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COUNTRY

Doing Business in
Colombia

Preface

This guide has been prepared by Baker Tilly Colombia Ltda., an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing businesses in Colombia.

Baker Tilly International is the world's 8th largest accountancy and business advisory network by combined fee income, and is represented by 138 firms in 104 countries and over 24,000 personnel worldwide. Its members are high quality, independent accountancy and business advisory firms, all of whom are committed to providing the best possible service to their clients, both in their own marketplace and across the world.

This guide is one of a series of country profiles compiled for use by Baker Tilly International member firms' clients and professional staff. Copies may be obtained from Baker Tilly Colombia Ltda. or any of our independent member firms.

Doing Business in Colombia has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and readers should not act upon it without seeking professional advice. Facts and figures presented are correct at the time of writing.

Up-to-date advice and general assistance on Colombian matters can be obtained from Baker Tilly Colombia Ltda.; contact details can be found at the end of this guide.


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1 Fact Sheet

Geography

Location	Colombia is located in the north-west corner of South America. It is the fourth largest country in South America
Area	1,138,910 km ² . Colombian territory encompasses a number of Caribbean islands, including San Andrés and Providencia, as well as the islands of Gorgona, Gorgonilla and Malpelo in the Pacific
Land boundaries	Venezuela and Brazil to the east; Ecuador and Peru to the south; Panama to the west
Coastline	3,208 km. Colombia is the only South American country with coasts on the Atlantic and the Pacific Oceans
Climate	Tropical along the coast and eastern plains; cooler in the highlands. In general terms, there are two defined seasons. The rainy season lasts from April to November, and the relatively dry season spans December to March. Nevertheless, there are clear weather differences specific to the country's individual regions
Terrain	Flat coastal lowlands, central highlands, high Andes Mountains, eastern lowland plains
Time zone	GMT -5

People


Population	45 million. It is estimated that this will increase to 56 million by 2025. Almost 70% of the population lives in the big cities; the balance resides in rural areas
Religion	Approximately 90% of the population is Catholic
Language	Spanish is the official language. Other native languages are spoken such as Chibcha, Guajiro and close to 90 other native dialects. In some communities German and English are spoken. English is recognised as the universal language in academic and business environments

Government

Country name	Republic of Colombia
Government type	Republic; executive branch dominates government structure
Capital	Bogota DC
Administrative divisions	32 departments and one capital district
Political situation	Democratic

Economy

GDP – per capita	US\$6,700 (2007 est.)
GDP – real growth rate	7% (2007 est.)
Labour force	20.5 million
Unemployment	11.2% (2007 est.)
Currency	Peso (COP\$)



2 Business Entities and Accounting

2.1 Sole Proprietorship

Sole proprietorship describes a person (natural or legal) carrying out one or more activities of a commercial nature. The administration of a sole proprietorship is the responsibility of the individual but can be delegated to a third party. A sole proprietor cannot contract in their own name with the sole proprietorship.

2.2 Sole Proprietor Company

A sole proprietor company is formed by one person but it can take on almost any form, although the designation can apply only to small and medium-sized companies.

2.3 Foreign Company Branch

Every foreign company directly carrying out permanent activities in Colombia must establish a branch in Colombia.

In order to establish a branch the foreign company must register documents proving its existence and legal representation, as well as the resolution or minutes recording the decision to establish a branch.

2.4 Corporation

- A corporation must have at least five shareholders.
- Shareholders are accountable for the liabilities of the corporation up to the amount of their shares.
- The management and administration of the corporation are the responsibility of the legal representative, the board of directors and the shareholders' general assembly.
- A shareholder is not allowed to own 95% or more of the equity.
- Private limited companies, partnerships limited by shares and corporations must create a legal reserve of at least 50% of the subscribed equity. An annual transfer of 10% of net profit to the reserve is required.

2.5 Private Limited Company

- A minimum of two and a maximum of 25 shareholders.
- Members are responsible on a pro-rata basis for taxes and labour liabilities. The extent of a member's liability is proportional to their contributions. In the event that a member's contribution was made during the period under review, their liability is time apportioned.

2.6 Limited Partnership

- A limited partnership must have at least one managing partner and at most 25 limited liability partners.
- The managing partner is jointly and unlimitedly liable for the debts of the partnership. The limited liability partners are responsible up to the amount of their contributions.
- The management of the company is the responsibility of the managing partners who may manage directly or via third parties.

2.7 Consortium and Temporary Union

Consortia and temporary unions are associations of two or more natural or legal persons whose common interest in an activity permits a pooling of resources without requiring the incorporation of a new legal entity.

