

Annual corporate compliance



Bogotá D.C., March 16, 2021

Dear:
Clients and friends of KPMG Advisory, Tax & Legal S.A.S.

Subject: 2021 annual corporate compliance for legal entities with presence in Colombia

Find herein a summary of the corporate, commercial, customs and foreign exchange obligations for 2021.

1. Corporate and commercial obligations

1.1. Renewal of the mercantile registry

- Legal entities (companies and branches) must renew each year their mercantile registry before the chamber of commerce of their place of domicile. The deadline for renewing the mercantile registry for 2021 is no later than March 31.
- Failing to comply with this obligation may entail economic sanctions by the Superintendence of Industry and Commerce.

1.3. Appointment of the statutory auditor

- Companies that meet any of the following conditions must appoint a statutory auditor:
 - Gross assets, up to December 31, 2020, equal or superior to 5000 Colombian monthly minimum wages.
 - Gross income, up to December 31, 2020, equal or superior to 3000 Colombian monthly minimum wages.
- Failing to comply with this obligation may entail economic sanctions by the Superintendence.

1.4. Web page's registration

- Web pages and internet sites of Colombian origin whose economic activity is commercial, financial or of rendering of services, shall be registered before the chamber of commerce and shall also provide to the Colombian tax authority (DIAN, per its acronym in Spanish) information of the transactions performed by means of these web pages (subject to what said entity requires).
- Failing to comply with this obligation may entail economic sanctions by the Superintendence and the DIAN.

1.6. Submitting financial information before the Superintendence

- Pursuant to article 289 of the Commercial Code, all enterprises subject to surveillance and control of the Superintendence must submit their financial statements, up to December 31, 2020. Also, companies and branches subject to the inspection of the Superintendence must submit their financial statements if requested. Deadlines for submitting the reports are determined in the following table according to the last two digits of the NIT (excluding the verification number):

Last two digits of the tax ID number (NIT)	2019 deadline	Last two digits of the tax ID number (NIT)	2019 deadline
01-05	Monday, April 12	51-55	Monday, April 26
06-10	Tuesday, April 13	56-6041	Tuesday, April 27
11-15	Wednesday, April 14	61-65	Wednesday, April 28
16-20	Thursday, April 15	66-7031	Thursday, April 29
21-25	Friday, April 16	71-75	Friday, April 30
26-30	Monday, April 19	76-80	Monday, May 3
31-35	Tuesday, April 20	81-85	Tuesday, May 4
36-40	Wednesday, April 21	86-90	Wednesday, May 5
41-45	Thursday, April 22	91-95	Thursday, May 6
46-50	Friday, April 23	96-00	Monday, May 7

- The supervised legal entities that are in a judicial settlement or award settlement process will have time to submit their respective reports until March 31, 2021.
- The supervised legal entities that are in a process of voluntary liquidation or that do not meet the hypothesis of "going concern" will have the deadline to submit their respective reports until May 30, 2021.
- Parent or controlling entities required to report consolidated and combined financial information shall submit their respective reports until May 31, 2021.
- Failing to comply with this reporting obligation may entail economic sanctions by the Superintendence.

1.9. Submitting consolidated financial statements

- In case of corporate control or subordination, the parent company shall prepare and submit, in addition to its individual financial statements, general purpose consolidated financial statements that represent the financial situation, operative results, changes in equity, as well as the cash flow of the parent company and its subsidiaries, as if they were one entity.
- Failing to comply with this obligation may lead to economic sanctions by the Superintendence and the DIAN.

1.11. Data Protection matters

- Private companies and private branches with assets greater 100.000 Tax Value Units (UVT, as per its acronym in Spanish) and all of the public companies shall register their databases, within (2) following months from its creation, in the National Registration Database (RNBD, as per its acronym in Spanish) managed by the Superintendence of Industry and Commerce, as required by External Letter 3 of 2018 (and any other regulations that replace or amend it).
- Deadlines for actualization of databases are as follows:
 - Annually, until March 31, 2021.
 - Within the first 10 working days of each month, when substantial changes of the information registered occur.
- Failing to comply with this obligation may entail economic sanctions by the Superintendence of Industry and Commerce.
- All the private companies and foreign branches, even if exempt from the registration obligation within the RNBD, must have a data protection policy and fulfill all the legal guidelines on the matter.

2. Customs and foreign exchange obligations

2.1. Holders of the clearing account

a. Exogenous quarterly exchange information

According to the Resolution No. 9147 of 2006, during the months of January, April, July, and October the holders of clearing accounts must transmit to the DIAN the exogenous exchange information of the immediately preceding quarter.

