

Annex I - Colombia

Sector: All Sectors

Subsector:

Industry Classification:

Type of Reservation: Local Presence (Article 905)

Measures: *Código de Comercio*, 1971 Art. 469, 471 and 474

Description: **Cross-Border Trade in Services**

A juridical person organized under the laws of another country, and with its principal domicile in another country, must establish as a branch in Colombia in order to develop a concession obtained from the Colombian State.

Sector: All Sectors

Subsector:

Industry Classification:

Type of Reservation: National Treatment (Article 902)
Performance Requirements (Article 807)

Measures: *Código Sustantivo del Trabajo*, 1993 Art. 74 and 75

Description: **Cross-Border Trade in Services and Investment**

Any employer that has more than 10 workers shall employ Colombians as part of its ordinary workforce in a proportion of no less than 90 per cent of its ordinary workers and of no less than 80 per cent of its skilled, specialized or managerial personnel or persons in a position of trust.

At the employer's request, these proportions may be reduced when it involves essential and strictly technical workers and only for the time necessary to train Colombian workers.

Sector: All Sectors

Subsector:

Industry Classification:

Type of Reservation: National Treatment (Article 803)

Measures: *Decreto 2080* of 2000, Art. 26 and 27

Description: **Investment**

Foreign investors may make portfolio investments in securities in Colombia only through a foreign capital investment fund (*fondo de inversión de capital extranjero*).

Sector: All Sectors

Subsector:

Industry Classification:

Type of Reservation: National Treatment (Article 803)
Senior Management and Boards of Directors (Article 808)

Measures: As set out in the **Description** element, including Articles 3, 11 of *Ley 226* of 1995.

Description: **Investment**

Colombia, when selling or disposing of its equity interests in, or the assets of, an existing state enterprise or an existing governmental entity, may prohibit or impose limitations on the ownership of such interests or assets, and on the ability of owners of such interests or assets to control any resulting enterprise, by investors of Canada or of a non-Party or their investments. With respect to such a sale or other disposition, Colombia may adopt or maintain any measure relating to the nationality of senior management or members of the board of directors.

Relevant existing legislation concerning this non-conforming measure includes *Ley 226 de 1995*. In this respect, if Colombia decides to sell all or part of its interest in an enterprise to a person other than a Colombian state enterprise or other Colombian government entity, it shall first offer such interest exclusively, and under the conditions established in article 11 of *Ley 226 de 1995*, to:

- (a) current, pensioned, and former employees (other than former employees terminated for just cause) of the enterprise and of other enterprises owned or controlled by the enterprise;

- (b) associations of employees and former employees of the enterprise;
- (c) employee unions;
- (d) federations and confederations of trade unions;
- (e) employee funds (“fondos de empleados”);
- (f) pension and severance funds; and
- (g) cooperative entities

However, once such interest has been transferred or sold, Colombia does not reserve the right to control any subsequent transfer or other disposal of such interest.

For purposes of this reservation:

- (a) any measure maintained or adopted after the date of entry into force of this Agreement that, at the time of sale or other disposition, prohibits or imposes limitations on the ownership of equity interests or assets or imposes nationality requirements described in this reservation shall be deemed to be an existing measure; and
- (b) "state enterprise" means an enterprise owned or controlled through ownership interests by Colombia and includes an enterprise established after the date of entry into force of this Agreement solely for the purposes of selling or disposing of equity interests in, or the assets of, an existing state enterprise or governmental entity.

Sector: All Sectors

Subsector:

Industry Classification:

Type of Reservation: Local Presence (Article 905)

Measures: *Ley 915* of 2004, Art. 5

Description: **Cross-Border Trade in Services**

Only natural or juridical persons with their main office in the free port of San Andrés, Providencia, and Santa Catalina may supply services in this region.

For greater certainty, this measure does not affect the cross-border supply of services as defined in Article 913.

