

COLOMBIA LEGAL COUNTRY PROFILE

LEGAL SYSTEM OVERVIEW

The Colombian legal system is one of civil law. The Colombian hierarchy of laws is typical of civil law jurisdictions. The Constitution is the supreme national law and its provisions apply over any incompatibility between the Constitution and other legal regulations.¹ The statutes, the decrees of the government, the ordinances and the resolutions of the council are subsequent. Congress has the responsibility to enact laws, as well as interpret, amend, repeal laws or codes. Most legislation issued by Congress are ordinary laws and in some instances, such as war or economic emergency, the President may be temporarily empowered to issue decrees equal in the force of law to ordinary laws. Outside of these instances Presidential decrees and resolutions must conform to existing laws.²

The independence of the judiciary is confirmed by Article 228 of the Colombian Constitution.³ The judicial branch consists of the Constitutional Court, the Supreme Court, the Council of State, Superior Council of Justice Administration and the Attorney General's Officer, as well as the lower courts. The Supreme Court of Justice is the highest court for civil, commercial, criminal and labour disputes and is also responsible for the recognition of foreign arbitral awards.⁴ President Santos' government is restoring the autonomy of the judiciary, which had been severely impeded by the previous administration, and trust is being restored in the judicial system. Despite this, the independence of the judiciary in the department's lower courts remains an issue. A lack of qualified personnel and a judiciary absence in some territories continue to hinder the efficiency of the judiciary.⁵ Businesses see the ability of the judiciary to settle disputes as poor.

Corruption also continues to blight parts of the judiciary. Payments and bribes are often demanded in order to obtain favourable court decisions whilst gifts and facilitation payments are widespread in government. In one significant corruption case the president of the Constitutional Court, Jorge Pretelt, was forced to resign after demanding a US\$200,000 bribe from an oil company in return for revoking a fine.⁶ Nevertheless, Colombia has comprehensive anti-corruption legislation which is generally implemented effectively. The Penal Code and Anti-Corruption Act criminalise abuse of office, active and passive bribery and a range of other corruption activities. Largely, officeholders that engage in corruption are prosecuted, but loopholes do exist which have been used to avoid prosecution, predominantly at the local levels of government and judiciary.

Colombian civil law is based on French, Spanish and Italian influences and has the status of ordinary laws. The Civil Code 1873 has a broad scope and governs contracts, torts, obligations, personal law and family law; the Commercial Code 1973 regulates commercial activity such as transactions, entities, negotiations and bankruptcy. For any aspect of commercial life that is not covered by the Commercial Code then the Civil Code applies. The Penal Code 2000 lays down the basis of offences punishable by law, whilst the Code of Criminal Procedure defines the procedures to be followed by the state's criminal courts. The procedures required to litigate before civil courts is defined in the General Code of Procedure 2012.⁷

Colombia is a signatory to a number of international treaties. These include the Geneva Conventions, the United Nations Convention Against Corruption and the United Nations Framework Convention on

¹ https://www.constituteproject.org/constitution/Colombia_2015.pdf.

² <http://www.nyulawglobal.org/globalex/Colombia1.html>.

³ https://www.constituteproject.org/constitution/Colombia_2015.pdf.

⁴ <http://www.nyulawglobal.org/globalex/Colombia1.html>.

⁵ https://www.bti-project.org/fileadmin/files/BTI/Downloads/Reports/2016/pdf/BTI_2016_Colombia.pdf.

⁶ <http://www.business-anti-corruption.com/country-profiles/colombia>.

⁷ <http://www.nyulawglobal.org/globalex/Colombia1.html>.

Climate Change. Colombia is also a member of a number of international organisations including the Comunidad Andina trade bloc, the Southern Common Market (MERCOSUR), World Trade Organisation, World Health Organisation and the International Centre for Settle of Investment Disputes. International treaties have the status of law in Colombia with the exception being international human rights treaties, which prevail over all domestic law.⁸

BUSINESS SECTOR

The Colombian economy has begun to recover from the recession it entered in 2014, as a consequence to the fall in hydrocarbon prices. Indeed, real GDP growth is expected to increase between 2.8-3.6% annually over the next four years. Nevertheless, mineral products, predominantly hydrocarbons, account for almost 50% of Colombia's exports whilst mining and agricultural products form another 20-21%.⁹ As such, the economy is in need of further reform.

Nevertheless, the country is ranked 59 of 190 in the World Bank's Ease of Doing Business Index and 96 of 190 in the World Bank's Starting a Business Index.¹⁰ It has also been ranked consistently as a 'top reformer' by the World Bank. The main challenges to doing business in Colombia include the poor transport infrastructure outside of the main urban metropolises, a sometimes-opaque bureaucracy, a large informal sector, lack of skilled labour and low productivity as well as a fluid security situation.¹¹

There are, however, a number of opportunities. Colombia is a regional hub, with good access to all other South American nations and the USA, and it has duty free access to MERCOSUR, the Andean nations as well as Chile. Colombia also has the second most flexible labour market in Latin America and with 13 free trade agreements; it is one of the most open economies in Latin America. The USA and UK are the largest investors in Colombia and significant opportunities exist in a number of sectors. There are a number of large infrastructure and construction projects underway which require machinery, design and project management expertise.¹² The hydrocarbon sector is also a best prospect market, particularly as reserves dwindle and the government seeks to diversify to, explore and exploit off-shore resources. It is recommended that market entry is done through an agent or distributor in Colombia, with a contract that meets Colombian law.

