelerated proceedings and reduced the backlog of court cases by allowing more verbal public hearings and creating alternative court mechanisms. The new Code of General Procedure

that entered into force in June 2014 also establishes an oral proceeding which is carried out in two hearings, and there are now penalties for not ruling in the time limit set by the law. Enforcement of an arbitral award can take up to two years. According to the Doing Business report, Colombia has made enforcing contracts easier by simplifying and speeding up the proceedings for commercial disputes.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

There are no active measures inconsistent with WTO Trade Related Investment Measures (TRIMs) requirements.

Investment Incentives

The Colombian government offers investment incentives such as income tax exemptions and deductions in specific priority sectors. During the last decade, it has committed to providing more incentives and stability for investors. Investment incentives through free trade agreements between Colombia and other nations include national treatment and most favored nation treatment of investors; establishment of liability standards assumed by countries regarding the other nation's investors, including the minimum standard of treatment and establishment of rules for investor compensation from expropriation; establishment of rules for transfer of capital relating to investment; and specific tax treatment.

The government offers tax incentives to all investors, such as preferential import tariffs, tax exemptions, and credit or risk capital. Some fiscal incentives are available for investments that generate new employment or production in areas impacted by natural disasters, and companies can apply for these directly with participating agencies. Tax and fiscal incentives are often based on regional considerations. Border areas have special protections due to currency fluctuations in neighboring countries, which can harm local economies. National and local governments also offer special incentives, such as tax holidays, to attract specific industries.

Special tax exemptions have existed since 2003 and range from ten to thirty years. Income tax exemptions in tourism cover new hotels constructed between 2003 and 2017, and remodeled and/or expanded hotels through 2017, for a period of 30 years, and for ecotourism services through 2023. New forestry plantations and sawmills also have benefitted from income tax exemptions since 2003. Late yield crops planted through 2014 are tax exempt for ten years from the beginning of the harvesting. Electricity from wind power, biomass, and agricultural waste are tax exempt until January 1, 2018, as are river-based transportation services provided with certain shallow draft vessels and barges. Certain printing and publishing companies can benefit from tax exemptions through 2033. Software developed in Colombia has been tax exempt for up to five years since 2013. To meet exemption requirements, the software must have its intellectual property rights protected, be based upon a high concentration of national scientific and technological research, and Colciencias (Colombia's agency for promoting science, technology, and innovation) must grant its certification.

In December 2014, Congress passed a controversial tax reform expanding the "wealth tax," creating an additional tax of 0.2 to 1.15 percent for businesses on assets with a net equity

over two billion pesos (approximately USD 675,000), to be phased out by 2018. Additionally, the government added a surcharge to the already existing Income Tax for Equality (CREE), a nine percent tax on company profits over 800 million pesos (approximately USD 275,000) designed to contribute to employment generation and social investments. The additional surcharge was five percent in 2015 and will increase gradually to reach nine percent in 2018.

Research and Development

Foreign investors can participate without discrimination in government-subsidized research programs, and most Colombian government research has been conducted with foreign institutions. R&D incentives include Value-Added Tax exemptions for imported equipment or materials used in scientific, technology, or innovation projects, and qualified investments may receive tax credits up to 175 percent. A 2012 reform of Colombia's royalty system allocates ten percent of the government's revenue to science, technology, and innovation proposals executed by subnational governments. Although only subnational governments can submit a project, anyone, including foreigners, can partner with them. Colombia's government R&D funding increased 40 percent to USD 840 million from 2012 to 2014.

Performance Requirements

Performance requirements are not imposed on foreigners as a condition for establishing, maintaining, or expanding investments. The Colombian government does not have performance requirements, impose local employment requirements, or require excessively difficult visa, residency, or work permit requirements for investors. Under the CTPA, Colombia grants substantial market access across its entire services sector.

Data Storage

According to the Ministry of Information Technologies, the government requires local data storage only for government entities and does so using its service contract with the private company providing the service. In Colombia, software and hardware are protected by IPR (Dirección Nacional de Derecho de Autor – DNDA – <http://www.derechodeautor.gov.co/>). There is no obligation to submit source code for registered software. However, if the IT provider is contracting with the Colombian government, through a clause of the service contract, the source code must be provided to the entity. The SIC launched a national database registry in November 2015 to implement Law 1581 pertaining to personal information protection and management. It requires data storage facilities that hold personal data to comply with government requirements for security and privacy, and data storage companies have one year to register.

