



# Annual corporate compliance



TAX & LEGAL

**Bogotá D.C.**  
**February 13, 2024**



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

**Subject: 2024 annual corporate compliance for legal entities with presence in Colombia**

Find herein a summary of the corporate, commercial, customs and foreign exchange obligations for 2024.

## **1. 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 renewal process may be carried out virtually.
- Failing to comply with this obligation may entail economic sanctions by the Superintendence of Industry and Commerce.
- In order to renew the mercantile registry, legal entities (companies and branches) must have the final financial statements for the period.
- The deadline for the renewal of mercantile registry is 31 March of 2024.

### **1.2. Hosting the general shareholders or partners assembly of 2023**

- Legal entities shall hold, no later than March 31, 2024, an ordinary meeting of the general shareholders' meeting or partners' meeting, to:
  - (i) **Review and approve the financial statements for the period 2023:** pursuant to article 46 of law 222 of 1995, the financial statements must: **(a)** be submitted to the highest corporate body; **(b)** be audited by the statutory auditor (when applicable); and **(c)** be certified by the legal entity's accountant and legal representative, together with the corresponding notes, opinions and other reports prepared by the statutory auditor or accountant.

Within the month following the approval of the financial statements, the same must be deposited before the chamber of commerce of their place of domicile.<sup>1</sup> Failure to comply with the above will result in the impossibility of approving financial statements and possible sanctions by the Superintendence of Companies (hereinafter, the "**Superintendence**").

(ii) **Review and approve the directors' management report:** pursuant to article 47 of law 222 of 1995 (amended by article 1 of law 603 of 2000), the directors' management report for the period 2023 must contain at least: **(a)** a detailed statement about the evolution of the business and the economic, administrative and legal situation of the legal entity; **(b)** the important events that occurred after the fiscal year; **(c)** the foreseeable evolution of the legal entity; **(d)** a summary of the operations entered into with partners and directors; **(e)** the status of compliance with intellectual property and copyright regulations; and, **(f)** the status of implementation of SAGRILAF's policies, if applicable.

(iii) **Review the statutory auditor's report:** if the legal entity has a statutory auditor, this shall submit a report on the matters within his competence.

(iv) **Designate and/or ratify Directors**

(v) **Distribute profits in case there is a need to do so**

**Note 1:** Directors and legal representatives shall be attentive to the compliance with the hypothesis of "going concern" ("*Hipótesis de Negocio en Marcha*"). In case the local legal entity does not comply with the "going concern" hypothesis, the respective procedure must be observed in order to proceed or avoid (as the case may be) its liquidation.

**Note 2:** For those companies that have adopted the status of Benefit Corporations ("*Sociedad de Beneficio de Interés Colectivo*" - BIC) within the general shareholders or partners general assembly, the BIC management report must be presented and approved.

### 1.3. Appointment of the statutory auditor

- Companies that meet any of the following conditions must appoint a statutory auditor:
  - a) Gross assets, up to December 31st, 2023, equal or superior to COP \$5.800.000.000, meaning 5000 minimum Colombian wages.
  - b) Gross income, up to December 31st, 2023, equal or superior to COP\$ 3.480.000.000, meaning 3000 minimum Colombian 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.

### 1.5. 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)**

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<sup>1</sup> Legal entities (companies or branches) subject to surveillance or control by the Superintendence are required to file their general-purpose financial statements before this entity, for which reason they are exempted from filing their financial statements with the chamber of commerce of their place of domicile.

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.

## 1.6. 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 31st, 2023. 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.)	Deadline for submitting information	Last two digits of the tax ID number (NIT.)	Deadline for submitting information
01-05	Tuesday, April 16	51-55	Tuesday, April 30
06-10	Wednesday, April 17	56-60	Thursday, May 02
11-15	Thursday, April 18	61-65	Friday, May 03
16-20	Friday, April 19	66-70	Monday, May 06
21-25	Monday, April 22	71-75	Tuesday, May 07
26-30	Tuesday, April 23	76-80	Wednesday, May 08
31-35	Wednesday, April 24	81-85	Thursday, May 09
36-40	Thursday, April 25	86-90	Friday, May 10
41-45	Friday, April 26	91-95	Tuesday, May 14
46-50	Monday, April 29	96-00	Wednesday, May 15

- The dates described above will also apply to entities that: **(i)** are in the process of negotiating or executing a restructuring agreement under the terms of law 550 of 1999, whose promoter is nominated by the Superintendence or by any chamber of commerce in the country; and **(ii)** are admitted to a reorganization process or procedure in accordance with law 1116 of 2006 or Legislative Decrees 560 and 772 of 2020, whether they are in process or in execution, must report General Purpose Financial Statements, corresponding to the period from January 1 to December 31, certified and audited, if applicable, with the scope provided in articles 37 and 38 of law 222 of 1995.