The administration of a consortium or a temporary union is performed in accordance with the members' agreement. The liability of the members of a consortium or a temporary union is unlimited. In the case of temporary unions, the degree of participation of members may be taken into account if penalties are imposed.

2.8 Joint Venture

Joint ventures are co-operation arrangements involving two or more entities to develop a project or to achieve a common goal for which each of the parties contributes resources (economic, technical etc), without the requirement to create a separate legal entity. Joint ventures do not have legal capacity to enter into contracts with third parties.

There are no specific regulations governing these agreements, Accordingly, they are subject to the general regulations applicable to commercial agreements. Joint ventures are also known as articles of partnership with shared risk.

2.9 Other Vehicles

Foreign investment can be made via individuals acting for the investor.

- **Agency** – agency agreements are covered by specific regulations which should be borne in mind.
- **Distribution** – distribution arrangements are not governed by specific regulations; agency rules do not apply.
- **Franchise** – this is an agreement that provides more freedom to the parties. Approval is only required if the transfer of intellectual property is envisaged.

2.10 Audit and Accounting Requirements

The Accountants' Central Board is responsible for the registration and control of public accounting in Colombia.

The Colombian Code of Commerce declares that all businesses are obliged to keep books of account capable of verifying at any time the financial situation of the company. The books must be registered with the relevant chamber of commerce.

Accounts must be prepared in Spanish and denominated in Colombian Pesos.

The Code of Commerce requires accounting records and documents to be retained for ten years.

General purpose financial statements must include:

- Balance sheet
- Profit and loss statement
- Statement of changes in equity
- Statement of changes in the financial situation
- Cash flow
- Notes to financial statements.

Fiscal comptrollership is mandatory for corporations with share capital and foreign company branches. The fiscal comptroller is required to check the company's financial situation, the system of internal control and compliance with legal and regulatory provisions.

Engagements are required to comply with generally accepted audit regulations which are set by the government.

Characteristics of the fiscal comptrollership:

- Business relationship – the fiscal comptroller is involved throughout the business cycle
- Access – the fiscal comptroller is allowed access to all areas of the company's books and records
- Independence – the fiscal comptroller undertakes the responsibilities assigned by law free of any conflict that might affect professional judgment
- Deterrence – supervision by the fiscal comptroller deters fraud.

3 Finance and Investment

3.1 Foreign Investment

Colombia provides a solid and stable business environment for foreign investors and an open and efficient legal system in which to undertake their operations. This is why Colombia is the South American operations centre for many multinational companies.

Foreign investors include all natural persons not residing in Colombia, as well as companies investing capital from abroad. Member countries from the Andean Community of Nations (CAN) are considered to be national investors.

The following principles have been established in respect of foreign investments:

- **Equality** – foreign investments have equal status to that afforded to national investments
- **Universality** – foreign investment is welcomed in all sectors of the economy, except:
 - Activities of national defence and security
 - Processing and discarding of toxic waste or radioactive material not produced in the country
 - Commercial TV service companies where foreign investment is limited to 40% of the total capital of the company
- **Automatic authorisation** – foreign investment does not require prior authorisation, except in the financial sector. A special regime applies to foreign investment in hydrocarbons, mining and when portfolio investments are made
- **Stability** – it is possible to enter into legal stability contracts with the government. This allows for the maintenance of the legal provisions existing at the time of the investment during the term of the investment

3.1.1 Types of investment

Direct

For example:

- Purchase of shares etc
- Purchase of real estate
- Investment in branches incorporated in Colombia by foreign companies.

Portfolio investments

These are made via investment funds dealing in shares, bonds and other instruments traded in the public securities market. Funds can be institutional or individual.

3.1.2 Investment registration

Prior approval is not required but all foreign investments must be registered at Banco de la República by the investor (or representative) before profits can be remitted. Failure to register may result in fines and other sanctions.

3.1.3 Import incentives

A range of incentives is available to importers.

3.1.4 International agreements for the protection of foreign investment

Colombia has entered into a number of tariff agreements.

3.2 Banking and Sources of Finance

Banco de la República is responsible for the country's monetary, exchange and credit policies. It also supervises registration of foreign investments, regulates interest rates, establishes the minimum reserves for credit entities, handles the international reserves and acts as a lender to institutions in the financial sector.

Banco de la República was granted independence in 1991. Its main objective in recent years has been the control of inflation, which peaked at 25% but fell to 4.48% in 2006.