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| Sector: | Business services |
| Subsector: | Professional Services |
| Industry Classification: | CPC 862: Accounting, auditing and bookkeeping services |
| Type of Reservation: | National Treatment (Article 902) Local Presence (Article 905) |
| Measures: | <i>Ley 43</i> of 1990, Art. 3 paragraph 1 <i>Resolución No. 160</i> of 2004, Art. 2 paragraph, and Art. 6 |
| Description: | Cross-Border Trade in Services |

Only persons registered with the *Junta Central de Contadores* may practice as accountants. A foreign national must have been domiciled continuously in Colombia for at least three years prior to the registration request and demonstrate accounting experience carried out in Colombian territory for a period of not less than one year. This experience may be acquired while engaging in public accounting studies or thereafter.

For natural persons, the term "domiciled" means being a resident of Colombia and having the intention of remaining in Colombia.

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| Sector: | Business services |
| Subsector: | Research and Development Services |
| Industry Classification: | CPC 851: Research and Development Services on Natural Sciences |
| Type of Reservation: | National Treatment (Article 902) |
| Measures: | <i>Decreto 309</i> of 2000, Art. 7 |
| Description: | Cross-Border Trade in Services |

Any natural or juridical foreign person planning to undertake scientific research on biological diversity in the territory of Colombia must involve one or more Colombian researchers in the research or analysis of the results of such research.

For greater certainty, this measure does not require or prohibit foreign persons and Colombian researchers from reaching an agreement with respect to the rights in relation to the scientific research or analysis.

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| Sector: | Business Services Fishing |
| Subsector: | Other Business Services Fishing, aquaculture and service activities incidental to fishing |
| Industry Classification: | CPC 882: Services incidental to fishing ISIC Rev.3.1: 0501 – Fishing |
| Type of Reservation: | National Treatment (Articles 803 and 902) Most Favored Nation Treatment (Article 903) Market Access (Article 904) |
| Measures: | <i>Decreto 2256</i> of 1991, Art. 27, 28 and 67 <i>Acuerdo 005</i> of 2003, Sección II and VII |

Description: Investment and Cross-Border Trade in Services

Only Colombian nationals may engage in artisanal fishing.

A foreign flagged vessel may obtain a permit and engage in commercial fishing and related activities in Colombian territorial waters only in association with a Colombian enterprise that owns a permit. In this case, the costs of the permit and fishing license are higher for foreign-flagged vessels than for Colombian-flagged vessels.

If the flag of a foreign-flagged vessel is that of a country that is a party to another bilateral agreement with Colombia, the terms of that other bilateral agreement shall determine whether or not the requirement to associate with a Colombian enterprise that owns a permit applies.

Sector: Services Directly Incidental to the Exploration and Exploitation of Minerals and Hydrocarbons

Subsector:

Industry Classification:

Type of Reservation: Local Presence (Article 905)

Measures: *Ley 685* of 2001, Art. 19 and 20
Decreto legislativo 1056 of 1953, Art. 10
Código de Comercio of 1971, Art. 471 and 474

Description: **Cross-Border Trade in Services**

To supply services directly related to the exploration and exploitation of minerals and hydrocarbons in Colombia, a juridical person organized under the laws of a foreign country must establish a branch, affiliate company, or subsidiary in Colombia.

These requirements do not apply to service suppliers engaged in those services for less than one year.

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| Sector: | Business Services |
| Subsector: | Other Business Services |
| Industry Classification: | CPC 873: Investigation and security |
| Type of Reservation: | National Treatment (Articles 803 and 902) Market Access (Article 904) Local Presence (Article 905) |
| Measures: | <i>Decreto 356</i> of 1994, Art. 8, 12, 23 and 25 |
| Description: | Investment and Cross-Border Trade in Services |

Only an enterprise organized under Colombian law as a limited liability company or a private security and surveillance services cooperative¹ may provide private security and surveillance services in Colombia. Partners or members of such enterprises must be Colombian nationals.

Enterprises established prior to February 11, 1994 with foreign members or foreign capital may not increase the participation of foreign members. Cooperatives organized before that date may retain their juridical form.

¹ Article 23 of *Decreto 356 de 1994* defines a “private security and surveillance services cooperative” as an employee-owned and employee-run non-profit associative enterprise created to provide private security and surveillance services, for remuneration.