6. Protection of Property Rights

Real Property

The 1991 Constitution explicitly protects individual rights against state actions and upholds the right to private property.

Secured interests in real property, and to a lesser degree movable property, are recognized and generally enforced after the property is properly registered. In terms of protecting third party purchasers, such as one of the cases cited under investment disputes, existing law is inadequate. The concept of a mortgage, trust, deed, and other types of liens exists, as does a reliable system of recording such secured interests. Deeds, however, present some legal risk

due to the prevalence of transactions that have never been registered with the Public Instruments Registry. Approximately four million hectares of land are affected by forced displacement and two million for violent usurpation. According to Amnesty International, eight million hectares have been acquired illegally, equivalent to 14 percent of the Colombian territory. Around 18 percent of land owners do not have clear title. The Colombian government is working to title these plots and has started a formalization program for land restitution, but as of April 2016, only 182,000 hectares have received restitution rulings out of the millions stolen during armed conflict. Some landowners who received their formal land titles have been threatened by illegal armed groups. Colombia ranked 54 out of 185 economies for ease of registering property, according to the Doing Business report—one position worse than its 2015 ranking.

Intellectual Property Rights

In Colombia, the granting, registration, and administration of IPR are carried out by four different government entities. The SIC acts as the Colombian patent and trademark office. The Colombian Agricultural Institute (ICA) is in charge of issuing plant variety protections and data protections for agricultural products. The Ministry of Interior administers copyrights through the National Copyright Directorate (DNDA). The Ministry of Health and Social Protection handles data protection for products registered through the National Food and Drug Institute (INVIMA). While each of these entities experiences significant financial and technical resource constraints, the SIC is well-run and the second fastest office in the world for patent applications. Colombia is subject to Andean Community Decision 486 on trade secret protection, which is fully implemented domestically by the Unfair Competition Law of 1996.

The patent regime in Colombia currently provides for a 20-year protection period for patents, a 10-year term for industrial designs, and 20- or 15-year protection for new plant varieties, depending on the species. Data protection applications take up to nine months to adjudicate. U.S. agroindustry companies have expressed concern because enforcement and implementation of Colombia's data protection regime for agrochemicals is still weak. ICA has no internal data protection regulations. The U.S. pharmaceutical industry has complained about a slow judicial process and inability of rights holders to obtain preliminary injunctions before a potentially patent-infringing product enters the market. The U.S. Patent and Trademark Office partnered with the SIC to establish a Patent Prosecution Highway (PPH) program in 2013. The PPH allows for the mutual recognition of patent examination procedures to make the patent granting process faster. The program was extended indefinitely due to the success of the pilot.

Colombia has been on the U.S. Trade Representative's Special 301 Watch List every year since 1991 and is also listed in the notorious markets report. Both reports can be found at <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications>. The CTPA improved standards for the protection and enforcement of a broad range of IPR. Such improvements include state-of-the-art protections for digital products such as software, music, text, and videos; stronger protection for U.S. patents, trademarks, and test data; and prevention of piracy and counterfeiting by criminalizing end-use piracy. Colombia is a member of the Inter-American Convention for Trademark and Commercial Protection. Various procedures associated with industrial property, patent, and trademark registration are available at <http://www.sic.gov.co/es/web/guest/propiedad-industrial>. In August 2012, Colombia joined the Madrid Agreement Concerning the International Registration of Marks

(Madrid Protocol). The Colombian government joined the World Intellectual Property Organization (WIPO) Trademark Law Treaty on January 13, 2012, which entered into force on April 12, 2013. WIPO's 1996 Copyright Treaty has been in force since March 6, 2002, and the Performances and Phonograms Treaty since May 20, 2002. Colombia is not a member of the Patent Law Treaty.

In January 2013, the Constitutional Court declared Law 1520 of 2012 implementing several CTPA-related commitments (including copyrights, TV programming quotas, and IPR enforcement measures) unconstitutional on procedural grounds, and these remain pending. The CTPA copyright deadline to establish liability for circumventing technological protections was May 15, 2013, and the deadlines to establish liability for misuse/altering information was November 15, 2014. The CTPA deadline for screen quotas was May 15, 2012. On enforcement, a decree specifying the list of pre-established compensation for trademark counterfeiting was issued in December 2014. However, Colombia has yet to establish additional criminal procedures for counterfeiting, which were due May 15, 2013. The Internet Service Providers (ISPs) legislation, another CTPA requirement, was also due then.