Sources of finance include:

- Financial corporations who provide venture capital and finance for merger and acquisition activities
- Commercial financing corporations, mainly involved in commercial leasing
- Trust companies. Assets are placed into trust where they are controlled in accordance with an agreement previously established by the parties to the arrangement
- Pensions and severance funds. These entities are responsible for handling the mandatory contributions for pensions and severance payments on behalf of employees. Funds are invested pursuant to provisions of the Banco de la República
- Deposit warehouses, which are charged with the custody, maintenance, distribution, purchase and sale of goods, on behalf of their owners
- Capitalisation companies who provide access to savings alternatives for their clients via various monetary instruments
- Insurance companies. The insurance industry is subject to strict regulation.

4 Employment Regulation and Social Security

4.1 Entry Visa and Work Permit Requirements

Tourists are permitted freedom of movement for 90 days. Visas are required for those seeking to enter Colombia for business or employment reasons. The following visas are available:

- Work
- Business
- Special temporary
- Investor resident
- Temporary worker
- Visitor
- Visiting technician.

4.2 Employment Contract

The right to employment is a fundamental aspect of the Colombian Constitution and, therefore, guaranteed by the state.

Employment contracts can be verbal or written. An employment contract may be classified as follows:

- Defined term contract
- Undefined term contract
- Contract for the duration of a defined work
- Transitory contract.

4.3 Salary

Salary is usually determined on a fortnightly or a monthly basis, not on an hourly rate. The national government sets a monthly minimum salary (COP\$461,500 in 2008).

4.4 Working Week

The maximum working week is 48 hours from Monday to Saturday. After 10.00pm a 35% premium is paid.

4.5 Social Security

The social security system provides for old age pension, health and occupational benefits. Contributions are required by the employer and employee.

4.6 Employee Benefits

Colombian employees have the following statutory rights:

- Vacation – 15 working days per year
- Severance payment – one month's salary per year or part year worked
- Bonuses – two bonuses per year of 15 days' salary each, payable in June and in December.

4.7 Payroll Contributions

Payroll contributions are payable by businesses at the rate of 9% of monthly payroll costs to fund specific welfare initiatives.

4.8 Foreign Workers

Foreign workers enjoy the same rights as Colombian nationals. Employers with more than ten employees are allowed to hire foreign workers up to maximum of 10% of their general personnel, or 20% of their specialist personnel.

Foreign nationals hired to work in Colombia require a work visa.

5 Taxation

Taxes in Colombia can be classified as: national taxes – administered by the Internal Revenue and National Customs Office (DIAN); state taxes; and municipal taxes, or district taxes in the case of Bogota DC.

National taxes:

- Income tax
- Wealth tax
- Value added tax (IVA)
- National stamp duty
- Financial movement taxes (GMF).

State taxes:

- Tax on sales and consumption of alcoholic beverages
- Registry and notary tax
- Beer, cigarette and tobacco taxes
- Butcher's tax – on the butchering of cattle.

Municipal or district taxes:

- Industry and commerce tax
- Real estate tax
- Vehicle tax
- Gaming and show taxes.

The principal taxes encountered in the business environment are described below.

5.1 Income Tax

Income tax includes taxes based on income, occasional profit and overseas transfers of income and occasional profit. It is also payable on the commercial profit of branches of foreign companies. In order to calculate income tax it is necessary to determine whether the income has a local or a foreign source.

- Local source income – income derived from the exploitation of goods (tangible and intangible) in Colombia and from the supply of services in its territory. It also includes income arising on the sale of assets located in the country at the time of sale.
- Foreign source income – other sources of income.

5.1.1 Taxable income

To determine the tax rate, it is necessary to calculate the ordinary system and the presumptive income.

- Ordinary system – income tax is charged on income of the tax payer subject to applicable exemptions, reductions, discounts, refunds, costs and deductions.
- Presumptive income – a minimum taxable income is calculated based on the assets of the tax payer on the last day immediately preceding the fiscal year-end. This income is called presumptive income and is charged to tax in the event that it exceeds the liability determined via the ordinary system.

5.2 Supplementary Tax on Occasional Profit

Occasional profit is that arising outside the ordinary performance of the tax payer's business. It includes profit resulting from the sale of fixed assets, partnership liquidations, inheritance and legacy, lotteries and prizes.

Tax is chargeable on these profits at a rate between 0% and 34%, and is determined independently from income tax.

5.3 Wealth Tax

This tax applies annually on legal and natural persons who are chargeable to income tax and have, as of 1 January 2007, assets of greater than or equal to COP\$3bn. The rate is 1.2% for fiscal years 2008, 2009 and 2010.