- The financial statements must be submitted together with the following additional documents:

**(i)** Document whereby the legal representative and the accountant certify that the financial statements submitted to the Superintendence comply with the provisions of article 37 of law 222 of 1995. This document must be additionally signed by the statutory auditor, if any, in compliance with article 38 of law 222 of 1995.

**(ii)** Directors' management report.

**(iii)** Opinion of the statutory auditor.

**(iv)** Explanatory notes to the financial statements, which must contain, among others, the disclosures of the statements of: **(a)** financial position; **(b)** comprehensive income for the year; **(c)** components of the other comprehensive income (ORI); **(d)** changes in equity; and **(e)** cash flow, as an integral part thereof.

**(v)** Copy of the extract of the minutes of the meeting in which the financial statements for the period 2023 and the management report were approved or disapproved.<sup>2</sup>

- 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 31, 2024, in accordance with External Circular 100-000009 de 2023.
- Failing to comply with this reporting obligation may entail economic sanctions by the Superintendence.

<sup>2</sup> This obligation does not apply to branches.

## 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.)	Deadline for submitting information	Last two digits of the tax ID number (NIT.)	Deadline for submitting information
00-10	First business day of the month of July	51-60	Sixth business day of the month of July
11-20	Second business day of the month of July	61-70	Seventh business day of the month of July
21-30	Third business day of the month of July	71-80	Eighth business day of the month of July
31-40	Fourth business day of the month of July	81-90	Ninth business day of the month of July
41-50	Fifth business day of the month of July	91-00	Tenth business day of the month of July

- The responsibility for the filling out, content and accuracy of the report "42 – Prácticas Empresariales" lies with the directors of the regulated entities.
- Failing to comply with this reporting obligation may entail economic sanctions by the Superintendence.

## 1.8. Submission of the report on SAGRILAF and PTEE

- Report "75 – Prevención SAGRILAF y PTEE" to the Superintendence shall be submitted by companies, branches, and sole shareholder enterprises subject to the surveillance or control of the Superintendence.
- The schedule for submitting the report "75 – Prevención LA/FT/PADM" is as follow:

Last two digits of the tax ID number (NIT.)	Deadline for submitting information	Last two digits of the tax ID number (NIT.)	Deadline for submitting information
00-10	Eleventh business day of the month of July	51-60	Sixteenth business day of the month of July
11-20	Twelfth business day of the month of July	61-70	Seventeenth business day of the month of July
21-30	Thirteenth business day of the month of July	71-80	Eighteenth business day of the month of July
31-40	Fourteenth business day of the month of July	81-90	Nineteenth business day of the month of July
41-50	Fifteenth business day of the month of July	91-00	Twentieth business day of the month of July

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

## 1.9. 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. 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.
- Consolidated financial statements or combined financial statements must be submitted with the following additional documents:
  - Document by which the legal representative and the accountant certify that the consolidated financial statements or combined financial statements submitted to the Superintendence comply with the provisions of article 37 of law 222 of 1995.
  - Notes to the consolidated financial statements or combined financial statements.
  - Special report under the terms established in article 29 of law 222 of 1995.
  - Opinion of the statutory auditor with respect to the person consolidating the consolidated financial statements<sup>4,5</sup>

- Deadline for the consolidated financial statements or combined financial statements is May 31, 2024.
- Failing to comply with this obligation may lead to economic sanctions by the Superintendence and the DIAN.

<sup>4</sup> Article 38 of law 222 of 1995.

<sup>5</sup> This document does not apply to the combined financial statements.

## 1.11. 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. 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.
- Deadlines for actualization of databases are as follows:
  - a. Annually, between February 2<sup>nd</sup> and March 31<sup>st</sup>.
  - b. 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.

## 1.13. Other matters

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

## 1.14. Surveillance by the Superintendence

- The commercial companies that comply with the following assumptions will be subject to the surveillance of the Superintendence during the year 2023:

Assumptions	Value in COP / USD
When total assets as of December 31, 2023, have exceeded 30,000 minimum Colombian wages	COP \$39.000.000.000 / USD \$9.920.105 aprox.
When the total income as of December 31, 2023, has exceeded 30,000 minimum Colombian wages	
Other monitoring and surveillance assumptions not tied to the value of assets or income	Chapter I Articles 2.2.2.1.1.2 hasta 2.2.2.1.2.5 of Decree 1074 of 2015

- If any of the aforementioned assumptions are met, the Superintendence must be notified before March 31, 2024.