In terms of investigations, Colombia's success against counterfeiting and IPR violations is limited to specific isolated events and seizures. However, Colombian law continues to limit the ability of law enforcement (police, customs, and prosecutors) to effectively combat counterfeiting because they do not have the requisite authorities to effectively inspect, seize, and investigate smugglers and counterfeiters. On prosecutions, the Attorney Generals' national-level IPR unit (UNPIT) was abolished and criminal IPR cases are now handled by the National Directorate for the Attorneys Office. Cases previously handled by this specialized unit are now treated as any other criminal case and distributed randomly to attorneys. Only in two situations, when there is a major crime organization involved, or is of national relevance, the specialized attorneys that previously worked for the IPR unit are designated to the cases. The anti-contraband law, approved in June 2015, increased penalties and prison time for those found guilty of contraband smuggling and customs fraud. The National Customs and Tax Directorate (DIAN), is implementing a risk management system to intelligently combat contraband, acquiring advanced software to improve performance, utilizing scanners at ports, creating a database of businesses used to launder money, and eliminating unnecessary penalties for minor errors in paperwork. In 2015, Colombia's tax and customs police (POLFA) seized nearly USD 95 million of contraband and counterfeit products, a five percent increase over 2014.

Resources for Rights Holders

Embassy point of contact:

U.S. Embassy Bogota
Economic Section
Carrera 45 #22B-45
Bogota, Colombia
(571) 275-2000
BogotaECONShared@state.gov

Country/Economy resources:

- American Chamber of Commerce in Colombia:
<http://www.amchamcolombia.com.co/>

- Council of American Companies in Colombia: <http://www.ceacolombia.com/es/>
- Local attorneys list: <http://bogota.usembassy.gov/attorneys.html>
- For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at <http://www.wipo.int/directory/en/>.

7. Transparency of the Regulatory System

The Colombian legal and regulatory systems are generally transparent and consistent with international norms. The commercial code and other laws cover broad areas including banking and credit, bankruptcy/reorganization, business establishment/conduct, commercial contracts, credit, corporate organization, fiduciary obligations, insurance, industrial property, and real property law. The civil code contains provisions relating to contracts, mortgages, liens, notary functions, and registries. There are no identified private sector associations or nongovernmental organizations leading informal regulatory processes. The ministries generally consult with relevant actors, both foreign and national, when drafting regulations, but not always. Proposed laws are typically published as drafts for public comment, though not always, and the complexity of the subject is not necessarily taken into account.

Enforcement mechanisms exist, but historically the judicial system has not taken an active role in adjudicating commercial cases. The Constitution establishes the principle of free competition as a national right for all citizens and provides the judiciary with greater administrative and financial independence from the executive branch. Colombia has completed its transition to an oral accusatory system to make criminal investigations and trials more efficient. The new system separates the investigative functions assigned to the Office of the Attorney General from trial functions. Lack of coordination among government entities as well as insufficient resources complicate timely resolution of cases.

Colombia is a member of UNCTAD's international network of transparent investment procedures <http://www.businessfacilitation.org/> (Colombia's website <http://colombia.eregulations.org/>). Foreign and national investors can find detailed information on administrative procedures applicable to investment and income generating operations including the number of steps, name, and contact details of the entities and people in charge of procedures, required documents and conditions, costs, processing time, and legal bases justifying the procedures.

8. Efficient Capital Markets and Portfolio Investment

Market capitalization has risen from USD14 billion in 2003 to USD153 billion as of December 2014. Sound fiscal and macroeconomic management allowed Colombia to claim the triple crown of seeing its credit ratings increased to 'Investment Grade' level by Moody's, Fitch, and Standard and Poor's, though the latter just downgraded Colombia's long-term outlook from stable to negative. Foreign investors are allowed to participate in capital markets by negotiating and acquiring shares, bonds, and other securities listed by the Foreign Investment Statute. These activities must be conducted via a local administrator, which can be a trust company or a stock brokerage firm that has been authorized to do so by the Financial Superintendence. Foreign investment capital funds are not allowed to acquire more than ten percent of the total amount of a Colombian company's outstanding shares.