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| Sector: | Business Services |
| Subsector: | Professional Services - Travel agents and Tourism |
| Industry Classification: | |
| Type of Reservation: | National Treatment (Article 902) Local Presence (Article 905) |
| Measures: | <i>Ley 32</i> of 1990, Art. 5 <i>Decreto 502</i> of 1997, Art. 1-7 |
| Description: | Cross-Border Trade in Services Foreign nationals must be domiciled in Colombia to provide travel and tourism agent services within the territory of Colombia. For greater certainty, this reservation does not apply to tour guide services, nor does it affect the cross-border supply of services as defined in Article 913. |

Sector: Notary and Registrar Public Services

Subsector:

Industry Classification:

Type of Reservation: National Treatment (Article 902)
Market Access (Article 904)

Measures: *Decreto ley 960* of 1970, Art. 123, 124, 126, 127 and 132
Decreto ley 1250 of 1970, Art. 60

Description: **Cross-Border Trade in Services**

Only Colombian nationals may be notaries and/or registrars.

The establishment of new notaries is subject to an economic needs test that takes into account the population of the area of interest, the necessity of the services, and access to means of communication facilities, among other factors.

Sector: Domiciliary Public Services

Subsector:

Industry

Classification:

Type of National Treatment (Article 803)

Reservation: Market Access (Article 904)

Local Presence (Article 905)

Measures: *Ley 142* of 1994, Artículos 1, 17, 18, 19 and 23

Código de comercio, Art. 471 and 472

Description: **Investment and Cross-Border Trade in Services**

A domiciliary public service enterprise, must be organized under the *Empresas de Servicios Públicos* (E.S.P.) regime, must be domiciled in Colombia and organized under Colombian law as a share company (*sociedad por acciones*). The requirement to be organized as a share company does not apply to a decentralized entity that takes the form of a commercial and industrial enterprise of the State.

For purposes of this entry, domiciliary public services include the provision of water, sewage, refuse disposal, electric power, combustible gas distribution, and basic public-switched telephone services (PSTN) and any activities supplemental thereto. Activities supplemental to basic public-switched telephone services means long-distance public telephone and fixed wireless local loop telephone services in rural areas, but does not include commercial mobile telephone services.

An enterprise in which a locally organized community holds a controlling interest shall be given a preference over enterprises with otherwise equivalent bids in the granting of a concession or license for the provision of domiciliary public services to that community.

Sector: Electrical Power

Subsector:

Industry Classification:

Type of Reservation: Market Access (Article 904)

Measures: *Ley 143* of 1994, Art. 74

Description: **Cross-Border Trade in Services**

Only enterprises organized under Colombian law, on or after 12 July 1994, to supply electrical power may engage in marketing of electrical power (*comercialización*) and any of the following activities: (i) generation, (ii) distribution, or (ii) transmission of electrical power; except that no enterprise may engage in more than one of these three activities at the same time.

Sector: Customs Services

Subsector:

Industry Classification:

Type of Reservation: Local Presence (Article 905)

Measures: *Decreto 2685* of 1999, Art. 74 and 76

Description: **Cross-Border Trade in Services**

In order to perform customs intermediation, intermediation for postal services (“*intermediación para servicios postales*”) and *mensajería especializada*² (including express delivery), deposit of merchandise, transportation of merchandise under the customs control, or international cargo services, or to act as Permanent Customs Users (“*Usuarios Aduaneros Permanentes*”) or Highly Exporting Users (“*Usuarios Altamente Exportadores*”), a person must be domiciled in Colombia or have a domiciled representative legally responsible for their activities in Colombia.

² “Servicio de mensajería especializada” means the class of postal services that is supplied independently of the official postal networks for national and international mail, and that requires the application and adoption of special procedures for the receipt, collection, and personal delivery of mail and other postal objects transported by land or air within or from the territory of Colombia.

Sector: Postal and *Mensajería Especializada* Services

Subsector:

Industry Classification:

Type of Reservation: Local Presence (Article 905)

Measures: *Decreto 229* of 1995, Art. 14 and Art. 17 numeral 2

Description: **Cross-Border Trade in Services**

Only juridical persons organized under Colombian law may supply postal services and “*mensajería especializada*” (as defined in I-COL-16) in Colombia.