## 2. Customs and foreign exchange obligations

### 2.1. Compensation Account Holders

#### a. Quarterly exogenous exchange rate information

In accordance with Resolution No. 00161 of 2021, during the months of January, April, July and October, compensation account holders must transmit to the DIAN the exogenous exchange information of the immediately preceding quarter.

The deadlines for transmitting this information are established based on the last digit (**without considering the verification digit**) of the NIT of the person required to know:

Last digit of the NIT	First quarter: January-February-March	Second quarter: April-May-June	Third quarter: July-August-September	Fourth quarter 2024: October- November-December
	<b>April 2024</b>	<b>July 2024</b>	<b>October 2024</b>	<b>January 2025</b>
1 and 2	The tenth (10th) and eleventh (11th) business day			
3 and 4	The twelfth (12) and thirteenth (13) business day			
5 and 6	The fourteenth (14) and fifteenth (15) business day			
7 and 8	The sixteenth (16) and seventeenth (17) business day			
9 and 0	The eighteenth (18) and nineteenth (19) business day			

**Note 1:** Please keep in mind that the Central Bank, in use of the power indicated in the paragraph of article 88 of External Resolution 1 of 2018 of the Board of Directors of the Central Bank, adopted new terms through general regulations. conditions and procedures applicable to the exchange declaration and external credit reports.

By virtue of the above, through Bulletin 36 dated September 12, 2023, the Board of Directors of Central Bank completely replaced the External Regulatory Circular DCIP-83 of the Department of International Exchange Payments (DCIP) to adjust the procedures and the regulatory provisions for the functionalities of the Exchange Information System.

Based on the modifications provided on the matter by the Central Bank and to comply with the obligation to present to the DIAN the information of the exchange statements and external credit reports, it is necessary to modify the content and technical characteristics of the .XML format files described in Resolutions 00069 of 2019; 000161 of 2021 and 000494 of 2022 from the DIAN. For this purpose, a new regulatory regulation will subsequently be issued that contains the new structure of each Technical Annex, in accordance with the modifications established by the Central Bank.

Therefore, while the modifications are made to the systems for receiving exogenous exchange information of the DIAN so that they are in harmony with the Exchange Information System adopted by the Board of Directors of the Banco de la República through External Regulatory Circular DCIP 83 published in Bulletin 36 of September 12, 2023 of the Board of Directors of the Central Bank and its subsequent modifications, it is necessary to establish additional temporary deadlines in article 4 of Resolution 000161 of 2021 of the DIAN, applicable to the presentation of exogenous exchange information corresponding to the fourth quarter of 2023 and the first two quarters of 2024, by the intermediaries of the exchange market (in Spanish "*Intermediario del Mercado Cambiario*" - IMC), compensation account holders and postal service concessionaires providing postal financial services.

It is for the above reason that the following transitional paragraphs are added to article 4 of the Resolution 000161 of 2021, like this:

*" TRANSITIONAL PARAGRAPH 1. The exogenous exchange information of the Intermediaries of the Exchange Market (IMC) corresponding to the period between 1 and 27 October 2023, it must be*

submitted to the DIAN during the period between 1 and on February 29, 2024, in accordance with the .XML formats and files described by the Resolutions 000161 of 2021 and 000494 of 2022.

The .XML files that the IMC present during the month of February 2024 must indicate in its header, as the reported period, the period between October 1, 2023, as of December 31, 2023, but its content will only include the information of exchange operations and debt reports intermediated between 1 and 27 October 2023, inclusive.

The exogenous exchange information of the IMC corresponding to the period included between October 30 and December 31, 2023, as well as that of the first quarters (January to March) and second (April to June) of the year 2024, it must be presented to the DIAN, during the period between July 1 and July 31, 2024, based on the application and the formats of the .XML files that the DIAN provides for this purpose, in which will incorporate the adjustments provided for in the External Regulatory Circular DCIP 83 published in Bulletin 36 of September 12, 2023 of the Board of Directors of the Central Bank and its subsequent modifications."

"TRANSITIONAL PARAGRAPH 2. The exogenous exchange information of the holders of compensation accounts and postal service concessionaires that provide postal financial services corresponding to the fourth quarter (October to December) from 2023; and that of the first (January to March) and second (April to June) quarters of the year 2024, must be presented to the DIAN, during the period between 1 and 31 July 2024, based on the application and the formats of the .XML files that the DIAN available for this purpose, in which the adjustments provided for in the Circular will be incorporated. External Regulatory DCIP 83 published in Bulletin 36 of September 12, 2023, of the Board of Directors of the Central Bank and its subsequent modifications.