Foreigners can establish a bank account as long as they have a valid visa and government ID.

The market has sufficient liquidity for investors to enter and exit sizeable positions. Following the financial crisis of 1998-99, bailouts for failing banks were partially financed through a controversial tax on financial transactions. The tax was originally set at 0.2 percent but has since been increased to 0.4 percent. The tax on financial transactions is applied to all withdrawals from checking and savings accounts, including accounts with the Central Bank. Savings accounts for the purchase of low-income housing, transactions on the inter-bank market, and the sale or purchase of foreign currency are exempt from the tax. The Central Bank respects IMF Article VIII and does not restrict payments and transfers for current international transactions.

Money and Banking System, Hostile Takeovers

In 2005, Colombia consolidated supervision of all aspects of the banking, financial, securities, and insurance sectors under the Financial Superintendence. Colombia has an effective regulatory system that encourages portfolio investment. According to the Financial Superintendent, as of December 2014, the estimated assets of the country's main banks totaled approximately USD 184.7 billion. Sixty percent of all disbursed credits were destined for commercial credits, 28 percent for consumption, nine percent for housing, and three percent for microcredit. Past-due loans accounted for three percent of the total portfolio.

Colombia's financial system is well-developed by regional standards. The financial sector as a whole is investing in new risk assessment and portfolio management methodologies. Two private financial groups together own over half of all bank assets: the Sarmiento Group (Grupo Aval) controls about 27 percent and the Business Group of Antioquia (Bancolombia) about 27 percent as of December 2014. Total foreign-owned bank assets account for approximately 28 percent of sector assets.

The principal source of long-term corporate and project finance in Colombia are commercial banks. Loans with a maturity in excess of five years are scarce. Unofficial private lenders play a considerable role in meeting the working capital needs of small and medium-sized companies. Only the largest of Colombia's companies participate in the local stock or bond markets with the majority meeting their financing needs through the banking system, by reinvesting their profits, and through suppliers' credit.

9. Competition from State-Owned Enterprises (SOEs)

In principle Colombia's SOEs do not receive preferential treatment, though in practice some issues arise such as political authorities running SOEs and conflicts of interest. In general, Colombian SOEs are subject to the general legal framework and receive special treatment in very few areas. One of these areas is bankruptcy law; SOEs are largely protected from insolvency due to the necessity of providing essential public services. Colombian SOEs are, in general, subject to private law and structured as commercial companies. However, depending on the sector, SOEs may also be subject to specific sector norms, such as the Utilities Law.

Private enterprises generally are allowed to compete with public enterprises under the same terms and conditions, although at the sub-national level, private liquor companies face licensing restrictions and other administrative barriers that prevent free competition with local

SOEs. Private enterprises are allowed to compete with SOEs under the same terms and conditions with respect to access to markets, credit, and other business operations, such as licenses and supplies. State-owned banks are expected to treat SOEs without any preference. Colombian SOEs generally use the financial markets for financing and do not receive additional support from the government except in very rare cases. According to the OECD, the largest SOEs, including Ecopetrol and ISA, are good examples of professional management, competition, and excellent corporate governance. Nevertheless, Ecopetrol has been involved in a corruption probe over the last two years involving executives from a company that allegedly bribed Ecopetrol staff to secure a multi-million dollar oil-service contract.

In March 2014, Santos signed a new law requiring all SOEs to make information regarding their operations publicly available. Colombia protects the rights of minority shareholders and allows any group of shareholders with less than a ten percent stake to request the intervention of the regulator if they believe the company is taking measures detrimental to their interests. A renewed corporate governance code entered into force in January 2015 per OECD recommendations for companies issuing securities in Colombia. The new code is aimed at incorporating new trends in capital markets and elevates standards to international levels, although it preserves the voluntary approach and the principle of "comply or explain." All companies must submit an annual report on their implementation. The code comprises best practices for shareholders' meetings, boards of directors, disclosure of financial and non-financial information, and dispute resolution. The renewed set of guidelines includes better protection for minority investors, guidelines on fair treatment of shareholders, alternative methods to resolution of conflicts, and transit methods for shareholders to go from passivism to activism, among others.