The deadlines to fill out the information, will depend on the last digit (without taking into account the verification digit) of the NIT (Tax Identification Number) of the holders of the clearing accounts, as follows:

Last digit of the ID	Maximum presentation date in January, April, July and October
1	The tenth (10th) business day
2	The eleventh (11th) business day
3	The twelfth (12th) business day
4	The thirteenth (13th) business day
5	The fourteenth (14th) business day
6	The fifteenth (15th) business day
7	The sixteenth (16th) business day
8	The seventeenth (17th) business day
9	The eighteenth (18th) business day
0	The nineteenth (19th) business day

Quarterly period is understood as the period between January 1st and March 31st, between April 1st and June 30th, between July 1st and September 30th, and, between October 1st and December 31st, respectively. Therefore, the calendar applicable for 2021 is the following:

Last digits of the tax ID number (NIT) without verification number	first quarter (January to March)	Second quarter (April to June)	Third quarter (July to September)	Third quarter (July to September)
1	April 16, 2021	July 15, 2021	October 14, 2021	January 17, 2022
2	April 19, 2021	July 16, 2021	October 15, 2021	January 18, 2022
3	April 20, 2021	July 19, 2021	October 19, 2021	January 19, 2022
4	April 21, 2021	July 21, 2021	October 20, 2021	January 20, 2022
5	April 22, 2021	July 22, 2021	October 21, 2021	January 21, 2022
6	April 23, 2021	July 23, 2021	October 22, 2021	January 24, 2022
7	April 26, 2021	April 26, 2021	October 25, 2021	January 25, 2022
8	April 27, 2021	April 27, 2021	October 26, 2021	January 26, 2022
9	April 28, 2021	April 28, 2021	October 27, 2021	January 27, 2022
0	April 29, 2021	April 29, 2021	October 28, 2021	January 28, 2022

Within the information to transmit it is required to include the details of the import, export, external indebtedness operations, services, transfers and other matters, internal operations, data clarifications, among others. In any case, for the purposes of the operations to be transmitted, the FX code determined by Resolution number 69 of 2019 must be used.

The Resolution number 69 of 2019 is in force since January 1st, 2020 and applied from the first quarter of 2020 for the FX exogenous information that must be submitted before the DIAN.

Note: The foreign exchange market intermediaries and the concessionaires of financial post services that render financial services, are also forced to comply with the obligation of presenting and transmitting the exogenous exchange information for the operations that must be approved by the Central Bank.

b. Form No. 10 "Description of operations regarding the compensation account"

The Central Bank has established a mechanism for residents in Colombia in order that they comply with their obligations of transfer and reimburse of foreign currency for the payment of their foreign exchange operations.

Within the monthly obligations of the compensation account holders, all the amount received and/or transferred must be informed filing Form No.10 "Description of operations regarding the compensation account" before the Central Bank, on a monthly basis within the calendar month following the operations to be reported, which means, until the last business day of the following month.

Additionally, please note that depending on the exchange obligation and the exchange numeral under which the operation is to be declared, the forms that are generally related to External indebtedness or foreign investment must be transmitted prior to the transmission of Form No. 10.

2.3. External indebtedness

The operations of external indebtedness carried out by residents of Colombia, whether passive (in case of being receivers) or active (in the case of being lenders) must be reported to the Central Bank prior or concomitant to the disbursement of resources submit an external indebtedness form through a foreign exchange market intermediary.

Taking into account that the registration of the debt must be processed before a foreign exchange market intermediary, it is pertinent to evaluate with it, in advance, the requirements required for the procedure. From our experience, we could indicate that the supporting documents required include: debt contract between the parties (officially translated in those cases in which the original document is agreed and signed in a language other than Spanish) which indicates the agreed characteristics, including:

- Loaned amount.
- Interest rate agree by the parties.
- Debt repayment plan.
- Creditor or debtor data (company name, country of origin, type of lender or creditor).
- Purpose of the loan

Once the registration of the foreign indebtedness is done, the amount to be channelized should be informed before the same foreign exchange market intermediary or through the Company's clearing account through the presentation of a declaration of exchange for external indebtedness.

1.2. Hosting the general shareholders or partners assembly of 2021

- Legal entities must meet at least once every year in order to approve financial statements in the date set forth in the bylaws. If this matter is not regulated in the bylaws, the meeting must take place in the first three months of the year. However, due to the COVID-19 pandemic and the limitations for holding the regular meetings for the year 2019 in the year 2020, the outstanding general shareholders or partners assembly corresponding to the fiscal year 2019 may be held no later than March 31, 2021.
- Outstanding general shareholders or partners assembly corresponding to the fiscal year 2019 may be held simultaneously with that for 2021.
- Within the month after approval of the financial statements, they must be filed before the chamber of commerce of their place of domicile.
- Failing to comply with this obligation would prevent the approval of the financial statements and may entail economic sanctions by the Superintendence of Companies (hereinafter, the "Superintendence").