Compensation account holders who have transmitted the exogenous information exchange rate in the month of January 2024, corresponding to the exchange operations of the month of October 2023, they must present it in the month of July 2024, as indicated in this resolution."



"Transitional Paragraph 3. The deadlines contained in article 4 of this Resolution will not apply with respect to the information and periods referred to in the paragraphs transitional 1 and 2 of the same articles, which contain special presentation rules of the information."

**Note 2:** Please keep in mind that the 2023 exchange calendar, which stipulates the maximum dates for the presentation of exogenous exchange information, has not yet been issued by the DIAN.

The quarterly period is understood to be the period between the first (1st) of January and the thirty-first (31st) of March; between the first (1st) of April and the thirtieth (30th) of June; between the first (1st) of July and the thirtieth (30th) of September, and, between the first (1st) of October and the thirty-first (31st) of December, respectively.

The information to be transmitted must include the details of import and export operations, external debt, services, transfers and other concepts, data clarifications, legalization of already nationalized imports and information on changes in compensation account data. In any case, for the purposes of the operations to be transmitted, the exchange numerals determined by Resolution No. 161 of 2021 must be used.



**Nota 3:** Foreign Exchange Market Intermediaries (IMC) and mail service concessionaires that provide financial mail services, with respect to operations authorized by the Bank of the Republic, are also required to present and transmit exogenous exchange information.

### **b. Compensation Account Movement Report.**

The Central Bank, in use of the power indicated in the paragraph of article 88 of External Resolution 1 of 2018 of the Board of Directors of the Central Bank, adopted through general regulations new terms, conditions and procedures applicable to the exchange declaration. External credit reports have already established a compensation mechanism for the benefit of residents in Colombia so that they can comply with their obligations to transfer and refund foreign currency to pay for their exchange operations.

Through Bulletin 36 dated September 12, 2023, the Board of Directors of Central Bank completely replaced the External Regulatory Circular DCIP-83 of the International Payment Exchange Department (DCIP) to adjust the procedures and regulatory provisions to the functionalities of the Exchange Information System.

Therefore, through Bulletin 37 dated September 25, 2023, the Board of Directors of the Central Bank modified the validity of the External Regulatory Circular DCIP 83 published in Bulletin 36 of September 12, 2023 of the Board of Directors of the Central Bank, which will govern from November 1, 2023 and the eighth paragraph is included in numeral 9 of Annex 3, so that as of November 1, 2023, the modules for exchange declarations, external credits and compensation accounts of the Exchange Information System were put into operation.

Among the monthly obligations of the holders, it is found that all values received and drawn must be reported by transmitting to the Central Bank the Report on movements of the compensation account, monthly within the calendar month following that of the operations to be reported, that is, until the last business day of the following month.



## 2.2. Foreign investment

### a. Currency channeling

Recipients of foreign investment in Colombia must channel the amounts received for this concept, through the exchange market (IMC or compensation accounts) with the presentation of a declaration of exchange of minimum data for foreign investment with the applicable exchange numeral. The registration will be understood to be automatic with the channeling of currencies.

It is important to keep in mind that branches of foreign companies may also register the additional investment of the assigned capital through the same declaration.

### b. Non-currency contributions

International investments that are made through mechanisms other than foreign currency, such as contributions in kind, capitalization of external credit or sums with the right to draw, as well as business reorganization processes (whether mergers or splits) must be reported to the Central Bank through the new Exchange Information System for which they must have a user (natural person) linked to the actor, the latter understood as the legal entity obliged to make the report.

### c. Substitution, cancellation and repositing of capital

Substitution procedures (changes in the owners of the investment or the receiving company), cancellation or repositing of foreign investment capital must be registered with the Central Bank through the exchange forms that have been established for this purpose and through the new exchange system.