According to the International Finance Corporation (IFC), Colombia's OECD accession process has elevated the importance of corporate governance at all levels. The IFC has started to support a range of corporate governance-related actions, including legal and regulatory reforms and SOE governance. The project is working to establish a Colombian Corporate Governance Institute and a component to assist small and medium enterprises to increase their sustainability and competitiveness by incorporating better corporate governance practices.

OECD Guidelines on Corporate Governance of SOEs

At Colombia's request, the OECD analyzed Colombia's corporate governance practices of SOEs against OECD Guidelines and released a report in December 2013 (http://www.oecd-ilibrary.org/governance/colombian-soes-a-review-against-the-oecd-guidelines-on-corporate-governance-of-state-owned-enterprises_5k3v1ts5s4f6-en). The OECD found that Colombia's legal framework is compatible with the OECD standards of corporate governance. Colombian SOEs fall into two broad categories: Industrial and Commercial State Companies that are statutory corporations wholly owned by the state and whose origin and norms are established by law, and Mixed-Ownership in which the state has a stake and which can take any legal form and are generally governed by the norms applicable to the private sector. The central government owns 70 SOEs and partial SOEs. SOEs exist in the following sectors: defense article production, regional utility companies, postal service, electricity generation and distribution, hospitals, airports, banking, television, education, regional lotteries, alcohol and spirit distillers, and oil and gas. Subnational governments have

taken advantage of lax oversight to give preferential treatment to SOEs in their local markets, like for distilled spirits.

Sovereign Wealth Funds

In 2012 Colombia started operating a sovereign wealth fund, called a savings and stabilization fund, using royalties from the extractive industry. The fund can administer up to 30 percent of annual royalties. The fund's main objective is to promote saving and economic stabilization in the country and is administrated by the Central Bank. According to the Ministry of Finance, Colombia had saved as of January 2016 around USD 3.1 billion including returns. The fund has grown continuously since its establishment with about USD 500 million. The rest of royalties' resources are administered by other internal funds aimed to boost productivity in Colombia through new technologies and innovation.

10. Responsible Business Conduct

Colombia adheres to the corporate social responsibility (CSR) principles outlined in the OECD Guidelines for Multinational Enterprises. It has a long tradition of CSR across many industries and encourages public and private enterprises to follow OECD guidelines. Beneficiaries of CSR programs include students, children, populations vulnerable to Colombia's armed conflict, victims of violence, and the environment. Larger companies in particular structure CSR programs in line with generally accepted international CSR principles. On several occasions, companies in Colombia have been recognized on an international level, including by the State Department, for their CSR commitments.

Overall, Colombia has adequate environmental laws, is proactive at the federal level in enacting environmental protections, and does not waive labor or environmental regulations to attract investors. However, the Colombian government struggles with enforcement, particularly in more remote areas. Geography, lack of infrastructure, and lack of state presence all play a role, as does a general shortage of resources in its national and regional level institutions. The Environmental Chapter of the CTPA requires Colombia to maintain and enforce environmental laws, protect biodiversity, and promote opportunities for public participation. In October 2014, the Minister of Environment and Sustainable Development signed the modification to decree 2820 on environmental licensing. With this change, the Colombian government expects to streamline and optimize the issuance of permits for exploration and exploitation of natural resources in Colombia.

11. Political Violence

Security in Colombia has improved significantly over the past 15 years. However, there is still an active domestic insurgency and powerful narco-criminal group operations that threaten commercial activity and investment, especially in rural zones where government control is weaker. The Colombian government estimates the FARC insurgent group has from 6,000 to 7,000 armed members, and the National Liberation Army (ELN) has around 1,500. Both groups attack oil pipelines, mines, roads, and electricity towers to disrupt economic activity and pressure the government. Both groups also extort businesses in their area of operation, sometimes kidnapping personnel and destroying the property of operations that refuse to pay.

Violence, including political violence, has diminished significantly in recent years. Colombian government figures show that the number of terrorist acts decreased by 42 percent from

2014 to 2015. Homicides nationally continued a downward trend, with 12,673 in 2015, compared with 13,343 in 2014. The number of kidnappings in 2015 was 210, a 27 percent decrease from 288 in 2014, and a 93 percent decrease since 1999 when there were 3,204. The extractive sector has been especially hard hit by insurgent attacks. According to the Ministry of Defense, there were 80 attacks on oil pipelines in 2015, a 43 percent decrease compared to 2014. These attacks sometimes temporarily forced oil companies to stop production while pipelines were repaired or to transport oil by more expensive alternate methods.