SECURITY SITUATION

Despite recent improvements in security, crime rates remain high across Colombia. Petty street crime is common, especially in deprived urban areas, and can often be accompanied by violence. The drug trade, organised crime and terrorism/narco-terrorism are inextricably linked and 2016 was a record year for coca production. Illegal armed groups and criminal gangs are active in all Departments where coca crops are grown, processed, transported and distributed. The risk of drug related crime is particularly high in rural areas and in the areas bordering Panama, Venezuela and Ecuador.¹³

Despite the peace deal with FARC and the ceasefire with the ELN as well as elections in 2018, the risk of terrorism remains fairly high. This is predominantly from former-FARC dissidents, the ELN and their

⁸ <http://www.nyulawglobal.org/globalex/Colombia1.html>.

⁹ <https://atlas.media.mit.edu/en/profile/country/col/>.

¹⁰ <http://www.doingbusiness.org/data/exploreeconomies/colombia>.

¹¹ <https://globaledege.msu.edu/countries/colombia/risk>; <https://www.gov.uk/government/publications/exporting-to-colombia/doing-business-in-colombia-colombia-trade-and-export-guide#challenges-doing-business-in-colombia>.

¹² <https://www.gov.uk/government/publications/exporting-to-colombia/doing-business-in-colombia-colombia-trade-and-export-guide#opportunities-for-uk-businesses-in-colombia>.

¹³ <https://www.gov.uk/foreign-travel-advice/colombia/safety-and-security>.

dissidents, as well as other illegal armed groups. These groups have also carried out kidnappings, occasionally targeting foreigners, especially those working for resource extraction companies.¹⁴

Given the high crime rate, threat from illegal armed groups and criminal gangs there is a booming security sector in Colombia, driven by American, British, German, South Korean and Chinese companies. The current market is growing at 4-5% annually and is currently estimated at US\$2 billion. High-tech security products, such as surveillance systems and IT security, and personal protection products have particular appeal in the market.¹⁵

COUNTRY OVERVIEW

The Republic of Colombia is located in northern South America, bordering Venezuela, Brazil, Peru, Ecuador and Panama. Colombia's population stands at 47.70 million making it the 29th most populous nation globally. The capital, Bogota, is the largest metropole with 9.77 million residents, whilst the economic centres of Medellin, Cali, Barranquilla, Bucaramanga, and Cartagena all have over one million inhabitants. Spanish is the official language and whilst the state is officially secular, around 93% of the population are nominally Christian: 79% of adherents are Catholic and 14% are Protestants.¹⁶

Colombia is a relatively stable nation, particularly in relation to its neighbour, Venezuela. In terms of the political-economic outlook and the business climate, both are currently deemed to have acceptable levels of risk.¹⁷ The security situation is variable. Although the recent peace deal with FARC and ceasefire with ELN have reduced the risk, there are still significant threats from violent crime, terrorism and narco-terrorism.

Colombia ranks 90 of 176 in Transparency International's 2016 Corruption Index.¹⁸ Further data suggests that corruption is most significant in the Colombian political environment but it also exists in the business sector and judiciary. Nevertheless, anti-corruption laws are often enforced effectively.¹⁹

Colombia's GDP currently stands at US\$307.48 billion and has started to recover following its drop in GDP caused by the 2014 crash in hydrocarbon prices.²⁰ The economy is forecast to steadily grow in the near future.²¹ The official currency is the Colombian Peso.

Colombia is a presidential republic, which is pluralistic in nature. The executive power rests with the president, currently Juan Manuel Santos, who is both chief of state and head of government. Both the president and vice-president, currently Ret. Gen. Oscar Naranjo, are elected by absolute majority vote every four years, with the next election to be held on 15 June 2018. From 2018 presidents can only serve one four-year term. Legislative power rests with the bicameral Congress. The Senate is elected by a constituency-based proportional representation popular vote, as is the Chamber of Representatives and members of both serve four year terms, with the next election scheduled for March 2018. Elections are free and fair: the 2014 election saw no reports of major problems or irregularities.²²

¹⁴ <https://www.gov.uk/foreign-travel-advice/colombia/terrorism>.

¹⁵ <https://www.export.gov/article?id=Colombia-Safety-and-Security>.

¹⁶ <https://www.cia.gov/library/publications/the-world-factbook/geos/co.html>.

¹⁷ <https://globaledege.msu.edu/countries/colombia/risk>.

¹⁸ https://www.transparency.org/news/feature/corruption_perceptions_index_2016.

¹⁹ <https://www.gov.uk/government/publications/overseas-business-risk-colombia/overseas-business-risk-colombia#bribery-and-corruption>.

²⁰ <http://www.imf.org/external/datamapper/NGDPD@WEO/COL>.

²¹ <https://atlas.media.mit.edu/en/profile/country/col/>.

²² <https://www.cia.gov/library/publications/the-world-factbook/geos/co.html>; <http://www.bbc.co.uk/news/world-latin-america-27862555>.