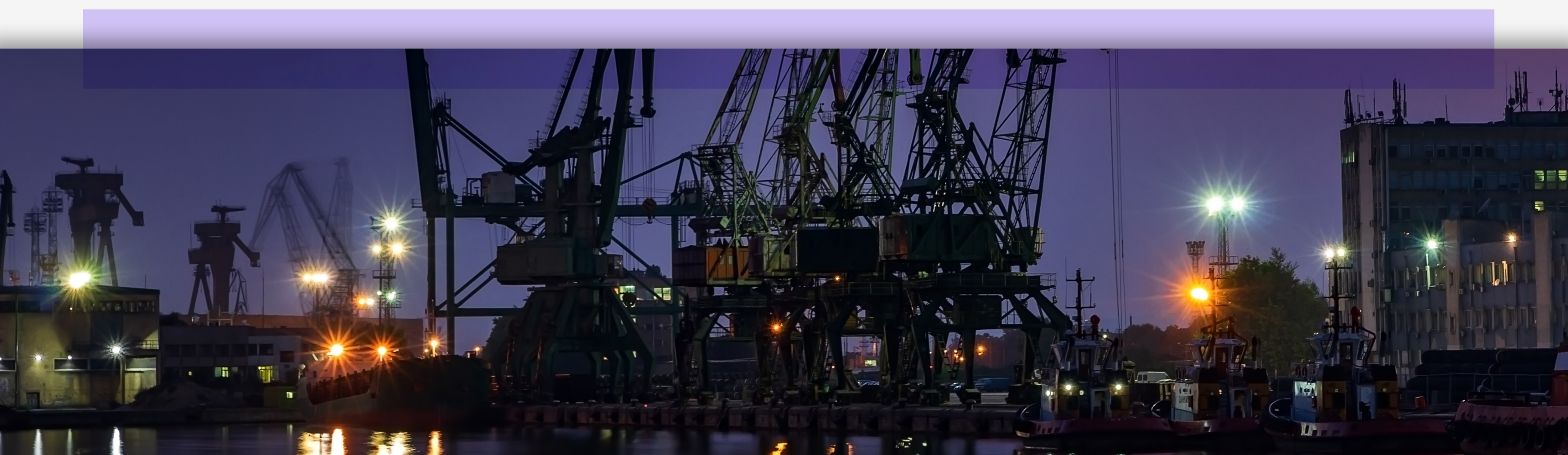
### d. Advances for future capitalizations

Advances for future capitalizations are considered external debt and must be registered with the Central Bank prior to the disbursement of the resources. If the advance is perfected and the shares or quotas supporting the capitalization are issued, the investment must be registered. On the contrary, if it is not fully or partially capitalized, such fact must be reported through the presentation of a form for external debt, which corresponds to the amortization of the debt, reporting the exchange rate number that most applies. at expenditure (amortization of capital or payment of interest).

### e. Reconciliation of asset accounts

The companies and branches of the general regime, which as of December 31 of each annuity were recipients of capital investment from abroad, were required to transmit to the Bank of the Republic, Form No. 15 " *Equity reconciliation - companies and branches of the general regime.*" The Central Bank eliminated this obligation on September 24, 2018. Thus, the presentation of Form No. 15 is not mandatory.

With regard to the branches of the special regime with the obligation to transmit Form No. 13 " *Registration of supplementary investment to the assigned capital and updating of asset accounts – branches of the special regime*" , the deadline to report the update of the asset accounts and The procedure for its electronic transmission is six (6) months from the accounting closing on December 31, that is, June 30 of the year following the closing of the financial year.



## 2.3. External debt

External debt operations carried out by residents in Colombia, whether passive (in case of being recipients) or active (in case of being lenders), must be reported to the Central Bank prior to or concomitant to the disbursement of the funds. resources with the presentation of an external debt form before an Exchange Market Intermediary.

Given that the debt registration must be processed before the IMC, it is pertinent to evaluate with it, in advance, the requirements required for the procedure. From our experience, we can indicate that the required supporting documents 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 includes:

- Amount borrowed.
- Interest rate agreed between the parties.
- Debt amortization plan.
- Information about the creditor or debtor (company name, country of origin, type of lender or creditor).
- Purpose of the loan.

Once the registration of the indebtedness is obtained before the Central Bank, by the IMC, the channeling of the resources can be registered either through the IMC itself or the compensation account with the transmission of the exchange declaration. minimum data for external debt for each currency movement associated with the registered external debt.

**Nota 1:** Please note that, with the External Regulatory Circular DCIP 83 published in Bulletin 36 of September 12, 2023, of the Board of Directors of the Central Bank, which has been in force since November 1, 2023, are eliminated:

- a. Form No. 6. Information on external debt granted to residents.
- b. Form No. 7. Information on external debt granted to non-residents.

In replacement of the above, autonomy is granted to the IMCs, so that, as guarantors of the debt registry, they request the corresponding information through their own forms. For this reason, each IMC must request the form they manage to these records.





## **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 have an effect on 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.*

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