The Colombian government and FARC have been in peace negotiations in Havana, Cuba since November 2012. They have agreed in principle on four of the five negotiating topics – agriculture and rural development, political participation, drugs, and victims (including transitional justice) – and discussion on the last agenda item, end of conflict, is ongoing.

12. Corruption

Corruption is a significant challenge in Colombia. According to the WEF Global Competitiveness Index (2015-2016), corruption continues to be one of Colombia's biggest problems for doing business; it ranked 126 out of 144 countries. According to the NGO Transparency International, Colombian citizens' perception on corruption in the country has neither improved nor worsened in 2015. Colombia ties for 83 worldwide with countries such as Liberia, China, and Sri Lanka. Despite President Santos' numerous efforts, such as the 2011 Anti-Corruption Statute, the "Colombia buys efficiently" initiative, and the anti-corruption observatory created in 2014, concrete results have been limited. High profile corruption cases continue to surface frequently. In February 2015, the president of the Constitutional Court was involved in a high profile corruption case and accused of soliciting a USD 200,000 bribe in exchange for overturning a multi-million dollar fine, resulting in his resignation.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Colombia has adopted the OECD Convention on Combating Bribery of Foreign Public Officials and is a member of the OECD Anti-Bribery Committee. It has signed and ratified the UN Anticorruption Convention. Additionally, it has adopted the OAS Convention against Corruption. The CTPA protects the integrity of procurement practices and criminalizes both offering and soliciting bribes to/from public officials. It requires both countries to make all laws, regulations, and procedures regarding any matter under the CTPA publicly available. Both countries must also establish procedures for reviews and appeals by any entities affected by actions, rulings, measures, or procedures under the CTPA.

Resources to Report Corruption

Useful resources and contact information for those concerned about combating corruption in Colombia include the following:

- The Transparency and Anti-Corruption Observatory is an interactive tool of the Colombian government aimed at promoting transparency and combating corruption available at <http://www.anticorruption.gov.co/>.
- The Presidential Secretariat of Transparency advises and assists the president to formulate and design public policy about transparency and anti-corruption. This office also coordinates the implementation of anti-corruption policies. <http://wsp.presidencia.gov.co/secretaria-transparencia/Paginas/default.aspx/>.

Gerson David Motta Chavarro
Administrative staff of the National Secretary of Transparency
Presidential Secretariat of Transparency
Carrera 8 No.7-26 Bogota, Colombia
(57 1) 562-9300 or (57 1) 5870555
gersonmotta@presidencia.gov.co

13. Bilateral Investment Agreements

Colombia has eleven free trade agreements or agreements of economic cooperation that include investment chapters with: the U.S., European Union, Canada, Chile, Mexico, Cuba, Andean Community of Nations (Bolivia, Ecuador, and Peru), European Free Trade Area (Iceland, Liechtenstein, Norway and Switzerland), Mercosur (Brazil, Argentina, Paraguay, Uruguay, and Venezuela), the Northern Triangle (El Salvador, Honduras, and Guatemala), and the Pacific Alliance (Chile, Mexico, and Peru). Colombia recently signed trade agreements with South Korea, Israel, Panama, and Costa Rica and the treaties are pending final ratification. Colombia is also conducting FTA negotiations with Japan and Turkey. Another five agreements are being explored with Australia, China, the Dominican Republic, India, and Singapore. Additionally, Colombia has stand-alone bilateral investment treaties in force with China, India, Peru, Spain, Switzerland, the United Kingdom, and Japan.

Bilateral Taxation Treaties

Colombia has double taxation treaties with Spain, Chile, Switzerland, Canada, India, Portugal, Mexico, South Korea, France and Czech Republic. Talks have concluded successfully with Belgium. Colombia is currently negotiating double taxation agreements with Germany, the Netherlands, Japan, Panama, and the United States.