5.4 Value Added Tax (IVA)

IVA is a national tax imposed on sales of taxable goods and services and imports. Certain items are excluded by law. The rate of IVA varies according to the type of goods or services, but in general is 16%.

5.4.1 Taxable activities

IVA applies to the following operations:

- Sale of goods not expressly excluded
- Supply of services in Colombian territory
- Import of goods not expressly excluded
- Circulation, sale or operation of games of chance, excluding the lottery.

The tax does not apply to sales of fixed assets unless they fall within certain exceptions, for example motor vehicles and for “air dynamic motors” (aerodinos) are subject to IVA.

5.4.2 Taxable basis

For sales of goods and services, the taxable amount is the total value including but not limited to finance costs, accessories, haulage, facilities, insurances, commissions, guarantees and the other complementary expenses, regardless of whether they are invoiced or agreed upon separately.

5.4.3 Accrual (tax point)

The accrual defines the time the tax liability arises as follows:

- With respect to sales – invoice date; if there is no invoice, the time of accrual is the time of delivery of the goods or service
- With respect to the removal of tangible property – the date of removal of the tangible property
- With respect to services – invoice date or the date of completion of the service
- With respect to imports – at the time they clear customs
- With respect to games of chance – at the time of the bet or at the issuance of the document giving the right to participate in the game.

5.4.4 Who is liable?

Persons liable to account for IVA are those carrying on any taxable activity. The ultimate consumer is, however, the tax payer. The following persons are liable:

- Sales of goods – business persons whether distributors or manufacturer
- Suppliers of a service not excluded by law
- Importers.

5.4.5 Rates

There are two different types of rates:

- General rate – 16% and applies to most operations
- Differential rates – among them, 1.6%, 5%, 10%, 20%, 25% and 35% for some luxury goods, for example certain types of vehicles, aerodinos and pleasure and sport boats.

5.5 Stamp Tax

Stamp tax is a tax on documents evidencing the existence, constitution, modification or extinction of liabilities, as well as their extension or conveyance. It applies where the value of the liabilities exceeds an annually pre-established amount.

Stamp tax applies to public instruments and private documents, including those securities granted or accepted in Colombia, or granted outside Colombia but executed or generating liabilities in Colombia.

The applicable rate for 2008 is 1% on the total value of the document or contract, falling to 0.5% in 2009 and 0% in 2010. In the case of contracts in foreign currency, the taxable amount is determined in accordance with the official exchange rate in force at the time the tax liability arises.

5.6 Financial Movement Taxes (GMF)

This tax is applied on financial transactions where resources deposited in cheque or savings accounts are withdrawn, on deposit accounts at Banco de la República and on cashier cheques. It arises at the time the resources are transferred.

The rate is 0.4% of the total value of the financial transfer. Various transactions are specifically exempted from GMF.

5.7 Industry and Commerce and Commercial Signs Tax (ICA)

ICA is a municipal tax levied on income derived by persons and companies in the development of industrial, commercial and service activities.

The tax payer is liable to tax in the place where the product is made, based on the income received. No tax is due on sale if the vendor is able to demonstrate that tax was paid where the product was made.

5.7.1 Taxable basis

The taxable amount is the value obtained by the tax payer after subtracting applicable deductions and exemptions.

Tax is due to the municipality in which the factory or plant is located.

5.7.2 Rate

Municipalities are permitted to establish their own rate within the range of 2 to 30 per thousand per month. The maximum rate in Bogota DC is 13.8 per thousand.

5.7.3 Supplementary tax on commercial signs

This is a further tax charged at 15% (for Bogota DC) on the value of the ICA.

5.8 Unified Real Estate Tax

The unified real estate tax applies to properties or real estate located in urban, suburban and rural areas, with or without buildings. This is a municipal tax based on the land registry value. It is administered and collected by the municipality in which the property is located.

The rate chargeable is between 2 and 33 per thousand of the rateable value of the property.

5.9 Vehicle Tax

Vehicle tax is charged annually on the first day of January. For new vehicles it is charged on the date of registration.

Rates vary between 1.5% and 3.5% based on the registered value. Certain vehicles are exempt.

5.10 Tax Fines

Tax authorities are mainly concerned with tax compliance. Fines are generally low in respect of voluntary disclosure and modifications to existing declarations.

Interest is due in respect of late paid tax and fines may be charged for late filing and amendments. The fine may be tax or income based and maxima and minima are set. There is an offence referred to as passive tax evasion – this is where income and associated allowable expenses are not booked by the tax payer and the fine is referable to the tax that would have been due had the beneficiary declared the relevant income.