1.5. Submitting information before the Superintendence

- Companies, branches and one-man enterprises subject to the surveillance or control of the Superintendence or the ones subject to inspection that receive the order of the Superintendence, must inform said entity, within the next five (5) days following the registration of the resolution with the mercantile registry, of any changes regarding: (i) corporate name, (ii) corporate purpose, (iii) economic activity, (iv) transformation of the company, (v) domicile (including domicile and notification address), (vi) closing of the financial statements, (vii) term of duration of the company, (viii) any bylaws amendments that may have an impact upon the general legal entities' information available at the Superintendence, (ix) appointments and removals of legal representatives (including alternates), board members and auditors, and (x) whenever the company declares or acknowledges its dissolution.
- Failing to comply with this obligation may entail economic sanctions by the Superintendence.

1.7. Submitting the business practices' report to the Superintendence

- Report "42 – Prácticas Empresariales" to the Superintendence must be submitted by companies, branches and sole shareholder enterprises subject to the surveillance or control of the Superintendence. Deadlines are the following:

Last two digits of the tax ID number (NIT)	2019 deadline	Last two digits of the tax ID number (NIT)	2019 deadline
00-10	Tuesday, May 18	51-60	Tuesday, May 25
11-20	Wednesday, May 19	61-70	Wednesday, May 26
21-30	Thursday, May 20	71-80	Thursday, May 27
31-40	Friday, May 21	81-90	Friday, May 28
41-50	Monday, May 24	91-00	Monday, May 31

- Failing to comply with this reporting obligation may entail economic sanctions by the Superintendence.

1.8. Corporate control situation and corporate conglomerate's registration in the mercantile registry

- As stated by law, corporate control situation or a corporate conglomerate shall be notified and registered with the mercantile registry, within the following thirty (30) days counted from the beginning of the corporate control situation or the corporate conglomerate.
- Additionally, any modification to the corporate control situation or the corporate conglomerate shall also be registered with the mercantile registry.
- Failing to comply with this obligation may entail economic sanctions by the Superintendence.

1.10. Special report

- In case of a corporate conglomerate, directors (legal representatives) of the controlled companies and parent company, must present a special report to the shareholders' general meeting or to the meeting of partners (as the case may be), in which the closeness and frequency of the existing economic relations between the parent company or its subsidiaries or affiliates with the respective controlled company are described.
- The Superintendence may, at any time, verify the accuracy of the content of the special report and, if needed, adopt necessary measures.
- Failing to comply with this obligation may entail economic sanctions by the Superintendence.

1.12. Other matters

- Depending on its activities and financial thresholds, legal entities in Colombia may be subject to other requirements by the authorities.

2.2. International investment

a. Channeling of the foreign exchange

The recipients of foreign investment in Colombia must channel the amounts received for this matter through the foreign exchange market (foreign exchange market intermediary or clearing account), with the filing of a declaration of data exchange for foreign investment with the exchange number that applies. The registration will be automatically performed with the channeling of the currencies.

Bear in mind that the branches of foreign subsidiaries may use the same declaration to register the Supplementary Investment of Assigned Capital.

b. Different contributions to foreign currency

International investments made through mechanisms other than foreign currency, for instance, in-kind contributions, capitalization of external credit or sums that the foreign investors have the right to received, as well as business reorganization processes (whether mergers or divisions) must be reported to the Central Bank.

c. Replacement, cancellation and change of capital

The substitution procedures (changes in the holders of the investment or of the receiving company), cancellation or change of foreign investment capital must be registered with the Central Bank through the exchange forms that have been established for that purpose.

d. Advance payments for future capitalizations

Advances payments for future capitalization are considered as external indebtedness and must be registered before the Central Bank prior to the disbursement of resources. In the event that the advance is capitalized, and the shares or quotas of such capitalization are issued, the investment registration must be made. On the contrary, if it is not fully or partially capitalized, this must be reported through the presentation of a form by external indebtedness, which corresponds with the amortization of the debt and reporting the exchange rate that applies to the return of the money (amortization to the capital or payment of interests).

e. Conciliation of patrimonial accounts

Previously, the companies and branches of the general regime that on December 31st of each annuity were recipients of capital investment from abroad, were obliged to transmit Form 15 "Equity conciliation – companies and branches of the general regime" to the Central Bank. The Central Bank eliminated this obligation on September 24, 2018. Thus, for the fiscal year of 2019 it will not be mandatory to file in 2020 the Form No. 15.

Regarding branches of the special regime with the obligation to transmit Form No. 13 "Registration of supplementary investment to the assigned capital and updating of equity accounts – branches of the special regime" the period to inform the updating of the equity accounts and the procedure for electronic transmission is six (6) months counted as of the closing date of December 31st, that is, June 30th of the year following the closing of the fiscal year.

Liability clause

This is a guideline document which does not imply (or intends to be) a legal advice. It is the legal entity's sole responsibility to determine the extent of the described obligations and to ensure their compliance. We are relying upon the relevant provision of the Colombian law, the regulations thereunder, and the judicial and administrative interpretations thereof, which are subject to changes or modifications by subsequent legislative, regulatory, administrative, or judicial decisions. Any such changes could also influence the validity of this document and in case of such legislation changes or any of the considered assumptions, a new analysis of the corporate obligations will be needed.