14. Foreign Trade Zones/Free Ports/Trade Facilitation

To attract foreign investment and promote the importation of capital goods, the Colombian government uses a number of drawback and duty deferral programs. One example is free trade zones (FTZ), which the government has used to attract more investment and create more jobs. In 2005, congress passed comprehensive FTZ modernization legislation that opened investment to international companies, allowed one-company/standalone FTZs, and permitted the designation of pre-existing plants as FTZs. This law was updated in 2007 to outline the requirements to be declared a FTZ. Colombia is a leader in FTZs in Latin America. As of March 2016 there were 40 FTZs (between permanent, single company and special types). There are around ten additional FTZ projects currently being explored specifically focused on ports and the oil sector, with investments of around USD 500 million. While DIAN oversees requests to establish FTZs, the Colombian government is not involved in their operation.

In 2002, Colombia accepted the WTO Committee on Subsidies and Countervailing Measures' decision to phase out all export subsidies in FTZs by 2006. However, FTZs maintain their special customs and foreign exchange regimes, per Law 1004 passed in 2005, which also grants a preferential 15 percent corporate income tax and exemption from customs duties and value-added taxes on imported materials. In January 2013, a tax reform took effect that grandfathered benefits for existing FTZs while requiring FTZs created after 2012 to pay an additional income tax of nine percent until 2015 and eight percent beginning in 2016. In return for these and other incentives, every permanent FTZ must meet specific investment

and direct job creation commitments, depending on their total assets, during the first three years of the project. Special FTZ zones are required to invest and generate more or less direct jobs depending on the economic sector.

15. Foreign Direct Investment and Foreign Portfolio Investment Statistics

Table 2: Key Macroeconomic Data, U.S. FDI in Host Country/Economy

	Host Country Statistical source*		USG or international statistical source		USG or International Source of Data: BEA; IMF; Eurostat; UNCTAD, Other
	Year	Amount	Year	Amount	
Economic Data					
Host Country Gross Domestic Product (GDP) (\$M USD)	2014	\$3,786	2014	\$3,777	www.worldbank.org/en/country
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (\$M USD, stock positions)	2014	\$2,267	2014	\$7,085	http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Host country's FDI in the United States (\$M USD, stock positions)	2014	\$280	2014	\$961	http://bea.gov/international/direct_investment_multinational_companies_comprehensive_data.htm
Total inbound stock of FDI as % host GDP	2014	7.4%	2014	25.4%	N/A

*Data from the Central Bank: banrep.gov.co.

Table 3: Sources and Destination of FDI

Direct Investment from/in Counterpart Economy Data*					
From Top Five Sources/To Top Five Destinations (US Dollars, Millions)					
Inward Direct Investment			Outward Direct Investment		
Total Inward	16,325	100%	Total Outward	3,899	100%
Switzerland	2,817	17%	Spain	1,093	28%
Panama	2,446	15%	Bermuda	522	13%
United States	2,267	14%	Panama	517	13%
Spain	2,219	14%	United Kingdom	365	9%
United Kingdom	1,091	7%	Netherlands	317	8%

"0" reflects amounts rounded to +/- USD 500,000.

*Data from the Central Bank: banrep.gov.co. Country data not available in the IMF's Coordinated Direct Investment Survey.

Table 4: Sources of Portfolio Investment

Portfolio Investment Assets								
Top Five Partners (Millions, US Dollars)								
Total			Equity Securities			Total Debt Securities		
All Countries	30,183	100%	All Countries	17,981	100%	All Countries	12,202	100%
United States	21,042	70%	United States	14,190	79%	United States	6,852	56%
Luxembourg	2,930	10%	Luxembourg	2,640	15%	Germany	732	6%
Germany	732	2%	Panama	281	2%	International Organizations	626	5%
International Organizations	627	2%	Cayman Islands	263	1%	France	462	4%
United Kingdom	503	2%	United Kingdom	147	1%	United Kingdom	356	3%

Section 5 - Government

Chiefs of State and Cabinet Members:

For the current list of Chiefs of State and Cabinet Members, please access the following - [Central Intelligence Agency online directory of Chiefs of State and Cabinet Members of Foreign Governments](#)

Legal system:

civil law system influenced by the Spanish and French civil codes

International organization participation:

BCIE, BIS, CAN, Caricom (observer), CD, CDB, CELAC, FAO, G-3, G-24, G-77, IADB, IAEA, IBRD, ICAO, ICC (national committees), ICRM, IDA, IFAD, IFC, IFRC, IHO, ILO, IMF, IMO, IMSO, Interpol, IOC, IOM, IPU, ISO, ITSO, ITU, ITUC (NGOs), LAES, LAIA, Mercosur (associate), MIGA, NAM, OAS, OPANAL, OPCW, PCA, UN, UNASUR, UNCTAD, UNESCO, UNHCR, UNIDO, Union Latina, UNSC (temporary), UNWTO, UPU, WCO, WFTU (NGOs), WHO, WIPO, WMO, WTO

Section 6 - Tax















Exchange control

Certain foreign currency transactions must be channelled through intermediaries authorised for the purposes including:

- import of property
- export of property
- external indebtedness
- foreign investment in Colombia
- Colombian investment in foreign countries
- financial investments and fixed assets based in foreign countries
- endorsements and guarantees
- derivative transactions.

Treaty and non-treaty withholding tax rates

Colombia has signed **14 agreements** (12 DTC and 2 TIEA agreements) providing for the exchange of information.

Jurisdiction	Type of EOI Arrangement	Date Signed	Date entered into Force	Meets standard	Contains paras 4 and 5	
Bolivia	DTC	4 May 2004	1 Jan 2005	Unreviewed	No	
Canada	DTC	21 Nov 2008	12 Jun 2012	Unreviewed	Yes	
Chile	DTC	19 Apr 2007	22 Dec 2009	Unreviewed	No	
Curaçao	TIEA	4 Feb 2013	not yet in force	Unreviewed	Yes	
Czech Republic	DTC	22 Mar 2012	not yet in force	Unreviewed	Yes	
Ecuador	DTC	4 May 2004	1 Jan 2005	Unreviewed	No	
India	DTC	13 May 2011	not yet in force	Unreviewed	Yes	
Korea, Republic of	DTC	27 Jul 2010	not yet in force	Unreviewed	Yes	
Mexico	DTC	13 Aug 2009	11 Jul 2013	Unreviewed	Yes	
Peru	DTC	4 May 2004	1 Jan 2005	Unreviewed	No	
Portugal	DTC	30 Aug 2010	not yet in force	Unreviewed	Yes	
Spain	DTC	31 Mar 2005	23 Oct 2008	Unreviewed	Yes	
Switzerland	DTC	26 Oct 2007	11 Sep 2011	No	No	
United States	TIEA	30 Mar 2001	not yet in force	Unreviewed	No	

Methodology and Sources

Section 1 - General Background Report and Map

(Source: [CIA World Factbook](#))

Section 2 - Anti – Money Laundering / Terrorist Financing

	Lower Risk	Medium Risk	Higher Risk
FATF List of Countries identified with strategic AML deficiencies	Not Listed	AML Deficient but Committed	High Risk
Compliance with FATF 40 + 9 recommendations	>69% Compliant or Fully Compliant	35 – 69% Compliant or Fully Compliant	<35% Compliant or Fully Compliant
US Dept of State Money Laundering assessment (INCSR)	Monitored	Concern	Primary Concern
INCSR - Weakness in Government Legislation	<2	2-4	5-20
US Sec of State supporter of / Safe Haven for International Terrorism	No	Safe Haven for Terrorism	State Supporter of Terrorism
EU White list equivalent jurisdictions	Yes		No
International Sanctions UN Sanctions / US Sanctions / EU Sanctions	None	Arab League / Other	UN , EU or US
Corruption Index (Transparency International) Control of corruption (WGI) Global Advice Network	>69%	35 – 69%	<35%
World government Indicators (Average)	>69%	35 – 69%	<35%
Failed States Index (Average)	>69%	35 – 69%	<35%
Offshore Finance Centre	No		Yes

Section 3 - Economy

General Information on the current economic climate in the country and information on imports, exports, main industries and trading partners.

(Source: [CIA World Factbook](#))

Section 4 - Foreign Investment

Information on the openness of foreign investment into the country and the foreign investment markets.

(Source: [US State Department](#))

Section 5 - Government

Names of Government Ministers and general information on political matters.

(Source: [CIA World Factbook](#) / <https://www.cia.gov/library/publications/world-leaders-1/index.html>)

Section 6 - Tax

Information on Tax Information Exchange Agreements entered into, Double Tax Agreements and Exchange Controls.

(Sources: [OECD Global Forum on Transparency and Exchange of Information for Tax Purposes](#) [PKF International](#))

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