5.11 Tax Regime for Foreign Investors

There is preferential status for various activities giving rise to advantageous investment opportunities in the following sectors:

- Machinery imports
- Hotels
- New medical products and software
- Urban renewal
- Oil exploitation
- Construction of aqueducts and sewerage systems
- Housing
- Ecological tourism
- Renewable energy
- River transport
- Timber exploitation
- Rural areas
- Education
- Power infrastructure
- Vehicle fuel.

Foreign capital investment funds do not pay income tax on their profits. Accordingly, when income is received by the funds in the form of dividends that would be taxable in the hands of residents, tax is charged at a rate of 34%.

Withholding tax of 34% must be accounted for under the same conditions applied to a permanent resident.

5.11.1 Foreign investment in Colombian corporations and branches of foreign companies

All Colombian corporations are subject to income tax at 34% regardless of the existence of foreign investment.

For branches of foreign companies, only Colombian sources of income are subject to income tax at the same rate as national corporations.

Non-domiciled foreign companies and non-resident foreign individuals are subject to 7% withholding tax on dividends.

Where the corporation paying a dividend has not been charged to income tax the dividend is taxed at 34%. The additional 7% for foreigners results in a total amount withheld of 38.55%.

If the dividends are reinvested in the country, tax payment is deferred for the term of the reinvestment. For terms exceeding five years the 7% tax is waived.

Amounts paid for management expenses, royalties and exploitation, or the purchase of intangible assets are deductible from income so long as withholding tax is applied to the payments.

Similarly expenses incurred abroad in relation to Colombian income sources are deductible, provided that tax is withheld on payment to a beneficiary taxable in Colombia.

The deduction is usually limited to 15% of the tax payer's income.

5.11.2 Foreign individuals

Non-resident investors are subject to income or occasional profit tax on national sources. Tax is withheld by the entity making the payment. The rate is 34%. If the non-resident files a tax return a surcharge of 10% shall be applied. For dividends paid by a corporation the tax charge will be 7%.

Those present in Colombia for six months per tax year are classified as resident and are subject to income tax and occasional profit tax on income from national sources. After qualifying as resident for five years they are taxed on worldwide income.

Appendix 1

Taxation

This list summarises the principal taxes applicable to a foreign company operating in Colombia.

Tax	Rate	Withholding
Basic income tax. All companies are liable	34% of the net income (33% – 2008)	Between 1% and 10%
Income tax on dividends paid to shareholders not domiciled in Colombia	7%	At source
Income tax on dividends paid to shareholders not domiciled in Colombia. This tax applies only when the dividend is paid out of untaxed profits	35%	At source
Income tax on payments for consulting services, technical services and technical assistance provided by non-residents in Colombia	10%	By the party paying for the services at source
IVA on sales, services and imports	General rate is 16%. There are also differential rates for specific types of products	–
Customs	Rates from 5% to 35%, depending on the classification of the product in the Amazons tariffs. The average rate is 20%	–
Trade and industry tax (ICA)	Tariff varies from 0.2% to 1% of the gross profits derived from economic activities	–
Stamp tax	A tax on documents that create, modify or terminate a legal obligation. For obligations exceeding COP\$125,844,000 the rate is 1.5% of the total amount of the document	At source
Real estate tax	This is a municipal tax; the rate, therefore, is determined by each municipality, to a maximum of 3.3%. It is calculated on the rateable value of the property	–
Para-taxable payments	Approximately 19% of payroll value	–

Appendix 2

Labour Contracts

Labour Contracts (According to :)

Duration

Fixed term

- Duration is known at the outset.
- Requires a termination document.
- If terminated before the initial period, compensation is paid.
- If the termination document is not received in time, the contract is considered an indefinite term contract.

Non-defined term

- Lasts while the conditions that originated it last.
- Can be terminated with a document giving notice.

Content

Occasional

- Lasts for the duration of the contracted task.
- Does not have a pre-determined duration.
- Does not require a previous termination document.
- The parties may agree a trial term.

Transitory

- For those tasks different from the ones usually assigned by the employer.
- Lasts no more than one month.
- Will never become an indefinite term contract, regardless of subsequent extensions.
- Additional consideration is not mandatory.

Form

Written

- Document signed by both parties.
- Mandatory for contracts with foreign workers, with nationals working abroad and in fixed term and indefinite term contracts.
- Salary and trial term is always agreed in writing.

Verbal agreement

- A simple mutual consent regarding the elements of the labour relationship, which are: agreement on the task to be performed, subordination situation and consideration for the work.

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Notes



Notes



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