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|---------------------------------|---|
| Sector: | Communication Services |
| Subsector: | Telecommunication Services |
| Industry Classification: | |
| Type of Reservation: | National Treatment (Article 902) Market Access (Article 904) Local Presence (Article 905) |
| Measures: | <i>Ley 671</i> of 2001 <i>Decreto 1616</i> of 2003, Art. 13 and 16 <i>Decreto 2542</i> of 1997, Art. 2 <i>Decreto 2926</i> of 2005, Art. 2 <i>Decreto 2870</i> de 2007, <i>Título II</i> (Art. 3-7) |
| Description: | Cross-Border Trade in Services Only enterprises organized under Colombian law may receive concessions for the supply of telecommunications services within Colombia. For greater certainty, Colombia may grant licenses to enterprises to provide long distance basic switched telecommunications services on less favorable terms, with respect only to payment and duration, than those provided to Colombia Telecomunicaciones S.A. E.S.P. under article 2 of <i>Decreto 2542 de 1997</i> , articles 13 and 16 of <i>Decreto 1616 de 2003</i> and <i>Decreto 2926 de 2005</i> . |

Sector: Waste-Related Services

Subsector:

Industry Classification:

Type of Reservation: National Treatment (Article 803)

Measures: *Decreto 2080* of 2000, Art. 6

Description: **Investment**

Foreign investment is not permitted in activities related to the processing, disposition, and disposal of toxic, hazardous or radioactive waste not produced in Colombia.

Sector: Transport Services

Subsector:

Industry Classification:

Type of Reservation: Local Presence (Article 905)

Measures: *Ley 336* of 1996, Art. 9 and 10
Decreto 149 of 1999, Art. 5

Description: **Cross-Border Trade in Services**

Suppliers of public transportation services within the territory of Colombia must be enterprises organized under Colombian law and domiciled in Colombia.

Only foreign enterprises with an agent or representative domiciled in Colombia and legally responsible for their activities in Colombia may supply multimodal transportation of cargo within and from the territory of Colombia.

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|---------------------------------|---|
| Sector: | Transport Services |
| Subsector: | Maritime Transportation Fluvial Transportation |
| Industry Classification: | CPC 72: Water transport services |
| Type of Reservation: | National Treatment (Article 902) Local Presence (Article 905) |
| Measures: | <i>Decreto 804</i> of 2001, Art. 2 and 4 <i>numeral 4</i> <i>Código de Comercio</i> of 1971, Art. 1455 <i>Decreto Ley 2324</i> of 1984, Art. 99, 101 and 124 <i>Ley 658</i> of 2001, Art. 11 <i>Decreto 1597</i> of 1998, Art. 23 |
| Description: | Cross-Border Trade in Services Only enterprises organized under Colombian law using Colombian flag vessels may supply maritime and fluvial transport services between two points within the territory of Colombia (cabotage). All foreign-flagged vessels entering a Colombian port must have a representative legally responsible for their activities in Colombia and domiciled in Colombia. The maritime and fluvial public service of pilotage on Colombian territorial waters may only be performed by Colombian nationals. In Colombian flag vessels and foreign-flagged vessels (except those relating to fishing) that operate in Colombian jurisdictional waters for a period of time longer than six months, continuous or discontinuous, from the date of the issuing of the respective permit, the captain, officials and at least 80 per cent of the rest of the crew must be Colombians. |

Sector: Port Services

Subsector:

Industry Classification:

Type of Reservation: National Treatment (Article 902)
Market Access (Article 904)
Local Presence (Article 905)

Measures: *Ley 1* of 1991, Art. 5.20 and Art. 6
Decreto 1423 of 1989, Art. 38

Description: **Cross-Border Trade in Services**

The holders of a concession to supply port services must be organized under Colombian law as a corporation (*sociedad anónima*) whose corporate objective is the construction, and maintenance of ports, and their administration.

Only Colombian flag vessels may supply port services in maritime areas under the jurisdiction of Colombia. However, in exceptional cases, the Dirección General Marítima may authorize supply of such services by foreign flag vessels if no Colombian flag vessels have the capacity to supply such service. The authorization will be issued for a period of six months, but may be extended to a maximum total period of one year.